**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

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| **TAISEI PHILIPPINES CONSTRUCTION, INC.**, Petitioner, | **CTA CASE NO. 9008** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE**, Respondent. | Promulgated: DEC 0 1 2017 4:20 p.m. |

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# DECISION

**CASTAÑEDA, JR.**, ***J.***:

## THE CASE

This is a Petition for Review[1] filed by Taisei Philippines Construction, Inc. praying for the refund or issuance of a tax credit certificate (TCC) in the amount ₱84,175,660.03, allegedly representing its unutilized input valued-added tax (VAT) payments attributable to VAT zero-rated sales to Philippine Economic Zone Authority (PEZA) and Clark Special Economic Zone (CSEZ)-registered clients for the four quarters of 2012.

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[1] Docket, pp. 6-18.

## THE FACTS

Petitioner Taisei Philippines Construction, Inc. is a corporation duly organized and existing under Philippine laws, with principal office address at 23rd Floor Equitable Bank Tower, Paseo de Roxas Avenue, Legaspi Village, Makati City.[2] It is a VAT-registered taxpayer with Tax Identification No. 000-166-308-000.[3]

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

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

| DATE OF FILING | PERIOD COVERED | NET UTILIZED INPUT VAT |
|---|---|---|
| April 24, 2012[4] | 1st Quarter of 2012 | ₱ 6,808,604.56 |
| July 23, 2012[5] | 2nd Quarter of 2012 | ₱14,475,196.84 |
| October 24, 2012[6] | 3rd Quarter of 2012 | ₱75,792,340.98 |
| April 23, 2013[7] (Amended Return) | 4th Quarter of 2012 | ₱95,693,022.90 |

On June 25, 2013,[8] petitioner filed its administrative claim for refund amounting to ₱84,175,660.03 for the input VAT it paid attributable to VAT zero-rated sales of service for taxable year 2012.

Respondent issued Letter of Authority No. 122-2013-00000054[9] on July 29, 2013, authorizing Revenue Officers Amelia Molinos,

[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 203.
[3] Par. 2, Summary of Admitted Facts, JSFI, docket, p. 203.
[4] Exhibits "P-5", "P-6", and "P-6-A", docket, pp. 228-230.
[5] Exhibits "P-7", "P-8", and "P-8-A", docket, pp. 237-239.
[6] Exhibits "P-9", "P-10", and "P-10-A", docket, pp. 246-248.
[7] Exhibits "P-11", "P-12", and "P-12-A", docket, pp. 255-257.
[8] Exhibit "P-37", docket, p. 290.
[9] Exhibit "P-39", docket, p. 292.

Belinda Balagtas, Lourdes Liwanag, and Noemi Castro to examine petitioner's books of accounts and other accounting records for value-added tax for the period from January 1, 2012 to December 31, 2012 pursuant to Mandatory Audit-Claim for VAT refund.

On July 30, 2013,[10] respondent issued another letter authorizing Revenue Officer Fatima Sarrosa to assist in the examination/investigation of petitioner's books of accounts and other accounting records pursuant to Letter of Authority No. 122-2013-00000054 dated July 29, 2013 for value-added tax for taxable year 2012. On even date, respondent issued to petitioner a "Checklist of Requirements in Filing VAT Credit/Refund Claims".[11]

Meanwhile, petitioner submitted its additional documents in batches, where its last batch of documents was submitted on October 14, 2014.[12] Petitioner also submitted a Sworn Certification[13] attesting to the completeness of the documents it submitted to the BIR.

Due to respondent's inaction on its administrative claim for refund, petitioner filed the present Petition for Review before this Court on March 13, 2015[14].

Within the extended time granted by the Court,[15] respondent filed his Answer[16] through registered mail on May 6, 2015 and received by the Court on May 18, 2015, interposing the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

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7. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P84,175,660.03

[10] Exhibit "P-40", docket, p. 293.
[11] Exhibit "P-41", docket, pp. 294-297.
[12] Exhibit "P-43", docket, p. 299.
[13] Exhibit "P-42", docket, p. 298.
[14] Docket, p. 6.
[15] Order dated April 28, 2015, docket, p. 83.
[16] Docket, pp. 84-86.

representing alleged excess and unutilized input VAT paid for the four quarters of 2012 were not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

8. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

9. It is incumbent upon the latter 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.

10. 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***)."

The pre-trial conference was set on June 25, 2015.[17] Thus, petitioner's Pre-Trial Brief[18] was filed on June 19, 2015; while respondent's Pre-Trial Brief[19] was filed through registered mail on June 19, 2015 and was received by the Court on July 2, 2015.

The parties filed their Joint Stipulation of Facts and Issues[20] through registered mail on July 27, 2015 and was received by the Court on August 10, 2015. This was approved and adopted by the Court in the Pre-Trial Order[21] issued on September 9, 2015, which also terminated the pre-trial.

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[17] Notice of Pre-Trial Conference, docket, pp. 88-89.
[18] Docket, pp. 90-97.
[19] Docket, pp. 122-125.
[20] Docket, pp. 153-155.
[21] Docket, pp. 209-214.

Upon motion[22] of petitioner, the Court commissioned Aquino Mata Calica & Associates as the Independent Certified Public Accountant (ICPA) for the case, with Mr. Joseph Cedric V. Calica as named partner-in-charge of the undertaking.[23]

During trial, petitioner presented the following witnesses: Mr. Vicente M. Evangelista[24], its Accounting Manager; and Mr. Joseph Cedric V. Calica[25], the Court-commissioned ICPA.

On February 15, 2016, petitioner filed through registered mail its Formal Offer of Evidence.[26] In the Resolution[27] dated April 13, 2016, the Court partially admitted petitioner's Exhibits. However, the Court denied the admission of Exhibits "P-9", "P-13", "P-41", "P-41-a", "P-41-b", and "P-41-c" for failure to identify and for failure to present the originals for comparison; Exhibits "P-46", "P-47", "P-50", "P-51", "P-52", and "P-53" for failure to present the originals for comparison; and Exhibits "P-56-1790" to "P-56-1799", "P-56-4090", and "P-58-127" for not being found in the records.

On May 5, 2016, petitioner filed through registered mail its Motion for Partial Reconsideration (Of the Resolution dated April 13, 2016).[28]

In the Resolution[29] dated July 26, 2016, the Court allowed petitioner to present Ms. Judy Ann R. Rufin[30], its employee, to lay the basis for the introduction of secondary evidence. The ICPA, Mr. Joseph Cedric V. Calica[31], was likewise recalled and petitioner was allowed to present the originals of some of its denied exhibits for comparison.

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[22] Docket, pp. 158-162.
[23] Oath of Commission, docket, p. 222.
[24] Minutes of the Hearing dated September 28, 2015 and November 25, 2015, docket, pp. 220 and 311; Judicial Affidavit, docket, pp. 105-119.
[25] Minutes of the Hearing dated January 25, 2016, docket, p. 327; Judicial Affidavit of Mr. Joseph Cedric V. Calica, docket, pp. 316-326.
[26] Docket, pp. 335-372.
[27] Docket, pp. 380-382.
[28] Docket, pp. 408-415.
[29] Docket, pp. 466-467.
[30] Minutes of the Hearing dated September 5, 2016, docket, p. 468; Judicial Affidavit of Ms. Judy Ann R. Rufin, docket, pp. 433-436.
[31] Minutes of the Hearing dated September 5, 2016, docket, p. 468; Judicial Affidavit of Mr. Joseph Cedric V. Calica (To Identify the Certification dated May 4, 2016), docket, pp. 445-448.

Thereafter, petitioner filed a Supplemental Formal Offer of Evidence[32] through registered mail on September 15, 2016, which was received by the Court on September 22, 2016.

In the Resolution[33] dated December 2, 2016, the Court granted petitioner's Motion for Partial Reconsideration and admitted Exhibits "P-41", "P-41-a", "P-41-b", "P-41-c", "P-46", "P-47", "P-56-1790" to "P-56-1799", "P-56-4090", "P-58-127", "P-70", "P-90", "P-91", and "P-92".

During the hearing on September 5, 2016, counsel for respondent manifested that he has no witness to present in this case.[34]

Petitioner filed its Memorandum[35] through registered mail on January 9, 2017 and was received by this Court on January 19, 2017. Meanwhile, respondent's Memorandum[36] was also filed through registered mail on January 9, 2017 and was received by the Court on January 25, 2017. Thus, in the Resolution[37] dated January 31, 2017, the instant case was declared submitted for decision.

## THE ISSUES

The parties submitted the following issues to be resolved by this Court:[38]

1. Whether or not the sales of petitioner in the four quarters of 2012 to its PEZA and CESZ clients are subject to 0% VAT.

2. Whether or not the unutilized Input Taxes of petitioner for the four quarters of 2012 which it applied for refund or issuance of tax credit certificate, are duly supported by VAT Receipts and Invoices and are

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[32] Docket, pp. 470-475.
[33] Docket, pp. 480-482
[34] Docket p. 468.
[35] Docket, pp. 483-506.
[36] Docket, pp. 509-514.
[37] Docket, p. 516.
[38] Issues, JSFI, docket, p. 204.

attributable to VAT-zero-rated sales of services made by petitioner to its PEZA and CESZ registered clients.

3. Whether or not the respondent erred by her inaction on the claim for VAT refund or issuance of tax credit certificate of petitioner for unutilized Input VAT attributable to its VAT zero-rated sales to PEZA and CESZ clients in the four quarters of 2012.

## THE RULING

The Court shall determine first whether it has jurisdiction to entertain the present case.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and 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 or nature of an action. 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. 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.[39]

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[40] The jurisdiction of the CTA regarding internal revenue tax assessments is provided under Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided: 

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[39] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

[40] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014.

(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 in relations 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;" (*Emphasis supplied*)

Similarly, Section 3(a)(1) and (2) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue

Code or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;" (*Emphasis supplied*)

Based on the foregoing, that 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 NIRC of 1997 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 NIRC of 1997, as amended, 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, which reads as follows:

> "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 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.
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> xxx xxx xxx

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

> (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.) vs. 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-a-vis Section 112 of the NIRC of 1997, as amended, to wit:

> "In the subsequent case of *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, the Court summarized the rules on prescriptive periods for claiming credit/refund of input VAT, 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***

[42] G.R. No. 173241, March 25, 2015.

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

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 NIRC of 1997, as amended, 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 four quarters of taxable year 2012, which respectively closed on the following dates:

| **PERIOD COVERED (TY 2012)** | **CLOSE OF TAXABLE QUARTER** |
|---|---|
| 1st Quarter | March 31, 2012 |
| 2nd Quarter | June 30, 2012 |
| 3rd Quarter | September 30, 2012 |
| 4th Quarter | December 31, 2012 |

Counting two years from the said dates, petitioner had until the following dates within which to file its administrative claim for refund or issuance of tax credit certificate:

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

Based on the foregoing dates, petitioner's administrative claim filed on June 25, 2013[43] was seasonably filed. *Ju*

[43] Exhibit "P-37", docket, p. 290.

On the other hand, Section 112(C) of the NIRC of 1997, as amended, states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The 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. vs. Commissioner of Internal Revenue (Pilipinas Total Gas)*[46] is instructive. The relevant portion of the case reads:

> "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 compete 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

[44] *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[45] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.
[46] G.R. No. 207112, December 8, 2015.

> 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.

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 **'<u>from the date of submission of complete documents.</u>'**

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</u> of the investigating/processing office, <u>which shall be construed as within the one hundred twenty (120) day period</u>**.

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 ***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.

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**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 documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
>
> **In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected**.
>
> It bears mentioning at this point that the foregoing summation of the rules *should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014*, such as the claim at bench. xxx"(*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 the 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 legitimacy 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 of 1997, as amended.

A review of the records shows that the BIR issued a Letter of Authority[47] on July 29, 2013, while it issued another letter on July 30, 2013[48] with Checklist of Requirements in Filing VAT Credit/Refund Claims. The said checklist enumerated the additional documents that the BIR requested from petitioner for the determination of its claim for refund.

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

As stated earlier, on July 30, 2013, the BIR requested petitioner to submit additional documents to process its claim for refund. Petitioner complied by submitting its supporting documents to the BIR in several batches, where the last batch of its documents was submitted on October 14, 2017.

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[47] Exhibit "P-39", docket, p. 292.
[48] Exhibit "P-41", docket, pp. 294-297.

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

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

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

To reiterate, the 30-day period within which to file an appeal of the denial of the claim or inaction on the part of the CIR is both mandatory and jurisdictional, and non-compliance therewith precludes the CTA from acquiring jurisdiction over the case.

**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.

**SO ORDERED.**

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

WE CONCUR:

**CAESAR A. CASANOVA**
Associate Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

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[49] Docket, p. 6.

## 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

## 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