REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

WNS PHILIPPINES, INC., Petitioner,	**CTA EB CASE NO. 899 (CTA Case No. 8317)**
- *versus* -	Present: *Del Rosario, P.J. Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 10 2013 9:00 a.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed by petitioner WNS Philippines, Inc., by registered mail on May 17, 2012, pursuant to Section 18[2] of Republic Act ("RA") No. 1125, as amended by RA No. 9282, and RA No. 9503, praying for the reversal and setting aside of the Resolutions, respectively, promulgated by the First Division

[1] *Rollo*, CTA EB Case No. 899 (CTA Case No. 8317), pp. 60-112, with Annexes.

[2] Sec. 18. *Appeal to the Court of Tax Appeals En Banc*. – No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA E*n Banc*.

of the Court ("Court in Division") on January 16, 2012,[3] and April 3, 2012,[4] and accordingly, for the Court to hear the case on the merits, and order respondent Commissioner of Internal Revenue to refund or issue a tax credit certificate in the amount of twenty one million eight hundred eighteen thousand nine hundred forty two pesos and 57/100 (Php21,818,942.57) representing excess unutilized input taxes for the fiscal year ending March 31, 2010.

Antecedent Facts

The relevant antecedents as culled from the records of the case are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at the 15th Floor 6750 Ayala Avenue, Makati City.[5]

Respondent is the Bureau of Internal Revenue represented by the Commissioner, with office address at Diliman, Quezon City, and the Office of the Solicitor General, with office address at 143 Amorsolo Street, Legaspi Village, Makati City.[6]

On August 8, 2011, petitioner filed a Petition for Review, before the Court in Division, docketed as CTA Case No. 8317, praying for the refund or issuance of a tax credit certificate in its favor in the amount of Twenty One Million Eight Hundred Eighteen Thousand Nine Hundred Forty Two Pesos and 57/100 (Php21,818,942.57) representing excess unutilized input taxes for the fiscal year ending March 31, 2010.[7]

On October 17, 2011, respondent filed her Answer (with Motion to Dismiss)[8] by registered mail and alleged the following Special and Affirmative Defenses:

> "4. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and,

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[3] *Rollo*, CTA EB Case No. 899 (CTA Case No. 8317), pp. 78-89; penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta, and Associate Justice Erlinda P. Uy, concurring; Annex "A."
[4] *Ibid.*, pp. 90-93; Annex "B."
[5] *Records*, (CTA Case No. 8317), p. 6.
[6] *Ibid.*, Return of Summons, p. 163.
[7] *Ibid.*, pp. 6-162, with Annexes.
[8] *Records*, pp. 177-180.

in addition and in support of the respondent's Motion to Dismiss, most respectfully avers THAT:

5. The pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (G.R No. 184823)* with respect to the timeliness or untimeliness of the filing of judicial claim for refund, is specific and clear. The Supreme Court in Aichi ruled as follows:

xxx xxx xxx

6. Verily, the admission of the petitioner in paragraph 10 of its Petition for Review filed on August 8, 2011 that "**Additional documents in support of the claim were likewise submitted to RDO 47 on 1 July 2011**," is fatal and disastrous as it renders the instant Petition for Review **PREMATURE!**

7. Verily, the respondent has 120 days from the date of submission of the **complete documents**, within which to rule on taxpayer's application for tax refund or credit. And only after the lapse of this period without any action on her part (*wherein the inaction is deemed a denial pursuant to Section 7(a)(2) of RA No. 9282*) that the aggrieved party may, within 30 days, elevate the case to the Court of Tax Appeals (CTA). Prior to such period, the CTA has no competence, **with all due respect**, to entertain the appeal as in this case.

8. In the present case, petitioner filed its administrative claim for refund of its alleged unutilized input VAT for fiscal year ended 31 March 2010 in the amount of Php21,818,942.57 with Revenue District Office No. 47 on **March 11, 2011**. However, the submission of complete documents by petitioner, in support of its application for refund, was **admittedly** filed on **July 1, 2011**. In accordance with the instructions of the High Court in *Aichi* and the clear mandate of

Section 112 of the National Internal Revenue Code (NIRC), as amended, the respondent has 120 days from **July 1, 2011** or until **October 29, 2011** within which to make a ruling or decision on the petitioner's administrative claim for refund. Otherwise, stated, the 120-day period only commenced to run on July 1, 2011, the day of the submission of the complete documents to the respondent and not March 11, 2011, the day of the filing of the application for refund.

9. As stated, petitioner sprinted to this Court and prematurely filed the Petition for Review on **August 8, 2011 or just 38 days after the complete submission of the additional documents in support of its administrative claim for refund**, or before the 120-day period granted unto the CIR lapsed, effectively depriving the CIR of the opportunity to rule on the claim for refund. Verily, the premature filing of the Petition for Review justifies a dismissal inasmuch as no jurisdiction was acquired by the CTA.

10. The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction (Alllied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010 citing Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 150). Its jurisdiction may only be invoked in the particular instances enumerated in Section 7 of Republic Act (RA) No. 1125, as amended by Section 7 of RA No. 9282 (Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue, CTA EB No. 44, May 10, 2005).

11. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau.

> 12. It is incumbent upon the latter to show that it has complied with the provisions under Section 204(C) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
>
> 13. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Westeren Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***).
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> 14. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another.- **Non videtur quisquam id capere quod ei necesse est alii restitutere**."

On December 12, 2011, petitioner filed its Reply and Opposition to Respondent's Motion to Dismiss.[9] Petitioner counters that respondent's invocation of Sections 204(C) and 229 of the NIRC of 1997 as the applicable provision for its claim for VAT refund is flawed since "both provisions apply only to instances of erroneous payments or illegal collection of internal revenue taxes." According to petitioner, the applicable provision is Section 112 of the NIRC of 1997, as amended, since its claim is for the refund of unutilized input tax.

Petitioner likewise avers that Section 112(C) of the NIRC of 1997, as amended, does not explain or define the term "complete documents." However, Revenue Memorandum Circular ("RMC") No. 029-09 describes "complete documents" as those documents necessary to determine and/or ascertain the correctness of the return and the amount for refund/credit. Petitioner believes that taxpayers are given

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[9] *Records*, pp. 187-195.

wide latitude on what type of documents they should hand over for examination, provided that these documents enable the tax authorities to ascertain that the returns filed are correct and the amount for refund/credit is adequately supported.

Petitioner alleges that on March 11, 2011, it filed its application for refund of unutilized input VAT for fiscal year ended March 31, 2010 with RDO No. 47. In support thereof, it submitted the following documents:

a. Application for VAT Credit/Refund (Form 1914);
b. Summary List of Purchases;
c. Photocopies of VAT purchase invoices for purchases of goods and official receipts for purchase of service;
d. Quarterly VAT Returns for fiscal year 2010;
e. Articles of Incorporation;
f. Sales Contract/Agreement
g. Certificate of Registration with the Board of Investments (BOI);
h. Income Tax Return; and
i. Audited Financial Statements.[10]

According to petitioner, a perusal of the above-mentioned documents shows that they are sufficient for the tax authorities to ascertain the correctness of the return and determine the amount to be refunded/credited given that the Quarterly VAT returns were submitted as well as copies of the VAT purchase invoices and official receipts together with the summary list of purchases. Hence, the documents submitted on March 11, 2011 already constituted "complete documents."

Petitioner likewise admits that it submitted additional documents on July 1, 2011, to wit:

a. Quarterly VAT Returns for FY 2010;
b. Monthly VAT Declarations for FY 2010;
c. Official Receipts issued;
d. Purchase Invoices; and
e. Certification from the DOF[11] that the subject taxpayer has not filed similar claim for refund for the same period.

[10] *Ibid.*, p. 107, Annex "H-1."

Except for the Monthly VAT Declarations and the DOF Certification, petitioner claims that the above-enumerated documents are the same documents that have been submitted on March 11, 2011. Allegedly, these "additional documents" did not affect the counting of the 120 days prescribed under Section 112(C) of the Tax Code as they did not adversely or favorably affect the process of ascertaining or determining the correctness of the return and the amount to be refunded/credited. The input and output VAT contained in the Monthly VAT Declarations are included and reconciled in the Quarterly VAT Returns which were already submitted to respondent. The DOF Certification, while useful for the BIR to ensure that no other claim was filed, it is not one of the indispensable requisites in a claim for refund of unutilized input VAT.

Petitioner likewise claims that the submission of documents on July 1, 2011 was pursuant to the Regular Audit Program of RDO No. 47 - a tax audit separate and distinct from the administrative claim for refund filed. Respondent cannot also take refuge on the allegation that "additional documents" has been submitted on July 1, 2011 as those documents were substantially the same as those submitted on March 11, 2011. Thus, respondent had the benefit of the entire 120 days to act on the claim for refund.

The Ruling of the Court in Division

On January 16, 2012, the Court in Division promulgated a Resolution dismissing petitioner's Petition for Review by ruling that:

> "**WHEREFORE**, respondent's *motion to dismiss*, incorporated in her Answer filed on October 17, 2011, is hereby **GRANTED**. Accordingly, the *Petition for Review*, dated August 5, 2011, filed by petitioner, is hereby **DISMISSED**, for being prematurely filed.
>
> **SO ORDERED.**"[12]

On February 6, 2012, petitioner filed its *Motion for Reconsideration*. On April 3, 2012, the Court in Division issued a Resolution denying petitioner's claim, the dispositive portion is as follows:

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[11] Department of Finance.
[12] *Records*, pp. 208-219.

"**WHEREFORE,** petitioner's *Motion for Reconsideration,* is hereby **DENIED,** for lack of merit.

SO ORDERED."[13]

The Issues

Hence, the present Petition for Review where petitioner proffers the following grounds:

I.

THE 1ST DIVISION ERRED IN FINDING THAT PETITIONER'S SUBSEQUENT SUBMISSION OF DOCUMENTS ON JULY 1, 2011 TOLLED THE RUNNING OF THE 120-DAY PERIOD GIVEN THAT THE DOCUMENTS SUBMITTED ON MARCH 11, 2011 CONSTITUTED THE "COMPLETE DOCUMENTS" AS REQUIRED IN SECTION 112 OF THE TAX CODE; and

II.

THE 1ST DIVISION ERRED IN DISMISSING THE INSTANT CASE AND HOLDING THAT PETITIONER'S FILING OF THE JUDICIAL CLAIM WAS PREMATURE.[14]

Petitioner's Arguments

Petitioner claims that on March 11, 2011, it completely submitted its documents; that it is this date that the 120-day period of prescription, pursuant to Section 112(C) of the National Internal Revenue Code (NIRC), as amended, begins to run; and that the subsequent submission of documents on July 1, 2011, did not toll the running of the 120-day within which respondent is to decide on the taxpayer's claim.

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[13] *Ibid.*, pp. 242-245.
[14] *Rollo.*, Petition for Review, p. 10.

Furthermore, petitioner alleges that the filing of its judicial claim is not premature for the reckoning of the 120-day period is on March 11, 2011 and not on July 1, 2011.

The Ruling of the Court En Banc

The Court *En Banc* finds the Petition for Review without merit.

In the Resolution dated January 16, 2012, the Court in Division unanimously ruled as follows:

> "The pivotal issue is whether the submission of the 'additional documents' on July 1, 2011 affected the reckoning point of the 120-day period prescribed in Section 112(C) of the NIRC of 1997, as amended.
>
> The pertinent provision is Section 112(C) of the NIRC of 1997, as amended, which provides as follow:
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> xxx xxx xxx
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> Thus, respondent has **120 days from the date of submission of complete documents within which to grant or deny petitioner's application for refund or tax credit of excess input tax**. Upon notice of denial or expiration of the 120-day period without any action on respondent's part, petitioner has 30 days, within which to appeal the adverse decision or inaction of respondent with the Court of Tax Appeals.
>
> Record dovetails the facts that led to the filing of the instant case. Petitioner filed its application for the refund of unutilized input VAT for fiscal year ended March 31, 2010 on March 11, 2011. Admittedly, it filed additional documents in support of its claim for refund on July 1, 2011. This is as well evident in the transmittal letter of the additional documents which states:
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> 'Gentlemen:

> On behalf of our client, WNS Philippines, Inc., **we are pleased to transmit to you the following documents required in filing the TCC claim for unutilized Input VAT covering FY ended 31 March 2010:**
>
> 1. In hard copy
>   a) Quarterly VAT Returns for FY 2010;
>   b) Monthly VAT Declarations for FY 2010;
>   c) Official Receipts Issued;
>   d) Purchase Invoices; and
>   e) Certification from the DOF that the subject taxpayer has not filed similar claim for refund for the same period
>
> We hope you find the foregoing in order.'
> (*Emphases ours*)

Counting 120 days from the submission of additional documents in support of the claim, respondent had until October 29, 2011, within which to grant or deny refund or credit. But before the 120-day period lapsed, petitioner sought judicial intervention by filing a *Petition for Review* on August 8, 2011, rendering the action taken premature.

Realizing that its argument is checkered with flaws, petitioner in its *Reply and Opposition to Respondent's Motion to Dismiss* argues that the documents it submitted on March 11, 2011 already constituted complete documents, hence, the 120-day period should be reckoned from the said date. Further, except for the Monthly VAT Declarations and the DOF Certification, the additional documents it submitted on July 1, 2011 are the same documents as those submitted on March 11, 2011. More, the input and output VAT contained in the Monthly VAT Declarations are included and reconciled in the Quarterly VAT Returns which were already submitted to respondent. The DOF Certification, on the other hand, is not one of the indispensable requisites in a claim for refund of unutilized input VAT. Besides, the submission of documents on July 1, 2011 was pursuant to the Regular Audit Program of RDO 47 – a tax audit separate and distinct from the administrative claim for refund.

The Court rules for respondent.

Indeed, it is for the taxpayer to determine the appropriate documents to be presented to obtain a favorable resolution on a claim for refund. There is no argument that when petitioner filed its administrative claim for refund on March 11, 2011, it submitted supporting documents in support of its claim. However, on July 1, 2011, it submitted additional documents which per petitioner's own declaration were similar to those previously submitted except for two. Therefore in petitioner's mind, **the documents submitted on March 11, 2011 were not enough or complete to meet the requirements for a favorable ruling that it had to submit additional documents on July 1, 2011** if only to ensure victory. Petitioner claims that the second group of documents submitted on July 1, 2011 were similar to those filed on March 11, 2100 is also incorrect for it admitted that the two were not.

Even granting that the second group of documents were similar to those first submitted, still they would be examined evaluated as a matter of course to justify respondent's subsequent action on the claim. Necessarily, it would interrupt the 120-day period granted unto respondent to rule on petitioner's claim for refund/credit.

Lastly, the allegation in paragraph 10 of the Petition for Review dated August 5, 2011 and the tenor of the transmittal letter, completely belie petitioner's assertion that the additional documents are submitted in compliance with the Letter of Authority No. LOA-047-2011-00000087."[15]

After a careful consideration of the factual milieu in the case at bench, the Court sitting *En Banc* finds no reason to depart from the Court's in Division's Resolution.[16]

Anent the first issue, it is relevant to take note of Section 112(C) of the NIRC of 1997, as amended, to wit:

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[15] *Rollo*, pp.84-89.
[16] *Rollo*, pp. 25- 36, Annex "A."

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

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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. (*Emphases supplied*)

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From the foregoing, respondent is given 120 days from the date of submission of complete documents within which to grant or deny petitioner's application for refund or tax credit of excess input tax.

In the instant case, there is a need to determine the date of submission of complete documents so as to determine the running of the 120-days given to respondent to decide on the claim.

A perusal of the documents reveals that petitioner submitted its documents twice. The first was when it filed its administrative claim on March 11, 2011.[17] And the second was on July 1, 2011,[18] when it submitted additional documents in support of its application for refund. This only shows that on March 11, 2011, the documents submitted by petitioner were not complete. For if petitioner finds the documents submitted on March 11, 2011 are already complete, petitioner would not have submitted additional documents on July 1, 2011. Hence, we affirm the Court in Division's findings that the reckoning period is not on March 11, 2011 but on July 1, 2011, when the additional documents were submitted.

Now, we proceed to resolve the second issue.

Based on the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs.*

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[17] *Records*, p. 107, Annex "H-1."
[18] *Ibid.*, p. 109, Annex "H-2."

Commissioner of Internal Revenue,[19] where it adopted the ruling in *CIR vs. Aichi Forging Company of Asia, Inc*,[20] the Supreme Court held that the 120-day period provided in Section 112(C) is mandatory and jurisdictional. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity.

In the instant case, petitioner filed its administrative claim for refund of unutilized input VAT for fiscal year ended March 31, 2010 in the amount of Php21,818,942.57 with Revenue District Office ("RDO") No. 47, on March 11, 2011. Subsequently, on July 1, 2011, petitioner submitted additional documents to completely support its application for refund with the same RDO.[21] Following the instructions of the Supreme Court in the aforesaid consolidated cases and Section 112(C) of the NIRC of 1997, as amended, respondent has 120 days from July 1, 2011, or until October 29, 2011, to act on petitioner's claim. However, petitioner filed the instant Petition for Review on August 8, 2011,[22] or before the 120-day period had lapsed. Therefore, the Court has no jurisdiction to entertain the Petition for Review for it was prematurely filed.

In sum, the Court *En Banc* finds no cogent reason to depart from the Court in Division's Resolutions dated January 16, 2012 and April 3, 2012.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated January 16, 2012 and April 3, 2012 are hereby **AFFIRMED** in *toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[19] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[20] G.R No. 184823, October 6, 2010.
[21] *Records*, Petition for Review, paragraph 10, p 10.
[22] *Records*, p. 6.

WE CONCUR:

Roman G. del Rosario
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen R. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice