REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NOKIA (PHILIPPINES), INC.,
Petitioner,

CTA EB NO. 1585
(CTA Case No. 8679)

-versus-

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 17 2018 9:21 p.m.

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Nokia (Philippines), Inc. seeking nullification of the Decision[2] dated August 9, 2016 (Assailed Decision) and Resolution[3] dated January 16, 2017 (Assailed Resolution), both promulgated by the First Division of this Court (Court in Division) in CTA Case No. 8679 entitled "Nokia (Philippines), Inc. vs. Commissioner of Internal Revenue" which dismissed the Petition for Review for lack of jurisdiction.

[1] Rollo, CTA EB NO. 1585, pp. 5-23, with annexes.
[2] Docket, CTA Case No. 8679, pp. 860- 885.
[3] Ibid., pp. 905-909.

THE FACTS

The facts of the case as found by the Court in Division, as stated in the August 9, 2016 Decision read as follows:

"Petitioner Nokia (Philippines), Inc. is a corporation duly organized under Philippine laws, with principal office at the 40th Floor, Philamlife Tower, 8767 Paseo de Roxas Street, Salcedo Village, Makati City. It is a VAT-registered entity, under Certificate of Registration No. 8RC0000019384.

On the other hand, respondent is the then Commissioner of the Bureau of Internal Revenue (BIR), vested by law with authority to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT returns for taxable year 2011 on the following dates:

VAT RETURN	DATE FILED
1st Quarter	July 22, 2011
2nd Quarter	July 22, 2011
3rd Quarter	October 24, 2011
4th Quarter	May 4, 2012

Petitioner allegedly accumulated unutilized creditable input VAT attributable to its zero-rated sales during the four quarters of taxable year 2011 in the total amount of P55,134,694.13 broken down as follows:

PERIOD COVERED	AMOUNT
1ST Quarter	P 15,498,890.60
2nd Quarter	12,601,716.31
3rd Quarter	15,858,783.18
4th Quarter	11, 175,304.04
TOTAL	**P 55,134,694.13**

On March 1, 2013, petitioner filed its administrative claim for refund or issuance of tax credit certificate with respondent as regards its alleged unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2011.

Subsequently, Letter of Authority (LOA) No. 126-2013-0000004 was issued on March 14, 2013, which was received by petitioner on March 20, 2013. On the same date, petitioner received a letter from respondent entitled Checklist of Requirements and First Request for Presentation of Records, requesting petitioner to present or furnish copies of specific documents and records within ten (10) days from receipt thereof. Consequently, petitioner wrote a letter to respondent dated March 21, 2013, requesting an additional period of thirty (30) days, or until April 21, 2013, to submit the required documents.

On April 15, 2013, petitioner submitted some of the documents requested by respondent. Meanwhile, on April 23, 2013 and on May 8, 2013, respondent respectively issued its First and Second Notices for the Presentation of Books of Accounts and Other Accounting Records.

In a letter dated and received by respondent on May 16, 2013, petitioner again requested an additional period of 30 days or until June 17, 2013 to submit the required documents.

Thereafter, petitioner filed the instant Petition for Review before this Court on July 29, 2013; while respondent filed her Answer thereto on September 30, 2013.

The case was set for a pre-trial conference on November 15, 2013. Thus, respondent filed her Pre-Trial Brief on November 11, 2013; while petitioner filed its Pre-Trial Brief on November 12, 2013.

On November 29, 2013, petitioner received another letter from respondent, acknowledging petitioner's submission of invoices, lists, and other documents but stating that some of the other necessary documents have not yet been submitted. She again requested petitioner's submission of the required documents within fifteen (15) days from receipt thereof, and further stated that should it fail to comply within the desired date, respondent shall be constrained to deny petitioner's claim for refund.

Moreover, on November 28, 2013 and on December 19, 2013, the parties filed their Joint Stipulation of Facts and Issues and Supplemental Joint Stipulation of Facts and Issues, respectively; which were approved by the Court in its Resolution dated January 2, 2014. Afterwards, the Pre-Trial Order was issued on January 16, 2014.

Meanwhile, on April 7, 2014, respondent wrote to petitioner, denying the latter's claim for refund in the amount of P55,134,694.13 for petitioner's purported failure to submit the documents and records necessary to validly substantiate its claim for refund despite ample time given within which to comply.

During trial, petitioner presented the following witnesses: (1) Mr. Glenn Ian R. Villanueva – Court Commissioned Independent Certified Public Accountant (CPA); (2) Mr. Richard A. Baliola – petitioner's Revenue and Tax Analyst; and (3) Ms. Jocelyn Lapira – petitioner's Financial Shared Services Manager. Petitioner likewise formally offered its documentary evidence on May 22, 2014.

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The Court issued a Resolution on September 23, 2014 admitting, as petitioner's evidence, Exhibits "P-1," "P-2", "P-3", "P-3-A", "P-3-B", "P-4", "P-4-A, "P-4-B", "P-5", "P-6", "P-6-A", "P-6-B", "P-7", "P-8", "P-8-A", "P-8-B", "P-9", "P-10", "P-11", "P-12," "P-13", "P-14," "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-24-A", "P-25", "P-26", "P-27", "P-27-A", "P-27-B", "P-27-C", "P-27-D", "P-27-E", "P-27-F", :P-27-G", "P-27-H", "P-28", "P-29", "P-29-A", "P-30", "P-30-A", "P-30-B", "P-30-C", "P-31", "P-31-A", "P-32", "P-33", "P-34", and "P-34-A". However, the Court denied the admission of Exhibit "P-15" for failure of petitioner to identify the same.

On the other hand, respondent presented Ms. Maureen Gay B. Oligane as her lone witness. Upon submission of respondent's Formal Offer of Documentary Evidence on March 25, 2015, the Court admitted "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", and "R-12-A" as respondent's evidence.

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As directed by the Court, petitioner filed its Memorandum on June 23, 2015; while respondent filed her Memorandum on August 25, 2015. Accordingly, the case was declared submitted for decision on September 2, 2015."

On August 9, 2016, the Court in Division rendered its Decision dismissing the Petition for Review for lack of jurisdiction.

On August 26, 2016,[4] petitioner filed its "Motion for Reconsideration," praying that the decision be reconsidered and set aside.

On January 16, 2017, the Court in Division rendered the questioned Resolution.

Aggrieved, petitioner filed before the Court *En Banc* this Petition for Review.

In the Resolution[5] dated March 23, 2017, respondent was directed by the Court *En Banc* to file his comment in this case. On April 17, 2017, respondent filed a "Motion for Extension of Time to File Comment (Re: Petitioner's Petition for Review),[6] which was granted by the Court through a Minute Resolution on April 21, 2017.[7] On May 5, 2017, respondent filed a "Motion to Admit Attached Comment."[8]

In the Resolution dated June 5, 2017,[9] the Court granted respondent's "Motion to Admit Attached Comment." Accordingly, the attached Comment was admitted. After consideration of the arguments presented in the Petition for Review, the Court *En Banc* gave due course to the Petition for Review and ordered the parties to file their respective memoranda.

Petitioner filed its "Memorandum"[10] on August 2, 2017, while respondent failed to file his Memorandum, as per Records Verification Report[11] of the Judicial Records Division of this Court.

In the Resolution[12] dated October 4, 2017, this case was deemed submitted for decision.

ISSUE

The issue in this case is whether the Court in Division erred in dismissing petitioner's claim for refund or issuance of a tax credit certificate in the amount of P55,134,694.13, representing alleged unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2011.

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[4] Docket, CTA Case No. 8679, pp. 886-893
[5] Rollo, CTA EB No. 1585, pp. 59-60.
[6] Ibid. pp. 61-63
[7] Ibid. p. 65.
[8] Ibid. pp. 66-74.
[9] Ibid pp. 76-77.
[10] Ibid. pp. 83-99.
[11] Ibid. p. 100.
[12] Ibid. pp. 102-103.

ARGUMENTS

Petitioner argues that the judicial claim for refund can no longer be categorized as premature after the respondent rendered a decision denying the administrative claim for refund during the pendency of the case before the Court in Division; that respondent waived his objection of prematurity at the pre-trial by rendering a Decision denying the administrative claim for refund after the pre-trial; and that petitioner filed the judicial claim for refund reckoning from the filing of its administrative claim for refund to preserve its right to claim refund or tax credit for good reason.

On the other hand, respondent counter-argues that he never waived the defense of prematurity of the judicial claim for refund; that the 120-day period will only commence to run upon the submission of complete documents in support of the application for refund filed; and that the Court in Division correctly dismissed the petition for lack of jurisdiction.

RULING OF THE COURT *EN BANC*

The Petition for Review before the Court in Division was anchored on the petitioner's claim for tax refund pursuant to Section 112 (A) of the NIRC of 1997, as amended.

> "Section 112(A) of the NIRC of 1997 provides:
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> *Refunds or Tax Credits of Input Tax.* –
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> (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 or 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."

Pursuant to the above-quoted provision and as laid down by the Supreme Court in a number of cases[13], a taxpayer engaged in zero-rated or effectively zero-rated transactions may claim a refund or tax credit certificate for input taxes attributable to such sales upon compliance with the following requisites:

1. That the taxpayer must be VAT-registered;
2. That the claim for refund was filed within the two-year prescriptive period;
3. That there must be zero-rated or effectively zero-rated sales;
4. That input taxes were incurred or paid;
5. That such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales; and
6. That the input VAT payments were not applied against any output VAT liability.

The Petition for Review was prematurely filed before the Court in Division

As categorically stated under Section 112(A) of the NIRC of 1997, as amended, the application for tax credit certificate or refund must be filed within two 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 2011, which closed on March 31, 2011 for the first quarter, June 30, 2011 for the second quarter, September 30, 2011 for the third quarter, and December 31, 2011 for the fourth quarter. Counting two years therefrom, petitioner had until March 31, 2013 for the first quarter, June 30, 2013 for the second quarter, September 30, 2013 for the third quarter, and December 31, 2013 for the fourth quarter, within which to file its administrative claim for refund.

Thus, the petitioner's administrative claim for refund filed on March 1, 2013 for the four quarters of taxable year 2011 was well within the two-year prescriptive period prescribed under Section 112(A) of the NIRC of 1997, as amended.

[13] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 195175 and 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

As to the timeliness of petitioner's judicial appeal, the pertinent provision is Section 112(C) of the NIRC of 1997, as amended,which states:

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

Based on the foregoing, respondent CIR has one hundred twenty (120) days from the date of submission of complete documents by petitioner in support of its refund claim to act on the claim for refund or tax credit by either granting or denying the same. In case of an adverse ruling, the aggrieved taxpayer may within thirty (30) days from receipt of the decision, or if there is no action thereof after the expiration of the 120-day period, seek judicial intervention through a Petition for Review to be filed with the Court of Tax Appeals.

Petitioner mainly argues that the judicial claim for refund filed before the Court in Division on July 29, 2013 cannot be categorized as prematurely filed. Petitioner insists that its filing of judicial claim for refund which reckoned the 120-day waiting period from the filing of its administrative claim for refund, is validated by the issuance of Revenue Memorandum Circular (RMC) No. 54-2014.

The following are the pertinent events that transpired prior to the filing of the case and while the instant case was pending before the Court in Division:

1. Petitioner filed its administrative claim for refund or issuance of a tax credit certificate on March 1, 2013.[14]

[14] Exhibits "P-14" and "P-15."

2. Petitioner received on March 20, 2013, the Checklist of Requirements and First Request for Presentation of Records.[15]
3. On March 21, 2013, petitioner wrote respondent a letter requesting for an additional thirty (30) days extension or until April 21, 2013 to submit the required documents.[16]
4. On April 15, 2013, petitioner submitted some of the documents requested by respondent.[17]
5. On April 23, 2013 and May 8, 2013, respondent respectively issued its First and Second Notices for the Presentation of Books of Accounts and Other Accounting Records.[18]
6. On May 16, 2013, petitioner again requested an additional period of thirty (30) days or until June 17, 2013 to submit the required documents.[19]
7. On July 29, 2013, petitioner filed a Petition for Review before the Court in Division docketed as CTA Case No. 8679.[20]
8. On September 30, 2013, respondent filed his Answer.[21]
9. The Pre-Trial Conference of the case was held on November 15, 2013.[22]
10. The parties filed before the Court in Division their Joint Stipulation of Facts and Issues on November 29, 2013.[23]
11. On November 29, 2013, petitioner received another letter[24] from respondent, acknowledging petitioner's submission of invoices, list, and other documents but stating that some of the other necessary documents have not yet been submitted. Respondent again requested petitioner's submission of the required documents within fifteen (15) days from receipt thereof and further stated that should it fail to comply within the required date, respondent should be constrained to deny the claim for refund.
12. On December 19, 2013, the parties filed before the Court in Division a "Supplemental Joint Stipulation of Facts and Issues."[25]
13. The Pre-Trial Order was issued by the Court in Division on January 16, 2014.[26]
14. The initial presentation of petitioner's evidence was held on February 20, 2014.[27]
15. On April 7, 2014,[28] respondent wrote to petitioner, denying the latter's claim for refund, for petitioner's purported failure to submit the documents and records necessary to validly substantiate its claim for refund despite the ample time given within which to comply.

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[15] Exhibit "R-4."
[16] Exhibit "R-5."
[17] Exhibit "R-6."
[18] Exhibits "R-7" and "R-8."
[19] Exhibit "R-9."
[20] CTA Case No. 8679, Docket pp. 7-15, with annexes.
[21] Docket, pp. 97-112.
[22] Resolution dated November 15, 2013, Docket, pp. 218-282.
[23] Docket, pp. 283-285.
[24] Exhibit "R-10."
[25] Docket, pp. 303-307.
[26] Docket, pp. 338-345.
[27] Minutes of the Hearing, Docket, pp. 352-357.
[28] Exhibit "R-11."

After consideration, the Court *En Banc* finds the petitioner's argument without merit. The pronouncements made in RMC No. 54-2014 applies to administrative cases filed after June 11, 2014 only. The present case was filed with the BIR on March 1, 2013.

In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[29] the Supreme Court *En Banc* held that in claims for tax credit or refund filed prior to June 11, 2014, or the issuance of RMC No. 54-2014, the reckoning point in counting the 120-day period is the date of submission of complete documents. The Supreme Court held:

> "Thus, the questions must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under the 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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> 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-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 if filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.
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> 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.

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

> To summarize, for the just disposition of the subject controversy, 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 addition *(sic)* documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
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> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year peroid 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 be respected.
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> 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
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> On this score, the Court finds that the foregoing issuance cannot be applied retroactively to the case at bar since it imposes new obligations upon taxpayers in order to perfect their administrative claim, that is [1] compliance with the mandate to submit the "supporting document" enumerated under RMC 54-2014 under its "Annex A"; and [2] the filing of "a statement under oath attesting to the completeness of the submitted documents," referred to in RMC 54-2014 as "Annex B." This should not prejudice taxpayers who have every right to pursue their claims in the manner provided by existing regulations at the time it was filed."

Applying the foregoing ruling in the present case, the reckoning period of one hundred twenty (120) days is from June 17, 2013, the last day of extension prayed by petitioner to submit the requested documents. The 120th day after June 17, 2013 is October 15, 2013. Thus, petitioner should have waited until October 15, 2013 before filing the Petition for Review before the Court in Division. The BIR in its letter dated November 29, 2013 recognized that petitioner filed the Summary List of Purchases, Summary List of Importation and Summary List of Sales, although other pertinent documents relative to the said lists were not submitted. Hence, it is improper to reckon the period of 120 days from March 1, 2013.

As correctly ruled by the Court in Division in its Decision:

> "From the foregoing, it can be observed that petitioner itself repeatedly requested the granting of an additional period, within which to submit complete supporting documentary requirements, and thus acknowledging that its submission of documents was just partial. In fact, in its May 16, 2013 letter, petitioner specifically requested an extension period of until June 17, 2013, within which to submit the supporting documents.
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> Based on Section 112(C) of the NIRC of 1997, as amended, and the above-mentioned jurisprudence, the 120-day period must be reckoned from the filing of the complete documents, or expiration of the period given. It is only upon manifestation of petitioner that it no longer wishes to submit any additional documents, that the 120-day period would begin to run.
>
> In the instant case, considering that petitioner itself asked for an extension period of until June 17, 2013 within which to submit the supporting documents, and that it did not submit such documents within the said period, then the counting of the 120-day period should be reckoned on June 17, 2013. Accordingly, petitioner should have waited for the lapse of 120 days from June 17, 2013, before filing the instant Petition for Review.
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> Since petitioner filed the Petition for Review on July 29, 2013, which was within the mandatory and jurisdictional 120-day period, the Court finds that the case was filed prematurely. Consequently, this Court has no jurisdiction over the present case."

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now Team Energy Corporation)*,[30] the Supreme Court discussed the application of the 120-day and 30-day periods mentioned in Section 112 of the NIRC of 1197, as amended. It ruled that the 120-day waiting period is mandatory and jurisdictional, and that failure to observe such violates the doctrine of exhaustion of administrative remedies. The Supreme Court held that:

> "Contrary to the specified periods, specifically those that are provided in the second paragraph of Section 112(D), MPC filed its petition for review with the CTA on March 26, 2002, or a mere 15 days after it filed an administrative claim for refund with the CIR on March 11, 2002. It then did not wait for the lapse of the 120-day period expressly provided for by law within which the

[30] G.R. No. 180434, January 20, 2016.

CIR shall grant or deny the application for refund. The Court's pronouncement in *CIR v. San Roque Power Corporation* is instructive on the effect of such failure to comply with the 120-day waiting period, to wit:

> 1. <u>Application of the 120+30-Day Periods.</u>
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> It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional.** The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) days before San Roque filed its judicial claim.**
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> **<u>Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition.</u>** Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.
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> The charter of the CTA expressly provides that its jurisdiction is to review on appeal '**decisions** of the [CIR] in cases involving x x x refunds of internal revenue taxes.' When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no 'decision' of the Commissioner to review and thus, the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within **'a specific period'** required by law, such **'inaction shall be deemed a denial'** of the application for tax refund or credit. It is the Commissioner's decision, or inaction 'deemed a denial,' that the taxpayer can take to the CTA for review. Without a decision or an 'inaction x x x deemed a denial' of the

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> Commissioner, the CTA has no jurisdiction over a petition for review. xxx
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> The doctrine laid down in *San Roque* was reiterated in subsequent cases. In *CIR v. Aichi Forging Company of Asia, Inc.* the Court cited the general rule that **parties must observe the mandatory 120-day waiting period to give the CIR an opportunity to act on administrative claims; otherwise, their judicial claims are prematurely filed.** In *Team Energy Corporation (formerly MPC), v. CIR,* the Court again emphasized the rule stating that **'the 120-day period is crucial in filing an appeal with the CTA.' '[T]he 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period.'**
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> **Clearly, MPC's failure to observe the mandatory 120-day period under the law was fatal to its immediate filing of a judicial claim before the CTA. It rendered the filing of the CTA petition premature, and barred the tax court from acquiring jurisdiction over the same. Thus, the dismissal of the petition is in order.** '[T]ax refunds or tax credits- just like tax exemptions – are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit." *(Emphasis supplied)*

The Court's jurisdiction over the subject matter of a case cannot be a subject of waiver

Petitioner contended that when respondent issued his Decision while the case was pending, respondent is considered to have waived his defense of prematurity. Respondent opposed the Petition for Review because the claim for refund was prematurely filed and for failure of petitioner to exhaust all the available remedies in the administrative level. Records show that the Decision of the CIR was issued on April 7, 2014, when the case before the Court in Division is at its trial stage.

Again, the Court *En Banc* finds petitioner's argument without merit because the issue of jurisdiction cannot be a subject of waiver pursuant to Section 1, Rule 9 of the Rules of Court, which states:

> *Defenses and objections not pleaded.-* Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record, that the court has no jurisdiction over the subject matter, that there is another action pending between the

same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Hence, petitioner cannot validly argue that the defense of prematurity was waived by respondent when it issued the Decision while the case was pending trial.

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[31]

There being no new matters or issues raised in the Petition for Review before this Court and there being no reversible error committed by the Court in Division, the Court *En Banc* finds no cogent reason to disturb the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED for lack of merit.** Accordingly, the Decision dated August 9, 2016 and Resolution dated January 16, 2017 are hereby affirmed.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[31] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

CATHERINE T. MANAHAN
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