REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HEDCOR, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8964

Members:

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

Promulgated:

DEC 11 2017

1:05 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This Petition for Review filed by Hedcor, Inc. seeks the refund or issuance of tax credit certificate (TCC) in the amount of Twenty-Two Million Six Hundred Ten Thousand Five Hundred Five Pesos and One Centavo (₱22,610,505.01), allegedly representing excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the four quarters of calendar year (CY) 2010.

THE FACTS

Petitioner Hedcor, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at No. 214 Ambuclao Road, Obulan, Beckel, La Trinidad, Benguet

Province, Philippines.[1] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. (TIN) 001-946-873-000,[2] as evidenced by its Certificate of Registration No. 4RC0000670842[3].

Petitioner is primarily engaged in the business of owning, developing, constructing, operating, repairing, and maintaining of hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating and/or owning power generation plants and/or converting stations.[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.

On June 22, 2011, petitioner filed its applications for tax credit or refund of unutilized input taxes incurred in the four quarters of calendar year 2010 in the total amount of ₱22,610,505.01 with BIR Revenue District Office (RDO) No. 09.[5]

On November 26, 2014, Ms. Christine M. Cardona, Revenue District Officer of RDO No. 09, informed petitioner that the processing of its four claims could not be pursued in line with the issuance of Revenue Memorandum Circular (RMC) No. 54-2014.[6]

Hence, this instant Petition for Review filed before the Court on January 7, 2015. Jr

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[1] Exhibits "P-1" and "P-2".
[2] Par. 2, Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, p. 344.
[3] Exhibit "P-15".
[4] Exhibit "P-2".
[5] Exhibits "P-24" to "P-31".
[6] Exhibit "P-45".

Respondent filed his Answer[7] on April 6, 2015, interposing the following special and affirmative defenses:

> 4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
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> 5. In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.
>
> 6. To support its claim, it is imperative for petitioner to prove the following, *viz:*
>
> a. The registration requirements of a value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
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> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;
>
> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a

[7] Docket, vol. I, pp. 140-146.

condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply;

d. That the input taxes in the aggregate amount of P21,121,702.96 allegedly paid by petitioner on its purchases of goods and services for the 1st to 4th quarters of calendar year 2010 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) were filed within the periods provided in Sections 112 (A) and (D) of the Tax Code as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits).

h. The requirements as enumerated under Revenue Memorandum Circular 54-2014 (Re: Clarifying Issues Relative to the Application for Value Added Tax Refund/Credit under Section 112 of the Tax Code, as amended)

7. Petitioner must prove that the aggregate amount of P21,121,702.96 allegedly representing excess and unutilized input VAT for the 1st to 4th quarters of taxable year 2012 are properly documented.

8. In Revenue Memorandum Circular 54-2014, the administrative claim for VAT refund or TCC must be filed within two (2) years from the close of the taxable quarter when the zero-rated sales and/or effectively zero-rated sales were made. The application for VAT refund must be accompanied by complete supporting documents as specifically enumerated in Annex "A" of the RMC. In addition, the taxpayer should attach a sworn statement/affidavit (i) attesting to the completeness of the submitted documents; (ii) stating that the attached supporting documents are the only documents which the taxpayer will present to support the claim; and, additionally, (iii) in the case of corporations or other juridical persons, there should be a sworn statement that the officer signing the affidavit (which should at the very least be the Chief Finance Officer) has been authorized by the company's Board of Directors. Je

9. Corollary thereto, Section 112 (C) provides as follows, *to wit:*

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10. Pursuant to the aforequoted provision of law, the application for tax refund must be filed within two (2) years after the close of the taxable quarter when the sales were made and the CIR has a 120-day period within which to decide whether to grant the claim. It logically follows that a taxpayer must first submit the complete supporting documents before the 120-day period should commence. <u>If the claim is not acted upon by respondent, within the 120-day period, such inaction shall be deemed a denial of the claim.</u>

11. In the present case, petitioner failed to elevate the claim for refund within the period prescribed by law. Even without the issuance of Revenue Memorandum Circular No. 54-2014, the law is clear that in case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the respondent to act on the application within the period prescribed, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim** or after the expiration of the one hundred twenty-day period, **appeal the decision or the unacted claim with the Court of Tax Appeals**. <u>Accordingly, petitioner failed to do so.</u>

12. All in all, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

11. It can never be emphasized enough that in this jurisdiction tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict

application against the claimant. As held by the Honorable Supreme Court:

> "Tax refunds are in the nature of tax exemptions, and are to be construed **strictissimi juris** against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund."

12. Taxes collected are presumed to be in accordance with laws and regulations.

13. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

13. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of jurisdiction and/or for lack of merit.

A Notice of Pre-Trial Conference was issued by the Court, setting the case for pre-trial conference on May 28, 2015.[8] Accordingly, petitioner filed its Pre-Trial Brief[9] on May 25, 2015; while Respondent's Pre-Trial Brief[10] was filed on June 25, 2015.

The parties submitted their Joint Stipulation of Facts and Issues[11] on July 29, 2015. On August 10, 2015, the Court issued a Pre-Trial

[8] Docket, vol. I, pp. 148-149.
[9] Docket, vol. I, pp. 156-163.
[10] Docket, vol. I, pp. 331-334.
[11] Docket, vol. I, pp. 343-346.

Order adopting the parties' joint stipulations and the pre-trial was deemed terminated.

On August 24, 2015, upon motion[12] of petitioner, this Court commissioned Mr. Emmanuel Y. Mendoza as Independent Certified Public Accountant (ICPA).[13]

During trial, petitioner presented (1) Arazeli Malapad[14], AVP-Controller of petitioner; (2) Emmanuel Y. Mendoza[15], the ICPA; and (3) Ada Santiago-Aquino[16], petitioner's tax supervisor, as its witnesses.

Petitioner filed its Formal Offer of Documentary Exhibits[17] on June 1, 2016 and an Amended Formal Offer of Documentary Exhibits[18] on August 22, 2016. All of petitioner's formally offered exhibits were admitted by the Court, except for Exhibits "P-53-1", "P-54-1 to P-54-2", "P-55-1 to P-55-20", "P-56-1 to P-56-6", "P-57-1 to P-57-3", "P-58-1 to P-58-18", "P-59-1 to P-59-43", "P-60-1 to P-60-17", "P-61-1 to P-61-38", "P-62-1 to P-62-14", "P-63-1 to P-63-2", "P-64-1 to P-64-4", "P-65-1 to P-65-4", "P-66-1 to P-66-14", "P-73-1 to P-73-13", "P-74-1 to P-74-5", "P-75-1 to P-75-17", "P-76-1 to P-76-3", "P-77-1", "P-78-1 to P-78-6", "P-79-1 to P-79-4", "P-80-1 to P-80-4", "P-81-1 to P-81-4", "P-82-1 to P-82-2", "P-83-1 to P-83-2", "P-84-1 to P-84-2", "P-85-1 to P-85-74", "P-86-1 to P-86-105", "P-114-1 to P-114-5", "P-115-1 to P-115-32", "P-118-1 to P-118-14", "P-119-1 to P-119-28", "P-120-1 to P-120-2", "P-121-1", "P-122-1", "P-123-1 to P-123-3", and "P-112-1", pursuant to Resolutions[19] dated July 26, 2016 and October 20, 2016.

On the other hand, respondent manifested that he has no witness to present.[20] Je

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[12] Motion for Appointment of an Independent Certified Public Accountant (ICPA), docket, vol. I, pp. 341-342.
[13] Minutes of the Hearing dated August 24, 2015, docket, vol. I, p. 362.
[14] Minutes of the Hearing dated September 16, 2015, docket, vol. I, p. 367.
[15] Minutes of the Hearing dated December 2, 2015, docket, vol. I, p. 398.
[16] Minutes of the Hearing dated April 27, 2016, docket, vol. II, p. 516.
[17] Docket, vol. II, pp. 546 and 559-581.
[18] Docket, vol. II, pp. 604-623.
[19] Docket, vol. II, pp. 585-587; Docket, vol. II, pp. 627-628, respectively.
[20] Minutes of the Hearing dated July 27, 2017, docket, vol. II, p. 588.

The case was submitted for decision on December 27, 2016,[21] considering petitioner's Memorandum[22] filed on December 5, 2016 and respondent's failure to file a memorandum[23].

THE ISSUE

The parties submitted the following issue[24] for this Court's resolution:

1. Whether petitioner is entitled for a VAT refund or tax credit, as follow:

Q1 2010	Php6,067,860.71
Q2 2010	5,562,262.15
Q3 2010	5,437,505.46
Q4 2010	5,542,876.69

DISCUSSION/RULING

Pertinent to the resolution of the instant case is Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, which provides:

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

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[21] Resolution dated December 27, 2016, docket, vol. II, p. 665.
[22] Docket, vol. II, pp. 634-662.
[23] Records Verification dated December 21, 2016, docket, vol. II, p. 663.
[24] JSFI, docket, vol. I, p. 344.

> 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
>
> (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.

Before addressing the stipulated issue, the Court shall first determine whether the Court has jurisdiction to entertain the present appeal.

The administrative claim was timely filed

Pursuant to Section 112(A) of the Tax Code, 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 first, second, third and fourth quarters of CY 2010, which closed on March 31, 2010, June 30, 2010, September 30, 2010, and December 31, 2010, respectively. Counting two years from the said dates, petitioner had until March 31, 2012, June 30, 2012, September 30, 2012, and December 31, 2012 within which to file its administrative claim for refund/tax credit of unutilized input VAT for the said quarters, respectively. Thus, petitioner's administrative claims covering the four quarters of CY 2010 were seasonably filed on June 22, 2011.[25]

The judicial claim is barred by prescription

Section 112(C) of the Tax Code states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: 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 a refund or credit; and the period of 30 days, which refers to the period for filing a judicial claim with the CTA.

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[26], citing the landmark case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[27] (*San Roque*), 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 BIR 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 BIR Commissioner does not act within that period.

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.[28] 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* ge

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[25] Exhibits "P-24" to "P-31".
[26] G.R. No. 168950, January 14, 2015, 745 SCRA 663.
[27] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.
[28] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016, 785 SCRA 351.

Total Gas, Inc. vs. Commissioner of Internal Revenue (Pilipinas Total Gas)[29] is instructive. The relevant portion of the case reads:

> *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-day 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.
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> xxx xxx xxx
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> 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:
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>> 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**

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[29] G.R. No. 207112, December 8, 2015, 776 SCRA 395.

> **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>**.
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> [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.

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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.

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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 R.A. No. 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. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:

> The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach **a statement under oath** attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the

> only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (*i.e.*, at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

> Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC No. 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim. *(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 pertinent portion of *Pilipinas Total Gas*, for claims filed before June 11, 2014, or prior to the effectivity of RMC No. 54-14, the rules under RMC No. 49-03 in relation to Section 112 of the Tax Code shall apply.

In sum, the rule is that from the date that an administrative claim for refund/tax credit of excess unutilized input VAT is filed, a taxpayer only has thirty (30) days within which to submit all the documentary requirements that would substantiate his claim, unless the CIR gives further extension through a written notice.

In the instant case, petitioner filed its administrative claims covering the four quarters of CY 2010 on June 22, 2011.[30] Consequently, petitioner had thirty (30) days therefrom or until July 22, 2011 within which to submit all pertinent supporting documents.

Subsequent to the filing of its administrative claim on June 22, 2011, petitioner submitted additional supporting documents on the following dates:

DATE OF SUBMISSION TO THE BIR	EXHIBIT REFERENCE
September 30, 2011	"P-34"
April 12, 2012	"P-32"
April 10, 2012	"P-36"
June 6, 2012	"P-37"
June 11, 2012	"P-38"
June 11, 2012	"P-39"
June 26, 2012	"P-35"
August 17, 2012	"P-40"
December 18, 2013	"P-41"
July 14, 2014	"P-42"

Since the foregoing submissions were made beyond the 30-day period required by RMC No. 49-03 and there is no evidence that petitioner was given further extension by the CIR to submit documents in support of its administrative claim for refund, it is presumed that complete documents accompanied the claim when it was filed.

Thus, the 120-day period shall be reckoned from June 22, 2011 and shall run until October 20, 2011. Considering that respondent failed to act on the subject claim, petitioner had thirty (30) days after the lapse of the 120-day period on October 20, 2011 or until November 19, 2011 within which to file a judicial appeal before this Court. However, the present Petition for Review was filed only on January 7,

[30] Exhibits "P-24" to "P-31".

2015. Hence, it is clear that petitioner's judicial claim was belatedly filed.

For its part, petitioner argues that for the correct application of the 120+30 day period under Section 112(C) of the Tax Code, either of the following events must occur: (1) respondent's issuance of a decision denying a taxpayer's claim; or (2) **inaction** on the part of respondent within 120 days from the date of submission of complete documents in support of the claim.

Petitioner further states that respondent and his agents "acted" on petitioner's administrative claim before the lapse of the 120-day period through the issuance of Letters of Authority (LOAs) on various dates, and even after the lapse of the 120-day period, by continuously acting on petitioner's administrative claim and issuing a Recommendation Letter dated March 14, 2014,[31] which proposed a partial grant of the administrative claim for refund/tax credit.

According to petitioner, the issuance of the LOAs and the Recommendation Letter are "acts" which preclude the operation of the 120+30 day period stated in Section 112 of the Tax Code. Further, petitioner asserts that respondent's issuance of the Denial Letter dated November 26, 2014 means that the 30-day period to appeal should run from the date such Denial Letter was received by petitioner on December 9, 2014. Thus, petitioner maintains that its Petition for Review was timely filed on January 7, 2015.

The Court is not convinced.

We refer to Section 112(C) of the Tax Code which provides the period within which refund of input taxes shall be made, to wit:

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

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[31] Exhibit "P-43".

> **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. *(Emphasis supplied)*

If the second paragraph above stands alone, then the Court may perhaps subscribe to petitioner's understanding of the provision. However, the rule laid down therein must be read in relation to the first paragraph which gives it its context.

The first paragraph of the above-quoted provision states that the Commissioner shall grant a refund or issue the TCC within 120 days from the submission of complete documents. Consequently, the CIR cannot grant a refund or issue the TCC beyond the 120-day period provided by law. Hence, after the lapse of 120 days, the application will be deemed unacted, thereby granting the taxpayer-claimant the option to appeal the claim with this Court. Clearly therefore, the "full or partial denial" stated in the second paragraph of Section 112(C) contemplates a denial made by the CIR within 120 days from the date of submission of complete documents.

Hence, in *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[32], the Supreme Court clarified:

> Whether respondent rules in favor of or against the taxpayer – or does not act at all on the administrative claim – **within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.** ﾉｰ

[32] G.R. No. 182737, March 2, 2016, 785 SCRA 351.

xxx xxx xxx

> The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner.
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.** *(Emphasis supplied)*

In this case, petitioner's claim was not granted within 120 days. Since the 120-day period laid down by law has ended, petitioner, in effect, can no longer expect that a refund will be granted by the CIR. Petitioner then should have filed its judicial claim within 30 days from the expiration of the 120-day period.

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[33], the Supreme Court reminded all taxpayers as follows:

> A final note, the taxpayers are reminded that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period.

Moreover, even assuming that petitioner's interpretation is correct, its petition still fails. As indicated in respondent's Denial Letter[34] dated November 26, 2014, the LOAs were dated March 6, 2012 and June 15, 2012. Thus, before the expiration of the 120-day period on October 20, 2011, respondent could not have acted on petitioner's administrative claim. *gr*

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[33] G.R. No. 168950, January 14, 2015, 745 SCRA 663.
[34] Exhibit "P-45".

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.[35]

Accordingly, herein 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. Thus, the dismissal of the instant Petition for Review is in order.

WHEREFORE, in view of the foregoing, the instant 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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

[35] *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

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