REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

RIOFIL CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9031

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, ***JJ.***

Promulgated:
AUG 0 2 2017
4:15 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court is a Petition for Review[1], filed by petitioner on April 15, 2015, pursuant to and in accordance with *Sections 108(B)(3)* and *112(A)*, in relation to *112(C)* of the *1997 National Internal Revenue Code, as amended ("1997 NIRC")* and *Section 7(a)(1)*[2] *of Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], in relation to *Section 3(a)(1)*[6], *Rule 4 of the Revised Rules of the Court of Tax*

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[1] *Records, CTA Case No. 9031, Vol. 1, Petition for Review ("PFR"),* pp. 10-69, with annexes.

[2] Sec. 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise: (a) Exclusive appellate jurisdiction to review by appeal, as herein provided: (1) Decisions of 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;

[3] An Act Creating the Court of Tax Appeals, as amended.

[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[6] Rule 4. *Jurisdiction of the Court, Sec. 3. Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise: (a) Exclusive original over or appellate jurisdiction to review by appeal the following: (1) Decisions of the Commissioner of Internal Revenue in cases involving

Appeals ("RRCTA")[7], seeking for the Court to render judgment: *(1)* granting its claim for refund for the aggregate amount of Php91,994,521.20 representing its unutilized and/or unapplied and excess input value-added tax ("VAT") for the period covering January 1, 2012 to June 30, 2012; and *(2)* declaring *Revenue Memorandum Circular ("RMC") No. 54-2014* as invalid and illegal, insofar as it provides that failure to file a judicial claim by a taxpayer within thirty (30) days from the expiration of the one hundred and twenty (120)-day period renders the Commissioner of Internal Revenue ("CIR")'s decision or inaction "deemed a denial" final and unappealable; or in the alternative, declare that the provisions of *RMC No. 54-2014* be applied prospectively.[8]

The Parties

Petitioner, previously named Riofil Construction Co., Inc.[9], is a domestic corporation formed primarily "to carry on and conduct a general contracting business, including the constructing, enlarging, repairing, remodeling or otherwise in any work upon buildings, roads, sidewalks, highways, bridges or manufacturing plants; to engage in iron, steel, wood brick, concrete, stone, cement, masonry and earth construction; to execute contracts or to receive assignments of contracts therefore, or relating thereto; also, to manufacture and furnish the building materials and supplies connected herewith."[10] It is a VAT registered entity,[11] with office address at Units 1704-1706 Hanston Square, 17 San Miguel Avenue, Ortigas Center, Pasig City, Metro Manila.

Respondent is the duly appointed CIR, who holds office at 5th Floor, BIR National Office Building, Diliman, Quezon City.[12] He is vested with authority to administer and to enforce all laws pertaining to internal revenue taxes, and has jurisdiction to decide refunds and disputed tax assessments.[13]

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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;

7 *A.M. No. 05-11-07-CTA,* November 22, 2005.

8 *Records, Vol. 1, PFR, Prayer,* p. 20.

9 *Exhibit Box No. 3, Folder A, Exhibit "P-1," SEC Certificate of Registration No. 158715 dated January 6, 1989,* p. 1; *Exhibit Box No. 3, Folder A, Exhibit "P-1.1," SEC Certificate of Filing of Amended Articles of Incorporation dated October 21, 1993,* p. 1.

10 *Exhibit Box No. 3, Folder A, Exhibit "P-1.1," Amended Articles of Incorporation,* p. 2.

11 *Id., Folder E, Exhibit "P-19," BIR Certificate of Registration.*

12 *Records, Vol. 1, Joint Stipulations of Facts and Issues ("JSFI"), Summary of Admitted Facts, par. 1,* p. 1152.

13 *Id., Vol. 3, JSFI, Summary of Admitted Facts, par. 2,* p. 1152.

The Facts

Petitioner filed the following Monthly VAT Declarations and Quarterly VAT Returns for the 1st and the 2nd quarters of 2012:

PERIOD	BIR FORM	ORIGINAL OR AMENDED	DATE FILED	EXHIBIT
January	2550-M	Original	February 21, 2012	P-2[14]
February	2550-M	Original	March 19, 2012	P-2.1[15]
1st Quarter	2550-Q	Original	April 19, 2012	P-3[16]
April	2550-M	Original	May 16, 2012	P-2.2[17]
May	2550-M	Original	June 18, 2012	P-2.3[18]
2nd Quarter	2550-Q	Original Amended Amended	July 24, 2012 August 2, 2012 August 22, 2012	P-3.1.1[19] P-3.1.2[20] P-3.1[21]

On May 20, 2013, petitioner filed its administrative claim for refund[22] dated May 15, 2013, requesting for a cash refund of excess input VAT on the local purchase of goods and services directly attributable to its zero-rated sales for the period January 1, 2012 to June 30, 2012 in the total amount of Php91,994,521.20.[23] Attached thereto are petitioner's:

1. Application for Tax Credits/Refunds (BIR Form No. 1914)[24] filed on May 20, 2013 for VAT refund covering the period January 1, 2012 to June 30, 2012 in the amount of Php91,994,521.20 under *Section 4.110-7 of Revenue Regulations ("RR") No. 4-07;*

2. BIR Registration Certificate and Registration Fee for taxable year ("TY") 2013;

3. Monthly VAT Returns and Quarterly VAT Returns for January to June 2012;

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[14] *Exhibit Box No. 3, Folder A, Exhibit "P-2," Monthly VAT Declaration, January.*
[15] *Id., Exhibit "P-2.1," Monthly VAT Declaration, February.*
[16] *Id., Exhibit "P-3," Quarterly VAT Return, 1st Quarter.*
[17] *Id., Exhibit "P-2.2," Monthly VAT Declaration, April.*
[18] *Id., Exhibit "P-2.3," Monthly VAT Declaration, May.*
[19] *Id., Exhibit "P-3.1.1," Quarterly VAT Return, 2nd Quarter, Original.*
[20] *Exhibit Box No. 3, Folder A, Exhibit "P-3.1.2," Quarterly VAT Return, 2nd Quarter, 1st Amended.*
[21] *Id., Exhibit "P-3.1," Quarterly VAT Return, 2nd Quarter, 2nd Amended.*
[22] *Id., Folder E, Exhibit "P-13," Administrative Claim for Refund; BIR Records,* p. 638.
[23] *Records, Vol. 3, JSFI, Summary of Admitted Facts,* p. 1152; parties admit the existence of petitioner's administrative claim.
[24] *Exhibit Box No. 3, Folder E, Exhibit "P-13.1," Application for Tax Credits/Refunds; BIR Records,* p. 647.

4. Quarterly VAT Return for January to March 2013 reflecting the claim for VAT refund;

5. Summary of Zero-Rated Purchases; and

6. Summary of Zero-Rated and VATable Sales.

On August 16, 2013, petitioner, through a certain Desiree Gimenez, received Letter of Authority ("LOA")-43A-2013-00000576 (SN: eLA201100041569)[25] dated August 15, 2013 issued by Officer-In-Charge ("OIC")-Regional Director of Revenue Region No. 7 - Quezon City, Jonas DP. Amora. The LOA authorizes Revenue Officer ("RO") Almario F. Acosta and Group Supervisor ("GS") Rodorico D. Peralta of Revenue District No. 43A -East Pasig to examine petitioner's books of accounts and other accounting records pursuant to a mandatory audit for its claim for VAT refund for January 1, 2012 to June 30, 2012.

Through a letter dated October 1, 2013 addressed to RO Acosta and GS Peralta from petitioner, the latter submitted photocopies of documents in support of its claim, with a statement that the original documents are available for inspection; and asking for the setting of a meeting to facilitate the early resolution of its claim.[26]

On November 8, 2013, the BIR received a Transmittal Sheet[27] dated June 26, 2013 through a certain "Amor Acosta," stating that he received documents relating to the Summary List of Input Tax Claimed for the purpose of determining big ticket items.

On November 27, 2013, the BIR through a certain "Amor" received a Transmittal Sheet[28] dated November 27, 2013, stating that he received documents relating to the Schedule of Deferred VAT Input with January 2012 beginning balance and June 30, 2012 ending balance.

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[25] *Exhibit Box No. 3, Folder E, Exhibit "P-14," Letter of Authority; BIR Records,* p. 835.

