Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB CASE NO. 1399** (CTA Case No. 8624)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA RINGPIS-LIBAN, JJ.
-versus-	
CBK POWER COMPANY LIMITED, Respondent.	Promulgated: NOV 21 2016 3:10p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioner's "Motion for Reconsideration" of the Decision dated September 26, 2016 of this Court *En Banc*, the dispositive portion of which states:

> *"**WHEREFORE,** the Petition for Review filed by Commissioner of Internal Revenue is **DENIED,** for lack of merit. Accordingly, the Decision of the Second Division promulgated on September 14, 2015 and its Resolution, dated November 23, 2015, are hereby **AFFIRMED**. No pronouncement as to cost.*
>
> ***SO ORDERED**."*

In assailing this Court's Decision, petitioner again insisted that respondent CBK failed to submit the complete documents, thus, the 120 days will not commence to run, rendering the CTA without jurisdiction.

We resolve to deny the motion.

After a careful examination of petitioner's "Motion for Reconsideration", the Court finds that the rehashed issue and arguments had already been sufficiently passed upon and fully discussed not only by the Second Division's Decision dated September 14, 2015 and its Resolution, dated November 23, 2015 but also by this Court *En Banc's* Decision dated September 26, 2016.

We reiterate, the issue on whether the supporting documents have been completed or when the 120 days period has commence to run under Section 112 (C)[1] is no longer novel since it has been settled by the Supreme Court en banc in the case of Pilipinas Total Gas, Inc. vs. CIR[2]. The Supreme Court en banc ruled 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. The Supreme Court envisions the following scenarios:

1. The taxpayer 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.

2. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003[3].

3. The taxpayer 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.

Moreover, the Supreme Court ruled that except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit

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[1] Ibid.
[2] Pilipinas Total Gas, Inc. v. CIR,G.R. No. 207112, December 8, 2015 SC En Banc
[3] Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters

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.

In this case, respondent CBK filed on November 28, 2012 its administrative claim for excess unutilized VAT. Respondent CBK did not manifest that it no longer wishes to submit any other additional documents to complete the administrative claim. In fact respondent CBK did not submit any additional document in support of its administrative claim. Neither did petitioner CIR require respondent CBK additional documents necessary to decide the claim, nor deny the claim for failure to submit the additional documents requested. Thus, the 120 days period shall commence to run on November 28, 2012.

Section 112(C) of the NIRC[4] provides 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 Commissioner to act on the application within the 120 days period, the taxpayer 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 this case, from November 28, 2012, the CIR has 120 days or until March 28, 2013 within which to decide the administrative claim for tax credit or refund. Petitioner CIR failed to act within the 120 day period. Thus, respondent CBK may appeal the unacted administrative claim within 30 days from March 28, 2013 or until April 27, 2013. Hence, the Petition for Review filed with this Court's Division on April 1, 2013 is within the 30 day appeal period.

Evidently, the alleged failure of respondent CBK to submit the complete documents at the administrative level did not render its petition for review with the Court's Division dismissible for lack of jurisdiction. First, the 120-day

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[4] Supra. Note 6.

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period had commenced to run on November 28, 2012 and the 120+30 day period was, in fact, complied with.

Petitioner CIR did not require additional documents necessary to decide the claim, nor deny the claim for failure to submit the additional documents or for insufficiency of evidence for that matter. It was precisely the inaction of the BIR which prompted respondent CBK to file the judicial claim. Thus, the CIR cannot now argue that the 120 days will not commence to run, rendering the Court of Tax Appeals without jurisdiction.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice