-Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES), LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8847

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

Promulgated:

JUN 03 2016
11:30 a.m.

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DECISION

CASANOVA, *J.*:

Before us is a Petition for Review,[1] filed by Maersk Global Services Centres (Philippines), Ltd., seeking the refund or issuance of a tax credit certificate in the amount of Thirty Million Three Hundred Fifty Five Thousand Ninety Seven Pesos and Forty Eight Centavos (₱30,355,097.48) representing the alleged input tax on its alleged zero-rated sales for the calendar year 2012.

Petitioner Maersk Global Services Centres (Philippines) Ltd. is a foreign corporation, duly organized and existing under the laws of Hong Kong and licensed to do business in the Philippines as a regional operating headquarters, with principal office at the 29th Floor, Wynsum Corporate Plaza, F. Ortigas Jr. Road, Ortigas Center, Pasig City.[2]

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[1] Docket (Vol. I), pp. 6-17.
[2] Petition for Review, Docket (Vol. I), p. 6.

Respondent is the duly appointed Commissioner of Internal Revenue with office address at the Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City.[3]

Petitioner is registered with the BIR as a Value-Added Tax (VAT) taxpayer with Taxpayer Identification No. (TIN) 005-650-708-000.[4]

On October 15, 2007, a Service Agreement[5] was executed by and between A.P. Moller – Maersk A/S and petitioner. A.P. Moller – Maersk A/S is a non-resident foreign corporation doing business outside of the Philippines with address at Denmark, Esplanaden 50,1098 Copenhagen.[6]

Petitioner filed its quarterly VAT returns (BIR Form 2550Q) for the 1st, 2nd, 3rd and 4th quarters of calendar year (CY) 2012 on the following dates:

Quarter of CY 2012	Date Filed
1st	April 25, 2012[7]
2nd	July 25, 2012[8]
3rd	May 24, 2013[9]
4th	January 25, 2013[10]

On July 16, 2013, petitioner filed its administrative claim before the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF-OSS).[11]

In a transmittal letter dated December 3, 2013, petitioner requested the DOF-OSS to acknowledge the submission of additional supporting documents. The same was received by the DOF-OSS on December 4, 2013.[12] a

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[3] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues, (JSFI), Docket (Vol. I), p. 218.
[4] Exhibit "P-6".
[5] Exhibit "P-1".
[6] Par. 5, Jurisdictional Allegations, Petition for Review, Docket (Vol. I), p. 7.
[7] Exhibit "P-7".
[8] Exhibit "P-8".
[9] Exhibit "P-9".
[10] Exhibit "P-10".
[11] Exhibit "P-12".
[12] Exhibit "P-20".

On July 18, 2014, petitioner filed the instant Petition for Review before the Court, and the same was docketed as CTA Case No. 8847.

On September 9, 2014, respondent filed her Answer,[13] raising the following defenses:

> "Paragraph (A) Section 112 of the 1997 National Internal Revenue Code, as amended lays down the criteria governing claims for VAT refund of unutilized input taxes attributable to zero-rated or effectively zero-rated sales, to wit:
>
>> *'(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), 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 ratably between his zero-rated and non-zero-rated sales.'*
>
> Hence, the following are the criteria governing claims for refund under the foregoing section of the NIRC:

[13] Docket (Vol. I), pp. 47-50.

(1) That taxpayer is VAT registered;
(2) That taxpayer is engaged in zero-rated or effectively zero-rated sales;
(3) The input taxes are due or paid;
(4) The input taxes are not transitional input taxes;
(5) The input taxes have not been applied against output taxes during and in the succeeding quarters;
(6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
(7) For zero-rated sales under Section 106(A)(2)(1) and (2), 106(B) and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
(8) Where there are both zero-rated sales or effectively zero-rated sales and taxable year 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;
(9) The claim is filed within two (2) years after the close of the taxable quarter when such sales were made.
(10) The following documents, among others must be presented:
   (a) Sales invoices or receipts with the word 'zero-rated' imprinted to it;
   (b) Purchase invoices or receipts from another VAT-registered taxpayer;
   (c) Evidence of actual receipt of goods;
   (d) BOI statement showing the amount and description of sale of goods, etc;
   (e) Original or attested copies of invoice or receipt on capital equipment locally purchased; and
   (f) Photocopy of import entry document and confirmation receipt on imported capital equipment.

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

Petitioner must prove that its export sale qualified as VAT zero-rated pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended;

Petitioner must prove that it complied with the invoicing requirements provided in Section 113 of the NIRC of 1997, as amended;

Petitioner must also prove that it complied with the provisions of Section 4.110-8 of Revenue Regulations No. 16-05, as amended, as to the substantiation of Input Tax Credits;

Lastly, Petitioner must comply with the requirements provided under Revenue Memorandum Order No. 53-98;

Well-established is the rule that tax refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions.

In *COMPAIGNIE FINCANCIERE SUCRES ET DENREES vs. COMMISSIONER OF INTERNAL REVENUE, GR No. 133834 August 28, 2006 the Honorable Supreme Court ruled, to wit:*

> *'xxx Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted."*

The case was set for Pre-Trial Conference[14] on October 23, 2014. Respondent's Pre-Trial Brief[15] was filed on October 2, 2014, while petitioner's Pre-Trial Brief[16] was filed on October 17, 2014.

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[14] Notice of Pre-Trial Conference dated September 10, 2014, Docket (Vol. I), p. 51.
[15] Docket (Vol. I), pp. 52-55.
[16] Docket (Vol. I), pp. 60-73.

On November 11, 2014, the parties filed their Joint Stipulation of Facts and Issues,[17]which was approved by the Court in a Pre-Trial Order[18] promulgated on November 24, 2014.

Trial ensued. Petitioner presented as its witnesses Analou Y. Meneses and Richard R. Lapres.

A Formal Offer of Evidence[19] for Petitioner Maersk Global Services Centres (Philippines), Ltd. was filed on March 20, 2015, offering Exhibits "P-1" to "P-52", inclusive of submarkings, which the Court admitted, except for Exhibits "P-28.344", "P-28.345", "P-28.346", "P-28.347", "P-28.348", "P-28.1517", "P-28.1518", "P-28.2062", "P-28.2063", "P-28.2064", "P-28.3347", "P-28.3366", "P-28.4067", "P-28.4183", "P-28.4184", "P-28.4225", "P-28.4226", "P-28.4805", "P-28.5154", "P-28.5155", "P-28.5156", "P-28.7137", "P-29.119", "P-29.120", "P-29.181", "P-29.182", "P-29.452", "P-29.453", "P-29.454", "P-29.455", "P-30.47", P-30.48", "P-31.206", "P-31.207", and "P-31.319" for not being found in the records, in a Resolution[20] promulgated on May 4, 2015."

On May 20, 2015, petitioner filed a Motion for Reconsideration (of the Resolution dated 04 May 2015 on Petitioner's Formal Offer of Evidence).[21]

In a Resolution promulgated on July 24, 2015, the Court allowed petitioner to recall Mr. Richard R. Lapres, the Court-commissioned ICPA, to correctly mark the exhibits in petitioner's Motion for Reconsideration and to identify his judicial affidavit. The Court also held in abeyance the resolution of petitioner's Motion.

Subsequently, in the hearing[22] held on October 12, 2015, respondent's counsel manifested that she has no witness to present; and that she is waiving her right to present evidence.

On October 26, 2015, petitioner filed an Amended and Supplemental Formal Offer of Evidence for Petitioner Maersk Global Services Centres (Philippines), Ltd.[23] The exhibits therein were all

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[17] Docket (Vol. I), pp. 218-222.
[18] Docket (Vol. I), pp. 224-229.
[19] Docket (Vol. I), pp. 279-295.
[20] Docket (Vol. I), pp. 403-404.
[21] Docket (Vol. I), pp. 409-418.
[22] Minutes of Hearing dated October 12, 2015, Docket (Vol. II), p. 466.
[23] Docket (Vol. II), pp. 470-486.

admitted by the Court in a Resolution[24] promulgated on January 27, 2016.

The case was submitted for decision[25] on March 7, 2016, taking into consideration respondent's Memorandum[26] filed on March 1, 2016, and petitioner's Memorandum for Petitioner Maersk Global Services Centres (Philippines), Ltd.[27] filed on March 4, 2016.

The sole issue[28] raised by the parties for our resolution is:

> "Whether Petitioner is entitled to a refund in the total amount of Php30,355,097.48, representing its alleged unutilized and excess input VAT attributable to zero-rated sales for year 2012."

We shall first determine whether the Court has jurisdiction to entertain petitioner's claim for refund or issuance of a tax credit certificate.

Section 112(A) and (C) of the National Internal Revenue Code (NIRC), as amended reads:

> **"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*

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[24] Docket (Vol. II), pp. 519-521.
[25] Docket (Vol. II), p. 556.
[26] Docket (Vol. II), pp. 522-533.
[27] Docket (Vol. II), pp. 534-555.
[28] II. Stipulation of Issues, JSFI, Docket (Vol. I), p. 219.

> *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.
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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 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.
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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."

The above section 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**.[29] The following table would show that petitioner's administrative claim for the 1st to 4th quarters of CY 2012 was timely filed. Thus:

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[29] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, September 12, 2008.

Quarter of CY 2012	Start of the 2 year period	End of the 2 year period	Date of Filing Administrative Claim
1st	March 31, 2012	March 31, 2014	July 16, 2013
2nd	June 30, 2012	June 30, 2014	July 16, 2013
3rd	September 30, 2012	September 30, 2014	July 16, 2013
4th	December 31, 2012	December 31, 2014	July 16, 2013

As shown above, petitioner filed its administrative claim[30] for the 1st, 2nd, 3rd and 4th quarters of Calendar Year 2012 on July 16, 2013, well within the period prescribed by law.

Having determined that petitioner's administrative claim was timely filed, did petitioner observe strict compliance with the 120+30 mandatory and jurisdictional periods provided for by law?

We rule in the negative.

The pronouncement of the Supreme Court in *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[31] is in point. We quote:

> "Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.
>
> Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit - or actually submitted - additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed."

Using Section 112 (C) and the abovequoted doctrine as our guide, petitioner's judicial claim for the 1st to 4th quarters of CY 2012 was belatedly filed as shown below:

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[30] Exhibit "P-12".
[31] G.R. No. 182737, March 2, 2016.

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
July 16, 2013	December 4, 2013	April 3, 2014	May 5, 2014	July 18, 2014

Petitioner filed its administrative claim for the 1st, 2nd, 3rd and 4th quarters of Calendar Year 2012 on July 16, 2013. Subsequently, in a transmittal letter[32] dated December 3, 2013, petitioner requested the DOF-OSS to acknowledge the submission of additional supporting documents made by petitioner in support of its claim for application of a tax credit certificate on unutilized input VAT for CY 2012. The said letter was received/acknowledged by the DOF-OSS on December 4, 2013. Thus, the running of the 120-day period within which respondent is mandated to act shall commence on December 4, 2013, the date when petitioner last submitted the documents in support of its cause.

Counting 120 days from December 4, 2013, the lapse of the 120-day period would fall on April 3, 2014. Since respondent failed to act on petitioner's claim on the said date, petitioner has 30 days from April 3, 2014 or until May 5, 2014[33] within which to file a judicial appeal before us. Here, petitioner filed the instant petition only on July 18, 2014,[34] or seventy three (73) days late.

The Court has held time and again that taxes are the lifeblood of the government and, consequently, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[35] The impact on the non-observance of the mandatory and jurisdictional 120+30 day periods is specifically provided for in *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue.*[36] We quote:

> "xxx the 120+30-day period is indeed mandatory and jurisdictional, as recently ruled in Commissioner of Internal Revenue v. San Roque Power Corporation. Thus, failure to observe the said period before filing a judicial claim with

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[32] Exhibit "P-20".

[33] The last day of the 30-day period falls on May 3, 2014, a Saturday. Thus, the last day for filing a judicial appeal would fall on May 5, 2014, the following working day.

[34] Petition for Review, Docket (Vol. I), pp. 6.-17

[35] *Commissioner of Internal Revenue vs. Dash Engineering Philippines, Inc.*, G.R. No. 184145, December 11, 2013.

[36] G.R. No. 196907, March 13, 2013.

the CTA would not only make such petition premature, but would also result in the non-acquisition by the CTA of jurisdiction to hear the said case."

Courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[37] To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings.[38] The CTA, even if vested with special jurisdiction, is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority.[39] If the court has no jurisdiction over the nature of the action, its only jurisdiction is to dismiss the case. The court could not decide the case on its merits.[40]

In fine, petitioner's belated filing of the instant petition will rob the Court of the authority to entertain the same. It is in this light that We resolve to dismiss the instant petition for lack of jurisdiction.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[37] *Bureau of Customs vs. The Honorable Agnes VST Devanadera, et al., G.R. No. 193253, September 8, 2015, citing Ace Publications, Inc. vs. The Commissioner of Customs and The Collector of Customs, G.R. No. L-18808, May 29, 1964.*
[38] *AT & T Communications Services Phils., Inc. vs. Commissioner of Internal Revenue, G.R. No. 185969, November 19, 2014, citing Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals, G.R. No. L-23988, January 2, 1968.*
[39] *Nippon Express (Philippines) Corp. Vs. Commissioner of Internal Revenue, G.R. No. 185666, February 4, 2015, citing Ker & Company, Ltd. vs. Court of Tax Appeals, et. al., G.R. No. L-12396, January 31, 1962.*
[40] *ibid.*

WE CONCUR:

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

(On Leave)
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice