REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

EMERSON ELECTRIC (ASIA) LIMITED- ROHQ
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE.,
Respondent.

CTA Case Nos. 8583 & 8584

Members:

DEL ROSARIO, P.J., *Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:
NOV 06 2017 ; 10:47 am

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution is a Motion for Reconsideration filed by petitioner Emerson Electric (Asia) Limited-ROHQ (Emerson) Inc., seeking the reversal of the Decision[1] dated February 23, 2017, which denied the Petition for Review for lack of merit. As per Records Verification dated July 13, 2017, respondent Commissioner of Internal Revenue (CIR) failed to file his comment despite notice.

Petitioner insists that the Court's denial of its claim for refund representing unutilized input VAT attributable to zero-rated transactions and purchases of capital goods for the period 2nd to 4th quarter of FY 2008 and 1st quarter of FY 2009 lacks factual and legal basis.

After a careful review of the grounds raised in the Motion for Reconsideration, the Court finds no new matters or arguments which were not considered in the Assailed Decision. Petitioner failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court's findings in the Assailed Decision.

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[1] Division Docket, pp. 1453-1478.

Nevertheless, the Court will expound on the issues raised, if only to reinforce the discussion in the Assailed Decision.

Tax refund is one of the most tedious processes in our tax system, if not the most. Refunds are in the nature of tax exemptions construed strictly against the taxpayer. However, this doesn't necessarily mean that the taxpayer is at the mercy of government power. In our system of taxation, statutory procedures protect the rights of the taxpayer.

For value-added tax (VAT) refunds, Section 112 of the Tax Code provides that the taxpayer, whose sales are zero-rated or effectively zero-rated, has two years after the close of the taxable quarter when the sales were made, to apply for an administrative claim for refund. Thereafter, the Commissioner of Internal Revenue (CIR) has 120 days from the submission of complete supporting documents to act upon the claim for refund. In case of full or partial denial of the claim or failure of the CIR to act on the application within 120 days, the taxpayer may appeal with the Court of Tax Appeals (CTA) within 30 days from receipt of the decision or upon expiration of the 120-day period.

In the landmark case of *CIR vs. Aichi*[2], the Supreme Court (SC) held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. As such, its non-observance would warrant the dismissal of the judicial claim for lack of jurisdiction.

For emphasis, jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy[3]. It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case.

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[2] Commissioner of Internal Revenue vs. Aichi Forging Company Of Asia, Inc, GR No. 184823 dated October 6, 2010.
[3] Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue, G.R. No. 185666, February 4, 2015.

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Under this premise, the CTA is a court of special or limited jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction[4]. The jurisdiction of the CTA is conferred by Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282[5], wherein it clearly states that the CTA shall exercise exclusive appellate jurisdiction to ***review by appeal the decisions as well as the inaction by the Commissioner of Internal Revenue (CIR) in cases involving refunds of internal revenue taxes***. Accordingly, cases where the NIRC of 1997, as amended, provides a specific period for action, the CIR's inaction shall be deemed a denial.

Based on the foregoing, the proper question now would be, how should we reckon the 120-day period in order to properly observe its mandatory and jurisdictional nature? When should the submission of documents be deemed "completed" for purposes of determining the running of the 120-day period?

In revisiting the Supreme Court's ruling in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[6], the Court clarified that, starting June 11, 2014 when Revenue Memorandum Circular (RMC) No. 54-2014 took effect, the 120-day period should be counted from the date that the administrative claim was filed.

Under RMC No. 54-2014, prescribing the current rules on VAT refunds, the taxpayer is required to present complete supporting documents at the time of filing the

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[4]Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No.175097, February 5, 2010; Cathay Pacific Air Ways/ Ltd. vs. Commissioner of Internal Revenue, CTA EB No. 717 (CTA Case No. 7876), April 17, 2012; Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, Resolution dated April 24, 2007.

[5] Section. 7. Jurisdiction.- The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

xxx xxx xxx"

[6] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, GR No. 207112 dated December 29, 2015.

claim. The application must be accompanied by supporting documents as enumerated in the Circular and a statement under oath attesting to its completeness. The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. Thus, the taxpayer is barred from submitting additional documents after filing the administrative claim.

With this, we now resolve another question, what about claims filed before June 11, 2014, or prior to the effectivity of RMC No. 54-2014? In order to answer the question, it is first necessary to trace back the pertinent rules which will clarify the issue at hand. In the same case of *Pilipinas Total Gas, Inc*[7]., the Supreme Court ruled in this wise:

> "Thus, when the VAT was first introduced through Executive Order No. 273, the pertinent rule was that:
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> (e) Period within which refund of input taxes may be made by the Commissioner. The Commissioner shall ***refund input taxes within 60 days from the date the application for refund was filed*** with him or his duly authorized representative. xxx
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> Here, the CIR was not only given 60 days within which to decide an administrative claim for refund of input taxes, but the beginning of the period was reckoned 'from the date the application for refund was filed.'
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> When Republic Act (R.A.) No. 7716 was, however, enacted on May 5, 1994, the law was amended to read:
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> '(d) 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 for creditable input taxes within sixty (60) days from the date of submission of complete documents in***

[7] Ibid.

support of the application filed in accordance with sub-paragraphs (a) and (b) hereof. xxx'

Then, when the NIRC was enacted on January 1, 1998, the rule was once more amended to read:

"(D) 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 compete documents in support of the application filed in accordance with Subsections (A) and (B) 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]

This time, the period granted to the CIR to act upon an administrative claim for refund was extended to 120 days. ***The reckoning point however, remained 'from the date of submission of complete documents.'***

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[8]. The RMC mandates that

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[8] RMC No. 49-2003, August 15, 2003.

Q-18: For pending claims with incomplete document~ what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office 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**

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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."

Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112 (B) of the NIRC, Section 112 (D) was amended and renamed 112 (C)[9]. 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

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

[9] Section 112 (C) NIRC, as amended.

(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**.

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> 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***. xxx "

In sum, based on the above-quoted portion of *Pilipinas Total Gas*[10], the filing of the complete supporting documents by the taxpayer in connection with an administrative claim for VAT refund is subject to the following rules:

1. 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 processing unit.

2. 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 the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigation/processing unit. Notice of the request for the submission of additional supporting documents is required.

3. It is only upon the submission of the documents by the taxpayer that the 120-day period would begin to run.

4. 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.

To reiterate, this Court does not divest the taxpayer of the right to determine whether complete documents have been submitted in support of its claim for a VAT refund, but let it be clear as well that such right is not absolute. Such benefit is saddled with limitations.

In terms of what documents are to 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

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[10] Supra note 6.

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. However, whether these documents are actually complete as required by law is for the CIR and the courts to determine.

Contrary to petitioner's contention that it has the sole discretion to determine when documents are complete, the Supreme Court, in *Pilipinas Total Gas, Inc.,* elucidated and bluntly stated as follows:

> "If only to settle any doubt, this Court is by no means setting a precedent by leaving it to the mercy of the taxpayer to determine when the 120-day reckoning period should begin to run by providing absolute discretion as to when he must comply with the mandate of submitting complete documents in support of his claim."

In the case at bar, records have revealed that from October 14, 2011, or the date when petitioner is deemed to have submitted the complete documents in support of its VAT refund, respondent BIR had one hundred twenty (120) days or until February 11, 2012 to act on the administrative claim. Accordingly, adding thirty (30) days thereon, petitioner had until March 12, 2012 to appeal its judicial claim via Petition for Review before the CTA. The petitioner need not even wait for the decision of the BIR since a lapse of the prescribed period to act on the administrative claim is a "deemed denial".

The 30-day period within which to file an appeal of the denial of the claim or inaction on the part of the CIR is both mandatory and jurisdictional, and non-compliance therewith precludes the CTA from acquiring jurisdiction over the case. Considering that petitioner's judicial claim for refund filed before this Court on November 29, 2012 was filed out of time, this Court is bereft of jurisdiction to act on the judicial claim.

On another note, petitioner's insistence that the Supreme Court unduly expanded the provisions of RMC 49-2003 is misplaced. Let petitioner be reminded that courts' primary adjudicatory function is to mark the metes and bounds of the law in specific areas of application, as well as to pass judgment on the competing positions in a case properly brought before it.

The Court not only functions to adjudicate rights among the parties, but also serves the purpose of a supreme tribunal of last resort that establishes uniform rules of civil justice. Jurisprudence narrows the field of uncertainty in the application of an unclear area of the law. The certainty of judicial pronouncement lends respect for and adherence to the rule of law the idea that all citizens and all organs of government are bound by rules fixed in advance, which make it possible to foresee how the coercive powers of government will be used, whether in its own interests or in aid of citizens who call on them, in particular circumstances.

As judicial decisions form part of the law of the land[11], there is a strong public interest in stability and in the orderly conduct of our affairs, an end served by a consistent course of adjudication. Thus, pursuant to the ***"doctrine of stare decisis"***, once a court laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same.

In view of the foregoing, this Court finds no cogent reason to disturb the Assailed Decision.

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

[11] New Civil Code of the Philippines.
Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice