REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

TAISEI PHILIPPINES CONSTRUCTION, INC., *Petitioner,*	**CTA EB NO. 1825** *(CTA Case No. 9008)*
	Present:
- versus -	**DEL ROSARIO, *PJ,* CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, *and* MODESTO-SAN PEDRO, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondents.*	**Promulgated:** AUG 07 2019 10:08 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *en banc* is a Petition for Review[1] filed by petitioner Taisei Philippines Construction, Inc. (TPCI) against the respondent Commissioner of Internal Revenue (CIR) seeking the reversal of the Decision dated December 1, 2017[2] (Assailed Decision) rendered by the Second Division of this Court in CTA Case No. 9008, as well as the Resolution dated March 15, 2018[3] (Assailed Resolution) denying its motion for reconsideration.

The dispositive portion of the Assailed Decision which denied TCPI's claim for the refund or issuance of a tax credit certificate (TCC) in the amount ₱84,175,660.03, allegedly representing its unutilized input valued-added tax (VAT) payments attributable to VAT zero-rated sales to Philippine Economic

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[1] *Rollo*, pp. 1-20, with Annexes "A" to "MM", pp. 21-456.
[2] *Id.*, pp. 22-43.
[3] *Id.*, pp. 58-62.

Zone Authority (PEZA) and Clark Special Economic Zone(CSEZ)-registered clients for the four quarters of 2012 reads, as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED."**[4]

The Assailed Resolution, on the other hand, in its dispositive portion, provides the following:

> "**WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration is DENIED** for lack of merit.
>
> **SO ORDERED."**[5]

The Parties

Petitioner TPCI is a corporation duly organized and existing under Philippine laws, with principal office address at 23rd Floor Equitable Bank Tower, Paseo de Roxas Avenue, Legaspi Village, Makati City.[6] It is a VAT-registered taxpayer with Tax Identification No. 000-166-308-000[7].

On the other hand, respondent CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) 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.

The Facts[8]

TPCI filed its Quarterly VAT Returns for taxable year 2012, as follows:

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[4] *Id.*, p. 42.
[5] *Id.*, p. 62.
[6] Docket, CTA Case No. 9008, p. 203, Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts, par. 1.
[7] *Id.*, par. 2.
[8] As found by the Second Division and as culled from the records of the case.

DATE OF FILING	PERIOD COVERED	NET UTILIZED INPUT VAT
April 24, 2012[9]	1st Quarter of 2012	₱ 6,808,604.56
July 23, 2012[10]	2nd Quarter of 2012	₱ 14,475,196.84
October 24, 2012[11]	3rd Quarter of 2012	₱75,792,340. 98
April 23, 2013[12] (Amended Return)	4th Quarter of 2012	₱95,693,022. 90

On June 25, 2013,[13] TPCI filed its administrative claim for refund amounting to ₱84,175,660.03 for the input VAT it paid attributable to VAT zero-rated sales of service for taxable year 2012.

The CIR issued Letter of Authority No. 122-2013-00000054[14] on July 29, 2013, authorizing Revenue Officers (ROs) Amelia Molinas, Belinda Balagtas, Lourdes Liwanag, and Noemi Castro to examine TPCI's books of accounts and other accounting records for VAT for the period from January 1, 2012 to December 31, 2012 pursuant to Mandatory Audit-Claim for VAT refund.

On July 30, 2013,[15] the CIR issued another letter authorizing Revenue Officer Fatima Sarrosa to assist in the examination/investigation of TPCI's books of accounts and other accounting records pursuant to Letter of Authority No. 122-2013-00000054 dated July 29, 2013 for VAT for taxable year 2012. On even date, the CIR issued to TPCI a "Checklist of Requirements in Filing VAT Credit/Refund Claims".[16]

Meanwhile, TPCI submitted its additional documents in batches, where its last batch of documents was submitted on October 14, 2014.[17] TPCI also submitted a Sworn Certification[18] attesting to the completeness of the documents it submitted to the BIR.

Due to the CIR's inaction on its administrative claim for refund, TPCI filed a Petition for Review before the CTA on March 13, 2015[19] docketed as CTA Case No. 9008.

[9] *Id.* at Note 6, pp. 228-230, Exhibits "P-5", "P-6", and "P-6-A".
[10] *Id.*, pp. 237-239, Exhibits "P-7", "P-8", and "P-8-A".
[11] *Id.*, pp. 246-248, Exhibits "P-9", "P-10", and "P-10-A".
[12] *Id.*, pp. 255-257, Exhibits "P-11", "P-12", and "P-12-A".
[13] *Id.*, p. 290, Exhibit "P-37".
[14] *Id.*, p. 292, Exhibit "P-39".
[15] *Id.*, p. 293, Exhibit "P-40".
[16] *Id.*, pp. 294-297, Exhibit "P-41".
[17] *Id.*, p. 299, Exhibit "P-43".
[18] *Id.*, p. 298, Exhibit "P-42".
[19] *Id.*, p. 6.

Within the extended time granted by the Court in Division,[20] the CIR filed his Answer[21] through registered mail on May 6, 2015 which was received by the Court on May 18, 2015.

The pre-trial conference was set on June 25, 2015.[22] Thus, TPCI's Pre-Trial Brief[23] was filed on June 19, 2015; while the CIR's Pre-Trial Brief[24] was filed through registered mail on June 19, 2015 and was received by the Court on July 2, 2015.

The parties filed their Joint Stipulation of Facts and Issues[25] through registered mail on July 27, 2015 which was received by the Court in Division on August 10, 2015. This was approved and adopted by the Court in Division in the Pre-Trial Order[26] issued on September 9, 2015, which also terminated the pre-trial.

Upon motion[27] of TPCI, Aquino Mata Calica & Associates were commissioned as the Independent Certified Public Accountant (ICPA) for the case, with Mr. Joseph Cedric V. Calica named as partner-in-charge of the undertaking.[28]

During trial, TPCI presented the following witnesses: Mr. Vicente M. Evangelista, its Accounting Manager[29]; and Mr. Joseph Cedric V. Calica[30] the Court-commissioned ICPA.

On February 15, 2016, TPCI filed through registered mail its Formal Offer of Evidence.[31] In the Resolution[32] dated April 13, 2016, the Court in Division partially admitted TPCI's Exhibits, denying the admission of Exhibits "P-9", "P-13", "P-41", "P-41-a", "P-41-b", and "P-41-c" for failure to identify and for failure to present the originals for comparison; Exhibits "P-46", "P-47", "P-50", "P-51", "P-52", and "P-53" for failure to present the originals for comparison; and Exhibits "P-56-1790" to "P-56-1799", "P-56-4090", and "P-58-127" for not being found in the records.

[20] *Id.*, p. 83, Order dated April 28, 2015.
[21] *Id.*, pp. 84-86.
[22] *Id.*, pp. 88-89, Notice of Pre-Trial Conference.
[23] *Id.*, pp. 90-97.
[24] *Id.*, pp. 122-125.
[25] *Id.*, pp. 153-155.
[26] *Id.*, pp. 209-214.
[27] *Id.*, pp. 158-162.
[28] *Id.*, p. 222, Oath of Commission.
[29] *Id.*, pp. 220 and 311, Minutes of the Hearing dated September 28, 2015 and November 25, 2015, pp. 105-119, Judicial Affidavit.
[30] *Id.*, p. 327, Minutes of the Hearing dated January 25, 2016; pp. 316-326, Judicial Affidavit of Mr. Joseph Cedric V. Calica.
[31] *Id.*, pp. 335-372.
[32] *Id.*, pp. 380-382.

On May 5, 2016, TPCI filed through registered mail its Motion for Partial Reconsideration(Of the Resolution dated April 13, 2016).[33]

In the Resolution[34] dated July 26, 2016, the Court in Division allowed TPCI to present Ms. Judy Ann R. Rufin[35] its employee, to lay the basis for the introduction of secondary evidence. The ICPA, Mr. Joseph Cedric V. Calica[36] was likewise recalled and petitioner was allowed to present the originals of some of its denied exhibits for comparison.

Thereafter, TPCI filed a Supplemental Formal Offer of Evidence[37] through registered mail on September 15, 2016, which was received by the Court in Division on September 22, 2016.

In the Resolution[38] dated December 2, 2016, the Court in Division granted TPCI's Motion for Partial Reconsideration and admitted Exhibits "P-41", "P-41-a", "P-41-b", "P-41-c", "P-46", "P-47", "P-56-1790" to "P-56-1799", "P-56-4090", "P-58-127", "P-70", "P-90", "P-91", and "P-92".

During the hearing on September 5, 2016, counsel for the CIR manifested that he has no witness to present.[39]

TPCI filed its Memorandum[40] through registered mail on January 9, 2017 which was received by the Court in Division on January 19, 2017. Meanwhile, the CIR's Memorandum[41] was also filed through registered mail on January 9, 2017 which was received by the Court in Division on January 25, 2017. Thus, in a Resolution[42] dated January 31, 2017, the case was submitted for decision.

On December 1, 2017, the Court in Division issued the assailed Decision[43].

TPCI filed its Motion for Reconsideration[44] via registered mail on December 20, 2017 which was received by the Court in Division on January 4,

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[33] *Id.*, pp. 408-415.
[34] *Id.*, pp. 466-467.
[35] *Id.*, p. 468, Minutes of the Hearing dated September 5, 2016; pp. 433-436, Judicial Affidavit of Ms. Judy Ann R. Rufin.
[36] *Id.*, p. 468, Minutes of the Hearing dated September 5, 2016; pp. 445-448, Judicial Affidavit of Mr. Joseph Cedric V. Calica (To Identify the Certification dated May 4, 2016).
[37] *Id.*, pp. 470-475.
[38] *Id.*, pp. 480-482.
[39] *Id.*, p. 468.
[40] *Id.*, pp. 483-506.
[41] *Id.*, pp. 509-514.
[42] *Id.*, p. 516.
[43] *Id.* at Note 2.
[44] *Id.* at Note 1, pp. 46-55.

2018, assailing the Decision for declaring the Petition for Review as being filed beyond the prescriptive period provided in Section 112(C) of the NIRC, as amended. The motion was denied by the Court in Division in the assailed Resolution dated March 15, 2018.[45]

On April 6, 2018, TPCI timely posted its Petition for Review which was docketed as CTA EB No. 1825.[46]

In a Resolution dated May 11, 2018,[47] the CIR was ordered to file his Comment to the Petition. However, despite due notice, the CIR failed to file the same.[48]

On August 9, 2018, the Court *en banc* issued a Resolution[49] submitting the case for decision.

The Assignments of Errors

In its Petition for Review, petitioner assigns a lone error to the Court in Division's assailed Decision and Resolution - that the Court in Division erred in holding that it has no jurisdiction over the judicial claim for refund considering that TPCI timely filed its appeal within the 120-day period, counted from the time that it submitted its complete documents in support of its claim.

The Arguments of the Parties

TPCI argues that the letter dated July 30, 2013 which the Court in Division used as its reckoning point in counting the 120-day period was not a request to submit additional documents to process its claim for refund, but was merely, 1) an authorization to assist in the examination/investigation of its books of accounts and other accounting records; and, 2) a request to extend all facilities because the examination was conducted in the office premises of TPCI.

TPCI further argues that the Checklist was given during the audit and not simultaneously with the letter dated July 30, 2013. There is testimonial evidence from witness Vicente Evangelista to support this. The audit conducted by the CIR was a continuing process which lasted until after the issuance of RMC 54-2014, under which, TPCI was required to give additional documents. In fact, TPCI was required by the BIR to execute a sworn certification stating that the submitted documents are complete and final for purposes of processing their

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[45] *Id.* at Note 3.
[46] *Id.* at Note 1.
[47] *Id.*, pp. 458-459.
[48] *Id.*, p. 460.
[49] *Id.*, pp. 462-463.

claim for refund.

The CIR, on the other hand, failed to file Comment and set forth its arguments against the Petition.

The Ruling of the Court

We deny the Petition for lack of compelling ground to merit the reversal of the assailed Decision and Resolution.

At the outset, TPCI presents no new argument to persuade Us that it has a meritorious case. It merely reiterates the same arguments which have been extensively addressed by the Court in Division. Needless to state, the issue of jurisdiction over TPCI's judicial claim for input VAT refund has already been laid to rest in the Assailed Decision and Assailed Resolution. Nevertheless, we will discuss at length, once again, the demerits of TPCI's arguments which may serve as a guidepostin deciding issues of similar nature in the future.

Under the law, a taxpayer is given the remedy of refund in case of unutilized input VAT. The filing of a claim however, is subject to two (2) time requirements: (a) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT *(i.e.,* administrative claim); and (b) the 30-day period for filing an appeal with this Court *(i.e.,* judicial claim).

For clarity and reference, Sections 112(A) and (C) of the National Internal Revenue Code ("NIRC") of 1997, as amended, are reproduced below:

> "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)(l) 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. *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.
>
> 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 <u>from the date of submission of complete documents</u> in support of the application filed in** accordance with Subsections (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, <u>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 .</u>"**[50]

Pursuant to the above-quoted Section 112(A), the administrative claim for the issuance of TCC or refund of input VAT must be filed with the Bureau of Internal Revenue (BIR) within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Correspondingly, TPCI's last day for filing of its administrative claim for the four (4) quarters of CY 2010 fell on the following dates:

TY 2012	CLOSE OF TAXABLE QUARTER	LAST DAY TO FILE ADMINISTRATIVE CLAIM
1st Quarter	March 31, 2012	March 31, 2014
2nd Quarter	June 30, 2012	June 30, 2014
3rd Quarter	September 30, 2012	September 30, 2014
4th Quarter	December 31, 2012	December 31, 2014

TPCI filed its administrative claim for the refund or issuance of a TCC in the amount of ₱84,175,660.03 with the BIR Large Taxpayers Division - Makati

[50] Emphasis and underscoring supplied.

on June 25, 2013[51]. Evidently, TPCI's administrative claim was filed well within the two-year prescriptive period.

Anent the timeliness of the judicial appeal, the rule is that the taxpayer can file the appeal in one of two (2) ways:

> 1) file the judicial claim within thirty days after the Commissioner denies the claim within the one hundred twenty-day period (120-day period), counted from the date of submission of complete documents, or
>
> 2) file the judicial claim within thirty (30) days from the expiration of the 120-day period (120 + 30 days) if the Commissioner does not act within the 120-day period.[52]

Petitioner insists that contrary to the Court in Division's ruling, the 120-day period did not start on August 29, 2013 for there were additional documents submitted on various succeeding dates following the BIR's advice that it comply with Revenue Memorandum Circular (RMC) No. 54-2014 which required the submission of documents in the Checklist in Annex "A" thereof, together with a Sworn Certification of submission. TPCI contends that fairness dictates that the reckoning date of the 120-day period should be counted from October 14, 2014 when it submitted its last batch of documents together with its Sworn Certification that it had submitted complete documents.

The 120-day period is said to be crucial in filing a judicial appeal. In order for the Court to conclude that there is an administrative "denial due to inaction" of the CIR during the 120-day period, the correct reckoning point of the 120-day period is imperative. In this regard, *We* agree with the Second Division that the pronouncement of the High Tribunal in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[53] *(Pilipinas Total Gas)* is squarely applicable to the present case. As in *Pilipinas Total Gas,* the question involved here is when should the submission of supporting documents (to the administrative claim) be deemed completed, for purposes of determining the running of the 120-day period.

In *Pilipinas Total Gas*, the High Court emphatically ruled as follows -

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[51] *Id.* at Note 6, p. 290, Exhibit "P-37".
[52] *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[53] G.R. No. 207112, December 29, 2015.

"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?***

xxx xxx xxx

If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential.** It is only upon the submission of these documents that the 120-day period would begin to run.

xxx xxx xxx

Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

Moreover, under Section 112 (A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. **Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed.** This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.

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* ..."[54]

Pursuant to *Pilipinas Total Gas* above, **for claims filed before June 11, 2014**, or prior to the effectivity of RMC No. 54-2014, **the rules provided under RMC No. 49-2003 in relation to Section 112 of the NIRC of 1997, as amended, shall apply.** This is the situation that TPCI finds itself in, having filed its administrative claim on June 25, 2013. Thus, TPCI had thirty (30) days from the time of filing of its administrative claim for tax credit or refund to submit all the required supporting documents. If in the course of the investigation, additional documents are required, the BIR must inform TPCI of the need to submit additional documents through a notice, and TPCI shall have thirty (30) days to comply. Upon completion of all required documents, the 120-day period shall commence; but in all cases, all filings and submissions must be completed within the two-year period under Section 112(A) of the NIRC of 1997, as amended.

In this connection, the Second Division found the following facts to have been established by the evidence:

"A review of the record shows that the BIR issued a Letter of Authority[55] on July 29, 2013, while it issued another letter on July 30, 2013[56] with Checklist of Requirements in Filing VAT

[54] Emphasis supplied,- Underscoring and Italicize not ours.
[55] Exhibit "P-39", docket, p. 292.
[56] Exhibit "P-41", docket, pp. 294-297.

Credit/Refund Claims. The said checklist enumerated the additional documents that the BIR requested from petitioner for the determination of its claim for refund.

Under RMC No. 49-03, the taxpayer has thirty (30) days from notice within which to submit additional documents requested by the BIR which are necessary for the investigation and processing of the claims.

As stated earlier, on July 30, 2013, the BIR requested petitioner to submit additional documents to process its claim for refund. Petitioner complied by submitting its supporting documents to the BIR in several batches, where the last batch of its documents was submitted on October 14, 2014.

Applying the rules laid down in *Pilipinas Total Gas* and pursuant to RMC No. 49-2003, the 120-day period shall be counted thirty (30) days from July 30, 2013 when the BIR issued a request for additional documents, or from August 29, 2013. Meanwhile, petitioner's submission of complete documents cannot be deemed made on October 14, 2014, considering that RMC No. 49-2003 provides a limitation of only thirty (30) days from the BIR's request for additional documents, within which to submit the same.

Thus, counting 120 days from August 29, 2013, respondent had until December 29, 2013 within which to act on petitioner's administrative claim for refund. Thereafter, petitioner had 30 days from December 29, 2013, or until January 29, 2014, within which to file its judicial claim for refund.

Considering that petitioner filed this Petition for Review only on March 13, 2015,[49] the judicial claim was filed beyond the prescriptive period provided in Section 112(C) of the NIRC of 1997, as amended."

The Court *en banc* finds no error with the conclusions arrived at by the Court in Division.

While TPCI argues that the Checklist was given during the course of the audit, which could have been anytime between July 29, 2013 when the LOA was issued until October 14, 2014 when it issued its Sworn Certification that the documents it submitted was completed, there is testimony on record showing that the Checklist indeed accompanied the July 30, 2013 letter of the BIR.

On cross-examination during the hearing held on November 25, 2015, Vicente M. Evangelista[57], Jr., Accounting Manager of TCPI, testified as follows:

> "ATTY. VIOVICENTE:
>
> Q. Mr. Witness, you mentioned that at the time you filed your application, you did not know what are the documents required. So, when did you actually know what are these documents required to be filed in support of your Petition?
>
> MR. EVANGELISTA:
>
> A. When we filed our VAT refund June 25, 2013, BIR issued a Letter of Authority July 29, 2013. **Together with that Letter is a set of checklist which documents to submit during the audit to complete the documents required for a VAT refund.** That's the only time we knew what are the documents needed."[58] *(Emphasis supplied)*

It appears, therefore, that contrary to TPCI's claims, <u>**a**</u> Checklist indeed accompanied the July 29, 2013 LOA instructing petitioner on what documents to submit in order for the BIR to ascertain the veracity of its tax refund claim. Hence, the July 30, 2013 letter "requesting to extend all facilities to the group" could be taken in no other context than referring to the Checklist that accompanied the LOA.

However, TCPI claims that there was another request from the BIR for supporting documents -- its schedules of sales and purchases, in particular -- that would put it squarely within the ambit of the doctrine enunciated in *Pilipinas Total Gas*, and effectively extend its time to submit and/or complete its supporting documents for its claim for refund.

In Mr. Vicente's Judicial Affidavit, he further testified, as follows:

> "25. When did you file for VAT Refund?
>
> On June 25, 2013. We filed for VAT Refund for all the quarters of 2012.

[57] *Id.* at Note 29.
[58] TSN, November 25, 2015 hearing.

26. What is your proof to *(sic)* this?

We accomplished BIR Form 1914 which is an application for tax credits or refund. (Exhibit KK)

x x x x x x x x x

29. What documents, if any, did you attach to this application for refund?

We submitted the requirements contained in the checklist from the BIR website. In the course of the audit, BIR gave us a checklist to confirm documents we have submitted and complied. These are the checked items in the checklist, namely items:

x x x x x x x x x

30. What was the action of the BIR to your application for VAT Refund?

BIR issued a Letter of Authority dated July 29, 2013 (Exhibit MM) stating that it will conduct mandatory audit of our records pertaining to the application for VAT Refund.

BIR also issued another letter dated July 30, 2013 appointing additional personnel to conduct the audit.

31. Did Taisei submit to the audit?

Yes, sir. Otherwise, our claim will be denied outright.

32. During the audit, what did the BIR do?

They asked for schedules of sales and purchases. As stated earlier they also gave us a checklist of the requirements which confirmed the documents that we needed to comply and have submitted. These are the same documents mentioned above. x x x" *(Boldface supplied)*

In *Pilipinas Total Gas*, the Supreme Court clarified the turnaround time within which additional supporting documents must be submitted under RMC No. 42-2003 before the 120-day period within which the CIR can decide on the claim begins to run, thus:

> "Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential."** *(Emphasis supplied)*

As established by the evidence, TCPI's deadline to submit the supporting documents requested of it by the BIR by virtue of its July 30, 2013 letter was on August 29, 2013. If, as TCPI claims, there was an **additional request for documents**, such additional request must therefore comply with the dictum in *Pilipinas Total Gas* which requires **"notice, by way of a request"**. As this is an exception to the general rule laid down, it must, perforce, be construed strictly. By this standard, it is apparent, that TCPI failed to provide adequate proof that another notice was indeed sent by the CIR for additional supporting documents.

The notice required by *Pilipinas Total Gas* would indeed be the best evidence that TPCI could have presented. Instead, what is on record is merely the testimony of Mr. Vicente regarding the notice which would be properly classified as secondary evidence.

Sections 5 and 6, Rule 130 of the Rules of Court provide:

> "**SEC. 5.** *When original document is unavailable.* – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.
>
> **SEC. 6.** *When original document is in adverse party's custody or control.* – If the document is in the custody or control of the adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss."

Based on the aforesaid provisions, the offeror of the secondary evidence is burdened to satisfactorily prove the predicates thereof, namely: (1) the execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence.[59]

However, TCPI failed to give ample justification for the Court in Division to consider secondary evidence in this case. It did not establish first the existence of the subject exhibits, prove the loss and destruction of the originals thereof, and neither did TPCI attempt to show, either independently or during trial, that it gave notice to the BIR to produce this document.

Hence, the Court in Division committed no error in weighing the evidence presented to support TPCI's claim that it was entitled to a longer period within which to submit additional supporting documents. The 120-day period is to be counted from August 29, 2013 which is thirty (30) days from the time that the BIR issued a request for additional documents. The CIR had until December 29, 2013 to act on the claim, and upon the expiry of the period, TPCI had 30 days from December 29, 2013, or **until January 29, 2014**, within which to file its judicial claim for refund. Since it filed its Petition for Review before the Court in Division on **March 13, 2015**[60], clearly, it was filed out of time.

Considering all these pronouncements, TPCI's judicial claim for the aforementioned quarters was filed way beyond the mandatory 120 + 30 days to seek judicial recourse. A claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. Strict compliance with the 120 + 30 day periods is necessary for such a claim to prosper.[61]

Such non-compliance with the said mandatory period of 120 + 30 days is fatal to TPCI's claim of refund on the ground of prescription, resulting in the Second Division's lack of jurisdiction over the said judicial claim.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The Decision dated December 1, 2017 and the Resolution dated March 15, 2018 of the Second Division in CTA Case No. 9008 are **AFFIRMED.**

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[59] *Rogelio Dantis vs. Julio Maghinong,* Jr., G.R. No. 191696, April 10, 2013.
[60] *Id.* at Note 6, p. 6.
[61] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

NO PART
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

NO PART
MARIA ROWENA MODESTO- SAN PEDRO
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice