REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

EMERSON ELECTRIC (ASIA) LIMITED-ROHQ, *Petitioner,*	**CTA CASE NO. 8657**
	Members: *Bautista, Chairperson* *Fabon-Victorino, and* *Ringpis-Liban, JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 16 2017 2:39 p.m.

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R E S O L U T I O N

BAUTISTA, J:

For resolution is respondent's Commissioner of Internal Revenue's ("CIR") Motion for Reconsideration (Decision dated December 15, 2016) ("MR") filed on January 24, 2017; with petitioner's Comment/Opposition (To: Respondent's Motion for Reconsideration) ("Comment") filed on February 17, 2017.

On December 21, 2016, the Court promulgated a Decision[1] ("Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the reduced amount of **NINETEEN MILLION SEVEN HUNDRED FIFTY-NINE THOUSAND SIX HUNDRED FORTY-EIGHT AND 83/100 PESOS (Php19,759,648.83)** representing petitioner's unutilized input VAT attributable to its zero-rated sales for the 1st to 4th Quarters of FY 2011.

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[1] *Records, Vol. 3, CTA Case No. 8657,* pp. 1726-1794.
[2] *Id.,* pp. 1357-1358.

SO ORDERED.

In his MR, respondent CIR claims that the Court erred in declaring that the petition for review was timely filed; that pursuant to *Section 112 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*, he has one hundred twenty (120) days from the date of submission of the complete documents in support of the application for tax refund to act on the claim; that petitioner failed to prove that it submitted the complete documents in support of its application at the time of filing the application for refund; and that until petitioner has submitted the complete documents, the 120-day period will not commence to run.

The CIR also insists that petitioner failed to maintain a subsidiary sales journal and subsidiary purchase journal pursuant to *Section 113* of the *1997 NIRC* and *Section 4.113.3 of Revenue Regulations ("R.R.") No. 16-2005*, thus, petitioner is deemed to have failed to substantiate its claim for refund.

In its Comment, petitioner counter-argues that respondent's MR is merely *pro forma* as the arguments raised are mere reiterations of the averments made in his Answer, which have been sufficiently discussed and passed upon in the assailed Decision; and that respondent's MR failed to specify which findings or conclusions by the Court are alleged to be contrary to the law.

Petitioner maintains that it timely filed the Petition for Review; that failure to maintain subsidiary sales journal and subsidiary purchase journal does not warrant the denial of its claim for refund; and that the arguments relied on by the respondent are without factual and legal basis.

The Ruling of the Court

After a careful review of the grounds raised in the Motion for Reconsideration and the corresponding Comment thereto, the Court finds no new matters or arguments which were not considered in the Assailed Decision. Respondent failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court's findings in the Assailed Decision. Consequently, the Court finds respondent's Motion for Reconsideration devoid of merit. Nevertheless, the Court will expound on the issues raised, if only to reinforce the discussion in the Assailed Decision.

The one hundred twenty (120)-day period commenced to run on December 27, 2012

Respondent claim that the one hundred twenty (120)-day period within which he can act on petitioner's claim for refund did not commence to run due to the latter's failure to submit the complete documents in support of its application for refund/tax credit certificate.

The Court does not agree.

Records disclose that petitioner filed its administrative claim for refund for the period October 1, 2010 to September 30, 2011 on December 27, 2012[3]. In the judicial affidavit[4] of petitioner's witness, Atty. Raquel Dujunco ("Atty. Dujunco"), she testified that respondent failed to act on its administrative claim for refund[5] and that they submitted complete documents in support of its claim together with the application, *viz:*

> Q-10: Are you familiar with the nature of the present case?
>
> A-10: Yes, it is a claim for the refund of issuance of a tax credit certificate of the unutilized input VAT of petitioner arsing from the zero-rated sale of services by Emerson to its non-resident affiliates for the period October 2010 to September 2011 in the amount of [Php]74,014,521.32 of the 1st to 4th Quarters of fiscal year ("FY") 2011. The claim for refund or issuance of a [TCC] of the unutilized input Vat of petitioner for said period was appealed to the Court of Tax Appeal[s] after the failure of the Bureau of Internal Revenue ("BIR") to

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[3] *Records, Vol. 2, Exhibits "P-5," "P-5-a" to "P-5-c" and "P-6,"* pp. 1240-1249.
[4] *Records, Vol. 1, Exhibit "P-15,"* pp. 70-80; underscoring ours.
[5] *Id., Item No. 10,* p. 72.

act on Emerson's claim for refund within 30 days from the lapse of 120 days from the complete submission of documents.

Q-11: You mentioned 30 days from the lapse of 120 days from the complete submission of documents. How do you know when Emerson submitted its complete documents in support of its claim for refund?

A-11: Emerson submitted complete documents when it filed its administrative claim for refund or issuance of TCC of its unutilized input VAT attributable to zero-rated transactions for the 1st to 4th quarters of FY 2011 last December 27, 2012.

Q-12: What is your proof, if any, to show that petitioner filed such input VAT refund claims on those dates?

A-12: Attached to this Affidavit are Applications for Tax Credits of Refund (BIR Form 1914) for the 1st to 4th quarter[s] of FY 2011 and marked as Exhibits "P-5" to "P-56-c". These are all stamped received by the BIR on December 27, 2012. Also Attached to this Affidavit is the Application letter dated December 21, 2012 which was stamped received by the BIR on December 27, 2012 and marked as Exhibit "P-6". These documents prove that Emerson filed its administrative claim for input VAT refund on December 27, 2012.

Q-13: What is your proof, if any, that Emerson completed its submission of documents on December 27, 2012?

A-13: Attached to this Affidavit is a letter, dated December 21, 2012 and received by BIR RDO 41 on December 27, 2012, marked as Exhibit "P-6" showing the list of documents submitted by Emerson. Hence, Emerson completed submission of documents on the said date.

Q-14: Why do you say that Emerson completed its submission of documents on said date?

A-14: Together with its application for input VAT refund, Emerson submitted all documents that it deemed necessary to support its application for input Vat refund.

Q-15: You mentioned that Emerson submitted all documents that it deemed necessary to support its application for input VAT refund, what are these documents?

A-15: The Application Letter or Exhibit "P-6" enumerates the documents that Emerson submitted when it field its administrative claim for refund. These are all the documents that Emerson deemed necessary to support its application for input VAT refund.[6]

Another witness for the petitioner, Ms. Carla Francesca Lim ("Ms. Lim"), corroborated this in her judicial affidavit[7], to wit:

> Q-39: Do you know the status of this administrative claim for refund?
>
> A-39: Yes. The BIR did not act upon Emerson's administrative claim for refund within the 120-day period from the complete submission of documents in support of its claim for refund or issuance of a [TCC].
>
> Q-40: You mentioned that the BIR failed to act upon Emerson's administrative claim for refund within the 120-day period from the complete submission of documents. When did petitioner complete its submission of documents in support of its claim for refund or issuance of a [TCC]?
>
> A-40: Emerson completed submission of documents in support of its claim for refund or issuance of a [TCC] on December 27, 2012.
>
> Q-41: What proof do you have, if any, to prove that petitioner completed submission of documents on December 27, 2012?
>
> A-41: Attached to this Affidavit it an Application Letter dated December 21, 2012, marked as Exhibit "P-6", received by the BIR on December 27, 2012. This letter shows that petitioner completed submission of documents on December 27, 2012.
>
> Q-42: Why do you say that Emerson completed its submission of documents on December 27, 2012?
>
> A-42: Emerson submitted all the documents that it deems necessary to support its claim for input VAT refund.
>
> Q-43: You mentioned the Emerson submitted all the documents that it deems necessary to support its claim for input Vat refund. What are these documents?

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[6] Underscoring ours.

[7] Records, Vol. 1, Exhibit "p-30," pp. 81-94; underscoring ours.

> A-43: These are the documents listed in the Application letter.
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> Q-44: How do you know that the administrative claim was never acted upon by the BIR within the 120-day period from the complete submission of documents?
> A-44: Emerson did not receive any written document from the BIR showing its decision on its claim for refund or issuance of a [TCC]. Neither did the BIR inform petitioner of its decision on its application for input VAT refund or issuance of a [TCC].
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> xxx xxx xxx

From the foregoing, it is clear that respondent did nothing when it received petitioner's application for refund or issuance of a TCC. Records also disclose that respondent did not controvert the testimony of petitioner's witnesses, neither did he present any evidence to support his claims that petitioner failed to substantiate its claim.

To elaborate on the running of the periods, the Supreme Court, in the recent case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[8], ruled that:[9]

> 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. <u>Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.</u>
>
> Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. <u>If there is no evidence showing that the taxpayer was required to submit - or actually submitted - additional documents after the filing of the administrative</u>

[8] G.R. No. 182737, March 2, 2016.
[9] Underscoring ours.

> claim, it is presumed that the complete documents accompanied the claim when it was filed.[10]

Applying this to the instant case, the one hundred twenty (120)-day period began to run from December 27, 2012, the date when petitioner filed its administrative claim. Thus, respondent had until April 26, 2013 within which to decide the administrative claim.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[11], the Supreme Court reminded taxpayers that when the one hundred twenty (120)-day period lapses and there is inaction on the part of the CIR, they must no longer await for a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within thirty (30) days from the lapse of the one hundred twenty (120)-day waiting period, this period is mandatory and jurisdictional.

Consequently, petitioner had thirty (30) days from April 26, 2013 or until May 27, 2013 to file its judicial claim with the CTA. Therefore, the Petition for Review filed on May 24, 2013, was timely filed.

Non-submission of subsidiary sales journal and subsidiary purchase journal before the Court is not fatal to the claim for refund or issuance of TCC

The CIR posits that petitioner failed to prove that it maintained a subsidiary sales journal and subsidiary purchase journal and that it failed to prove that the documents it submitted in support of its claim for refund is sufficient despite non-submission of the subsidiary sales journal and subsidiary purchase journal. On the other hand, petitioner argues that failure to maintain subsidiary sales journal and subsidiary purchase journal does not warrant the denial of its claim for refund.

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[10] Underscoring ours.
[11] G.R. No. 168950, January 14, 2015.

Section 112(A) of the 1997 NIRC sets forth the requirements for refund or issuance of TCC of input tax attributable to zero-rated or effectively zero-rated sales. In order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be satisfied:

1. the taxpayer must be VAT-registered;
2. the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;
3. the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; and
4. the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

Clearly, there is nothing in the law that says that the non-submission or non-presentation of subsidiary sales journal and subsidiary purchase journal will result to the denial of the claim for tax refund or issuance of a tax credit certificate.

It is worthy to note at this point, that the petition for review was filed due to the inaction by the CIR on petitioner's administrative claim for refund. The Supreme Court explained the difference between a judicial claim for refund that was filed on appeal of a decision by the CIR due to the taxpayer's failure to substantiate the claim and a judicial claim for refund that was filed due to the inaction by the CIR in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[12], wherein the Supreme Court held as follows:

> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the

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

> administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. <u>Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.</u>[13]

The instant Petition for Review was filed due to the inaction of respondent on petitioner's administrative claim, thus, the Court may give credence to all the evidence that was submitted to it and to evaluate them accordingly in order to determine whether the evidence submitted are sufficient to merit the grant of a claim for refund or issuance of a TCC. As found by the Court, petitioner was able to prove its entitlement to a refund or issuance of a TCC.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Decision dated December 21, 2016 is **AFFIRMED** and **UPHELD.**

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[13] Underscoring ours.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice