REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHIL.GOLD PROCESSING AND REFINING CORP., *Petitioner,*	CTA EB No. 1645 (CTA CASE No. 8856)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 14 2018 3:32 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision of this Court *En Banc* is a Petition for Review filed by Phil. Gold Processing and Refining Corporation (PGPRC) under *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended*, seeking the nullification of the Decision dated January 6, 2017[2], and the Resolution dated March 22, 2017[3]

[1] RULE 8, Sec 4. Where to appeal; mode of appeal.-

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> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court En Banc shall act on the appeal.

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[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban, En Banc Docket, pp.37-48.
[3] Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban, En Banc Docket, pp.24-26.

rendered by the Third Division of this Court, the dispositive portions of which, respectively, reads as follows:

Decision dated January 6, 2017:

"**WHEREFORE,** the instant Petition for Review filed by petitioner Phil. Gold Processing & Refining Corporation on August 4, 2014, is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED."

Resolution dated March 22, 2017:

"A reading of the assailed Decision and the arguments of the parties as confined in their respective Motions for Reconsideration and Oppositions reveals that the contentions they raise are repetition of those advanced in their previously filed pleadings which have been considered and passed upon by the Court. There being no new or substantial arguments to modify much less reverse the assailed Decision dated January 6, 2017, petitioner's Motion for Reconsideration dated February 2, 2017 is **DENIED**, for lack of merit.

SO ORDERED."

The following facts of the case as recited by the Court in Division in its Decision[4] read as follows:

"Petitioner Phil. Gold Processing & Refining Corporation filed the instant Petition for Review for the refund of the amount of P106,217,979.09, allegedly representing its unutilized input Value-Added Tax (VAT) for the quarter April 1, 2008 to June 30, 2008. Petitioner is a domestic corporation with principal business address at the 3rd Floor Corinthian Plaza Building, 121 Paseo de Roxas, Legaspi Village, Makati City. It is engaged in the processing, milling, crushing, refining, smelting and concentrating of mineral resources. It is registered with the Bureau of Internal Revenue (BIR) under

[4] Supra note 2.

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Tax Identification No. (TIN) 004-498-686-000, as well as, with the Board of Investments (BOI) as a new producer of/gold and silver with a non-pioneer status.

On the other hand, respondent is the Commissioner of the BIR, with authority to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner alleges that it exports 100% of its processed gold and silver ore which are paid for in acceptable foreign currency in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Thus, its export sales are subject to zero percent (0%) VAT under Section 106 of the National Internal Revenue Code (NIRC).

During the period covering April 1, 2008 to June 30, 2008, it exported its processed gold and silver ore which were paid in acceptable foreign currency, duly accounted for based on the rules and regulations of the Bangko Sentral ng Pilipinas. Pursuant to Section 106 of the NIRC, the said export sales were subject to zero percent (0%) VAT.

During the same quarter, petitioner purchased various goods and services locally and abroad in the total amount of P885,149,825.79, which resulted in total input VAT payments of P106,217,979.09.

On June 22, 2010, petitioner filed with the BIR-Revenue District Office (RDO) No. 47-Makati City a claim for refund of unutilized input VAT for the subject period of April 1, 2008 to June 30, 2008, amounting to P106,217,979.09.

On July 4, 2014, petitioner received from respondent a letter dated June 25, 2014, denying its claim for refund.

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On August 4, 2014, petitioner filed the instant Petition for Review before the Court assailing the denial of its claim for refund by respondent.

On September 9, 2014, respondent filed his Answer basically arguing that it is upon petitioner to substantiate its claim for refund with sufficient evidence and to comply with all the legal requisites or conditions for its alleged entitlement. Failure to discharge such burden is fatal to its claim. In the instant case, petitioner was unable to submit complete documents in support of its administrative claim for refund as provided under RMO No. 53-98, rendering its administrative action pro-forma. Without a validly and duly filed administrative claim for refund, the Court is without jurisdiction to entertain the instant Petition for Review. Finally, claims for refund are construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.

On November 3, 2014, the Pre-Trial Order was issued after the parties filed their Joint Stipulation of Facts on October 14, 2014.

On December 4, 2014, the case was dismissed for failure to prosecute, at the instance of respondent's counsel, for failure of petitioner's counsel to appear, despite due notice, for the initial presentation of evidence.

In the Resolution dated February 4, 2015, the Court, finding merit, granted petitioner's Motion for Reconsideration and reinstated the case.

In support of its case, petitioner presented its Treasurer, Atty. Juanita Lilet A. Dato-Abuel, and the Court commissioned Independent Certified Public Accountant (ICPA) Noel Peter F. Cañete, as witnesses.

Atty. Juanita Lilet A. Dato-Abuel testified that as petitioner's Treasurer, she supervises and oversees petitioner's application for tax refund with the BIR, specially claims for refund of unutilized input VAT.

She confirmed that petitioner is engaged in processing, milling, crushing, refining, smelting and concentrating of mineral resources. Petitioner is a 100% exporter of gold bullion, gold ore and other mineral products. Considering the foregoing and given that its customer Metalor Technologies SA is a non-resident foreign corporation, its sales to the latter is zero-rated. Hence, its input VAT remains unutilized.

On June 22, 2010, petitioner filed with the BIR RDO No. 47-East Makati a claim for refund of its unutilized input VAT for taxable quarter April 1, 2008 to June 30, 2008 in the amount of P106,217,979.09. But prior to such filing of administrative claim for refund, petitioner received a confirmation from the BIR through BIR Ruling No. DA-VAT-0723 435-2009, that it can claim as tax refund or credit its input VAT paid on its purchases of goods and services and importations of capital equipment.

On July 4, 2014, notwithstanding BIR Ruling No. DA-VAT-0723 435-2009, petitioner received from the BIR a letter denying its administrative claim for refund amounting to P106,217,979.09, prompting it to file this Petition for Review on August 4, 2014.

The witness corrected herself saying that petitioner was issued by the BOI a Certification that it is a 100% exporter for year 2009 on January 27, 2010 and not in 2009, as she earlier claimed. She also explained that the BOI Certification was based on documents annually submitted by petitioner and that the Mines and Geoscience Bureau regularly visits the site and checks on their production.

The Court-commissioned ICPA, **Noel Peter F. Cañete,** testified that he examined and audited petitioner's documents in support of its claim for tax refund or credit of its unutilized input VAT for

> the period April 1 to June 30, 2008. Per his audit and as appearing in his Amended Report, petitioner is entitled to a tax refund or credit in the amount of P106,131,308.89. He, however, disallowed the amount of P86,670.20 due to various reasons all indicated in Annex "A" of the said Amended Report.
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> The delay in the submission of his Amended Report was due to petitioner's belated submission of additional documents which were previously stored in its main office in Pororoy, Masbate, showing its export sales for 2009.
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> After petitioner rested its case, respondent's counsel manifested that he had no witness to present.
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> As directed, respondent filed her Memorandum on December 21, 2015, while petitioner, on January 11, 2016."

With the filing of the parties' respective Memoranda, the instant case was submitted for decision on January 15, 2016.

The Court in Division dismissed PGPRC's Petition for Review on the ground of lack of jurisdiction. Aggrieved, PGPRC filed a Motion for Reconsideration, but to no avail. Hence, this Petition for Review was filed.

We rule to DENY the Petition for Review.

The crux of the controversy hinges on the concept of appeal from the notice of a final decision on refunds of internal revenues taxes by the BIR. This Court needs to address the question of whether the period to appeal with the CTA from the notice of final decision on refunds of internal revenues taxes is jurisdictional.

This Court in Division did not err in ruling that the Petition for Review must fail for having been filed out of time.

Settled in this jurisdiction is the rule that the right to appeal is merely statutory and one who seeks to avail of it

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must comply with the statute or rules.[5] The perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory[6] depriving the appellate body of any jurisdiction to alter the final judgment.[7]

Section 8 of Rule 43 of the Revised Rules of Court[8] allows dismissal of a petition if the Court finds the same to be patently without merit.[9]

Judicious evaluation of the arguments presented by petitioner clearly warrant an immediate dismissal of the case for the same is patently without merit considering that the judicial claim was belatedly filed.

Section 112(C) of the NIRC, as amended provides judicial remedy relative to taxpayers' claim for refund of input VAT attributable to zero-rated sales, viz:

> "SEC. 112. Refunds or Tax Credits of Input Tax.- xxx
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> xxx xxx xxx
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> (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.
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> 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***

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[5] Apex Mining Co., Inc. vs. Commissioner of Internal Revenue, G.R. No. 122472, October 20, 2005.
[6] Id.
[7] Gesmundo vs. Salome Sahagun Vda. De Gesmundo, G.R. No. 147881, June 27, 2006.
[8] Pursuant to Sec. 3, Rule 1 in relation to Sec. 1, Rule 7 of the Revised Rules of the Court of Tax Appeals (RRCTA), Sec.8, Rule 43 applies suppletory.
[9] Revised Rules of Court, Rule 43, Sec. 8.

> Section 8. Action on the petition. - The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, within ten (10) days from notice, or dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

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> ***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)

In *CIR* vs. *Aichi Forging Company of Asia, Inc.*,[10] the Supreme Court ruled in this wise:

> "In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. ***The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA***. As we see it then, the 120- day period is crucial in filing an appeal with the CTA."

In the case cited above, the Supreme Court clarified the two situations contemplated under Section 112(D) of the NIRC [now Sec. 112(C)] which are appealable to the CTA within the thirty (30) day period.

There is no question as to the timeliness of petitioner's administrative claim for tax credit or refund. However, petitioner obviously failed to consider the concept of a ***"deemed a denial decision"*** of a claim for VAT refund after the lapse of the 120- day period under Section 112 (C) of the 1997 NIRC, as amended, which if not timely appealed with the CTA becomes final and unappealable.

In the case of *San Roque,*[11] the Supreme Court elucidated as follows:

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[10] Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.

[11] Commissioner of Internal Revenue vs. San Roque, G.R. No. 187485, Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113 and Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156, February 12, 2013.

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> "The Atlas doctrine cannot save Philex from the late filing of its judicial claim. ***The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, 'deemed a denial' of Philex's claim***. ***Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the 'deemed a denial' decision of the Commissioner final and inappealable***. The right to appeal to the CTA from a decision or 'deemed a denial' decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences."

In other words, a decision made by the BIR after the 120 + 30-day period like in the appealed case, is therefore inconsequential as the inaction of the CIR during the 120-day period is "deemed a denial" of a claim for refund, and without a timely appeal filed by the taxpayer, the "deemed a denial" decision of the CIR becomes final and unappealable.

In order for the Court to conclude that there is "deemed a denial decision" due to inaction during the 120-day period, a correct reckoning point of the 120-day period is imperative. In this regard, the pronouncement in *Pilipinas Total Gas, Inc. vs. CIR*[12] is instructive:

> "Under present law, ***when should the submission of documents be deemed "completed" for purposes of determining the running of the 120-day period?***
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> xxx xxx xxx.
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> 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.

[12] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.

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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.***

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.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that

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one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

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, ***<u>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</u>***. 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.

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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. (emphases supplied)

Applying the foregoing in the case at bar, the Court in Division correctly counted the 120-day period from the date of filing of petitioner's administrative claim[13] for refund on **June 22, 2010**, as the Petition for Review does not disclose any allegation and supporting proof that petitioner submitted additional documents within 30 days from the date of filing of its administrative claim; or that petitioner was given further extension by the CIR to submit documents in support of its administrative claim for refund; or that the BIR made a request for petitioner to produce documents in the course of the investigation and processing of petitioner's claim.

In this regard, counting the 120-day period from June 22, 2010, the CIR, therefore, had until **October 20, 2010** to act on petitioner's administrative claim for refund. As

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[13] Exhibits "P-1" and "P-2", Division Docket, Volume 4, pp. 2313-2315.

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there was "inaction" on the part of the CIR during the 120-day period, such inaction is "deemed a denial decision" of the CIR which is ripe for appeal with the Court within 30 days from the lapse of such period.

Petitioner's failure to appeal the "inaction" or "deemed a denial decision" of the CIR with the Court within 30 days from the lapse of the 120-day period or until **November 19, 2010**, the CIR's "deemed a denial decision" became final and unappealable.

Since the Petition for Review was filed with the Court in Division only on August 4, 2014, the same was clearly filed out of time. The "deemed a denial decision" of the CIR became final and executory.

In fine, considering that the Petition for Review of the petitioner before the Court in Division was filed beyond the 30-day period, which period is characterized by no less than the Supreme Court as mandatory and jurisdictional, and beyond the power of the court to extend,[14] this Court finds that the Court in Division committed no reversible error in dismissing the Petition for Review. Indeed, petitioner's failure to comply with the 30-day period to appeal effectively deprived the Court in Division of jurisdiction to entertain and determine the correctness of the claim for refund representing petitioner's unutilized input VAT for the fourth quarter of taxable year 2008.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. The Decision dated January 6, 2017, and the Resolution dated March 22, 2017 of the Third Division of this Court in CTA Case. No. 8856 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

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[14] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007, Resolution.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(took no part)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

C E R T I F I C A T I O N

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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice