REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

RIOFIL CORPORATION,
Petitioner,

CTA *EB* NO. 1741
(CTA Case No. 9031)

-*versus*-

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 09 2019 3:25 pm

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review,[1] filed by Riofil Corporation (Riofil), pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the reversal and setting aside of the Decision[3] and Resolution,[4] dated August 2, 2017 and October 19, 2017, respectively, of the Court's Third Division (Court in Division). The assailed Decision denied Riofil's Petition for Review claiming for refund of its alleged unutilized/unapplied excess

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[1] *Rollo*, CTA EB No. 1783, Petition for Review (PFR), pp. 6-31.

[2] Rule 8. Procedure in Civil Cases

Section 3. Who may appeal; period to file petition.

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[3] *Rollo*, pp. 35-51.

[4] *Rollo*, pp. 53-56.

input value-added tax (VAT) for the period covering January 1, 2012 to June 30, 2012. The Court in Division reasoned that the said petition for review was filed beyond the prescriptive period.

The Facts

The Court in Division recited the facts, as follows:

> Petitioner, previously named Riofil Construction Co., Inc., 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." It is a VAT registered entity, with office address at Units 1704-1706 Hanston Square, 17 San Miguel Avenue, Ortigas Center, Pasig City, Metro Manila.
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> Respondent is the duly appointed CIR, who holds office at 5th Floor, BIR National Office Building, Diliman, Quezon City. 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.
>
> *The Facts*
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> Petitioner filed the following Monthly VAT Declarations and Quarter VAT Returns for the 1st and 2nd quarters of 2012:

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

> On May 20, 2013, petitioner filed its administrative claim for refund 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. Attached thereto are petitioner's:

1. Application for Tax Credits/Refunds (BIR Form No. 1914) 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;

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) 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.

On November 8, 2013, the BIR received a Transmittal Sheet 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 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.

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

In a letter 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 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. Attached thereto is an RO's Audit Report on VAT, with the amount of Php90,469,037.27 stated as VAT refund; and a schedule stating that the case will be forwarded to the Assessment Division.

In a Memorandum 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.
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> On September 9, 2014, a 2nd Indorsement 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*.
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> Due to the receipt of the above letter, petitioner filed the present Petition for Review with the Court on April 15, 2015.[5] (*Citations omitted*)

The case proceeded to trial, after which the Court in Division rendered the assailed Decision, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for having been filed beyond the prescriptive period.
>
> **SO ORDERED**.[6]

Petitioner's Motion for Reconsideration (of the Decision dated 02 August 2017), filed on August 22, 2017, was denied in the Court in Division's Resolution, dated October 19, 2017, as follows:

> **WHEREFORE**, petitioner's Motion for Reconsideration (of the Decision dated 02 August 2017) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[7]

On November 16, 2017, Riofil filed the instant Petition for Review with the Court *En Banc* praying that its claim for refund be granted. Despite notice,[8] respondent failed to file a comment to the subject Petition for Review, per Records Verification[9] dated March 27, 2018.

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[5] *Rollo*, pp. 36-40.
[6] *Rollo*, p. 50.
[7] *Rollo*, p. 55.
[8] *Rollo*, Resolution dated February 13, 2018, pp. 97-100.
[9] *Rollo*, p. 101.

On April 18, 2018, the Court *En Banc* gave due course to the Petition for Review and required the submission of memoranda.[10]

On June 18, 2018, within the extended period granted, petitioner filed its Memorandum.[11] However, respondent failed to file his memorandum, per Records Verification[12] dated June 20, 2018.

Thus, on July 12, 2018, the case was deemed submitted for decision.[13]

Issue

Petitioner submits the following issues:

> I. Whether the Third Division erred in denying Riofil's claim for VAT Refund on the ground that it has no jurisdiction.
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> II. Whether Riofil 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 second quarters of taxable year 2012.[14]

Ruling of the Court

The petition lacks merit.

The Petition for Review before the Court *En Banc* was timely filed.

The Court in Division issued the assailed Resolution denying the Riofil's Motion for Reconsideration on October 19, 2017. Riofil received the said resolution on October 30, 2017.

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[10] *Rollo*, pp. 103-104.
[11] *Rollo*, pp. 109-149.
[12] *Rollo*, p. 150.
[13] *Rollo*, pp. 152-153.
[14] *Rollo*, p. 6.

Pursuant to Rule 8, Section 3(b) of the RRCTA, Riofil had fifteen (15) days from October 30, 2017 or until November 14, 2017, within which to file the petition for review.

Considering that November 14 and 15, 2017 were declared special (non-working) days,[15] Riofil timely filed its Petition for Review on November 16, 2017.

There is no compelling reason to reverse or modify the findings of the Court in Division.

Riofil argues that the Court in Division erred in denying Riofil's claim for VAT refund on the ground of lack of jurisdiction. Riofil states that in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,*[16] a taxpayer is given the benefit of the two-year period from the close of the taxable quarter within which to complete the submission of documents in support of its administrative claim. Riofil also argues that under Revenue Memorandum Circular No. (RMC) 49-2003 and RMC 29-2009, the BIR's 120-day period to rule on the administrative claim shall start to run from the date of complete submission of supporting documents. Finally, Riofil states that it is legally entitled to the refund of its unutilized/unapplied and excess input VAT for January 1, 2012 to June 30, 2012, amounting to Php91,994,521.20.

There is no dispute that Riofil timely filed its administrative claim for refund on May 20, 2013, covering the periods January 1, 2012 to March 31, 2012 and April 1, 2012 to June 30, 2012. Riofil's administrative claim was clearly filed within two years from the close of the subject taxable quarters.

As to the timeliness of the judicial claim for refund, Section 112(C) of the 1997 National Internal Revenue Code, as amended (NIRC), provides:

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

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[15] Proclamation No. 332, declaring November 13-15, 2017 as special non-working days due to the 31[st] ASEAN Summit.
[16] G.R. No. 207112, December 29, 2015.

> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

In the instant case, the Court in Division held that Riofil failed to timely file its judicial claim, as follows:

> 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, November 8, 2013, November 27, 2013, and November 29, 2013.
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> 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*. 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. Instead, records

reveal that petitioner belatedly filed its Petition for Review on April 15, 2015.[17]

Riofil argues that its judicial claim was timely filed, based on the following arguments:

1) The 30-day period within which to submit additional supporting documents counted from the date of filing of the administrative claim is not mandatory. The BIR's 120-day period to rule on Riofil's administrative claim should be reckoned from its last submission of documents on November 29, 2013, thus, giving the BIR until March 29, 2014 within which to rule on the administrative claim. The BIR acted on said claim on December 2, 2013, well within the said 120-day period, therefore, Riofil is not obligated to elevate the claim to the CTA within 30 days from the lapse of the 120-day period.

2) The BIR has a fresh period of 120-days from the lapse of the 30-day period after receipt of notice to submit documents within which to rule on the administrative claim. Riofil considered its receipt of LOA-43A-2013-00000576 with checklist of mandatory requirements for VAT refund on August 16, 2013 as notice to submit additional supporting documents. Thus, counting 30-days therefrom, Riofil had until September 15, 2013 within which to submit its supporting documents. Even assuming that the documents submitted by Riofil after September 15, 2013 were belatedly filed, the 120-day period for the BIR to rule on the administrative claim should be counted from September 15, 2013, or after the lapse of the 30-day period from receipt of BIR's notice to submit additional supporting documents. If so, the 120-day period shall run until January 13, 2014, and in the instant case, the BIR already acted on the said administrative claim on December 2, 2013.

3) The BIR favorably acted on Riofil's administrative claim for refund within the 120-day period, and was therefore not an inaction that could be appealed to the CTA.

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership,*[18] the Supreme Court explained that the taxpayer may only: (1) file the judicial claim within thirty (30) days from receipt of the denial by the Commissioner of the

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[17] *Rollo*, Decision dated August 2, 2017, pp. 49-50.
[18] G.R. No. 191498, January 15, 2014.

claim within the 120-day period, or (2) file the judicial claim within thirty (30) days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

Thus, it is important to determine when the submission of complete documents occurs such that the reckoning point of the 120-day period may be established.

As stated above, it is undisputed that Riofil timely filed its administrative claim on May 20, 2013.

In *Pilipinas Total Gas v. Commissioner of Internal Revenue*,[19] the Supreme Court clarified the reckoning point of the 120-day period for the CIR to decide a refund claim, as follows:

> To summarize, for the just disposition of the subject controversy, the rule is from the date of 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[al] documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.

Riofil submitted supporting documents together with its claim for refund on May 20, 2013.[20] Riofil did not submit any other supporting documents within thirty (30) days from its submission of the claim for refund. Thus, the 120-day period shall be counted from the date of filing of the administrative claim for refund on May 20, 2013.

Counting 120 days from May 20, 2013, the CIR had until September 17, 2013 within which to act upon Riofil's administrative claim for refund. Prior to the expiration of the 120-day period on September 17, 2013, Riofil received an LOA

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[19] G.R. No. 207112, December 8, 2015.
[20] Docket, CTA Case No. 9031, Vol. III, Exhibit "P-13", p. 1110.

on August 16, 2013 authorizing the mandatory audit of petitioner's VAT for the period January 1, 2012 to June 30, 2012 in relation to its claim for refund. However, it does not appear that the BIR requested additional documents from the petitioner and that petitioner was given an extension of the period to submit additional supporting documents. Riofil also did not file additional supporting documents within thirty (30) days from receipt of the LOA.

Thus, the period for the CIR to act on Riofil's administrative claim for refund lapsed on September 17, 2013. Clearly, the submission of Riofil's additional documents on October 1, 2013, November 8, 2013, November 27, 2013, and November 29, 2013 were made beyond the 120-day period. Further, the supposed decision partially approving petitioner's claim for refund, subject to the review of higher authorities, signed on December 10, 2013, was also made beyond the lapse of the 120-day period.

Considering the foregoing, there was an inaction on the part of the CIR when the 120-day period lapsed on September 17, 2013. Such inaction should have been appealed by petitioner to the Court of Tax Appeals, within thirty days from September 17, 2013, or until October 17, 2013. Unfortunately, records show that Riofil belatedly filed its Petition for Review only on April 15, 2015 before the Court in Division.

Based on the foregoing, the Court *En Banc* finds no compelling reason to modify nor reverse the findings of the Court in Division.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision and Resolution, dated August 2, 2017 and October 19, 2017 respectively, are **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

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