[26] *Exhibit Box No. 3, Folder E, Exhibit "P-16," Letter with Supporting Documents; BIR Records,* pp. 687-689.

[27] *Exhibit Box No. 3, Folder E, Exhibit "P-16.1," June 26, 2013 Transmittal Sheet.*

[28] *Exhibit Box No. 3, Folder E, Exhibit "P-16.3," November 27, 2013 Transmittal Sheet; BIR Records,* p. 726.

The BIR, through a certain "Almario F. Acosta" received a Transmittal Sheet[29] dated November 29, 2013, stating that he received photocopies of invoices or official receipts for VAT input on zero-rated sales.

In a letter[30] dated December 2, 2013 but signed by Revenue District Officer ("RDO") Josephine S. Virtucio on December 10, 2013, addressed to Ms. Jean E. Mesa (petitioner's Finance Manager), RDO Virtucio informed petitioner that the results of the verification resulted to disallowances in the amount of Php1,525,483.93 due to invoicing requirement violations, out of period claims, and invoices not directly identifiable with zero-rated sales transactions; and that as a result, the amount sought to be refunded was reduced to Php90,469,037.27. Petitioner was likewise informed that pursuant to *RMC No. 29-2009* dated April 16, 2009, petitioner is given five (5) days from receipt to reconcile and explain in writing the noted discrepancies or findings; and that should there be no objection, the report on the refund claim will be submitted for review and processing of higher authorities.

The BIR received a letter[31] dated December 10, 2013 from petitioner through Ms. Mesa, concurring with the findings stated by RDO Virtucio in the December 2, 2013 Letter.

In a Memorandum dated November 29, 2013 but signed by RDO Virtucio on December 13, 2013, submitted by RO Acosta, noted by GS Peralta, recommended for approval by RDO Virtucio, and addressed to the Regional Director ("RD"), they recommended the refund of the amended amount of Php90,469,037.27, subject to the review and outcome of the evaluation made by higher authorities and that the said findings were communicated to petitioner who interposed no objection.[32] Attached thereto is an RO's Audit Report on VAT[33], with the amount of Php90,469,037.27 stated as VAT refund; and a schedule[34] stating that the case will be forwarded to the Assessment Division.

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[29] *Exhibit Box No. 3, Folder E, Exhibit "P-16.4," November 29, 2013 Transmittal Sheet; BIR Records,* p. 838.

[30] *Exhibit Box No. 3, Folder E, Exhibit "P-17," December 2, 2013 BIR Letter; BIR Records,* p. 844A, and unnumbered page between pp. 845-847.

[31] *Exhibit Box No. 3, Folder E, Exhibit "P-18," December 10, 2013 Concurring Letter; BIR Records,* p. 844b.

[32] *Exhibit Box No. 3, Folder E, Exhibit "P-20," November 29, 2013 Internal Memorandum; BIR Records,* unnumbered pages between pp. 844A-844 and 844b-845.

[33] *Exhibit Box No. 3, Folder E, Exhibit "P-21," RO's Audit Report on VAT; BIR Records,* p. 845.

[34] *Exhibit Box No. 3, Folder E, Exhibit "P-22;" BIR Records,* p. 847.

In a Memorandum[35] dated June 17, 2014 addressed to the RD from the Assessment Division, it found that petitioner is entitled to the refund claimed in the reduced amount of Php90,469,037.27 and has complied with all the requirements, subject to further review and approval by higher authorities.

On September 9, 2014, a 2nd Indorsement[36] was issued by the Deputy CIR-Operations Group returning to the RD the entire docket of the case, with the information that the processing of the subject claim could not be pursued in light of the issuance of *RMC No. 54-2014*.

On March 17, 2015, petitioner received a letter dated March 9, 2015 from RDO Virtucio (who signed on March 13, 2015) informing petitioner that the case was returned by the Office of the Deputy CIR-Operations Group, with the information that the processing of the claim could not be pursued in light of the issuance of *RMC No. 54-2014*.[37]

Due to the receipt of the above letter, petitioner filed the present Petition for Review[38] with the Court on April 15, 2015.

The Court issued Summons[39] against respondent on April 28, 2015, ordering him to file his Answer within fifteen (15) days from service.

After being granted an extension period to file his Answer,[40] respondent filed an Answer[41] on June 18, 2015, interposing his Special and Affirmative Defenses[42].

On August 20, 2015, Respondent's Pre-Trial Brief[43] was submitted, and petitioner filed its Pre-Trial Brief[44] by registered mail.

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[35] *Exhibit Box No. 3, Folder E, Exhibit "P-23," June 17, 2014 Internal Memorandum; BIR Records,* pp. 850-851.
[36] *Exhibit Box No. 3, Folder E, Exhibit "P-26," 2nd Indorsement; BIR Records,* pp. 860-861.
[37] *Exhibit Box No. 3, Folder E, Exhibit "P-15," March 9, 2015 Letter from the BIR RDO; BIR Records,* p. 867.
[38] *Records, Vol. 1, PFR,* pp. 10-69, with annexes.
[39] *Id., Summons,* p. 70.
[40] *Records, Vol. 1, Motion for Extension of Time to File Answer to the Petition for Review,* pp. 72-73, filed on May 13, 2015; *Records, Vol. 1, May 19, 2015 Resolution,* p. 75.
[41] *Records, Vol. 1, Answer,* pp. 76-83.
[42] *Id., Answer, Special and Affirmative Defenses,* pp. 80-81.
[43] *Id., Respondent's Pre-Trial Brief,* pp. 95-97.
[44] *Id., Vol. 2, Pre-Trial Brief,* pp. 598-610.

During Pre-Trial Conference[45] held on September 22, 2015, the Court granted the parties a period of ten (10) days or until October 2, 2015 to submit their joint stipulation of facts and issues. Accordingly, on October 2, 2015, the parties filed their Joint Stipulations of Facts and Issues[46] ("JSFI") by registered mail. The parties admit the existence of petitioner's administrative claim and the following provisions of law: *(1) Section 108(B) of the 1997 NIRC; (2) Special Economic Zone Act of 1995; (3) Bases Development and Conversion Act of 1992* (*RA No. 7227*, as amended by *RA No. 9400*); and *(4) RA No. 7916* and *RA No. 7227*, as amended by *RA No. 9400*.[47]

On November 26, 2015, a Pre-Trial Order[48] was issued by the Court terminating the Pre-Trial Conference.

On March 22, 2016, the Court-appointed[49] Independent Certified Public Accountant ("ICPA") filed her Urgent Motion for Extension of Time to Submit [ICPA]'s Report, along with a soft copy of the Preliminary [ICPA] Report and Annexes.[50] This was granted by the Court on March 30, 2016.[51] The ICPA then submitted a soft copy of the Amended and Final [ICPA] Report on April 22, 2016.[52]

In the course of the proceedings, petitioner presented the following witnesses: *(1)* Ms. Shirley E. Mercado[53], the Accounting Manager of petitioner; and *(2)* Ms. Katherine O. Constantino[54], the Court-appointed ICPA.

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[45] *Records, Vol. 3, Minutes of Hearing dated September 22, 2015*, p. 1145; *Records, Vol. 3, Confirming Resolution*, pp. 1150-1151.
[46] *Records, Vol. 3, JSFI*, pp. 1152-1160.
[47] *Id., Summary of Admitted Facts*, pp. 1152-1153.
[48] *Id., Pre-Trial Order ("PTO")*, pp. 1170-1175.
[49] *Records, Vol. 3, Motion for the Commissioning of an Independent Certified Public Accountant [("ICPA")] (Pursuant to Rule 12, Section 5 of the RRCTA)*, pp. 1199-1202; *Records, Vol. 3, Exhibits "P-33" and "P-33-a," Judicial Affidavit ("JA") (of Ms. Katherine O. Constantino for her appointment and commissioning as an [ICPA])*, pp. 1203-1217, with annexes; *Records, Vol. 3, Oath of Commission (For a CPA Firm)*, p. 1244; *Records, Vol. 3, Manifestation and Compliance*, pp. 1249-1258, with annexes; *Records, Vol. 3, March 7, 2016 Minute Resolution*, p. 1259.
[50] *Records, Vol. 3, Urgent Motion for Extension of Time to Submit [ICPA]'s Report*, pp. 1263-1265.
[51] *Id., Resolution*, p. 1269.
[52] *Id., Receiving Copy of ICPA Report*, p. 1273.
[53] *Records, Vols. 2 and 3, Exhibits "P-31" and "P-31-a," [JA] of Ms. Shirley E. Mercado*, pp. 639-1123, with annexes; *Records, Vol. 3, January 25, 2016 Minutes of Hearing*, p. 1195; *Transcript of Stenographic Notes ("TSN"), January 25, 2016 Hearing*, pp. 1-5; *Records, Vol. 3, Exhibits "P-32" and "P-32-a," Amended Supplemental [JA] of Ms. Shirley E. Mercado*, pp. 1222-1242, with annexes; *Records, Vol. 3, February 22, 2016 Minutes of Hearing*, p. 1243; *TSN, February 22, 2016 Hearing*, pp. 1-41.
[54] *Records, Vol. 3, Exhibits "P-3272" and "P-3272-a," [JA] (of Ms. Katheirne O. Constantino)*, pp. 1276-1290, with annexes; *Records, Vol. 3, February 22, 2016 Minutes of Hearing*, p. 1243; *TSN, February 22,*

On June 22, 2016, petitioner filed its Formal Offer of Evidence[55] ("FOE"), offering *Exhibits* "P-1," "P-1.1," "P-1.2," "P-2," "P-2.1" to "P-2.3," "P-3," "P-3.1," "P-3.1.1," "P-3.1.2," "P-4," "P-5," "P-5.1," "P-6," "P-6.1" to "P-6.9," "P-7," "P-7.1" to "P-7.10," "P-8," "P-8.1," "P-8.3," "P-8.4," "P-8.8," "P-9," "P-9.1," "P-10," "P-10.1," "P-11," "P-12," "P-13," "P-13.1," "P-14," "P-15," "P-16," "P-16.1" to "P-16.4," "P-17" to "P-26," "P-29," "P-30," "P-31," "P-31-A," "P-32," "P-32-A," "P-33," "P-33-A," "P-34" to "P-75," "P-77" to "P-2738," "P-2738.1" to "P-2738.21," "P-2739" to " P-2755," "P-2755.1," "P-2755.2," "P-2756" to "P-3272," and "P-3272-A." There being no comment from respondent,[56] on August 8, 2016, the Court admitted all of petitioner's exhibits, save for *(1) Exhibit* "P-16.2" for failure to submit the same to the Court; *(2) Exhibits* "P-1124" to "P-1126," "P-2722" to "P-2726," and "P-2754" for failure to present the originals for comparison; and *(3) Exhibits* "P-2757" to "P-2972," and "P-2973" to "P-3259" for failure of the marked and identified document to correspond with the one described in the FOE.[57] The Court likewise noted that *Exhibits* "P-1127" to "P-2727" were marked and identified as *Exhibits* "P-1127" to "P-2726" by ICPA Constantino in her JA.[58]

Unsatisfied, petitioner filed its Motion for Partial Reconsideration (Of the Resolution dated August 8, 2016)[59] on August 26, 2016. On November 10, 2016, the Court resolved to admit *Exhibits* "P-2722" to "P-2726," "P-2757" to "P-2972," and "P-2973" to "P-3259" and denied *Exhibits* "P-1124" to "P-1126," and "P-2754."[60]

During the hearing held on November 1, 2016 and as confirmed in an Order[61] dated November 15, 2016, respondent manifested that he has no evidence to present.[62] As prayed for, the parties were granted thirty (30) days or until December 15, 2016 to submit their respective memoranda.

2016 Hearing, pp. 1-41; *Records, Vol. 3, May 16, 2016 Minutes of Hearing*, p. 1291; *TSN, May 16, 2016 Hearing*, pp. 1-17.

[55] *Records, Vol. 3, Petitioner's Formal Offer of Evidence ("FOE")*, pp. 1308-1333.

[56] *Id., Records Verification Report*, p. 1334.

[57] *Id., Resolution*, pp. 1337-1339.

[58] *Id.*

[59] *Id., Motion for Partial Reconsideration (Of the Resolution dated August 8, 2016)*, pp. 1345-1353.

[60] *Id., Resolution*, pp. 1362-1364.

[61] *Records, Vol. 3, November 15, 2016 Minutes of Hearing*, p. 1365.

[62] *Id., Order*, p. 1366.

After being granted an extension,[63] respondent filed its Memorandum[64] on January 16, 2017; while respondent failed[65] to file his memorandum.

Thereafter, the Court resolved to submit the case for decision through its Resolution[66] dated January 19, 2017; hence, this Decision.

The Issues[67]

WHETHER PETITIONER COMPLIED WITH THE REQUIREMENTS UNDER *SECTION 112(C) OF THE 1997 NIRC;*

WHETHER PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND IN THE AMOUNT OF PHP91,994,521.20 REPRESENTING ITS UNUTILIZED AND/OR UNAPPLIED INPUT VAT FOR THE FIRST AND THE SECOND QUARTERS OF TY 2012; AND

WHETHER *RMC NO. 54-2014* IS VALID.

Petitioner's Arguments[68]

Petitioner alleges that it timely filed both its administrative claim and judicial claim for refund; that the CIR exceeded his rule-making authority when he issued *RMC No. 54-2014;* that *RMC No. 54-2014* narrows the remedies afforded to the taxpayer under *Section 112(C) of the 1997 NIRC;* that the taxpayer should have the option to await the decision of the CIR even beyond the one hundred and twenty (120)-day period; that *RMC No. 54-2014* promotes inefficiency and condones BIR's inaction, it passes undue financial burden to the taxpayer by compelling the latter to appeal the unacted claim within thirty (30) days from the lapse of the one hundred and twenty (120)-day period; and that *RMC No. 54-2014* is confiscatory and violates the taxpayer's right to due process.

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[63] *Records, Vol. 3, Motion for Extension of Time to File Memorandum,* pp. 1367-1369, filed on December 14, 2016; *Records, Vol. 3, December 21, 2016 Resolution,* p. 1371.
[64] *Records, Vol. 3, Memorandum,* pp. 1373-1414.
[65] *Id., Records Verification Report,* p. 1372.
[66] *Id., Resolution,* p. 1416.
[67] *Id., PTO, Issues,* p. 1171.
[68] *Id., Memorandum, Discussion,* pp. 1377-1412.

It went on to explain that it is legally entitled to be refunded the amount of Php91,994,521.20 representing its unutilized and/or unapplied and excess input VAT covering the period January 1, 2012 to June 30, 2012; that its sales of services qualify as zero-rated; that it incurred or paid input VAT on its purchases for the 1st and the 2nd quarters of TY 2012; that the input taxes it paid were not utilized against any of its output VAT liabilities for the succeeding taxable quarters or years, as verified by the ICPA; that its claim for refund are attributable to zero-rated VAT sales; and that it submitted complete documents in support of its claim for refund.

Respondent's Counter-Arguments[69]

Respondent claims that the Court has no jurisdiction over the case for the belated filing of the Petition for Review; that in order to validly claim for tax refund or tax credit, it is imperative for petitioner to prove compliance with the statutory requirements; that the burden rests upon the taxpayer to establish by sufficient evidence his entitlement to a tax refund or credit and failure to adduce sufficient proof is fatal to the action; that taxes collected are presumed to be in accordance with laws and regulations; and that petitioner failed to sufficiently prove and demonstrate that the tax was erroneous or illegally collected.

The Ruling of the Court

The Court has no jurisdiction over the instant case.

The Court must first determine whether it has jurisdiction over the case at bar.

Anent the timeliness of filing the administrative claim for refund, *Section 112(A) of the 1997 NIRC* provides as follows:

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

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[69] *Records, Vol. 1, Answer, Special and Affirmative Defenses,* pp. 80-81.

(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, 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.

xxx xxx xxx[70]

As to the timeliness of the judicial claim for refund, *Section 112(C) of the 1997 NIRC,* in relation to *RR No. 16-2005*[71], is instructive, to wit:

SEC. 112. *Refunds or Tax Credits of Input Tax.* -

xxx xxx xxx

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

[70] Underscoring ours.
[71] Consolidated Value-Added Tax Regulations of 2005, effective November 1, 2005.

xxx xxx xxx[72]

Corollary, *Section 4.112-1(d) of RR No. 16-2005* states the following:

> Sec. 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.*
>
> xxx xxx xxx
>
> *(d) Period within which refund or tax credit certificate/refund of input taxes shall be made*
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.[73]

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[74] the Highest Tribunal held that the taxpayer can file a judicial claim in one of two ways, *viz.*: *(1)* within thirty (30) days after the CIR denies the claim within the one hundred and twenty (120)-day period; or *(2)* within thirty (30) days from the expiration of the one hundred and twenty (120)-day period, if the CIR does not act within the one hundred and twenty (120)-day period.

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[72] Italics retained, underscoring ours.
[73] *Id.*
[74] G.R. No. 191498, January 15, 2014, 713 SCRA 645.

Moreover, the Supreme Court in *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue*[75] reminded taxpayers that when the one hundred and twenty (120)-day period lapses and there is inaction on the part of the CIR, the taxpayer must no longer wait for it to come up with a decision. This is because the CIR's inaction is already deemed a denial of the refund claim; hence, the taxpayer must file an appeal within thirty (30) days from the lapse of the one hundred and twenty (120)-day waiting period.

The above is consistent with the jurisdiction of the division of the CTA under *Section 3(a)(2), Rule 4 of the RRCTA*[76]. It provides that the Court in Divisions shall exercise exclusive original or appellate jurisdiction to review, by appeal, the inaction by the CIR in cases involving refunds of internal revenue taxes, where the *1997 NIRC* provides a specific period for action.

In sum, based on *Section 112(A) of the 1997 NIRC*, petitioner has two (2) years from the close of the taxable quarter when the sales were made to file its administrative claim with the CIR. The latter is given one hundred and twenty (120) days from submission of complete supporting documents to decide the claim. In case of inaction by the CIR after one hundred and twenty (120) days from the date of submission of the application with complete documents, *Section 112(C) of the 1997 NIRC*, in relation to *RR No. 16-2005*, grants petitioner thirty (30) days to file its judicial claim with the CTA. If the CIR does not decide within that period, taxpayers must elevate the matter to the CTA within thirty (30) days after the lapse thereof; otherwise, the Court will be deprived of jurisdiction to hear and determine the case.

Records disclose that the subject periods cover January 1, 2012 to March 31, 2012 (1st quarter) and April 1, 2012 to June 30, 2012 (2nd quarter); hence, the taxable quarters close on March 31, 2012 and June 30, 2012, respectively. Therefrom, petitioner had two (2) years or until March 31, 2014 and June 30, 2014, respectively, to file its administrative claims for refund.

Records reveal that petitioner timely filed its administrative claim for refund for the 1st and the 2nd quarters of 2012 on May 20, 2013.

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[75] G.R. No. 168950, January 14, 2015, 745 SCRA 663.
[76] *A.M. No. 05-11-07-CTA*, November 22, 2005.

At this point, it is relevant to refer to the pronouncement of the Supreme Court in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[77] (*"Pilipinas Total Gas"*). In *Pilipinas Total Gas,* petitioner therein filed an administrative claim for refund of unutilized input VAT for the first two (2) quarters of TY 2007 on May 15, 2008. On August 28, 2008, it submitted additional supporting documents to the BIR; and on January 23, 2009, petitioner therein elevated the matter to the CTA in view of the inaction of the CIR.

In the *Pilipinas Total Gas* case, the issue is "when should the submission of documents be deemed completed for purposes of determining the running of the one hundred and twenty (120)-day period?" In determining whether the judicial claim was timely filed, the Highest Tribunal summarized the rules under the *1997 NIRC, as amended by RA No. 9337* and implemented by *RMC No. 49-2003.* It explained 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/her/its claim, unless given further extension by the CIR; that upon filing by the taxpayer of his/her/its complete documents to support the application, or expiration of the period given, the CIR has one hundred and twenty (120) days within which to decide the claim for tax credit or refund; and that in all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two (2)-year period under *Section 112(A) of the 1997 NIRC.* It likewise stressed 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 in *Pilipinas Total Gas.*

The Supreme Court went on to discuss that *RMC No. 54-2014* dated June 11, 2014 mandates that the application for VAT refund or tax credit must be accompanied by complete supporting documents, and a statement under oath attesting to the completeness of the submitted documents, which are the only documents the taxpayer will present to support the claim; that upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted or required from the taxpayer in the course of its evaluation; and that a decision shall be rendered by the CIR based only on the documents submitted by the taxpayer. The Supreme Court explained that under *RMC No. 54-2014,* the reckoning of the one hundred and twenty (120)-day period has been withdrawn from the taxpayer, since it requires him/her/it at the

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[77] G.R. No. 207112, December 29, 2015.

time of filing of the claim to complete the supporting documents and to attest that he/she/it will no longer submit any other document to prove the claim; and that the taxpayer is barred from submitting additional documents after filing the administrative claim.

Thereafter, the Supreme Court found that *RMC No. 54-2014* cannot be applied retroactively to petitioner in the *Pilipinas Total Gas* case as it imposes new obligations upon taxpayers in order to perfect their administrative claim, to wit: *(1)* compliance with the mandate to submit the "supporting documents" enumerated under *RMC No. 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 No. 54-2014* as "Annex B."

Going back to the case at bar and contrary to the BIR's findings, the Court finds that *RMC No. 54-2014* cannot be applied to petitioner's administrative claim filed on May 20, 2013, as it imposes new obligations upon petitioner in order to perfect its administrative claim. It must be noted that the present administrative claim was filed before *RMC No. 54-2014* took effect; and that the applicable rule at the time of filing of the administrative claim is *RMC No. 49-2003*. Therefore, petitioner's documentary requirements sufficient to support his claim should be filed: *(1)* thirty (30) days from the filing of the administrative claim, there being no extension granted to petitioner; and *(2)* within the two (2)-year period from the close of the taxable quarter; and upon filing of complete supporting documents, or expiration of the period given, the CIR has one hundred and twenty (120) days within which to decide the claim for tax credit or refund.

Considering that the administrative claim was filed on May 20, 2013, petitioner had until June 19, 2013 [which is clearly within the two (2)-year period ending on March 31, 2014 for the 1st quarter of 2012 and June 30, 2014 for the 2nd quarter of 2012] to file supporting documents. Therefore, petitioner belatedly filed supporting documents to support its claim on the following dates: October 1, 2013[78], November 8, 2013[79], November 27, 2013[80], and November 29, 2013[81].

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[78] *Exhibit Box No. 3, Folder E, Exhibit "P-16," Letter with Supporting Documents; BIR Records,* pp. 687-689.

[79] *Exhibit Box No. 3, Folder E, Exhibit "P-16.1," June 26, 2013 Transmittal Sheet.*

[80] *Exhibit Box No. 3, Folder E, Exhibit "P-16.3," November 27, 2013 Transmittal Sheet; BIR Records,* p. 726.

[81] *Exhibit Box No. 3, Folder E, Exhibit "P-16.4," November 29, 2013 Transmittal Sheet; BIR Records,* p. 838.

There being no supporting documents filed on or before June 19, 2013, the counting of the one hundred and twenty (120)-day period shall commence therefrom. Hence, the CIR had until October 17, 2013 to decide petitioner's claim. However, no decision was made for it was only on March 17, 2015 when petitioner received a letter dated March 9, 2015 from RDO Virtucio, with a statement that the processing of the claim could not be pursued in light of the issuance of *RMC No. 54-2014*.[82] Therefore, petitioner should not have awaited the decision of the CIR; and should have filed its judicial claim with the CTA within thirty (30) days from the lapse of the one hundred and twenty (120) day period, which ended on November 18, 2013[83]. Instead, records reveal that petitioner belatedly filed its Petition for Review on April 15, 2015[84].

As to the issues of whether petitioner is entitled to the refund claimed and whether *RMC No. 54-2014* is valid, the Court finds the same moot and academic in view of the foregoing findings.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for having been filed beyond the prescriptive period.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[82] *Exhibit Box No. 3, Folder E, Exhibit "P-15," March 9, 2015 Letter from the BIR RDO; BIR Records,* p. 867.
[83] November 16, 2013 fell on a Saturday.
[84] *Records, Vol. 1, PFR,* pp. 10-69, with annexes.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice