REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KEP (PHILIPPINES) REALTY CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8983

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

APR 2 0 2016 10:50 a.m.

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DECISION

CASTAÑEDA, JR., ***J.:***

STATEMENT OF THE CASE

This case involves a Petition for Review filed by KEP (Philippines) Realty Corporation to seek the refund or the issuance of tax credit certificate (TCC) in the amount of ₱38,736,174.00, allegedly representing excess and unutilized input value-added tax (VAT) on purchases of goods attributable to its zero-rated sales of services for the 3rd quarter of calendar year (CY) 2012.

STATEMENT OF FACTS

Petitioner KEP (Philippines) Realty Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Cebu

Light Industrial Park, Lapu-Lapu City, 6015. The Company was incorporated on May 29, 2012.[1] As stated in its Articles of Incorporation, its primary purpose is:

> "To acquire by purchase, lease, donation or otherwise, and to own, use, develop, subdivide, sell, mortgage, exchange, lease, develop, and hold for investment or otherwise, real estate of all kinds, including but not limited to land, buildings, factories, and other structures of whatever kind, together with their appurtenances."

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. 008-289-280-000.[2]

On the other hand, respondent is the duly appointed Commissioner of the BIR, vested by law with authority to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Quezon City.

On September 14, 2012, petitioner purchased from Cebu Light Industrial Park, Inc. five (5) parcels of land located in Lapu-Lapu City in the total amount of ₱206,250,130.00.[3]

Thereafter, petitioner executed a Contract of Lease on January 7, 2013 with Knowles Electronics (Philippines) Corporation (KEPC) involving the 5 parcels of land located within the special economic zone known as Cebu Light Industrial Park.[4] KEPC is an entity registered with the Philippine Economic Zone Authority (PEZA)[5] and a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers of goods, properties and services.[6]

Petitioner filed its Quarterly VAT Return (BIR Form No. 2550Q) for the 3rd quarter of calendar year 2012 on December 26, 2012.[7]

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[1] Exhibit "P-1"; Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 651.
[2] Exhibit "P-2", Docket, p. 161.
[3] Exhibit "P-3", Docket, pp. 162-184.
[4] Exhibit "P-12", Docket, pp. 752-764.
[5] Exhibit "P-8", Docket, p. 408.
[6] Exhibit "P-9", Docket, p. 409.
[7] Exhibit "P-5", Docket, p. 200.

On September 18, 2014, petitioner filed an administrative claim for refund or issuance of a tax credit certificate before Revenue District Office (RDO) No. 80 of the BIR.[8]

Petitioner filed the instant Petition for Review before this Court on February 6, 2015.[9]

In response to the Petition for Review, respondent filed her Answer[10] on March 5, 2015, containing the following arguments and Special and Affirmative Defenses:

> "5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 6. The amount of ₱38,736,174.00 representing alleged excess and unutilized input VAT on purchases of goods attributable to zero-rated sales of services for the 3rd quarter of calendar year 2012 was not properly documented.
>
> 7. In an action for refund, 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/credit.
>
> 8. Petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
>
> **ARGUMENTS/DISCUSSIONS**
>
> To support its claim, it is imperative for petitioner to prove that it has complied with 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

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[8] Exhibit "P-7", Docket, pp. 228-232.
[9] Docket, pp. 6-12.
[10] Docket, pp. 91-100.

Regulations No. 7-95, and Section 236 of the Tax Code, as amended.

In the case at bar, petitioner failed to show that its purchases of non-capital goods and services were made in the course of its trade and business. It further failed to show that the said purchases were properly supported by VAT invoices and/or official receipts and other documents such as entries made in its 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 in pursuance to Section 4.104-5(a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit). Petitioner further failed to prove that the input taxes of ₱38,736,174.00 allegedly paid on its purchases of goods and services, were attributable to its zero-rated sales and such have not been applied against output tax and were not carried over in the succeeding taxable quarter or quarters.

Section 113 of the Tax Code provides:

> 'SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. ---
>
> (A) Invoicing Requirements. --- A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> 1. A statement that the seller is a VAT-registered person followed by his taxpayer's identification number (TIN).
>
> xxx'

Likewise, Section 4.108-1 of Revenue Regulations No. 7-95 provides: *Je*

'SEC. 4.108-1. Invoicing Requirements. – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN, and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales, and;
6. invoice value or consideration.

xxx'

While it is true that Section 112(A) of the NIRC of 1997, as amended, allows tax refund or credit on input tax of zero-rated or effectively zero-rated sale, nonetheless, compliance with certain invoicing requirement must be met before such claim for refund or credit can be granted.

Moreover, it is the responsibility of a taxpayer seeking for a refund to comply with Section 2(c)(1)(2)(4) of Revenue Regulations No. 3-88, which provides:

'Section 2. Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:

Section 16. Refunds or tax credits of input tax. –

(c) Claims for Tax Credits/Refunds. – Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place

> of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
>
> A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:
>
> 1. Export Sales
>   i) photocopy of the export document showing the amount of export document, and the date and destination of the goods exported. With respect to the foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.
>
>   ii) statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.'

There was likewise no proof of compliance with the prescribed checklist of requirements to be submitted involving a claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, hence, there was no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the NIRC of 1997. It is worthy of emphasis that Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

There is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R.* 145526, *16 March 2007:*

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the**

evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.' (emphasis and underscoring supplied)

The implementing rule for these 'complete documents' required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

VALUE-ADDED TAX
(For audit involving Claim for Refund/TCC)

A.) Requirements from Taxpayer

I. Requirements mention in Annex B
II. Additional General Requirements

1) 3 copies of 'Application for VAT Credit/Refund'

2) Summary List of Local Purchases specifying the following:

XXX XXX XXX

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

4) Summary of importations made during the period with the following details:

XXX XXX XXX

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo) *ge*

6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation – for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from the BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the

manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statements, if applicable.

17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A) Requirements from Taxpayers

1) Proof of claimed tax credits

2) Proof of Tax Compliance Certificates applied

3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable

4) Proof of payment of deficiency tax, if any

a) current year/period

b) previous year/period

5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable

6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable

7) Proof of exemption under special law, if applicable

8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable

9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable

10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable

11) Sample invoice/s for 'Export/Exempt Sales', if applicable

12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

Far from complying with the checklist of requirements, petitioner merely stated in the petition that it filed an administrative claim for refund together with supporting documents. This is not a claim for erroneously or illegally collected taxes where petitioner has the discretion of choosing the evidence it deems fit to prove its case. This is a claim for excess but legally collected, unutilized input taxes. It does not have to prove its case, it merely has to substantiate the excess amount. Hence, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit of unutilized input VAT warranted the denial by inaction of the administrative claim.

Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998)**.

Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999).** Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs.**

> **Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377).**
>
> Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."*

The case was set for Pre-Trial Conference on April 16, 2015.[11] Accordingly, respondent filed her Pre-Trial Brief[12] on March 18, 2015 and petitioner filed its Pre-Trial Brief[13] on June 22, 2015.

The parties then filed their Joint Stipulation of Facts and Issues[14] on July 10, 2015; which was subsequently approved by this Court in the Pre-Trial Order[15] promulgated on July 29, 2015.

During trial, petitioner presented Ms. Lilibeth E. Peralta as its witness.

Petitioner filed its Formal Offer of Evidence[16] on October 30, 2015. In the Resolution[17] promulgated on November 25, 2015, this Court admitted, as petitioner's evidence, Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-5-a", "P-6", "P-7", "P-7-a", "P-7-b", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-21-a", "P-22", "P-23", "P-24", "P-24-a", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-33-a", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-39-a", "P-40", "P-40-a", "P-41", "P-41-a", "P-42", "P-42-a", "P-43", "P-43-a", "P-44", "P-44-a", "P-45", "P-45-a", "P-45-b", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", and "P-51-a".

On the other hand, respondent manifested that she has no witness to present in this case.[18]

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[11] Docket, p. 102.
[12] Docket, pp. 103-105.
[13] Docket, pp. 630-642.
[14] Docket, pp. 651-661.
[15] Docket, pp. 669-676.
[16] Docket, pp. 710-726.
[17] Docket, pp. 942-943.
[18] Minutes of Hearing dated December 2, 2015, Docket, p. 946.

Thereafter, respondent filed her Memorandum[19] on December 28, 2015; while petitioner filed its Memorandum[20] on January 27, 2016.

In the Resolution[21] promulgated on February 2, 2016, the Court declared the instant case submitted for decision.

STATEMENT OF ISSUES

The parties agreed that the main issue[22] to be resolved in this case is:

> Whether or not petitioner is entitled to its claim for refund of or issuance of TCC in the amount of ₱38,736,174.00, allegedly representing excess and unutilized input VAT for the 3rd Quarter of CY 2012.

This issue may be broken down into the following sub-issues:

1. Whether petitioner incurred input VAT in the amount of ₱38,736,174.00 during the 3rd Quarter of taxable year 2012.

2. Whether all of petitioner's sales are subject to zero percent (0%) VAT.

3. Whether petitioner's alleged input VAT in the amount of ₱38,736,174.00 is attributable to its zero-rated sales.

4. Whether petitioner's alleged excess and unutilized input VAT for the 3rd Quarter of CY 2012 was applied or credited against any output VAT of the petitioner in the same or subsequent quarters.

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[19] Docket, pp. 947-956.
[20] Docket, pp. 965-986.
[21] Docket, p. 989.
[22] Docket, p. 652.

5. Whether petitioner's alleged excess and unutilized input VAT in the amount of ₱38,736,174.00, was carried over to the succeeding quarters after it deducted the same from its inventory of input VAT in the 3rd Quarter of 2014.

6. Whether petitioner's administrative and judicial claims were filed in accordance with the period prescribed under Section 112 of the Tax Code.

DISCUSSION/RULING

In claiming refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales, the pertinent legal provision is Section 112(A) of the National Internal Revenue Code of 1997, as amended, (1997 NIRC) which 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 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."

As may be gleaned from the foregoing provision, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:

1. that the claimant must be a VAT-registered person;
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 two-year prescriptive period.

Regarding the first requisite, petitioner is registered with the BIR as a VAT taxpayer, with Taxpayer Identification No. 008-289-280-000.[23] Thus, petitioner has satisfied the first requisite.

As to the sixth requisite, Section 112(A) of the 1997 NIRC clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.[24]

Petitioner's zero-rated sales were made, at the earliest, in the 1st quarter of 2013. Counting two years therefrom, petitioner had until March 31, 2015 within which to file its administrative claim with the BIR. The administrative claim for refund or issuance of a tax credit certificate was filed by petitioner with the BIR RDO No. 80 on September 18, 2014.[25] Thus, the administrative claim was timely filed within the said two-year prescriptive period.

Corollary thereto, Section 112(C) of the 1997 NIRC provides a specific period for the BIR Commissioner to act on the refund claim,

[23] Docket, p. 651.
[24] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon Inc.)*, G.R. No. 172129, September 12, 2008.
[25] Exhibit "P-7", Docket, pp. 228-232.

as well as the taxpayer's remedy in case of denial or inaction thereof, to wit:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

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."

In *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[26], the Supreme Court discussed the prescribed procedure relative to Section 112(C) of the NIRC of 1997, as amended, thus:

"We summarize the rules on the determination of **the prescriptive period for filing a tax refund or credit of *unutilized input VAT* as provided in Section 112 of the 1997 Tax Code**, as follows:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

[26] G.R. Nos. 193301 and 194637, March 11, 2013.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods."

As shown above, from the date of submission of complete documents in support of an administrative claim for refund with the BIR, the Commissioner of Internal Revenue has a period of 120 days within which to act on a claim for refund or application for issuance of tax credit certificate. Upon denial thereof, or upon expiration of the 120-day period, the taxpayer has a 30-day period within which to appeal said adverse decision or unacted claim before this Court.

Petitioner was able to submit complete documents in support of its claim for refund, as evidenced by the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund signed by a BIR Revenue Officer on September 30, 2014.[27]

Respondent counters that petitioner failed to comply with the checklist of requirements to be submitted involving a claim for VAT refund pursuant to Revenue Memorandum Order (RMO) No. 53-98; hence, there was no sufficient compliance with the filing of administrative claim for refund, which is an indispensable

[27] Exhibit "P-7-b", docket, p. 233.

requirement prior to the filing of a judicial claim pursuant to the NIRC of 1997, as amended.

The Court finds for petitioner.

As borne by the records, petitioner simultaneously submitted the supporting documents when it filed its administrative claim for refund or issuance of tax credit certificate on September 18, 2014, to wit:

> "In support of our request we attach the following additional documents in addition to the Annexes mentioned above:
>
> 1. Secretary's Certificate authorizing the Company's Senior Finance Controller to file the administrative claim for refund and sign the relevant sworn statements and documents;
> 2. The certified true copy of KEPC's BIR Certificate of Registration;
> 3. The General Information Sheet of the Company showing the list of its officers;
> 4. Three copies of the Application of Tax Credits (BIR Form 1914);
> 5. Certified true copy of the following returns:
>   a. Quarterly VAT Return for 3rd quarter of 2012;
>   b. Quarterly VAT Return for 1st quarter of 2013;
>   c. Quarterly VAT Return for 2nd quarter of 2013;
>   d. Quarterly VAT Return for 3rd quarter of 2013;
>   e. Quarterly VAT Return for 4th quarter of 2013;
>   f. Quarterly VAT Return for 1st quarter of 2014;
>   g. Quarterly VAT Return for 2nd quarter of 2014;
>   h. Monthly VAT Declarations from October 2012 to July 2014
> 6. 3rd Quarterly ITR and Annual ITR for 2012; Je

7. 1st, 2nd, and 3rd Quarterly ITR and Annual ITR for 2013;
8. 1st and 2nd Quarterly ITR for 2014;
9. Certified true copies of the 2012 and 2013 AFS stamped received by the BIR;
10. Sworn Statement certifying the amount of zero-rated sales and that no similar claim was filed with the BOC, BOI, and BIR;
11. Verification of Delinquent Account from RDO No. 80;
12. Certifications from PEZA, BOI, BOC, and BIR/DOF that the Company has not filed any similar claim covering the same period;
13. Certified true copy of the approved application for zero-rating issued by the BIR-AITEID;
14. Special Power of Attorney designating the authorized representatives to file the administrative claim and follow-up the same with the BIR;
15. Affidavit under oath attesting to the completeness of documents submitted;
16. Affidavit on the Schedule of Purchases for the period of the claim;
17. Certified true copy of the sales invoice;
18. Alphalist of Suppliers;
19. Soft copy of the Schedule of Purchases in CD;
20. Schedule of zero-rated sales;
21. Certified true copies of Summary List of Purchases and Sales from 3rd Quarter of 2012 to 2nd Quarter of 2014;
22. Soft copy of the Schedule of zero-rated sales in CD; and
23. Certified true copies of the official receipts for the zero-rated sales;"

This Court has consistently ruled in a number of cases[28] that the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund or issuance of tax credit certificate at the judicial level. The Court *En Banc's*

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[28] *Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 8342, Amended Decision dated December 19, 2014; *Nanox Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8320, Resolution dated December 4, 2014; *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657, April 4, 2012; *Commissioner of Internal Revenue vs. Panay Power Company*, CTA EB No. 683, November 29, 2011; *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB No. 589, Resolution dated January 12, 2011; and *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 474, September 1, 2009.

pronouncement in *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*[29] is instructive, the pertinent parts of which are quoted as follows:

> "It has been settled in several CTA *en banc* cases that judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund. In the case of *Philippine Bank of Communications vs. Commissioner of Internal Revenue* We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:
>
> > Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial. In the case of *CIR vs. Manila Mining Corporation*, it was explained that 'Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases.' Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.
>
> This Court is not barred from receiving, evaluating and appreciating evidence formally offered before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court. xxx"

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[29] CTA EB No. 775, Resolution dated November 13, 2012.

Moreover, if there is indeed truth to the allegation of non-submission of complete documents before the BIR, respondent could have simply denied outright the administrative claim on that ground, and not allow the lapse of considerable length of time without action on petitioner's claim.

Applying Section 112(C) of the 1997 NIRC, petitioner's judicial claim for the 3rd quarter of 2012 was timely filed, as shown below:

Date of Filing of Administrative Claim	**Date of Submission of Complete Documents**	**End of 120 days**	**End of 30 days**	**Date of Filing of Petition for Review**
September 18, 2014	September 30, 2014	January 28, 2015	February 27, 2015	February 6, 2015

The Court will now proceed to determine petitioner's compliance with the remaining requisites.

As regards the second requisite, petitioner posits that it is engaged in zero-rated or effectively zero-rated transaction arising from the lease of its 5 parcels of land it purchased from Cebu Light Industrial Park to KEPC. It asserts that it is entitled to a refund or issuance of tax credit certificate for its unutilized input VAT incurred during the 3rd quarter of 2012, arising from the said purchase of land attributable to its zero-rated sales, in accordance with Section 108(B)(3) of the 1997 NIRC. Section 108(B)(3) is quoted hereunder for ready reference:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx

> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

Zero-rated transactions generally refer to the export sale of goods and supply of services. The tax rate is set at zero. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. The seller of such transactions charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers.[30]

In *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*[31], the Supreme Court explained that:

> "Sales of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%). In zero-rated transactions, the VAT-registered supplier shall not pass on any output VAT to the ECOZONE enterprise, and at the same time, shall be entitled to claim tax credit/refund of its input VAT attributable to such sales. Zero-rating of export sales primarily intends to benefit the exporter (*i.e.,* the supplier from the Customs Territory), who is directly and legally liable for the VAT, making it internationally competitive by allowing it to credit/refund the input VAT attributable to its export sales."

To prove that its client is a PEZA-registered enterprise, petitioner submitted (1) KEPC's Certificate of Registration[32] as an Ecozone Export Enterprise at the Cebu Light Industrial Park-Special Economic Zone; (2) PEZA Certification[33] attesting that KEPC is a qualified enterprise for the purpose of VAT zero-rating; (3) KEPC's Articles of Incorporation[34]; and (4) Contract of Lease[35] between petitioner and KEPC executed on January 7, 2013, involving the 5 parcels of land. In addition, petitioner furnished this Court the official

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[30] *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005.
[31] G.R. No. 150154, August 9, 2005.
[32] Exhibit "P-8", Docket, p. 408.
[33] Exhibit "P-9", Docket, p. 409.
[34] Exhibit "P-10", Docket, pp. 728-750.
[35] Exhibit "P-12", Docket, pp. 752-764.

receipts evidencing the rental income it received from KEPC, detailed as follows:

Exhibit	OR No.	Date	In payment for	Zero-rated Sales	Withholding Tax	OR Amount
"P-13"	0001	2/28/2013	Partial payment of land rental from January 2013 to December 2013	₱9,200,000.00	₱460,000.00	₱8,740,000.00
"P-14"	0002	6/18/2013	Full payment of land rental from January 2013 to December 2013	1,083,940.00	54,197.00	1,029,743.00
"P-15"	1253	1/28/2014	Land rental for the year 2014	10,283,940.00	514,197.00	9,769,743.00
"P-50"	1254	1/26/2015	Land rental for the year 2015	10,283,940.00	514,197.00	9,769,743.00

A closer scrutiny of petitioner's original and/or amended Quarterly VAT Returns for taxable years 2013[36], 2014[37] and 2015[38] clearly shows that the above rental fees have been declared by petitioner. Therefore, petitioner's lease of land to KEPC qualifies for VAT zero-rating and the input VAT attributable thereto may be a proper subject of a claim for refund or issuance of a tax credit certificate.

The Court shall now ascertain whether petitioner had incurred input VAT in connection to its VAT zero-rated receipts.

It is evident from the Quarterly VAT Return for the 3rd quarter of 2012[39] that petitioner reported an input VAT from domestic purchase of goods other than capital goods in the amount of ₱38,736,174.00. The said input VAT pertains to its purchase of 5 parcels of land from Cebu Light Industrial Park, which were subsequently leased to KEPC, as evidenced by the Deed of Absolute Sale[40] entered into by petitioner with Cebu Light Industrial Park and the Sales Invoice No. 0002[41] dated September 14, 2012, duly issued by the latter to petitioner.

[36] Exhibit "P-21", Docket, pp. 483-484; Exhibit "P-24", Docket, pp. 771-773.
[37] Exhibit "P-33", Docket, pp. 807-810.
[38] Exhibit "P-45-a", Docket, pp. 891-893.
[39] Exhibit "P-5", Docket, p. 200.
[40] Exhibit "P-3", Docket, pp. 162-198.
[41] Exhibit "P-4", Docket, p. 199.

As regards the fifth requisite, it must be remembered that when claiming tax refund/credit, the VAT-registered taxpayer must be able to establish that it does have a refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities – information which are supposed to be reflected in the taxpayer's VAT returns. Thus, an application for tax refund/credit must be accompanied by copies of the taxpayers VAT return/s for the taxable quarter concerned.[42]

Applying the foregoing principle, the Quarterly VAT Returns for the succeeding taxable quarters of 2013, 2014 and 2015 reveal that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. Even though the claimed input VAT of ₱38,736,174.00 was carried over by petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its amended Quarterly VAT Return for the 3rd quarter of 2014.[43]

In view of the foregoing, petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate in the amount of ₱38,736,174.00, representing its unutilized excess input VAT for the 3rd quarter of 2012 attributable to its zero-rated sales.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱38,736,174.00**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of CY 2012.

SO ORDERED.

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

WE CONCUR:

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[42] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159471, January 26, 2011.
[43] Exhibit "P-39-a", line 23D, Docket, p. 837.

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.
Associate Justice
Chairperson

CERTIFICATION

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