REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DEDON MANUFACTURING, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1970
(CTA Case No. 8926)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

Promulgated:

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review seeks to set aside the Decision[1] dated May 21, 2018 and the Resolution[2] dated October 29, 2018, respectively, of the CTA Third (3rd) Division.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

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1 Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Retired Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino concurring. Court *En Banc* Docket, pp. 51-75.
2 Court *En Banc* Docket, pp.44-49.

SO ORDERED."[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

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

SO ORDERED."[4]

THE FACTS

The following are the facts as found by the Court in Division:

"Petitioner Dedon Manufacturing, Inc. is a corporation organized and existing under Philippine laws, with office at Zone 7 Birds of Paradise Riverside, Barangay Canduman, Mandaue City. It is engaged in the business of manufacturing goods such as furniture made of aluminum frame and hularo synthetic fiber and in trading the same on wholesale basis. Petitioner is registered with Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. (TIN) 207-396-481-000, and as evidenced by its Certificate of Registration No. OCN3RC0000055031.

Pursuant to its registration with the Board of Investments, petitioner's sales are VAT zero-rated and entitled to income tax holiday incentive under Article 39(a) of Executive Order (EO) No. 226, as amended by Republic Act (RA) No. 7918.

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 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 original Monthly and Quarterly VAT Returns for CYs 2009, 2010, and 2011 through the Electronic Filing and Payment System (eFPS) of the BIR, containing the following details:

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3 See Note 1, p. 74.
4 See Note 2, p. 49.

xxx xxx xxx

Petitioner maintains that the input VAT paid on its purchases of goods and services during CYs 2009, 2010, and 2011 are duly supported by VAT invoices and/or official receipts issued by its VAT-registered suppliers in accordance with Sections 110 and 113 of the NIRC of 1997, as amended.

Petitioner insists that the input VAT incurred in connection with its purchases of goods and services, including capital goods during CYs 2009, 2010, and 2011 were attributable to its zero-rated sales of goods for the said period and were not applied against any output VAT during each of the four quarters of CYs 2009, 2010, and 2011.

Petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance ('DOF-OSS Center' for brevity) an Application for Tax Credits/Refund (BIR Form No. 1914), requesting the refund of its alleged unutilized input VAT incurred in CYs 2009, 2010, and 2011, summarized as follows:

PERIOD COVERED	DATE OF FILING	TAX CREDIT APPLIED
2009	March 30, 2011	9,225,927.56
2010	March 30, 2012	8,134,936.26
2011	March 26, 2013	9,159,320.99
TOTAL		**26,520,184.81**

As a consequence of said filing, petitioner received the corresponding Letters of Authority (LOAs) authorizing the BIR revenue officers to examine petitioner's books of accounts and other accounting records, to wit:

xxx xxx xxx

On April 22 to 23, 2013, the revenue officers authorized to examine petitioner's books for CY 2009 conducted an actual audit at petitioner's office in Mandaue City.

On July 19 and 29, 2013, the revenue officer requested the submission of additional documents for the 2009 claim through electronic mail, to which petitioner complied.

As regards the 2010 claim, petitioner transmitted on November 14, 2012 its supporting documents in response to the Department of Finance's (DOF) first and second notices dated October 1, 2012 and October 24, 2012, respectively.

Anent the 2011 claim, petitioner maintains that the DOF-OSS Center neither conducted any examination nor served a notice for compliance with other reportorial requirements.

On June 11, 2014, the BIR issued Revenue Memorandum Circular (RMC) No. 54-2014, which clarifies the issues relative to the application for VAT refund/credit under Section 112 of the NIRC of 1997, as amended, particularly, that the inaction of the BIR Commissioner within the 120-day period provided by law to decide on the claim shall be deemed a denial. Upon expiration of said period, the taxpayer has 30 days within which to file an appeal with the Court of Tax Appeals.

According to petitioner, since the BIR Commissioner failed to act on its refund claim within the prescribed 120-day period, which petitioner reckoned from the issuance of RMC No. 54-2014 on June 11, 2014, the inaction amounted to a denial; thus, prompting it to file the instant Petition for Review on November 10, 2014.

Respondent filed his Answer to the Petition for Review on January 26, 2015, interposing the following arguments:

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The parties submitted their Joint Stipulation of Facts on May 21, 2015 in compliance with the order of the Court during the Pre-Trial Conference held on May 5, 2015.

Petitioner filed a Motion for Appointment of Independent Certified Public Accountant to Examine and Testify on Voluminous Records and Documents on May 21, 2015, which the Court granted during the hearing held on June 26, 2015.

During trial, petitioner presented Ms. Grace A. Cabradilla — petitioner's Finance Director and Ms. Rosie Sultan — petitioner's Accounting Manager, who testified during the hearing on August 11, 2015 and on September 8, 2015, respectively, and identified their judicial affidavits.

> Petitioner filed its Formal Offer of Evidence, consisting of Exhibits 'P-1' to 'P-33', inclusive of submarkings, on December 14, 2015; with respondent's Comment.
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> xxx xxx xxx
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> On the other hand, respondent manifested during the hearing on December 6, 2016 that he will not be presenting any witness. The Court then directed the parties to submit their respective memoranda.
>
> The case was submitted for decision on June 5, 2017, considering respondent's Memorandum filed on January 5, 2017 and petitioner's Memorandum filed on February 21, 2017. Hence, this decision."[5]

On May 21, 2018 and October 29, 2018, the Court in Division issued the assailed Decision and Resolution, respectively.

On December 13, 2018, petitioner filed through registered mail the instant Petition for Review.[6]

On April 16, 2019, respondent filed his Opposition (Re: Petition for Review dated 13 December 2018).[7]

On May 22, 2019,[8] the Court *En Banc* issued a Resolution submitting the case for decision.

On July 27, 2019, petitioner filed through registered mail its Verified Motion for Leave to Withdraw the Case.[9] However, on August 5, 2019, petitioner filed its Manifestation of Withdrawal of Motion to Withdraw Case.[10]

On August 28, 2019,[11] the Court *En Banc* granted petitioner's Manifestation of Withdrawal of Motion to Withdraw Case. Consequently, the instant case was deemed submitted for decision anew. Hence, this Decision.

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[5] See Note 1, pp. 51-59.
[6] Court *En Banc* Docket, pp. 8-27.
[7] Court *En Banc* Docket, pp. 86-98.
[8] Resolution, Court *En Banc* Docket, pp. 101-102.
[9] Court *En Banc* Docket, pp. 114-117.
[10] Court *En Banc* Docket, pp. 120-122.
[11] Resolution, Court *En Banc* Docket, pp. 126-127.

THE ISSUE

The issue to be resolved by the Court *En Banc* is whether petitioner is entitled to its refund claim. The main issue, however, revolves around the Court's jurisdiction *vis-à-vis* the timeliness of the judicial claim.

THE RULING

The Court *En Banc* denies the instant Petition.

Petitioner's judicial claim was filed out of time

To emphasize, the factual antecedents of this case show that petitioner filed its relevant administrative claims for the period 2009, 2010 and 2011 on March 30, 2011, March 30, 2012 and March 26, 2013, respectively. All of these claims were filed before the DOF-OSS Center.

For the period 2009, it was only on July 19 and 29, 2013 or more than 2 years from the filing of the administrative claim, when the BIR sent its notice for submission of additional documents. Similarly, for the period 2010, it was only on October 1, 2012 and October 24, 2012, or more than 120 days from the filing of the administrative claim, when the BIR sent its first and second notices for submission of additional documents. With respect to the period 2011, the BIR did not request for submission of additional documents.

Meanwhile, on June 11, 2014, the BIR issued Revenue RMC No. 54-2014. Petitioner claims that with the issuance of the said RMC, its refund claims were deemed denied.[12] Thus, it counted the 120-day period from June 11, 2014, or until October 9, 2014. Counting 30 days therefrom, petitioner asserts that its judicial claim was timely filed on November 10, 2014.[13]

Furthermore, petitioner asserts that the 120-day period is discretionary and non-mandatory. It points that the DOF-OSS processed and approved claims for tax refund/credit even after the 120-day period.[14] *gr*

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[12] Pars. 1.42-1.43, Statement of Facts, Petition for Review, Court *En Banc* Docket, p. 17.
[13] Petition for Review before the Court in Division, Division Docket, Vol. 1, p. 20. N.B.: The 30th day from October 9, 2014 falls on a Saturday, November 8, 2014.
[14] Arguments/Discussion, Petition for Review, Court *En Banc* Docket, p. 18.

In ruling against petitioner, the Court in Division found that:

> "Pursuant to the above-quoted portion of the *Pilipinas Total Gas* case, for claims filed before June 11, 2014, or prior to the effectivity of Revenue Memorandum Circular (RMC) No. 54-14, the rules provided under RMC No. 49-2003 in relation to Section 112 of the NIRC of 1997, as amended, shall apply. Thus, petitioner had 30 days from the time of filing of its administrative claim for tax credit or refund to submit all the required supporting documents. If in the course of the investigation, additional documents are required, the BIR must inform petitioner of the need to submit additional documents through a notice, and petitioner shall have 30 days to comply. Upon completion of all required documents, the 120-day period shall commence; but in all cases, all filings and submissions, including the judicial claim, must be completed within the two-year period under Section 112 (A) of the NIRC of 1997, as amended.
>
> However, the Court notes that the notices received by petitioner, requiring the submission of certain documents for the processing of the claim for refund for CYs 2009 and 2010, stated that the 120-day period is suspended pending the submission of the required documents. Even though the date of receipt was not indicated, the notices were dated beyond the 120-day period to decide.
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> Thus, the request for additional documents made by the revenue officers to petitioner and the subsequent compliance therewith which were beyond the 120-day period did not toll the running of the said period.
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> xxx xxx xxx
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> There is nothing in the law nor regulations or circulars issued by the DOF or the BIR, which provides that the 120 days may be reckoned upon the issuance of RMC No. 54-2014, since it is a mere clarification of what is provided in Section 112 (C) of the NIRC of 1997, as amended.
>
> The reckoning period of the 120 days remains from the submission of complete document in support of the administrative claim for refund, whether filed directly with the BIR Office or with the DOF-OSS Center."[15]

[15] See Note 1, pp. 70-73.

The Court *En Banc* agrees with the findings of the Court in Division.

Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "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 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)*

Contrary to petitioner's assertion, the 120-day period provided for under the above-quoted law was declared by the Supreme Court as mandatory and jurisdictional in the consolidated cases of *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.*[16] Thus:

> "Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**."

On the other hand, the *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[17] case summarized the rules vis-à-vis the completion of the supporting documents and the 120-day waiting period, as follows: *Jc*

[16] G.R. Nos. 187485, 196113 and 197516, February 12, 2013.
[17] G.R. No. 207112, December 8, 2015.

"To summarize, for the just disposition of the subject controversy, the rule is that **from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR**. Then, upon filing by the taxpayer of his complete documents to support his application, or **expiration of the period given**, the CIR has 120 days within which to decide the claim for tax credit or refund. **Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition[al] documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.**

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

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"*(Emphasis supplied)*

For claims prior to June 11, 2014, the *Pilipinas Total Gas* case made reference to RMC No. 49-2003. It provides:

Q-18: For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by thc 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. *gr*

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 within thirty (30) days from request of the investigating/processing office, which shall be construed as within the one hundred twenty (120)-day period."

In the instant case, the Court in Division found that petitioner submitted supporting documents together with the filing of its administrative claims for refund.[18] Upon further verification, records reveal that the request for additional documents made by the revenue officers to petitioner and the subsequent compliance were beyond the 120-day period.

As such, applying the above-quoted provisions of the law and jurisprudence, the Court in Division committed no error in finding that the 120-day period commenced from the date of the filing of the administrative claims. Likewise, the belated request for additional documents did not toll the running of the 120-day period.

Thus, the Court *En Banc* adopts the findings of the Court in Division, in relation to the pertinent dates as to the timeliness of the filing of the judicial claim[19]:

YEAR	DATE OF FILING THE ADMINISTRATIVE CLAIM	DATE OF NOTICE FOR SUBMISSION OF DOCUMENTS	END OF THE 120-DAY PERIOD	END OF THE 30-DAY PERIOD TO FILE WITH THE CTA
2009	March 30, 2011	May 31, 2012 and October 8, 2012	July 28, 2011	August 27, 2011
2010	March 30, 2012	October 1, 2012 and 24, 2012	July 28, 2012	August 27, 2012
2011	March 26, 2013		July 24, 2013	August 23, 2013

As the Court in Division correctly found, the Petition for Review was filed out of time on November 10, 2014. Hence, the denial of the instant Petition is likewise in order, for lack of jurisdiction.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of jurisdiction. Accordingly, the Decision dated May 21, 2018 and the

[18] See Note 2, p. 48.
[19] See Note 1, p. 71.

Resolution[20] dated October 29, 2018 of the CTA Third (3rd) Division are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

20 Court *En Banc* Docket, pp.44-49.