REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ, *Petitioner,*	**CTA Case No. 9025**
	Members:
	CASTAÑEDA, JR., *Chairperson,* **CASANOVA,** and **MANAHAN,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 0 3 2018 2:07 PM

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RESOLUTION

CASTAÑEDA, JR., ***J.:***

For resolution of this Court is petitioner Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ's (Zuellig) Motion for Reconsideration (Re: Decision dated May 23, 2018)[1] filed on June 8, 2018.

Petitioner's Motion assails the Decision of this Court promulgated on May 23, 2018[2] (the "assailed Decision") which denied the former's Petition for Review for lack of jurisdiction.

[1] Docket, Vol. III, pp. 1050-1064.
[2] *Id.*, pp. 1013-1049.

In its *Motion*, petitioner posits that absent any proof that there were additional documents filed after the filing of the administrative claim, the presumption is that the complete documents were filed together with the administrative claim.[3] Conversely, petitioner maintains that where there is proof that additional documents were submitted after the filing of the administrative claim for value-added tax (VAT) refund, the 120-day period (within which the CIR should act on the claim) begins to run from the date of submission of the last document in support of such claim.[4]

Petitioner likewise claims that during the period of respondent's review of the Application for Refund, or for a total of 664 days, petitioner was in constant communication with the assigned revenue officers to discuss the claim and to comply with any instructions coming from the revenue officers.[5] Hence, according to petitioner, the foregoing submissions were made to comply with the revenue officer's request for documents, which the petitioner's representatives deemed mandatory and essential to their claim.[6]

Petitioner likewise avers that the ruling laid down by the Supreme Court in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[7] was erroneously applied in the present case.[8] It added that there is nothing in Revenue Memorandum Circular (RMC) No. 49-2003 [that] requires the notice for submission of documents to be in writing.[9] Thus, according to petitioner, any verbal notices or requests from the revenue officers constitute as sufficient notice for additional documents and compliance therewith shall be deemed compliant with RMC No. 49-2003.[10]

On the other hand, the Commissioner of Internal Revenue failed to file his Comment on petitioner's *Motion* despite notice, as per the Records Verification report issued by the Judicial Records Division of this Court dated July 16, 2018.[11] Considering the failure of respondent Commissioner of Internal Revenue to file his Comment on the *Motion* as required, the Court *En Banc* deemed petitioner's *Motion* as submitted for resolution.

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[3] *Id.*, p. 1054.
[4] *Id.*
[5] *Id.*, pp. 1058-1059.
[6] *Id.*, p. 1059.
[7] G.R. No. 207112, December 8, 2015, 776 SCRA 395.
[8] *Id.*, p. 1059.
[9] *Id.*, p. 1061.
[10] *Id.*, pp. 1061-1062.
[11] *Id.*, p. 1067.

The present Motion for Reconsideration is bereft of merit.

Consistent with the ruling laid down by the Supreme Court in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[12] this Court stands by its position that petitioner's judicial claim for VAT refund was filed out of time. As thoroughly discussed in the assailed Decision, the 120-day period within which the CIR should act on the administrative claim shall be reckoned from March 20, 2013, when petitioner submitted additional documents in response to respondent's request. This Court likewise carefully explained in the assailed Decision that petitioner's subsequent submissions starting on June 13, 2013 onwards cannot be considered for purposes of counting the 120-day period because these were made way beyond the 30-day period from date of respondent's request to submit additional supporting documents. Another reason why these later submissions cannot be counted is because they were made beyond the two-year period prescribed under Section 112(A) of the 1997 National Internal Revenue Code, as amended (1997 NIRC).

To reiterate the Court's ruling in the assailed Decision, to wit:[13]

> "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:
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> 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. *JC*

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[12] *Supra*, Note 7.
[13] Citations omitted.

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.* 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, petitioner 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. *Je*

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

DATE SUBMITTED	EXHIBIT
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 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."

This Court also finds unmeritorious petitioner's claim that the ruling in *Pilipinas Total Gas* has been erroneously applied in the present case. As stated in the assailed Decision, while it is true that the taxpayer ultimately determines when complete documents have been submitted for purposes of commencing and continuing the running of the 120-day period, such discretion is not absolute and is subject to limitations as discussed by the Supreme Court in *Pilipinas Total Gas*. In the said case, the Supreme Court expressly prescribes that the submission of supporting documents in response to the request of the tax examiners must be made within thirty (30) days from notice. It also provides that 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 1997 NIRC. These limitations were not complied with by the subsequent submissions of supporting documents made by petitioner in the present case. Hence, they are not included for purposes of counting the 120-day period.

In light of the foregoing, this Court finds no new or substantial matter let alone compelling reason to disturb its findings in the assailed Decision.

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

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
(With due respect, I maintain my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice