Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

IBEX PHILIPPINES INC. (FORMERLY TRG PHILIPPINES, INC.), Petitioner,	**CTA Case No. 8849** For: Refund
-versus-	Members: **DEL ROSARIO, P.J., *Chairperson*, UY, and MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 13 2017 ; 11:17a.m.

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review[1] filed by Ibex Philippines Inc. (Formerly TRG Philippines, Inc.) on July 23, 2014, before the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[2], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[3], as amended.

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[1] Docket, pp. 14-26.

[2] Sec. 7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

x x x x x x

[3] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner prays that judgment be rendered ordering the Commissioner of Internal Revenue to refund or to issue a tax credit certificate in the amount of Twenty Million Fifty-Three Thousand Thirty-Seven Pesos and Thirty-Six Centavos (₱20,053,037.36), allegedly representing unused input value-added tax (VAT) attributable to zero-rated sales for the third (3rd) and fourth (4th) quarters of taxable year 2008, and the first (1st), second (2nd), 3rd, and 4th quarters of taxable years 2009, 2010, and 2011.

Petitioner Ibex Philippines Inc. (Formerly TRG Philippines, Inc.) is a domestic corporation, duly organized and existing under the laws of the Philippines, with registered address at 8th Floor, Hanston Building, Don Francisco Ortigas, Jr. Road, Ortigas Center, Pasig City, 1605.[4] It is registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR) as evidenced by its Certificate of Registration No. OCN3RC0000595484 issued on August 4, 2005 by Revenue Region No. 7, Revenue District Office (RDO) No. 43A.[5] Moreover, petitioner is

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(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

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[4] Par. 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issue, Docket, p. 562.
[5] Exhibits "P-1-1" to "P-1-3".

registered with the Board of Investments (BOI) as a New Information Technology Export Services Firm under BOI Certificate of Registration No. 2006-005.[6] Petitioner is engaged in the business of providing contact center services and other facilities to its foreign clients, such as TRG Holdings, LLC ("TRG Holdings" for brevity) and Square Trade, which are non-resident foreign corporations doing business in the United States of America.[7]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the following dates[8], petitioner filed an application for VAT refund of the alleged unutilized and excess creditable input taxes attributable to its zero-rated sales with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance ("DOF-OSS" for brevity):

DATE FILED	**QUARTERLY RETURN**	**AMOUNT OF CLAIM**
September 30, 2010	3rd Quarter 2008	₱ 2,615,356.25
December 30, 2010	4th Quarter 2008	792,889.02
March 31, 2011	1st Quarter 2009	1,082,122.39
June 28, 2011	2nd Quarter 2009	1,435,577.68
September 28, 2011	3rd Quarter 2009	1,288,262.66
December 12, 2011	4th Quarter 2009	1,186,693.13
March 29, 2012	1st Quarter 2010	940,775.92
June 27, 2012	2nd Quarter 2010	1,026,255.72
September 26, 2012	3rd Quarter 2010	1,510,890.25
December 10, 2012	4th Quarter 2010	1,506,353.29
March 22, 2013	1st Quarter 2011	1,478,519.87
June 28, 2013	2nd Quarter 2011	2,162,858.74
September 27, 2013	3rd Quarter 2011	1,539,647.83
December 3, 2013	4th Quarter 2011	1,486,834.61

[6] Exhibit "P-1-4".
[7] Exhibits "P-1" and "P-1-5" to "P-1-8".
[8] Exhibits "P-1-12-A", "P-1-13", "P-1-13-A", "P-1-14", "P-1-14-A", "P-1-15", "P-1-15-A", "P-1-16", "P-1-16-A", "P-1-17", "P-1-17-A", "P-1-18", "P-1-18-A", "P-1-19", "P-1-19-A", "P-1-20", "P-1-20-A", "P-1-21", "P-1-21-A", "P-1-22", "P-1-22-A", "P-1-23", "P-1-23-A", "P-1-24", "P-1-24-A", "P-1-25", and "P-1-25-A".

Thereafter, the DOF-OSS issued Letters of Authority[9] authorizing the examination of petitioner's books of accounts and other accounting records in connection with the claims for VAT Refund, dated as follows:

DATE FILED	QUARTERLY RETURN	DATE OF LOA
September 30, 2010	3rd Quarter 2008	February 22, 2011
December 30, 2010	4th Quarter 2008	February 22, 2011
March 31, 2011	1st Quarter 2009	May 9, 2011
June 28, 2011	2nd Quarter 2009	July 20, 2011
September 28, 2011	3rd Quarter 2009	October 27, 2011
December 12, 2011	4th Quarter 2009	January 27, 2012
March 29, 2012	1st Quarter 2010	April 24, 2012
June 27, 2012	2nd Quarter 2010	July 4, 2012
September 26, 2012	3rd Quarter 2010	October 4, 2012
December 10, 2012	4th Quarter 2010	January 31, 2013
March 22, 2013	1st Quarter 2011	April 19, 2013
June 28, 2013	2nd Quarter 2011	July 15, 2013
September 27, 2013	3rd Quarter 2011	October 23, 2013
December 3, 2013	4th Quarter 2011	December 26, 2013

Petitioner filed the instant Petition for Review on July 23, 2014.[10] Respondent then filed his Answer[11] on October 15, 2014.

The case was set for pre-trial conference on January 15, 2015[12] but was reset to March 19, 2015.[13] Petitioner[14] and respondent[15] filed their respective Pre-Trial Briefs on March 16, 2015.

The parties filed their Joint Stipulation of Facts and Issues[16] on April 8, 2015, which was adopted by the Court in the Pre-Trial Order[17] dated May 11, 2015.

During trial, the following witnesses testified for petitioner: (1) Mr. Joel S. Aldaya[18] – petitioner's accountant; and (2) Mr. Edwin F. Ramos – Independent Certified Public Accountant (ICPA). Petitioner

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[9] Exhibits "P-1-26" to "P-1-38".
[10] Docket, pp. 14-26.
[11] Docket, pp. 380-385.
[12] Notice of Pre-Trial Conference, Docket, p. 386.
[13] Order dated January 5, 2015, Docket, p. 389.
[14] Pre-Trial Brief, Docket, pp. 514-530.
[15] Respondent's Pre-Trial Brief, Docket, pp. 500-503.
[16] Docket, pp. 562-569.
[17] Docket, pp. 596-606.
[18] Minutes of the Hearing dated May 26, 2015, Docket, pp. 609-612.

also formally offered its evidence on September 7, 2015[19], which were subsequently admitted by the Court.

Petitioner formally offered the following documentary exhibits:

Exhibit:	Description:
P-1	Affidavit in Lieu of Direct Examination of Mr. Joel S. Aldaya dated 12 March 2015
P-1-a	Signature of Mr. Joel S. Aldaya, p. 20 of Affidavit in Lieu of Direct Examination
P-1-1	BIR Certificate of Registration bearing Revenue District Office Control No. 3RC0000329953 issued on 25 May 2006
P-1-2	BIR Certificate of Registration bearing Revenue District Office Control No. 3RC0000477824 issued on 26 July 2010
P-1-3	BIR Certificate of Registration bearing Revenue District Office Control No. 3RC0000595484 issued on 31 May 2013
P-1-4	BOI Certificate of Registration No. 2006-05 issued on 6 January 2006
P-1-5	Service Agreement between TRG Philippines, Inc. and TRG Holdings, LLC. Dated 1 January 2009
P-1-6	Certificate of Formation of AGS Capital LLC dated 17 December 2001
P-1-7	Certificate of Amendment to Certificate of Formation of AGS Capital LLC dated 3 July 2002
P-1-8	SEC Certificate of Non-Registration of TRG Holdings, LLC issued on 8 October 2014
P-1-9	PEZA Amended Certificate of Registration No. 11-29-IT of IBEX Global Solutions (Philippines) (Formerly: TRG Global Solutions (Philippines), Inc. registered on 29 April 2011) as an Ecozone IT Enterprise issued on 22 August 2014
P-1-10	VAT Zero-rating Certificate of IBEX Global Solutions issued on 31 May 2011
P-1-11	Authority to Print dated 4 August 2006
P-1-12	DOF One Stop Shop Claim Stub No. 62954
P-1-13	Application for Tax Credits/Refunds (BIR Form 1914) for Q4 2008 filed on 30 December 2010
P-1-13-A	Corresponding DOF One Stop Shop Claim Stub No. 63432
P-1-14	Application for Tax Credits/Refunds (BIR Form 1914) for Q1 2009 filed on 31 March 2011
P-1-14-A	Corresponding DOF One Stop Shop Claim Stub No. 64002
P-1-15	Application for Tax Credits/Refunds (BIR Form 1914) for Q2 2009 filed on 28 June 2011
P-1-15-A	Corresponding DOF One Stop Shop Claim Stub No. 64478
P-1-16	Application for Tax Credits/Refunds (BIR Form 1914) for Q3 2009 filed on 28 September 2011
P-1-16-A	Corresponding DOF One Stop Shop Claim Stub No. 64480
P-1-17	Application for Tax Credits/Refunds (BIR Form 1914) for Q4 2009 filed on 12 December 2011
P-1-17-A	Corresponding DOF One Stop Shop Claim Stub No. 64479
P-1-18	Application for Tax Credits/Refunds (BIR Form 1914) for Q1 filed on 29 March 2012
P-1-18-A	Corresponding DOF One Stop Shop Claim Stub No. 64481

[19] Formal Offer of Evidence, Docket, pp. 718-739.

P-1-19	Application for Tax Credits/Refunds (BIR Form 1914) for Q2 2010 filed on 27 June 2012
P-1-19-A	Corresponding DOF One Stop Shop Claim Stub No. 66477
P-1-20	Application for Tax Credits/Refunds (BIR Form 1914) for Q3 2010 filed on 26 September 2012
P-1-20-A	Corresponding DOF One Stop Shop Claim Stub No. 66478
P-1-21	Application for Tax Credits/Refunds (BIR Form 1914) for Q4 2010 filed on 10 December 2012
P-1-21-A	Corresponding DOF One Stop Shop Claim Stub No. 66479
P-1-22	Application for Tax Credits/Refunds (BIR Form 1914) for Q1 2011 filed on 22 March 2013
P-1-22-A	Corresponding DOF One Stop Shop Claim Stub No. 67888
P-1-23	Application for Tax Credits/Refunds (BIR Form 1914) for Q2 2011 filed on 28 June 2013
P-1-23-A	Corresponding DOF One Stop Shop Claim Stub No. 67889
P-1-24	Application for Tax Credits/Refunds (BIR Form 1914) for Q3 2011 filed on 27 September 2013
P-1-24-A	Corresponding DOF One Stop Shop Claim Stub No. 67890
P-1-25	Application for Tax Credits/Refunds (BIR Form 1914) for Q4 2011 filed on 03 December 2013
P-1-25-A	Corresponding DOF One Stop Shop Claim Stub No. 67891
P-1-26	Letter of Authority dated 22 February 2011 covering Q3-Q4 2008
P-1-27	Letter of Authority dated 9 May 2011 covering Q1 2009
P-1-28	Letter of Authority dated 20 July 2011 covering Q2 of 2009
P-1-29	Letter of Authority dated 27 October 2011 covering Q3 2009
P-1-30	Letter of Authority dated 27 January 2012 covering Q4 2009
P-1-31	Letter of Authority dated 24 April 2012 covering Q1 2010
P-1-32	Letter of Authority dated 4 July 2012 covering Q2 2010
P-1-33	Letter of Authority dated 4 October 2012 covering Q3 2010
P-1-34	Letter of Authority dated 31 January 2013 covering Q4 2010
P-1-35	Letter of Authority dated 19 April 2013 covering Q1 2011
P-1-36	Letter of Authority dated 15 July 2013 covering Q2 2011
P-1-37	Letter of Authority dated 23 October 2013 covering Q3 2011
P-1-38	Letter of Authority dated 26 December 2013 covering Q4 2011
P-1-39	Revenue Memorandum Circular No. 54-14 issued by the Bureau of Internal Revenue and certified by the University of the Philippines – Office of the National Administrative Register ("ONAR")
P-1-40	Certification from ONAR regarding the date of filing of RMC 54-14
P-1-41	BIR Certificate of Registration bearing Revenue District Office Control No. 3RC0000633222 issued on 29 January 2014
P-2	Affidavit in Lieu of Direct Examination of Edwin F. Ramos dated 25 June 2015
P-2-2	Final and Consolidated Independent CPA Report dated 24 June 2015 ("the ICPA Report")
P-2-3	Signature of Edwin F. Ramos, p. 4 of Affidavit in Lieu of Direct Examination
P-3.1 to P-5.400	Documents supporting the input tax for the year 2008 to 2010 – i.e. sales invoice, official receipts, billing statements
P-5.401 to P-6.625	Documents supporting the input tax for the year 2010-2011 – i.e. sales invoice, official receipts, billing statements
P-7-1 to P-23	Monthly VAT declarations for July to November 2008; Quarterly VAT Return for the quarter ended 31 December 2008;

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Monthly VAT declarations for 2009 to 2011;
Quarterly VAT Returns for 2009 to 2011;
Quarterly VAT Returns for Q1 2012 to Q3 2012;
Certificates of Inward Remittance;
Summary of collection/receipt prepared by petitioner;
Schedule of purchase of capital goods exceeding P1million prepared by petitioner;
Zero-rated official receipts;
Audited Financial Statements (2008 to 2011);
Amended Articles of Incorporation to reflect the change of name from TRG Philippines, Inc. to IBEX Philippines, Inc.;
Schedule of input VAT amortization of purchase of capital goods exceeding 1 million prepared by petitioner;
Summary of input VAT prepared by Petitioner.

On the other hand, respondent presented Revenue Officer Estela G. Buenviaje as his lone witness.[20] He formally offered his evidence on June 28, 2016, which were all admitted by the Court as respondent's evidence.

Respondent's documentary exhibits are as follows:

Exhibit:	Description:
R-1	Ibex Philippines, Inc. (formerly TRG Philippines, Inc.) Application for TCC January to December 2010
R-2	Letter of Authority No. 311-2012-0000129 SN:eLA2010000050071 dated April 24, 2012 issued to petitioner for its claim for VAT Refund for the period January 1, 2010 to March 31, 2012
R-3	Letter of Authority No. 311-2012-000159 SN:eLA201000050093 dated July 4, 2012 issued to petitioner for its claim for VAT Refund for the period April 1, 2010 to June 30, 2010
R-4	Letter of Authority No. 311-2012-000184 SN:eLA201000050126 dated October 4, 2012 issued to petitioner for its claim for VAT Refund for the period July 1, 2010 to September 30, 2010
R-5	Letter of Authority No. 311-2013-00013 SN:Ela201000050163 dated January 31, 2013 issued to petitioner for its claim for VAT Refund for the period October 1, 2010 to December 31, 2010
R-6	First Notice dated July 29, 2013
R-7	Second Notice dated September 18, 2013
R-8	Third & Final Notice dated October 10, 2013
R-9	Memorandum to Mr. Carmelo T. Casibang, Jr. OID, OSS-CENTER Department of Finance dated November 13, 2013
R-10	Denial Letter dated November 13, 2013
R-11	Judicial Affidavit of Revenue Officer Estela G. Buenviaje
R-11-a	Name and signature of RO Estela G. Buenviaje

[20] Minutes of the Hearing dated June 23, 2016, Docket, pp. 824-825.

As directed by the Court, petitioner filed its Memorandum[21] on October 21, 2016, while respondent filed his Memorandum[22] on October 25, 2016. Hence, on November 2, 2016, the case was declared submitted for decision.[23]

The parties submitted the following issue[24] for this Court's disposition:

> Whether petitioner is entitled to a refund in the total amount of ₱20,053,037.36, representing unutilized and excess input VAT attributable to zero-rated sales for the 3rd and 4th quarters of taxable year 2008, and the 1st, 2nd, 3rd, and 4th quarters of taxable years 2009, 2010 and 2011.

PETITIONER'S ARGUMENTS[25]

Petitioner insists that the Court has jurisdiction to decide the instant case because both the administrative and the judicial claims for refund were timely filed. It avers that the instant Petition for Review is not based on inaction but on the positive action of respondent in denying petitioner's VAT refund claims with the issuance of Revenue Memorandum Circular (RMC) No. 54-2014. Hence, according to petitioner, it duly filed the Petition for Review with the Court in accordance with Section 112(C) of the National Internal Revenue Code of 1997, as amended.

Furthermore, petitioner alleges that its sales of services to its clients, which are either non-resident foreign corporations or domestic corporations registered with the PEZA are VAT zero-rated. It contends that the input taxes incurred by it in the course of its business are duly paid, attributable to zero-rated or effectively zero-rated sales, and have not been applied against output taxes during and in the succeeding quarters.

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[21] Memorandum, Docket, pp. 856-886.
[22] Memorandum, Docket, pp. 892-902.
[23] Resolution dated November 2, 2016, Docket, p. 904.
[24] Stipulation of Issue, Joint Stipulation of Facts and Issues, Docket, pp. 562-563.
[25] Memorandum, Docket, pp. 856-886.

RESPONDENT'S ARGUMENTS[26]

On the other hand, respondent asserts that the Court has no jurisdiction over the present case, considering that petitioner failed to file its judicial claim within the prescriptive period mandated by the NIRC of 1997, as amended. According to respondent, petitioner flagrantly failed to observe the 120-day and 30-day periods required by law, in filing the judicial claim.

Moreover, respondent contends that for petitioner to be entitled to the claim of refund, it must prove it had VAT zero-rated sales and the input taxes paid were actually attributable thereto. He avers that the taxpayer claiming the tax refund has the burden of proving that he is entitled to the refund or tax credit, by submitting evidence that he has complied with the requirements laid down in the NIRC of 1997, as amended, and the BIR's revenue regulations, under which such privilege of tax credit or refund is accorded.

DISCUSSION/RULING

Relevant to the resolution of the stipulated issue is Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, which is quoted hereunder for ready reference:

> "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,

[26] Memorandum, Docket, pp. 892-902.

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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(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 *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Now TeaM Energy Corporation)*[27], the Supreme Court discussed the application of the 120-day and 30-day periods mentioned in Section 112 of the NIRC of 1997, as amended. It held that the 120-day waiting period is mandatory and jurisdictional, and that failure to observe such period violates the doctrine of exhaustion of administrative remedies. The Supreme Court held:

"Contrary to the specified periods, specifically those that are provided in the second paragraph of Section 112 (D), MPC filed its petition for review with the CTA on March 26, 2002, or a mere 15 days after it filed an administrative claim for refund with the CIR on March 11, 2002. It then did not wait for the lapse of the 120-day period expressly provided for by law within which the CIR shall grant or deny the application for refund. The Court's pronouncement in *CIR v. San Roque Power Corporation* is instructive on the effect of such failure to comply with the 120-day waiting period, to wit:

[27] G.R. No. 180434, January 20, 2016.

1. **Application of the 120+30-Day Periods**

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It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.

The charter of the CTA expressly provides that its jurisdiction is to review on appeal '**decisions** of the [CIR] in cases involving x x x refunds of internal revenue taxes.' When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no 'decision' of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within **'a specific period'** required by law, such **'inaction shall be deemed a denial'** of the application for tax refund or credit. It is the Commissioner's decision, or inaction 'deemed a denial,' that the taxpayer can take to

> the CTA for review. Without a decision or an 'inaction ... deemed a denial' of the Commissioner, the CTA has no jurisdiction over a petition for review. (Citations omitted, emphasis in the original and underscoring ours)

The Court explained further:

> The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period.** With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.
>
> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional. (Citations omitted and emphasis in the original)

The cited exception to the general rule, which came as a result of the issuance of BIR Ruling No. DA-489-03, does not apply to MPC's case as its administrative and judicial claims were both filed in March 2002.

The doctrine laid down in *San Roque* was reiterated in subsequent cases. In *CIR v. Aichi Forging Company of Asia, Inc.*,[32] the Court cited the general rule that **parties must observe the mandatory 120-day waiting period to give the CIR an opportunity to act on administrative claims; otherwise, their judicial claims are prematurely filed.** In *Team Energy Corporation (formerly MPC) v. CIR*,[34] the Court again emphasized the rule stating that **'the 120-day period is crucial in filing an appeal with the CTA.' '[T]he 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period.'**

Clearly, MPC's failure to observe the mandatory 120-day period under the law was fatal to its immediate filing of a judicial claim before the CTA. It rendered the filing of the CTA petition premature, and barred the tax court from acquiring jurisdiction over the same. Thus, the dismissal of the petition is in order. '[T]ax refunds or tax credits - just like tax exemptions - are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.'" *(Emphasis supplied)*

Similarly, in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[28], the Supreme Court *En Banc* ruled that in claims for tax credit or refund filed before June 11, 2014, or the date of issuance of RMC No. 54-2014, the reckoning point in counting the 120-day period is the date of submission of complete documents, to wit:

"Section 112 (C) of the NIRC provides:

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

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

Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days **from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision 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.

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From the above, it is apparent that the CIR has 120 days from the date of submission of complete documents to decide a claim for tax credit or refund of creditable input taxes. The taxpayer may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a 'denial due to inaction,' appeal the decision or unacted claim to the CTA.

To be clear, Section 112 (C) categorically provides that the 120-day period is counted 'from the date of submission of complete documents in support of the application.' Contrary to this mandate, the CTA *En Banc* counted the running of the period from the date the application for refund was filed or May 15, 2008, and, thus, ruled that the judicial claim was belatedly filed.

This should be corrected.

Indeed, the 120-day period granted to the CIR to decide the administrative claim under the Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.

A hypothetical situation illustrates the hazards of granting the CIR the authority to decide when complete documents have been submitted - A taxpayer files its administrative claim for VAT refund/credit with supporting documents. After 121 days, the CIR informs the taxpayer that it must submit additional documents. Considering that the CIR had determined that complete documents have not yet been submitted, the 120-day period to decide the administrative claim has not yet begun to run. In the meantime, more than 120 days have already passed since the application with the supporting documents was filed to the detriment of the taxpayer, who has no opportunity to file a judicial claim until the lapse of the 120+30 day period in Section 112(C). With no limitation to the period for the CIR to determine when complete documents have been submitted, the taxpayer may be left in a limbo and at the mercy of the CIR, with no adequate remedy available to hasten the processing of its administrative claim.

Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under present law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?*

Ideally, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, *ideally*, the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.

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To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

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

> 'The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex 'A' hereof. In addition, the taxpayer shall attach a **statement under oath** attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (*i.e.*, at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
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> Upon submission of the administrative claim and its supporting documents, the claim shall be

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> processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/ claimant.'

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.

On this score, the Court finds that the foregoing issuance cannot be applied retroactively to the case at bar since it imposes new obligations upon taxpayers in order to perfect their administrative claim, that is, [1] compliance with the mandate to submit the 'supporting documents' enumerated under RMC 54-2014 under its 'Annex A'; and [2] the filing of 'a statement under oath attesting to the completeness of the submitted documents,' referred to in RMC 54-2014 as 'Annex B.' This should not prejudice taxpayers who have every right to pursue their claims in the manner provided by existing regulations at the time it was filed.

As provided under Section 246 of the Tax Code:

> SEC. 246. *Non-Retroactivity of Rulings*. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

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> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
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> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith.
>
> Applying the foregoing precepts to the case at bench, it is observed that the CIR made no effort to question the inadequacy of the documents submitted by Total Gas. It neither gave notice to Total Gas that its documents were inadequate, nor ruled to deny its claim for failure to adequately substantiate its claim. Thus, for purposes of counting the 120-day period, it should be reckoned from August 28, 2008, the date when Total Gas made its 'submission of complete documents to support its application' for refund of excess unutilized input VAT. Consequently, counting from this later date, the BIR had 120 days to decide the claim or until December 26, 2008. With absolutely no action or notice on the part of the BIR for 120 days, Total Gas had 30 days or until January 25, 2009 to file its judicial claim." *(Emphasis supplied)*

Petitioner alleges that the claims for VAT Refund were pending investigation and evaluation by respondent when, on June 30, 2014, the assigned Revenue Officers informed petitioner that the BIR will no longer process the claims but the BIR will not issue a written denial because pursuant to RMC No. 54-14, the claims for VAT refund were deemed denied after the lapse of 120 days.[29]

It must be noted, however, that in the instant case, all administrative claims for refund were filed prior to June 11, 2014, the date of issuance of RMC No. 54-14. Hence, from the foregoing jurisprudence, what is applicable to the instant case is the following rule:

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[29] Memorandum, Docket, p. 860.

"xxx from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other additional documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing."[30]

In the instant case, there was no evidence showing that respondent gave petitioner further extension to submit documentary requirements to support its claim. Nonetheless, petitioner also did not manifest that it no longer wishes to submit any other additional documents to complete its claim. Hence, the 120-day period began after the expiration of the 30-day period within which petitioner was allowed to submit its supporting documents. Petitioner then had until the following dates, to file the judicial claims:

Quarterly Return	**Date Filed**	**Expiration of 30-day period to submit additional documents**	**Expiration of the 120-day period**
3rd Quarter 2008	September 30, 2010	October 30, 2010	February 27, 2011
4th Quarter 2008	December 30, 2010	January 29, 2011	May 29, 2011
1st Quarter 2009	March 31, 2011	April 30, 2011	August 28, 2011
2nd Quarter 2009	June 28, 2011	July 28, 2011	November 25, 2011
3rd Quarter 2009	September 28, 2011	October 28, 2011	February 25, 2012
4th Quarter 2009	December 12, 2011	January 11, 2012	May 10, 2012
1st Quarter 2010	March 29, 2012	April 28, 2012	August 26, 2012
2nd Quarter 2010	June 27, 2012	July 27, 2012	November 24, 2012
3rd Quarter 2010	September 26, 2012	October 26, 2012	February 23, 2012
4th Quarter 2010	December 10, 2012	January 9, 2013	May 9, 2013
1st Quarter 2011	March 22, 2013	April 22, 2013	August 20, 2013
2nd Quarter 2011	June 28, 2013	July 28, 2013	November 25, 2013
3rd Quarter 2011	September 27, 2013	October 27, 2013	February 24, 2013
4th Quarter 2011	December 3, 2013	January 2, 2013	May 2, 2013

[30] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

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Considering that the instant case was filed only on July 23, 2014, the judicial claim was filed out of time. Hence, the Court has no jurisdiction over the instant case.

WHEREFORE, premises considered, the Petition for Review filed by Ibex Philippines Inc. (Formerly TRG Philippines, Inc.) is **DENIED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, 1st Division