REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ,	**CTA Case No. 9025**
Petitioner,	Members:
	CASTAÑEDA, JR., *Chairperson,* **CASANOVA,** and **MANAHAN,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	MAY 2 3 2018 8:00 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This resolves the Petition for Review filed by Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ, praying for the refund of or the issuance of tax credit certificate (TCC) in the amount of ₱59,809,336.79, allegedly representing its excess and unutilized input value-added tax (VAT) on its purchases of goods and services attributable to zero-rated sales for the four (4) quarters of calendar year (CY) 2011.

THE FACTS

Petitioner Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ is the regional operating headquarters (ROHQ) of Zuellig Pharma Asia Pacific Ltd., a foreign corporation duly organized and existing under the laws of Hong Kong.[1] Its office is located at the 27th Floor, Philippine AXA Life Centre, Sen. Gil Puyat Avenue corner Tindalo Street, Makati City.[2] Petitioner is registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR), with Tax Identification Number (TIN) 215-025-090-000.[3]

Petitioner was licensed by the Securities and Exchange Commission (SEC) to do business as ROHQ in the Philippines on December 4, 2001, particularly, to engage in the business of development, general administration and planning, sourcing of IT components and services, marketing control, sales promotion, training, technical support and maintenance.[4]

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

During the four quarters of CY 2011, petitioner rendered services in the Philippines for its foreign affiliate, Zuellig Pharma Holdings Ltd. (ZPHL), a non-resident foreign corporation engaged in business conducted outside the Philippines.[5]

Petitioner filed its original Quarterly VAT Returns (BIR Form No. 2550-Q) for the four quarters of CY 2011 with the BIR through the BIR's Electronic Filing and Payment System (eFPS) on the following dates:

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[1] Exhibit "P-2", Docket, Vol. I, p. 423.
[2] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, p. 348.
[3] Exhibit "P-3", Docket, Vol. I, p. 433.
[4] Exhibit "P-1", Docket, Vol. I, p. 413.
[5] Par. Q17 and A, Judicial Affidavit of Carolina Zenaida A. Magat, Exhibit "P-26", Docket, Vol. I, p. 337; Exhibits "P-8", "P-9", and "P-10", Docket, Vol. I, pp. 452-494.

TAXABLE PERIOD (CY 2011)	FILING DATE OF VAT RETURN	FILING REFERENCE NO.
First Quarter	April 15, 2011[6]	101100004685925
Second Quarter	July 18, 2011[7]	101100004948797
Third Quarter	October 14, 2011[8]	101100005207644
Fourth Quarter	January 17, 2012[9]	101200005514509

Based on petitioner's Quarterly VAT Returns for the four quarters of CY 2011, petitioner did not have any local sales subject to twelve percent (12%) VAT during the said four quarters. Nevertheless, petitioner had zero-rated sales in the total amount of ₱457,570,398.82, broken down as follows:

TAXABLE PERIOD	ZERO-RATED SALES	VATABLE SALES
First Quarter	₱ 104,662,984.18	0.00
Second Quarter	100,488,880.94	0.00
Third Quarter	115,665,718.90	0.00
Fourth Quarter	136,752,814.80	0.00
TOTAL	**₱457,570,398.82**	**0.00**

Petitioner accumulated input VAT credits on its domestic purchases of goods and services for the four quarters of CY 2011 amounting to ₱59,809,336.82, computed as follows:

TAXABLE PERIOD (CY 2011)	AMOUNT
First Quarter	₱ 25,148,767.09
Second Quarter	13,277,883.22
Third Quarter	13,828,942.35
Fourth Quarter	7,553,744.16
TOTAL	**₱ 59,809,336.82**

On January 16, 2013, petitioner filed with the BIR Revenue District Office (RDO) No. 49 an administrative claim for refund of its alleged excess and unutilized input VAT for the four quarters of CY 2011 in the total amount of ₱59,809,336.79.[10]

[6] Exhibit "P-4", Docket, Vol. I, pp. 434-439.
[7] Exhibit "P-5", Docket, Vol. I, pp. 440-445.
[8] Exhibit "P-6", Docket, Vol. I, pp. 446-448.
[9] Exhibit "P-7", Docket, Vol. I, pp. 449-451.
[10] Exhibit "P-11", Docket, Vol. I, pp. 495-496.

Petitioner received from the BIR RDO No. 49 a Letter of Authority (LOA) No. eLA201100014655 on March 13, 2013, authorizing Revenue Officer Cadidia Carim and Group Supervisor Adolph Viacrusis to examine petitioner's books of accounts and other accounting records for VAT for the period covering January 1, 2011 to December 31, 2011. Attached to the LOA was a Checklist of Requirements requesting the submission of petitioner's books of accounts and other accounting records for CY 2011.[11]

In compliance with the LOA and the request of the BIR Revenue Officers, petitioner submitted supporting documents on the following dates:

DATE SUBMITTED	EXHIBIT
March 20, 2013[12]	"P-13"
June 13, 2013[13]	"P-14"
August 16, 2013[14]	"P-15"
August 30, 2013[15]	"P-16"
September 6, 2013[16]	"P-17"
September 13, 2013[17]	"P-18"
September 16, 2013[18]	"P-19"
September 18, 2013[19]	"P-20"
November 26, 2013[20]	"P-21"
December 9, 2013[21]	"P-22"
April 2, 2014[22]	"P-23"
November 11, 2014[23]	"P-24"

During that period, petitioner was said to be in constant communication with the BIR's Revenue Officers to discuss or follow-up petitioner's claim for refund and to determine what additional documents they will need to process petitioner's VAT refund claim.[24]

[11] Exhibit "P-12", Docket, Vol. I, pp. 507-508.
[12] Exhibit "P-13", Docket, Vol. I, p. 509.
[13] Exhibit "P-14", Docket, Vol. I, p. 512.
[14] Exhibit "P-15", Docket, Vol. I, p. 513.
[15] Exhibit "P-16", Docket, Vol. I, p. 514.
[16] Exhibit "P-17", Docket, Vol. I, p. 515.
[17] Exhibit "P-18", Docket, Vol. I, p. 516.
[18] Exhibit "P-19", Docket, Vol. I, p. 517.
[19] Exhibit "P-20", Docket, Vol. I, p. 518.
[20] Exhibit "P-21", Docket, Vol. I, p. 519.
[21] Exhibit "P-22", Docket, Vol. I, p. 521.
[22] Exhibit "P-23", Docket, Vol. I, p. 522.
[23] Exhibit "P-24", Docket, Vol. I, p. 527.
[24] Q35 and A, Judicial Affidavit of Carolina Zenaida A. Magat, *supra*, pp. 341-342.

In petitioner's letter dated November 10, 2014, stamped received by respondent on November 11, 2014, petitioner manifested that it has already submitted the complete supporting documents for its administrative claim for refund of excess and unutilized input VAT for the four quarters of CY 2011.

In view of respondent's inaction on petitioner's claim,[25] petitioner filed a Petition for Review with this Court on April 8, 2015 and was docketed as CTA Case No. 9025.

Respondent filed his Answer[26] on May 26, 2015 and raised the following special and affirmative defenses:

"<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>

> 6. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
>
> 7. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 8. It is incumbent upon the petitioner to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
>
> 9. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*

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[25] Par. 4, Stipulation of Facts, JSFI, *supra*, p. 349.
[26] Docket, Vol. I, pp. 113-116, filed through registered mail on May 26, 2015 and received by the Court on June 4, 2015.

10. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus no one is considered entitled to recover that which he must give up to another. – Non videtur quisquam id capere quod ei necesse est alii restitutere."

The Pre-Trial Conference was scheduled on July 23, 2015. Respondent filed his Pre-Trial Brief[27] through registered mail on July 7, 2015 and received by the Court on July 16, 2015; while petitioner submitted its Pre-Trial Brief[28] on August 12, 2015.

The parties filed their Joint Stipulation of Facts and Issues[29] on August 12, 2015. Subsequently, the Court issued the Pre-Trial Order[30] on August 20, 2015.

Petitioner presented Ms. Carolina Zenaida A. Magat – petitioner's Senior Accounting Manager and Ms. Katherine O. Constantino – the Court-commissioned Independent Certified Public Accountant (ICPA) as its witnesses.[31]

Petitioner formally offered its testimonial and documentary evidence, consisting of Exhibits "P-1" to "P-1061", inclusive of sub-markings. Subsequently, the Court admitted all the formally offered exhibits as petitioner's evidence.[32]

On the other hand, respondent, through counsel, manifested during the October 19, 2015 hearing that he will no longer present evidence.

The Court declared the case deemed submitted for decision on June 2, 2017,[33] considering the filing of petitioner's Memorandum[34]

[27] Docket, Vol. I, pp. 120-121.
[28] Docket, Vol. I, pp. 148-164.
[29] Docket, Vol. I, pp. 348-355.
[30] Docket, Vol. I, pp. 357-361.
[31] Minutes of the Hearing dated September 9, 2015, Docket, Vol. I, p. 372.
[32] Resolutions dated January 5, 2016, July 27, 2016, October 25, 2016, and March 17, 2017, Docket, Vol. II, pp. 564-565, 647-649, 724-726, and 950-951, respectively.
[33] Docket, Vol. II, p. 1010.
[34] Docket, Vol. II, pp. 963-1002.

on May 18, 2017 and the Records Verification[35] issued by the Court's Judicial Records Division on May 31, 2017 stating that respondent failed to file a memorandum.

THE ISSUES

The parties submitted the following issue[36] for this Court's resolution:

> Whether or not petitioner is entitled to its claim for refund of or issuance of TCC for its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the four (4) quarters of CY 2011 in the total amount of ₱59,809,336.79.

The issue may be broken down into the following sub-issues:

1. Whether or not petitioner had zero-rated sales during the four quarters of CY 2011, the consideration for which was paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

2. Whether or not the input VAT incurred by petitioner for the four quarters of CY 2011 amounting to ₱59,809,336.79 is duly supported by VAT invoices and official receipts;

3. Whether or not the input VAT incurred by petitioner for the four quarters of CY 2011 amounting to ₱59,809,336.79 was applied against any output VAT during the succeeding taxable periods; and

4. Whether or not petitioner's administrative and judicial claims for refund of or issuance of TCC for its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of CY 2011

[35] Docket, Vol. II, p. 1009.
[36] Stipulated Issues for Resolution, JSFI, Docket, Vol. I, p. 349.

were filed within the periods prescribed under Sections 110 and 112, of the Tax Code.

THE COURT'S RULING

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[37] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[38] Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[39] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[40]

The Court of Tax Appeals (CTA) is a court of special jurisdiction and can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, provides:

> "Sec. 7. Jurisdiction. — The CTA 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 or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties

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[37] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, 749 SCRA 570.
[38] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014, 718 SCRA 533 citing *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3, 4 (1968).
[39] *Id.*, citing *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156, 169.
[40] *Id.*

> in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;"

Based on the above provision, the CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the CIR in cases involving refunds of internal revenue taxes. In cases where the 1997 NIRC provides a specific period for action, the CIR's inaction shall be deemed a denial.[41]

In relation to the foregoing, Section 112(A) and (C) of the 1997 NIRC governs the filing of administrative and judicial claims for refund or tax credit of excess and unutilized input tax attributable to zero-rated or effectively zero-rated sales. The provision reads:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, 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

[41] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 336.

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 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 *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*,[42] the Supreme Court summarized the rules on prescriptive periods for filing claims for refund or tax credit of input VAT *vis-à-vis* Section 112 of the 1997 NIRC, to wit:

"SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. *(Aichi)* gz

[42] G.R. No. 173241, March 25, 2015, 754 SCRA 291, 292.

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. *(San Roque)*

3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008**. *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. *(San Roque)*

B. 120 + 30 Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi and San Roque)*

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque)*

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *(San Roque)*"

Pursuant to Section 112(A) of the 1997 NIRC, the application for refund or tax credit of unutilized excess input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 1st to 4th quarters of CY 2011, which respectively closed on March 31, 2011, on June 30, 2011, on September 30, 2011, and on December 31, 2011. Counting two years from the said dates, petitioner had until March 31, 2013, June 30, 2013, September 30, 2013, and December 31, 2013, within which to file its administrative claim for refund or issuance of tax credit certificate. Thus, petitioner's administrative claim filed on January 16, 2013 was seasonably filed, as shown below:

CY 2011	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim
1st Quarter	March 31, 2011	March 31, 2013	January 16, 2013[43]
2nd Quarter	June 30, 2011	June 30, 2013	
3rd Quarter	September 30, 2011	September 30, 2013	
4th Quarter	December 31, 2011	December 31, 2013	

Section 112(C) of the 1997 NIRC prescribes the period for filing a judicial claim for the refund or tax credit of input VAT. Such provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with the Court of Tax Appeals.[44]

It bears stressing that the 120-day period begins to run from the date of submission of complete documents in support of the administrative claim.[45] As to when should the submission of supporting documents deemed "completed" for purposes of determining the running of the 120-day period, the Supreme Court's ruling in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue ("Pilipinas Total Gas")* [46] is instructive. The relevant portion of the said decision reads:

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[43] Exhibit "P-11", Docket, Vol. I, pp. 495-496.

[44] *ROHM Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015, 745 SCRA 669.

[45] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

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

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

Thus, when the VAT was first introduced through Executive Order No. 273, the pertinent rule was that:

> (e) Period within which refund of input taxes may be made by the Commissioner. The Commissioner shall refund input taxes within 60 days **from the date the application for refund was filed** with him or his duly authorized representative. No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.
>
> [Emphasis Supplied]

Here, the CIR was not only given 60 days within which to decide an administrative claim for refund of input taxes, but the beginning of the period was reckoned "from the date the application for refund was filed."

When Republic Act (R.A.) No. 7716 was, however, enacted on May 5, 1994, the law was **amended** to read:

> (d) Period within which refund or tax credit of input taxes shall be made. — In proper cases, [t]he Commissioner shall grant

> a refund or issue the tax credit for creditable input taxes within sixty (60) days **from the date of submission of complete documents in support of the application** filed in accordance with sub-paragraphs (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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.
>
> [Emphasis Supplied]

Again, while the CIR was given only 60 days within which to act upon an administrative claim for refund or tax credit, the period came to be reckoned **"from the date of submission of complete documents in support of the application."** With this amendment, the date when a taxpayer made its submission of complete documents became relevant. In order to ensure that such date was at least determinable, RMO No. 4-94 provides:

> REVENUE MEMORANDUM ORDER NO. 40-94
>
> SUBJECT: *Prescribing the Modified Procedures on the Processing of Claims for Value-Added Tax Credit/Refund*
>
> III. Procedures
> REGIONAL OFFICE
> A. Revenue District Office
> In General:
>
> 1. Ascertain the completeness of the supporting documents prior to the

receipt of the application for VAT credit/refund from the taxpayer.

2. Receive application for VAT Credit/Refund (BIR Form No. 2552) in three (3) copies in the following manner:

a. stamp the word "RECEIVED" on the appropriate space provided in all copies of application;

b. indicate the claim number;

c. **indicate the date of receipt**; and

d. initial by receiving officer.

The application shall be received only if the required attachments prescribed in RAMO 1-91 have been fully complied with. x x x

Then, when the NIRC was enacted on January 1, 1998, the rule was once more amended to read:

(D) *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 comp[l]ete 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.
>
> [Emphasis Supplied]

This time, the period granted to the CIR to act upon an administrative claim for refund was extended to 120 days. The reckoning point however, remained **"from the date of submission of complete documents."**

Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:

> Q-18: *For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?*
>
> A-18: **For pending claims** which have not been acted upon by the investigating/processing office due to incomplete documentation, **the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.**
>
> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall

> be **officially received** only upon submission of complete documents.
>
> For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. 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 **<u>within thirty (30) days from request of the investigating/processing office, which shall be construed as within the one hundred twenty (120)-day period.</u>**
>
> [Emphases Supplied]

Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. 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.

Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112(B) of the NIRC, Section 112(D) was amended and renamed 112(C). Thus:

> (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.

With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining ***when*** the supporting documents have been completed — *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms [of] ***what*** additional document must be presented in support of a claim for tax credit or refund — it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are *actually* complete as required by law — is for the CIR and the courts to determine. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. 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[al] 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." *(Citations omitted)*

To be sure, it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. Nevertheless, the Supreme Court also emphasized that the foregoing benefit given to taxpayer is not unbridled and, as such, is subject to limitations. Hence, based on the above-quoted portion of *Pilipinas Total Gas*, the filing of the complete supporting documents by the taxpayer in connection with an administrative claim for VAT refund is subject to the following rules:

1. Upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of processing unit.

2. 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 the claim, the taxpayer-claimants *shall* submit such documents within thirty (30) days from request of the investigation/processing unit. Notice of the request for the submission of additional supporting documents is required.

3. It is only upon the submission of the documents by the taxpayer that the 120-day period would begin to run.

4. 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.

To reiterate, the right of the taxpayer to determine when it has to submit complete documents in support of its claim for VAT refund is not absolute but is saddled with limitations, as elucidated in *Pilipinas Total Gas.*[47] As bluntly stated by the Supreme Court in the said case:

> "If only to settle any doubt, this Court is **by no means** setting a precedent by leaving it to the mercy of the taxpayer to determine when the 120-day reckoning period should begin to run by **providing absolute discretion** as to when he must comply with the mandate submitting complete documents in support of his claim." *(Emphasis supplied)*

Records reveal that upon receiving the Electronic Letter of Authority (eLA) with Serial No. eLA201100014655 from Revenue District Office No. 49 – North Makati on March 13, 2013,[48] petitioner

[47] *Id.*
[48] Exhibit "P-12", Docket, Vol. I, pp. 507-508.

was required to submit all required documents, books and records to the assigned Revenue Officer.

On March 20, 2013, well within the 30-day period, petitioner submitted the required supporting documents.[49]

Subsequently, on the following dates, petitioner submitted additional supporting documents:

DATE SUBMITTED	EXHIBIT[50]
June 13, 2013	"P-14"
August 16, 2013	"P-15"
August 30, 2013	"P-16"
September 6, 2013	"P-17"
September 13, 2013	"P-18"
September 16, 2013	"P-19"
September 18, 2013	"P-20"
November 26, 2013	"P-21"
December 9, 2013	"P-22"
April 2, 2014	"P-23"
November 11, 2014	"P-24"

However, on the foregoing dates, the 30-day period pursuant to RMC No. 49-2003 had already expired, and there is no evidence of additional notice from the BIR requesting petitioner to provide additional documents for the proper determination of whether petitioner is entitled to the amount claimed.

Thus, the 120-day period shall be reckoned from March 20, 2013 and shall run until July 18, 2013. Considering that respondent failed to act on the subject claim, petitioner had 30 days after the lapse of the 120-day period or until August 17, 2013 within which to file a judicial appeal before this Court. However, the present Petition for Review was filed only on April 8, 2015. Clearly, petitioner's judicial claim was belatedly filed.

Accordingly, petitioner's belated filing of its judicial claim or failure to observe the mandatory 120+30 day periods is fatal to its claim and rendered the Court devoid of jurisdiction over petitioner's

[49] Exhibit "P-13, Docket, Vol. I, p. 509.
[50] Docket, Vol. I, pp. 512-528.

claim. Therefore, the dismissal of the instant Petition for Review is in order.

It bears stressing that a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper.[51]

WHEREFORE, the present Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(With Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

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.

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

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[51] *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9025

Members :

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

MAY 2 3 2018
8:00 a.m.

x - x

DISSENTING OPINION

MANAHAN, J.:

The Court *a quo* promulgated a Decision dismissing the instant Petition for lack of jurisdiction based on the majority's conclusion that petitioner failed to observe the mandatory 120 + 30 day period to file a judicial claim for refund with this Court.

The ponencia held that the 120-day period should be reckoned from the filing of the administrative claim for refund on March 20, 2013 and shall run until July 18, 2013. Considering that respondent failed to act on the subject claim, my esteemed colleagues went on to state that petitioner then had 30 days after the lapse of the 120-day period or until August 17, 2013 within which to file a judicial appeal before this Court. Their conclusion was that the Petition for Review filed on April 8, 2015 was clearly outside the prescriptive period provided by law and jurisprudence.

I dissent.

A brief discourse on the facts leading up to the Petition for Review is in order to enable the readers to follow the logical flow of my position that the judicial claim was timely filed. For this purpose, allow me to adopt the jurisdictional facts as laid down by my colleagues, *viz:*

"During the four quarters of CY 2011, petitioner rendered services in the Philippines for its foreign affiliate, Zuellig Pharma Holdings Ltd. (ZPHL), a non-resident foreign corporation engaged in business conducted outside the Philippines.

Petitioner filed its original Quarterly VAT Returns (BIR Form No. 2550-Q) for the four quarters of CY 2011 with the BIR through the BIR's Electronic Filing and Payment System (eFPS) on the following dates:

TAXABLE PERIOD (CY 2011)	FILING DATE OF VAT RETURN	FILING REFERENCE NO.
First Quarter	April 15, 2011	101100004685925
Second Quarter	July 18, 2011	101100004948797
Third Quarter	October 14, 2011	101100005207644
Fourth Quarter	January 17, 2012	101200005514509

Based on petitioner's Quarterly VAT Returns for the four quarters of CY 2011, petitioner did not have any local sales subject to twelve percent (12%) VAT during the said four quarters. Nevertheless, petitioner had zero-rated sales in the total amount of ₱457,570,398.82, broken down as follows:

TAXABLE PERIOD	ZERO-RATED SALES	VATABLE SALES
First Quarter	₱ 104,662,984.18	0.00
Second Quarter	100,488,880.94	0.00
Third Quarter	115,665,718.90	0.00
Fourth Quarter	136,752,814.80	0.00
TOTAL	**₱457,570,398.82**	**0.00**

Petitioner accumulated input VAT credits on its domestic purchases of goods and services for the four quarters of CY 2011 amounting to ₱59,809,336.82, computed as follows:

TAXABLE PERIOD (CY 2011)	AMOUNT
First Quarter	₱ 25,148,767.09
Second Quarter	13,277,883.22
Third Quarter	13,828,942.35
Fourth Quarter	7,553,744.16
TOTAL	**₱ 59,809,336.82**

On January 16, 2013, petitioner filed with the BIR Revenue District Office (RDO) No. 49 an administrative claim for refund of its alleged excess and unutilized input VAT for the four quarters of CY 2011 in the total amount of ₱59,809,336.79.

Petitioner received from the BIR RDO No. 49, a Letter of Authority (LOA) No. eLA201100014655 on March 13, 2013, authorizing Revenue Officer Cadidia Carim and Group Supervisor Adolph Viacrusis to examine petitioner's books of accounts and other accounting records for VAT for the period covering January 1, 2011 to December 31, 2011. Attached to the LOA is a Checklist of Requirements requesting the submission of petitioner's books of accounts and other accounting records for CY 2011.

In compliance with the LOA and the request of the BIR Revenue Officers, petitioner submitted supporting documents on the following dates:

DATE SUBMITTED	EXHIBIT
March 20, 2013	"P-13"
June 13, 2013	"P-14"
August 16, 2013	"P-15"
August 30, 2013	"P-16"
September 6, 2013	"P-17"
September 13, 2013	"P-18"
September 16, 2013	"P-19"
September 18, 2013	"P-20"
November 26, 2013	"P-21"
December 9, 2013	"P-22"
April 2, 2014	"P-23"
November 11, 2014	"P-24"

During that period, petitioner alleges that it was in constant communication with the BIR's Revenue Officers to discuss or follow-up petitioner's claim for refund and to determine what additional documents they will need to process petitioner's VAT refund claim.

In petitioner's letter dated November 10, 2014, stamped received by respondent on November 11, 2014, petitioner manifested that it has already submitted the complete supporting documents for its administrative claim for refund of excess and unutilized input VAT for the four quarters of CY 2011.

In view of respondent's inaction on petitioner's claim, petitioner filed a Petition for Review with this Court on April 8, 2015 and was docketed as CTA Case No. 9025."

Based on the foregoing facts, I agree with the majority that the administrative claim for refund was timely filed but the divergence in my opinion stems from their judgment that petitioner failed to timely file a judicial claim thereby divesting this Court of the requisite jurisdiction to adjudicate this case.

Section 112(C) of the NIRC of 1997, as amended, prescribes the period for filing a judicial claim for the refund or tax credit of input VAT. Such provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with the Court of Tax Appeals.

In the landmark case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[1] ("*San Roque* case" for brevity), the Supreme Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period.[2]

It is noteworthy that the 120-day period begins to run from the date of submission of complete documents in support of the administrative claim.[3] As to when should the submission of supporting documents be deemed "completed" for purposes of determining the running of the 120-day period, the Supreme Court's ruling in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas*" for brevity)[4] is instructive. The relevant portion of the case reads:

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[1] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

[2] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[3] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

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

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

xxx xxx xxx

Then, when the NIRC was enacted on January 1, 1998, the rule was once more amended to read:

> (D) *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.
>
> [Emphasis supplied]

This time, the period granted to the CIR to act upon an administrative claim for refund was extended to 120 days. The reckoning point however, remained '**from the date of submission of complete documents.**'

Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:

> Q-18: *For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?*
>
> A-18: **For pending claims** which have not been acted upon by the investigating/processing office due to incomplete documentation, **the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.**
>
> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be **officially received** only upon submission of complete documents.
>
> For current and future claims for tax credit/refund, the <u>**same shall be processed within one hundred twenty (120) days from receipt of the complete documents.**</u> 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 <u>**within thirty (30) days from request**</u> **of the investigating/processing office,** <u>**which shall be construed as within the one hundred twenty (120) day period**</u>.
>
> [Emphases Supplied]

Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. 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.
>
> Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112(B) of the NIRC, Section 112 (D) was amended and renamed 112(C). Thus:
>
> > (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."

As a general rule, it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.

Pursuant to the above-quoted portion of the *Pilipinas Total Gas* case, for claims filed before June 11, 2014, or prior to the effectivity of Revenue Memorandum Circular (RMC) No. 54-14, the rules provided under RMC No. 49-2003 in relation to Section 112 of the NIRC of 1997, as amended, shall apply. Thus, petitioner had 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, the BIR should require additional documents to enable them to complete their evaluation of the claim for refund, petitioner shall have 30 days to comply. Upon completion of all the required documents, the counting of the 120-day period shall commence.

Petitioner's claim for refund was filed and received by the BIR on January 16, 2013.[5] Applying the foregoing ruling, the instant case shall be governed by Revenue Memorandum Circular (RMC) No. 49-2003, and petitioner had 30 days to submit all pertinent supporting documents to expedite the examination.

Records reveal that upon receiving the electronic Letter of Authority (eLA) with Serial No. eLA201100014655 from Revenue District Office No. 49 – North Makati on March 13, 2013,[6] petitioner was required to submit the required documents, books and records to the assigned revenue officer.

On March 20, 2013, which is well within the 30-day period, petitioner submitted the required supporting documents.[7]

Subsequently, on the following dates, petitioner submitted additional supporting documents:

DATE SUBMITTED	**EXHIBIT**[8]
June 13, 2013	"P-14"
August 16, 2013	"P-15"
August 30, 2013	"P-16"
September 6, 2013	"P-17"
September 13, 2013	"P-18"
September 16, 2013	"P-19"
September 18, 2013	"P-20"
November 26, 2013	"P-21"
December 9, 2013	"P-22"
April 2, 2014	"P-23"
November 11, 2014	"P-24"

The records of the case show that petitioner submitted documents on the foregoing dates in response to the continued requests by the respondent.

[5] Exhibit "P-11", docket, vol. I, pp. 495-496.
[6] Exhibit "P-12", docket, vol. I, pp. 507-508.
[7] Exhibit "P-13, docket, vol. I, p. 509.
[8] Docket, vol. I, pp. 512-558.

In the Sworn Statement of petitioner's Senior Accounting Manager, Carolina Zenaida Magat, she testified as follows:

Q35. What events transpired, if any, after the Company received the LOA?

A- In compliance with the BIR's LOA and Checklist of Requirements, the Company submitted supporting documents to the BIR on several occasions. During that period, we were in constant communication with the BIR's Revenue Officers to discuss or follow-up the Company's claim for refund and to determine what additional documents they will need to process the Company's VAT refund claim. Every now and then, the Revenue Officers would request additional supporting documents from the Company and we would comply with their request by submitting the relevant documents.

Q36. Ms. Magat, can you please tell us the dates when the Company submitted supporting documents to the BIR?

A. Based on our records, the Company submitted the supporting documents to the BIR on the following dates:

i. March 20, 2013
ii. June 13, 2013
iii. August 16, 2013
iv. August 30, 2013
v. September 6, 2013
vi. September 13, 2013
vii. September 16, 2013
viii. September 18, 2013
ix. November 26, 2013
x. December 9, 2013
xi. April 2, 2014; and
xii. November 11, 2014

Q37. What proof do you have, if any, that the Company submitted supporting documents to the BIR on the above-mentioned dates?

A. We have copies of the Company's transmittal letters for the supporting documents stamped or signed as received by the BIR on the above-mentioned dates.

Q38. If shown copies of these transmittal letters, will you be able to identify the same?

A. Yes.

Based on the aforequoted sworn statement of petitioner's Senior Accounting Manager, the revenue officers assigned to handle the claim for refund continued to ask for more documents in the process of evaluating the claim for refund of petitioner. This Sworn Statement of petitioner's Senior Accounting Manager and identified as "Exhibit P-28" was never controverted by respondent. Transmittal Letters by the petitioner transmitting the documents requested were also presented as evidence.[9] Similarly, respondent did not object to their presentation during the hearing of the case.

RMC No. 49-2003 provides that taxpayers with pending claims may be required to submit the documentary requirements by the investigating/processing office within thirty (30) days unless given further extension by the head of the processing unit but such extension should not exceed thirty days. Quoted below are the pertinent sections of RMC No. 49-2003, thus:

> Q-18: For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? xxx xxx xxx
>
> A-18: For pending claims which have not been acted upon by the investigating/processing office due to incomplete documentation, the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.
>
> xxx xxx xxx
>
> For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing the claim, additional documents are required for the proper documentation of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days **from request of the investigating/processing office**, which shall be construed as within the one hundred twenty (120) day period (emphasis supplied).

[9] Exhibits "P-13" to "P-24".

There is nothing in the aforequoted RMC 49-2003 which requires the request for additional documents to be written

The ruling of the Supreme Court in the *Pilipinas Total* case gives rise to two (2) critical periods as far as the processing of claim for refund of input taxes attributable to zero-rated sales is concerned, namely:

a) the two-year period to file the claim with the Bureau of Internal Revenue (BIR) and,
b) the 30-day period from denial of the claim or expiration of the 120-day period to elevate the claim to the CTA.

An incisive analysis of this jurisprudential guideline is that the 30-day period from the expiration of the 120-day may fall outside the ambit of the 2-year period to file and must constitute an exception to this general rule.

The wide latitude given to interpret the relevant provisions of the NIRC is due to the silence of the law itself as to the period within which to submit the supporting documents. The law makes mention of the 120-day period to decide the application for refund counted from the submission of the supporting documents but is quiet on the counting of the latter period.

The overriding question in this case is who has the prerogative to determine the sufficiency or completeness of the documents to support the claim for refund.

The *Pilipinas Total* case in the course of its resolution of the issue stated that "it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120 day period" but then in another statement, it goes on to say that "whether these documents are actually complete as required by law – is for the CIR and the courts to determine."

There are various stages of submission of supporting documents in the administrative level to support a claim for refund of unutilized or excess input VAT. It is clear that the taxpayer, at the time of filing his application for refund, is guided by the law and its implementing revenue issuances as to the documents that must be submitted to the BIR in support of its claim for refund. At this stage, taxpayer has no idea on how the assigned revenue examiner will appreciate the sufficiency of the documentation submitted. This is the first stage. Upon assignment of the refund claim to an examiner, the latter will now study the application and thereby communicate his or her findings to the taxpayer. The assigned examiner may or may not ask for additional documents or may not even communicate with the taxpayer at all. This is the second stage.

Considering the length of time that the respondent had spent evaluating the claim for refund, petitioner, finally in its November 11, 2014 letter to the BIR stated that they have already submitted the complete documents. Following the *Pilipinas Total* ruling that it is the taxpayer who ultimately determines when complete documents have been submitted, the petitioner in this case counted the 120 days from the date of such submission and within the 30-day period *from* its expiration, filed the petition for review with the CTA on April 8, 2015.

The cited ruling in the *Pilipinas Total* case that the submission of the complete documents must be within the two-year period is true only in the first stage, that is, upon the filing of the application for the issuance of a tax credit certificate (TCC) or refund of unutilized input taxes. This is consistent with the two-year prescriptive period to file the claim for refund because certainly the claimant has to file documents in support of said claim as directed under section 112(C) of the NIRC which clearly specifies that the documents are in support of the application filed in accordance with Section 112 (A). At this stage, it is really the taxpayer who will determine the completeness of its documents. After the application is filed, then this prerogative is shifted to the BIR which will now determine if the documents submitted in support of the application for refund or TCC are sufficient to warrant a favorable grant.

In the instant case, the revenue examiner continued to request for documents even beyond the two- year period so the exception to the two-year period should apply. The case of *Pilipinas Total* case seems to recognize and confirm this conclusion when it ruled thus:

> "xxx *Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms of what additional documents must be presented in support of a claim for tax credit or refund* it is the taxpayer who

has the right and burden of providing any and all documents that would support his claim for tax credit or refund" (italics ours).

I remain consistent with the foregoing position which I have reiterated in a case involving the same parties[10] as regards the counting of the 120 + 30 day period.

Having determined the timeliness of the filing of both administrative and judicial claims for refund, I am inclined to vote in favor of acquiring jurisdiction over the case and consequently determining the issue of whether the petitioner satisfied the requirements for the grant of the claim for refund of alleged unutilized input VAT for taxable year 2011.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[10] Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ vs. CIR, CTA Case No. 8899, March 9, 2017.