REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NICKELBASE, INC., Petitioner,	**CTA CASE NO. 9632**
	Members:
-versus-	Castañeda, Jr., *Chairperson,* Mindaro-Grulla, and, Bacorro-Villena, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 18 2019 1:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This is a *Petition for Review* filed by Nickelbase, Inc. against the Commissioner of Internal Revenue, seeking the refund or issuance of a Tax Credit Certificate (TCC) in the amount of ₱90,666,827.96, allegedly representing validated and duly supported unutilized input taxes attributable to its zero-rated sales covering the taxable year January 1, 2015 to December 31, 2015.

THE PARTIES

Petitioner Nickel Base, Inc. is a domestic corporation registered with the Securities and Exchange Commission.[1] It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer under Certificate of Registration Number OCN 2RC0000840376, with TIN 007-773-770-000.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue who holds office at the 5th Floor BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On February 15, 2017, petitioner filed an *Application for Tax Credits / Refunds* (BIR Form No. 1914) with the BIR, covering the period from January 1, 2015 to December 31, 2015 in the amount of ₱90,666,827.96,[4] with the corresponding *Checklist of Mandatory Requirements for Claims for VAT Credit/Refund* duly checked by Mr. Eddie L. Felicilda, Chief of the Administrative Section of the BIR.[5]

In response to the said *Application*, Ms. Erlinda A. Simple, Assistant Commissioner for the Assessment Service of the BIR, issued the letter dated June 14, 2017,[6] denying, in effect, petitioner's claim for refund/credit for the said period, representing unutilized input taxes on local purchases of goods and services, for lack of factual basis.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant *Petition for Review* on July 21, 2017.[7]

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[1] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, Vol. I, p. 413.
[2] Exhibit "P-2", Docket, Vol. II, p. 532.
[3] Par. 1. Admitted Facts, JSFI, Docket, Vol. I, p. 413.
[4] Exhibit "P-19-G-180001", Formal Offer of Evidence for the Petitioner, Docket, Vol. II, P. 508.
[5] Exhibit "P-19-G-180002", Formal Offer of Evidence for the Petitioner, Docket, Vol. II, P. 508.
[6] Exhibits "P-19-G-170001" to "P-19-G-170030", Formal Offer of Evidence for the Petitioner, Docket, Vol. II, P. 508.
[7] Docket, Vol. I, pp. 10 to 30.

On September 15, 2017, respondent filed his *Answer*,[8] interposing the following affirmative defenses, to wit:

"I. THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION.

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

> 6.1 Moreover, it has long been established that 'the CTA is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction. Hence, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.

6.2 The timeliness of the filling of administrative and judicial claim for refund is governed by Section 112(A) and (C) of the NIRC of 1997, as amended, to wit:

> **'SEC. 112. Refunds of Tax Credit 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
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> xxx xxx xxx
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> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, **the**

[8] Docket, Vol. I, pp. 145 to 155.

> **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.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of **the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**. *(Emphasis supplied)*
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> xxx xxx xxx

6.3 In the case of *Team Energy Corporation (formerly Mirant Pagbilao Corporation) vs. Commissioner of Internal Revenue*, the Supreme Court elaborates on this second paragraph of Section 112 (C) [previously Section 112 (D)], as follows:

> 'xxx The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: **(1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA**. As we see it then, the 120-day period is crucial in filling an appeal with the CTA.' *(Emphasis supplied)*

6.4 From the foregoing, petitioner can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the respondent denies the claim within the 120-day period, or (2) file the judicial claim within 30 days from expiration of the 120-day period if the respondent does not act within the 120-day period. Corollary thereto, the 'decision' contemplated by Section 112 is a decision issued by the respondent before the lapse of the 120-day period within which the latter may act on petitioner's claim. The inaction of the respondent on petitioner's claim during the 120-day period is, by express provision of law, 'deemed a denial' of the latter's claim. Petitioner had therefore 30 days from the expiration of the 120 day period to file its judicial claim with the Court.

6.5 Thus, the relevant dates as regards petitioner filing of its claim are provided below: Jr

Period	Last day of filing administrative claim (within 2 years from close of taxable quarter)	Filing date of administrative claim	Last day of the 120-day period for the BIR to act on the claim	Last day of filing of judicial claim	Filing date of Petition for Review
Quarter Ending March 31, 2015	March 31, 2017	February 15, 2017	June 15, 2017	July 15, 2017	July 21, 2017
Quarter Ending June 30, 2015	June 30, 2017				
Quarter Ending September 30, 2015	September 30, 2017				
Quarter Ending December 31, 2015	December 31, 2017				

6.6 Petitioner allegedly filed its administrative claim for refund or issuance of tax credit certificate on February 15, 2017. Counting 120 days from February 15, 2017, respondent then had until June 15, 2017, within which to decide the claim. Petitioner had 30 days from the lapse of 120 days on June 15, 2017 or until July 15, 2017 to file its judicial claim.

6.7 Based therefrom, it is clear that while the administrative claim for refund was timely filed, the instant petitioner was belatedly filed by six (6) days.

6.8 The decision of Assistant Commissioner Erlinda A. Simple is not any more appealable. It is not a decision contemplated by the law that is appealable to the Court of Tax Appeals. As discussed above, **the 'decision' contemplated by Section 112 is a decision issued by the respondent before the lapse of the 120-day period** within which the latter may act on petitioner's claim.

6.9 In view of petitioner's failure to comply with the mandatory provisions of Section 112 of the NIRC of 1997, as amended, Respondent respectfully submits that the Court has no other recourse but deny petitioner's judicial claim."

The pre-trial conference was initially set on October 12, 2017.[9] However, upon respondent's filing of *Motion To Reset Pre-Trial Conference* on October 3, 2017,[10] the pre-trial conference was reset to, and held on, October 26, 2017.[11] The *Pre-Trial Brief For the*

[9] *Notice of Pre-Trial Conference* dated September 19, 2017, Docket, Vol. I, pp. 157 to 158.
[10] Docket, Vol. I, pp. 159 to 161.
[11] Order dated October 6, 2017, Docket, Vol. I, p. 165; Minutes of the hearing held on, and Order dated, October 26, 2017, Docket, Vol. I, pp. 382 to 383.

Petitioner was filed on October 9, 2017;[12] while *Respondent's Pre-Trial Brief* was submitted on October 23, 2017.[13]

The parties filed their *Joint Stipulation of Facts and Issues* on November 8, 2017.[14] Thereafter, the Pre-Trial Order dated November 17, 2017 was issued,[15] thereby terminating the pre-trial.

The trial of the case then ensued.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of Ms. Dana Mai Tinoy,[16] petitioner's Senior Accounting Supervisor, and Mr. Valentin U. Romio,[17] the Court-commissioned Independent Certified Public Accountant (ICPA).[18]

The ICPA Report was submitted on January 3, 2018.[19]

On February 2, 2018, petitioner filed its *Motion for Transfer of Markings For Exhibits P-16 and P-17 and Formal Offer of Evidence.*[20] In the Resolution dated March 14, 2018,[21] the said *Motion for Transfer of Markings* was granted, and petitioner's Exhibits were admitted, by the Court, except for Exhibits "P-5", "P-5-1", and "P-6".

Respondent likewise presented documentary and testimonial evidence. His witnesses are Mr. Vincent Jay Aguillon,[22] Revenue Officer I, and Mr. Eddie L. Felicilda,[23] Chief of the Administrative Section, both of the BIR.

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[12] Docket, Vol. I, pp. 166 to 173.
[13] Docket, Vol. I, pp. 377 to 379.
[14] Docket, Vol. I, pp. 413 to 418.
[15] Docket, Vol. I, pp. 420 to 423.
[16] Exhibit "P-18", Docket, Vol. I, pp. 177 to 196; Minutes of the hearing held on, and Order dated, December 4, 2017, Docket, Vol. II, pp. 432 to 433.
[17] Minutes of the hearing held on, and Order dated, January 22, 2018, Docket, Vol. II, pp. 493 to 494.
[18] *Oath of Commission* dated December 4, 2017, Docket, Vol. II, p. 428.
[19] Exhibit "P-20", Formal Offer of Evidence for the Petitioner, Docket, Vol. II, P. 506.
[20] Docket, Vol. II, pp. 495 to 516.
[21] Docket, Vol. II, pp. 762 to 764.
[22] Exhibit "R-7", Docket, Vol. II, pp. 755 to 759; Minutes of the hearing held on, and Order dated, March 19, 2018, Docket, Vol. II, pp. 765 to 766.
[23] Exhibit "R-9", Docket, Vol. II, pp. 774 to 777; Minutes of the hearing held on, and Order dated, July 16, 2018, Docket, Vol. II, pp. 781 to 782.

On July 19, 2018, respondent filed his *Formal Offer of Evidence*.[24] The Court admitted respondent's Exhibits, in the Resolution dated October 4, 2018.[25]

Subsequently, petitioner filed its *Memorandum* on December 7, 2018;[26] while respondent's *Memorandum* was submitted on December 10, 2018.[27]

The Court declared the case submitted for decision on January 4, 2019.[28]

THE ISSUE

The parties submitted the following issue for this Court's resolution,[29] to wit:

> "Is the Petitioner entitled to a refund in the amount of ₱90,666,827.96 representing unutilized input tax for the period January 1 to December 31, 2015?"

Petitioner's arguments:

Petitioner argues that it is entitled to a refund or tax credit of input tax; and that the denial of the deductions per District and Audit Review in the aggregate amount of ₱14,378,767.53 does not have factual and legal bases.

Moreover, petitioner avers that it was able to fully support with proper documentation, in accordance with Section 110(A) in relation to Section 113 of the Tax Code, the input VAT claim in the amount of ₱784,553.84, contrary to the finding of respondent that the said amount is the ripened portion of the deferred input tax.

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[24] Docket, Vol. II, pp. 783 to 786.
[25] Docket, Vol. II, pp. 790 to 791.
[26] Docket, Vol. II, pp. 801 to 837.
[27] Docket, Vol. II, pp. 838 to 849.
[28] Resolution dated January 4, 2019, Docket, Vol. II, p. 851.
[29] Issues, JSFI, Docket, Vol. I, p. 413.

Furthermore, according to petitioner, the disallowance made by the BIR in the amount of ₱3,302,531.94 is without factual and legal bases.

In addition, petitioner, in effect, contends as follows:

1. The denial of input tax in the amount of ₱46,733,712.24 on purchases from big-ticket suppliers for failure to comply with documentary requirements prescribed per Revenue Memorandum Order No. 16-2007 and Revenue Memorandum Circular (RMC) No. 29-2009 is without factual or legal bases;

2. The deferred input taxes in the amount of ₱839,069.65 from the prior year's capital goods may be claimed as part of the refund/TCC;

3. The denial of input taxes in the amount of ₱4,038,193.99 attributable to the imputed sales on unverified official receipts is untenable;

4. The denial of input taxes in the amount of ₱12,736.95 relative to purchases from suppliers which were not found VAT-registered in the BIR-ITS database, pursuant to RMC No. 42-2003, is likewise untenable; and

5. The denial based on the alleged inconsistencies in the documents to establish the true nature of the operations/business undertakings of the subject claimant is unmeritorious.

Finally, petitioner concludes that it was able to demonstrate the validity of its claim.

Respondent's counter-arguments:

Respondent maintains that this Court has no jurisdiction over the instant *Petition*; and that granting for the sake of argument, but without conceding that the Court has jurisdiction, petitioner is not entitled to the refund of alleged unutilized input tax.

THE COURT'S RULING

The instant *Petition for Review* must be dismissed.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337,[30] 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: xxx.
>
> xxx xxx xxx
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*— In proper cases, the Commissioner shall grant a refund or issue a 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. *jc*

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[30] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing provisions, certain requisites have been identified through jurisprudential pronouncements which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, and said requisites may be classified into certain categories, to wit:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[31]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[32]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[33]

<u>In relation to the taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively

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[31] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

[32] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[33] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

zero-rated sales;[34]

5. 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;[35]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are due or paid;[36]

7. the input taxes are not transitional input taxes;[37]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, 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 basis of sales volume;[38] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[39]

Petitioner's administrative claim was timely filed.

The *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two (2) years from the close of the quarter when the sales were made.

Counting two (2) years from the close of the four (4) quarters of 2015, the respective last day for the filing of the administrative claim for the said four (4) quarters are shown below:

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[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[39] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

Period (2015)	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
January 1 to March 31, 2015	March 31, 2015	March 31, 2017
April 1 to June 30, 2015	June 30, 2015	June 30, 2017
July 1 to September 30, 2015	September 30, 2015	September 30, 2017
October 1 to December 31, 2015	December 31, 2015	December 31, 2017

Considering that petitioner's administrative claim [*Application for Tax Credits/Refunds* (BIR Form No.1914)], covering the said four (4) quarters, was filed with the BIR on February 15, 2017,[40] the same was timely made.

However, the instant judicial claim was belatedly filed.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 120-day period under the aforequoted Section 112(C).

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[41] the Supreme Court held:

> "**Whether respondent rules in favor of or against the taxpayer — or does not act at all on the administrative claim — within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**
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> xxx xxx xxx
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> **The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, <u>whichever is sooner</u>.**

[40] Exhibit "P-19-G-180001".
[41] G.R. No. 182737, March 2, 2016.

> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law,[42] **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**." *(Emphases and underscoring supplied)*

Based on the foregoing doctrinal pronouncements, the 30-day period provided by law should be reckoned after the receipt of respondent's decision/ruling or after the expiration of the 120-day period, **whichever is sooner**. In addition, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day periods is outside the jurisdiction of this Court.

In this case, the determination of the 120+30-day periods is shown as follows:

Date of Filing of Administrative Claim	End of the 120 days for the BIR to decide the claim	End of the 30 days from expiration of the 120 days
February 15, 2017	June 15, 2017	July 15, 2017

Since the instant *Petition for Review* was filed only on July 21, 2017, it is apparent that the same was belatedly filed, since the 30-day period after the expiration 120-period, ended on July 15, 2017. To reiterate, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of this Court.

The letter dated June 14, 2017 of the BIR,[43] denying petitioner's administrative claim, is of no moment, simply because there is no evidence showing when the same was received by petitioner. And even granting that petitioner received the said letter on June 22, 2017, as alleged in paragraph 4 of instant *Petition for Review*[44] and in paragraph 12 of petitioner's *Memorandum*[45], the same shall still have no effect, since the 30-day period after the

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[42] In *CIR vs. San Roque Power Corporation, et seq.* (G.R. Nos. 187485, 196113 & 197156, February 12, 2013, the Supreme Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal in *CIR vs. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823) on October 6, 2010 need not wait for the lapse of the 120+30-day period.
[43] Exhibits "P-19-G-170001" to "P-19-G-170030".
[44] Docket, Vol. I, p. 11.
[45] Docket, Vol. II, p. 803.

expiration of the 120-day period came sooner than the 30-day period from the said alleged date of receipt. Thus, this Court indeed has no jurisdiction to entertain the present appeal.

Finding that this Court has no jurisdiction to entertain the present judicial claim, it becomes unnecessary to resolve whether petitioner complied with the remaining requisites for the successful prosecution of its input VAT claim for refund/credit.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for this Court's lack of jurisdiction.

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

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice