REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

DEDON MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8926

Members:

BAUTISTA, *Chairperson;*
FABON-VICTORINO *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
MAY 2 1 2018
11:56 a.m.

x--x

DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This resolves the Petition for Review filed by Dedon Manufacturing, Inc. that prays for the refund or the issuance of tax credit certificate (TCC) in the total amount of ₱26,520,184.81, allegedly representing unutilized input value-added tax (VAT) on its purchases of goods and services attributable to its zero-rated sales for calendar years (CYs) 2009, 2010, and 2011.

THE FACTS

Petitioner Dedon Manufacturing, Inc. is a corporation organized and existing under Philippine laws, with office at Zone 7 Birds of Paradise Riverside, Barangay Canduman, Mandaue City. It is engaged in the business of manufacturing goods such as furniture made of aluminum frame and hularo synthetic fiber and in trading the same on wholesale basis.[1] Petitioner is registered with Bureau of Internal Revenue (BIR) as a VAT taxpayer, with

[1] Docket, Vol. I, pp. 348-446, Exhibits "P-6", "P-6-a", "P-6-b", "P-6-c", "P-6-d", "P-6-e", "P-6-f", "P-6-g", and "P-6-h".

Taxpayer Identification No. (TIN) 207-396-481-000, and as evidenced by its Certificate of Registration No. OCN3RC0000055031.[2]

Pursuant to its registration with the Board of Investments,[3] petitioner's sales are VAT zero-rated[4] and entitled to income tax holiday incentive under Article 39(a) of Executive Order (EO) No. 226, as amended by Republic Act (RA) No. 7918.[5]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power 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 or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City

Petitioner filed its original Monthly and Quarterly VAT Returns for CYs 2009, 2010, and 2011 through the Electronic Filing and Payment System (eFPS)[6] of the BIR, containing the following details:

Calendar Year	Sales subject to VAT	Output VAT	Zero-rated Sales	Input VAT credits
2009	₱29,265,286.22	₱3,511,834.35	₱702,950,348.68	₱ 8,633,404.59
2010	₱31,277,637.34	₱3,753,316.48	₱886,155,338.62	₱11,611,534.23
2011	₱25,127,531.15	₱3,015,303.74	₱755,631,159.17	₱12,075,741.32

Petitioner maintains that the input VAT paid on its purchases of goods and services during CYs 2009, 2010, and 2011 are duly supported by VAT invoices and/or official receipts issued by its VAT-registered suppliers in accordance with Sections 110 and 113 of the NIRC of 1997, as amended.[7]

Petitioner insists that the input VAT incurred in connection with its purchases of goods and services, including capital goods during CYs 2009, 2010, and 2011 were attributable to its zero-rated sales of goods for the said period and were not applied against any output VAT during each of the four quarters of CYs 2009, 2010, and 2011.[8]

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[2] Docket, Vol. I, p. 347, Exhibit "P-5".
[3] Id., pp. 324-338, Exhibits "P-1" and "P-2".
[4] Id., pp. 341-346, Exhibits "P-4", "P-4-a", and "P-4-b".
[5] Id., pp. 339-340, Exhibits "P-3" and "P-3-a".
[6] Id. vol. II, pp. 674-875, Exhibits "P-8", "P-8-a", "P-8-b", "P-9", "P-9-a", "P-9-b", "P-10", "P-10-a", "P-10-b", "P-11", "P-11-a", and "P-11-b".
[7] Id., vol. IV, pp. 1621-1622, Par 1.16, Petitioner's Memorandum.
[8] Id. vol. IV, p. 1622, Pars 1.17 and 1.18, Petitioner's Memorandum.

Petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance ("DOF-OSS Center" for brevity) an Application for Tax Credits/Refund (BIR Form No. 1914), requesting the refund of its alleged unutilized input VAT incurred in CYs 2009, 2010, and 2011, summarized as follows:

PERIOD COVERED	DATE OF FILING	TAX CREDIT APPLIED
2009[9]	March 30, 2011	9,225,927.56
2010[10]	March 30, 2012	8,134,936.26
2011[11]	March 26, 2013	9,159,320.99
TOTAL		**26,520,184.81**

As a consequence of said filing, petitioner received the corresponding Letters of Authority (LOAs) authorizing the BIR revenue officers to examine petitioner's books of accounts and other accounting records, to wit:

PERIOD COVERED	LOA NO.	DATE OF ISSUANCE OF LOA
2009	eLA201000049807[12]	May 9, 2011
2010	eLA201000050047[13]	April 24, 2012
2011	eLA201000050187[14]	April 19, 2013

On April 22 to 23, 2013, the revenue officers authorized to examine petitioner's books for CY 2009 conducted an actual audit at petitioner's office in Mandaue City.[15]

On July 19 and 29, 2013, the revenue officer requested the submission of additional documents for the 2009 claim through electronic mail,[16] to which petitioner complied.[17]

As regards the 2010 claim, petitioner transmitted on November 14, 2012 its supporting documents in response to the Department of Finance's (DOF) first and second notices dated October 1, 2012 and October 24, 2012, respectively.[18]

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[9] Docket, Vol. III, pp. 1311-1317, Exhibits "P-20", "P-21-b", "P-21-c", and "P-21-d".
[10] BIR Records, Folder 2, pp. 234-237, Exhibits "P-23", "P-23-b", "P-23-c", and "P-23-d".
[11] BIR Records, Folder 3, pp. 170-173, Exhibits "P-25", "P-25-b", "P-25-c", and "P-25-d".
[12] Docket, vol. III, p. 1321, Exhibit "P-22".
[13] Id., Vol. III, p. 1348, Exhibit "P-24".
[14] Id., Vol. III, p. 1371, Exhibit "P-26".
[15] Id., vol. III, p. 1322, Exhibit "P-22-a".
[16] Id., Vol. III, pp. 1333-1335, Exhibit "P-22-b".
[17] Id., Vol. IV, p. 1623, Par 1.22, Petitioner's Memorandum.
[18] Id., Vol. III, p. 1357, Exhibit "P-24-c".

Anent the 2011 claim, petitioner maintains that the DOF-OSS Center neither conducted any examination nor served a notice for compliance with other reportorial requirements.

On June 11, 2014, the BIR issued Revenue Memorandum Circular (RMC) No. 54-2014, which clarifies the issues relative to the application for VAT refund/credit under Section 112 of the NIRC of 1997, as amended, particularly, that the inaction of the BIR Commissioner within the 120-day period provided by law to decide on the claim shall be deemed a denial. Upon expiration of said period, the taxpayer has 30 days within which to file an appeal with the Court of Tax Appeals.

According to petitioner, since the BIR Commissioner failed to act on its refund claim within the prescribed 120-day period, which petitioner reckoned from the issuance of RMC No. 54-2014 on June 11, 2014, the inaction amounted to a denial; thus, prompting it to file the instant Petition for Review on November 10, 2014.

Respondent filed his Answer[19] to the Petition for Review on January 26, 2015[20], interposing the following arguments:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

> 4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 5. In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor. xxx
>
> 6. To support its claim, it is imperative for petitioner to prove the following, *viz*:
>
> > a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
> >
> > b. The invoicing and accounting requirements for VAT-registered persons, as well as

[19] Docket, Vol. I, pp. 171-176.
[20] Received by the Court on February 4, 2015.

the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. This 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;

d. That the input taxes in the aggregate amount of P26,520,184.81 allegedly paid by petitioner on its purchases of goods and services for the 1st to 4th quarter of calendar years 2009, 2010 and 2011 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of unutilized input tax (VAT) were filed within the periods provided in Sections 112 (A) and (D) of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claim for Input Tax Credits);

g. The requirements enumerated under Section 4.104-5 of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits).

> h. The requirements enumerated under Revenue Memorandum Circular 54-2014 (Re: Clarifying Issues Relative to the Application for Value Added Tax Refund/Credit under Section 112 of the Tax Code, as amended)

7. Petitioner must prove that the aggregate amount of P26,520,184.81 allegedly representing excess and unutilized input VAT for the 1st to 4th quarters of taxable years 2009, 2010 and 2011 are properly documented.

8. In Revenue Memorandum Circular 54-2014, the administrative claim for VAT refund or TCC must be filed within two (2) years from the close of the taxable quarter when the zero-rated sales were made. The application for VAT refund must be accompanied by complete supporting documents as specifically enumerated on Annex 'A' of the RMC. In addition, the taxpayer should attach a sworn statement/affidavit (i) attesting to the completeness of the submitted documents; (ii) stating that the attached supporting documents are the only documents which the taxpayer will present to support the claim; and, additionally (iii) in the case of corporations or other juridical persons, there should be a sworn statement that the officer signing the affidavit (which should at the very least be a Chief Finance Officer) has been authorized by the company's Board of Directors.

9. Corollary thereto, Section 112 (D) [now Section 112(c) of the Tax Code of 1997] provides as follows, *to wit*:

> '**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; xxx
>
> X X X
>
> **(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.
>
> 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 of 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.**' (Emphasis supplied)

Pursuant to the aforequoted provision of law, the application for tax refund must be filed within two (2) years after the close of the taxable quarter when the sales were made and the CIR has a 120-day period within which to decide whether to grant the claim. It logically follows that a taxpayer must first submit the complete supporting documents before the 120-day period should commence. If the claim is not acted upon by respondent, within the 120-day period, such inaction shall be deemed a denial of the claim. It cannot be overemphasized that respondent cannot decide the claim for refund without the complete supporting documents.

10. All in all, 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. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. For failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

11. It can never be emphasized enough that in this jurisdiction tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> 'Tax refunds are in the nature of tax exemptions, and are to be construed **strictissimi**

> **juris** against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to claim for refund.'

12. Taxes collected are presumed to be in accordance with laws and regulations.

13. 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. Basic is the rule that the tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

14. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of jurisdiction and/or lack of merit."

The parties submitted their Joint Stipulation of Facts on May 21, 2015[21] in compliance with the order of the Court during the Pre-Trial Conference held on May 5, 2015.[22]

Petitioner filed a Motion for Appointment of Independent Certified Public Accountant to Examine and Testify on Voluminous Records and Documents[23] on May 21, 2015, which the Court granted during the hearing held on June 26, 2015.[24]

During trial, petitioner presented Ms. Grace A. Cabradilla[25] – petitioner's Finance Director and Ms. Rosie Sultan[26] – petitioner's Accounting Manager, who testified during the hearing on August 11, 2015[27] and on September 8, 2015,[28] respectively, and identified their judicial affidavits.

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[21] Docket, Vol. I, pp. 236-244.
[22] Id., Vol. I, p. 219, Minutes of the Hearing.
[23] Id., Vol. I, pp. 245-248.
[24] Id., Vol. I, p. 286, Minutes of the Hearing.
[25] Id., Vol. I, pp. 313-323, Judicial Affidavit.
[26] Id., Vol. II, pp. 660-673, Judicial Affidavit.
[27] Id., Vol. I, p. 462, Minutes of the Hearing.
[28] Id., Vol. III, p. 1376, Minutes of the Hearing.

Petitioner filed its Formal Offer of Evidence[29], consisting of Exhibits "P-1" to "P-33", inclusive of submarkings, on December 14, 2015; with respondent's Comment.[30]

In the Resolutions dated January 22, 2016[31], June 27, 2016[32], and September 7, 2016,[33] the Court admitted petitioner's documentary evidence, except for Exhibits "P-22-C-5", "P-22-C-6", "P-22-C-6-A", "P-22-C-6-B", "P-22-C-6-C", "P-22-C-6-7", "P-22-C-6-8", "P-23-D-2", "P-24-A", "P-26-A", "P-26-C-4-A", "P-26-7-A", and "P-26-C-9".

On the other hand, respondent manifested during the hearing on December 6, 2016 that he will not be presenting any witness.[34] The Court then directed the parties to submit their respective memoranda.

The case was submitted for decision on June 5, 2017,[35] considering respondent's Memorandum[36] filed on January 5, 2017 and petitioner's Memorandum[37] filed on February 21, 2017. Hence, this decision.

THE ISSUES

The parties submitted the following stipulated issues for the Court's resolution:[38]

1. Whether or not petitioner is entitled to Tax Refund/Credit in the amount of Php9,225,927.56 representing excess and unutilized VAT Input Taxes for the four quarters of Calendar Year 2009;

2. Whether or not petitioner is entitled to Tax Refund/Credit in the amount of Php8,134,936.00 representing excess and unutilized VAT Input Taxes for the four quarters of Calendar Year 2010;

3. Whether or not petitioner is entitled to Tax Refund/Credit in the amount of Php9,159,320.99 representing excess and

[29] Docket, Vol. III, pp. 1425-1450.
[30] Id., Vol. III, pp. 1453-1455.
[31] Id., Vol. III, pp. 1458-1459.
[32] Id., Vol. IV, pp. 1592-1593.
[33] Id., Vol. IV, pp. 1596-1597.
[34] Id., Vol. IV, p. 1598, Minutes of the Hearing.
[35] Id., Vol. IV, p. 1654.
[36] Id., Vol. IV, pp. 1600-1606.
[37] Id., Vol. IV, pp. 1618-1632.
[38] Id., vol. I, p. 269, Pre-Trial Order.

unutilized VAT Input Taxes for the four quarters of Calendar Year 2011.

RULING OF THE COURT

The Court shall determine first whether it has jurisdiction over the Petition for Review.

Pursuant to Section 3(a)(1) and (2) of Rule 4 of the Revised Rules of the Court of Tax Appeals, this Court has jurisdiction over the following:

> "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*)

In addition, Section 112(A) and (C) of the NIRC of 1997, as amended, provides:

"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.

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.

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."

From the foregoing provision, in order to be entitled to a tax credit or refund of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. that the taxpayer is VAT-registered;
2. that there must be zero-rated or effectively zero-rated sales;
3. that input taxes were incurred or paid;
4. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. that the input taxes were not applied against any output VAT liability; and
6. that the claim for refund was filed within the prescribed periods both in the administrative and judicial levels.

The Court deems it best to first discuss the timeliness of petitioner's claim both in the administrative and judicial levels. After all, to inquire into the existence of the jurisdiction over the subject matter is the primary concern of the court, for thereon would depend the validity of its entire proceedings.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[39], the Supreme Court exhaustively explained the significance of the period mentioned in Section 112 of the NIRC of 1997, as amended, in relation to the validity of filing administrative and judicial claims for refund. Based on this case, the two-year prescriptive period is reckoned from the close of the taxable quarter when the zero-rated sales were made, regardless of when the input VAT was paid.

In the present case, the close of the first quarter for CYs 2009, 2010 and 2011 were on March 31, 2009, on March 31, 2010, and on March 31, 2011, respectively. The administrative claims for refund for said calendar years were filed with the DOF-OSS Center on March 30, 2011, on March 30, 2012, and on March 26, 2013, respectively. Clearly, petitioner has timely filed its administrative claims for refund for calendar years 2009, 2010, and 2011.

As to the judicial claim, the BIR Commissioner has 120 days from the submission of complete documents to decide whether or not to grant the claim for refund or the issuance of tax credit certificate. If the claim for refund or tax credit is not acted upon by the Commissioner within the 120-day period as required by law, such inaction shall be deemed a denial of the application for

[39] G.R. No. 184823, October 6, 2010.

refund or tax credit, pursuant to Section 112(C) of the NIRC of 1997, as amended.

The 120-day period is said to be crucial in filing a judicial appeal. In order for the Court to conclude that there is an administrative "denial" due to inaction of the BIR Commissioner during the 120-day period, the correct reckoning point of the 120-day period is imperative. In this regard, the pronouncement of the High Tribunal in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[40] is instructive. The relevant portions of the case are quoted hereunder:

> "*Ideally*, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, *ideally*, the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.
>
> Thus, when the VAT was first introduced through Executive Order No. 273, the pertinent rule was that:
>
>> (e) Period within which refund of input taxes may be made by the Commissioner. The Commissioner shall refund input taxes within 60 days **from the date the application for refund was filed** with him or his duly authorized representative. No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.
>>
>> [Emphasis supplied]
>
> Here, the CIR was not only given 60 days within which to decide an administrative claim for refund of input taxes, but the beginning of the period was reckoned 'from the date the application for refund was filed.'

[40] G.R. No. 207112, December 8, 2015.

When Republic Act *(R.A.)* No. 7716 was, however, enacted on May 5, 1994, the law was **amended** to read:

> (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 for creditable input taxes within sixty (60) days **from the date of submission of complete documents in support of the application** filed in accordance with sub-paragraphs (a) and (b) 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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.
>
> [Emphasis supplied]

Again, while the CIR was given only 60 days within which to act upon an administrative claim for refund or tax credit, the period came to be reckoned '**<u>from the date of submission of complete documents in support of the application</u>**.' With this amendment, the date when a taxpayer made its submission of complete documents became relevant. In order to ensure that such date was at least determinable, RMO No. 4-94 provides:

> REVENUE MEMORANDUM ORDER NO. 40-94
>
> SUBJECT: *Prescribing the Modified Procedures on the Processing of Claims for Value-Added Tax Credit/Refund*
>
> III. Procedures
> REGIONAL OFFICE
> A. Revenue District Office
> In General:
>
> 1. Ascertain the completeness of the supporting documents prior to the receipt of the application for VAT credit/refund from the taxpayer.

2. Receive application for VAT Credit/Refund (BIR Form No. 2552) in three (3) copies in the following manner:

    a. stamp the word 'RECEIVED' on the appropriate space provided in all copies of application;

    b. indicate the claim number;

    c. **indicate the date of receipt**; and

    d. initial by receiving officer.

The application shall be received only if the required attachments prescribed in RAMO 1-91 have been fully complied with x x x

Then, when the NIRC was enacted on January 1, 1998, the rule was once more amended to read:

> (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 compete documents** in support of the application filed in accordance with Subsections (A) and (B) 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.
>
> [Emphasis supplied]

This time, the period granted to the CIR to act upon an administrative claim for refund was extended to 120 days. The reckoning point however, remained **'<u>from the date of submission of complete documents.</u>'**

Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly 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?*
>
> 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 **<u>within thirty (30) days from request</u> of the investigating/processing office, <u>which shall be construed as within the one hundred twenty (120) day period</u>**.

[Emphases Supplied]

Consequently, 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. 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. Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential. It is only upon the submission of these documents that the 120-day period would begin to run.

Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112(B) of the NIRC, Section 112 (D) was amended and renamed 112(C). Thus:

> (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.

With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, 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.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund – it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

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. 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. 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.

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.

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.

It bears mentioning at this point that the foregoing summation of the rules ***should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014***, such as the claim at bench. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:

> 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.
>
> 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 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.

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."

Pursuant to the above-quoted portion of the *Pilipinas Total Gas* case, for claims filed before June 11, 2014, or prior to the effectivity of Revenue Memorandum Circular (RMC) No. 54-14, the rules provided under RMC No. 49-2003 in relation to Section 112 of the NIRC of 1997, as amended, shall apply. Thus, petitioner had 30 days from the time of filing of its administrative claim for tax credit or refund to submit all the required supporting documents. If in the course of the investigation, additional documents are required, the BIR must inform petitioner of the need to submit additional documents through a notice, and petitioner shall have 30 days to comply. Upon completion of all required documents, the 120-day period shall commence; but in all cases, all filings and submissions, including the judicial claim, must be completed within the two-year period under Section 112(A) of the NIRC of 1997, as amended.

However, the Court notes that the notices received by petitioner, requiring the submission of certain documents for the processing of the claim for refund for CYs 2009[41] and 2010[42], stated that the 120-day period is suspended pending the submission of the required documents. Even though the date of receipt was not indicated, the notices were dated beyond the 120-day period to decide.

Thus, the request for additional documents made by the revenue officers to petitioner and the subsequent compliance therewith which were beyond the 120-day period did not toll the running of the said period.

For better appreciation of the timeline, below is a table of the pertinent dates:

YEAR	DATE OF FILING THE ADMINISTRATIVE CLAIM	DATE OF NOTICE FOR SUBMISSION OF DOCUMENTS	END OF THE 120-DAY PERIOD	END OF THE 30-DAY PERIOD TO FILE WITH THE CTA
2009	March 30, 2011	May 31, 2012 and October 8, 2012	July 28, 2011[43]	August 27, 2011
2010	March 30, 2012	October 1, 2012 and 24, 2012	July 28, 2012	August 27, 2012
2011	March 26, 2013	-	July 24, 2013	August 23, 2013

Despite the fact that the revenue officers assigned to petitioner's 2009 claim conducted actual audit at petitioner's office on April 22 to 23, 2013 and requested for additional documents through email on July 19 and 29, 2013, to which petitioner complied, and the transmittal of additional documents for the 2010 claim on November 14, 2012, petitioner's subsequent submission of complete documents did not move the 120-day period provided by law.

Evidently, the instant Petition for Review filed on November 10, 2014 was submitted out of time.

The 120-day period to decide on administrative claims for VAT refund/credit applies to those filed with the DOF-OSS Center

Petitioner, however, maintains that the present petition was filed on time because on June 11, 2014, respondent issued RMC No. 54-2014 clarifying issues concerning the application for VAT refund including the 120-day mandate for the Commissioner to decide on tax refund, otherwise, the claim is deemed denied.[44]

[41] Exhibit "P-22-b", docket, vol. III, pp. 1323-1324.
[42] Exhibit "P-24-b", docket, vol. III, pp. 1349-1352.
[43] Considering that there is no proof that petitioner submitted additional document in compliance with the May 31, 2012 email, the commencement of the 120-day period was not moved to a later date.
[44] Petition for Review, docket, vol. I, p. 19.

It further argues that, since the BIR acquired jurisdiction over petitioner's claims for refund or tax credit from the DOF-OSS Center under RMC No. 54-2014 and has failed to act on its claims, petitioner computed the 120 days from June 11, 2014. Thus, petitioner's claim for tax refund was deemed denied on October 9, 2014 and petitioner had 30 days from October 9, 2014 within which to file its appeal before the Court of Tax Appeals. Since November 8, 2014 was a Saturday, the instant petition was filed on the next business day, November 10, 2014.

Petitioner further avers that upon the issuance of RMC No. 54-2014, the DOF-OSS Center stopped processing claims for excess and unutilized VAT input pending before their office and indorsed these claims to the BIR. These included petitioner's claim for refund/tax credit for CYs 2009, 2010 and 2011. It cites Department Order No. 055-2014 dated July 31, 2014, issued by the DOF, where it implies that the processing of claims for tax refund/credit for VAT input taxes was no longer included in said agency.[45]

Petitioner also argues that even in its prior claims for refund filed before the DOF-OSS Center, it has relied on the provision of Administrative Order (AO) No. 266, that the DOF-OSS Center should finish evaluation of the applications filed through its office within 30 days from the date of acceptance of complete applications. However, it does not provide that an inaction by the DOF-OSS Center within 30 days would amount to denial of the application. In fact, various claims for refund by petitioner with the DOF-OSS Center were processed beyond the 30-day period, making the 30-day processing period merely directory.[46]

Similarly, it claims that there is a lack of specific and express provision providing for the 120-day period given to the BIR Commissioner to decide on the claim that is applicable to the processing of claims for refund or tax credits filed with the DOF-OSS Center under AO No. 266.[47]

Lastly, petitioner avers that RMC No. 54-2014 should not be applied retroactively to applications pending before the DOF-OSS Center.[48]

Petitioner's arguments are bereft of merit.

There is nothing in the law nor regulations or circulars issued by the DOF or the BIR, which provides that the 120 days may be reckoned upon the issuance of RMC No. 54-2014, since it is a mere clarification of what is provided in Section 112(C) of the NIRC of 1997, as amended.

[45] Docket, Vol. I, p. 20, Petition for Review.
[46] Id., Vol. I, p. 18, Petition for Review.
[47] Id., Vol. I, p. 18, Petition for Review.
[48] Id., Vol. I, p. 20, Petition for Review.

The reckoning period of the 120 days remains from the submission of complete document in support of the administrative claim for refund, whether filed directly with the BIR Office or with the DOF-OSS Center.

The DOF-OSS Center was created under AO No. 266 for the purpose of achieving an orderly and expeditious processing of tax credits and duty drawbacks.[49] It is composed of representatives from the Department of Finance, acting as Chairman, the Board of Investments, Bureau of Customs and Bureau of Internal Revenue, as members and the Revenue Operations Group of the DOF, as Secretariat.[50] Among others, it has the duty to accept applications for tax credits and/or duty drawbacks and finish evaluation thereof within thirty (30) working days from the date of acceptance of complete applications.[51]

Pursuant to Section 2 of the NIRC of 1997, as amended, the BIR shall be under the supervision and control of the DOF. The power to decide disputed assessments, refund of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC of 1997, as amended, or other laws or portions thereof administered by the BIR is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the CTA.[52]

The power to decide claims for refund remains with the Commissioner and the DOF-OSS Center was created primarily to accept applications for refund and to process/evaluate the same within the period prescribed.

Similar to the Bureau of Customs (BOC), the BIR is a member of the DOF-OSS Center. While the BOC is involved in duty-drawbacks filed with the DOF-OSS Center, the power to decide internal revenue refund applications filed with the DOF-OSS Center remains with the BIR. It must also be noted that the applications for refund filed by petitioner for calendar years 2009, 2010, and 2011 were BIR Forms 1914. As a consequence of said filing, petitioner received LOAs from the BIR.

The Supreme Court, in the case of *Pilipinas Total Gas* has already ruled on when the 120-day period shall reckon for claims filed before the issuance of RMC No. 54-2014. There is nothing in the law, regulations or circulars issued by the DOF or the BIR or in jurisprudence providing that the 120-days may be reckoned upon the issuance of RMC No. 54-2014, considering that said RMC is a mere clarification of what is provided in Section 112 of the NIRC of 1997, as amended.

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[49] Section 1, AO No. 266, signed February 7, 1992.
[50] Section 2, AO No. 266.
[51] Section 3, AO No. 266.
[52] Section 4, NIRC of 1997, as amended.

The reckoning period of the 120-day period remains from the submission of complete document in support of the administrative claim for refund, whether filed directly with the BIR Office or with the DOF-OSS Center. Said submission of complete documents should be in accordance with RMC No. 49-2003 and the ruling of the Supreme Court in the *Pilipinas Total Gas* case.

While the Court takes note of the fact that certain applications for refund filed before the DOF-OSS Center were acted upon beyond the 30-day period, as prescribed by AO No. 266, this does not result in allowing petitioner to sleep on its right to appeal before the CTA when the case is deemed denied. After all, the 120-day period to decide is intended to benefit the taxpayer to ensure that its claim is decided judiciously and expeditiously. To prolong the processing of the application of refund would be prejudicial to its interest.

In fact, this Court has decided cases involving VAT refund/credits filed with the DOF-OSS Center applying the 120-day period. In the case of *Emerson Electric (Asia) Limited – ROHQ vs. Commissioner of Internal Revenue*[53], therein petitioner similarly filed its claim for refund with the DOF-OSS Center. The Court resolved that the reckoning point of the 120-day period to decide on the refund claim shall be from the time of submission of complete documents with the said agency.

In the present case, since petitioner failed to file the instant Petition for Review within the period prescribed by law, the Court has no jurisdiction over this case.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[53] CTA Case Nos. 8583 and 8584, February 23, 2017.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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