REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EMERSON ELECTRIC (ASIA) LIMITED – ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8768

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

AUG 03 2017 3:45 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This is a Petition for Review[1] filed on February 19, 2014 by Emerson Electric (Asia) Limited-ROHQ against the Commissioner of Internal Revenue, seeking the refund of the amount of ₱65,752,855.85, allegedly representing unutilized input value-added tax (VAT) attributable to zero-rated sales transactions for the first to fourth quarters of fiscal year 2012, broken down, as follows:

1st Quarter (October to December 2011)	₱ 12,869,561.47
2nd Quarter (January to March 2012)	19,500,497.38
3rd Quarter (April to June 2012)	17,079,492.33

[1] Docket, Vol. I, pp. 6-25.

4th Quarter (July to September 2012)	16,303,304.67
Total Claims	**₱65,752,855.85**

STATEMENT OF FACTS

Petitioner Emerson Electric (Asia) Limited-ROHQ is a corporation duly organized and existing under and by virtue of the laws of Hongkong, with principal office at the 23/F, 625 King's Road, North Point, Hongkong.[2] It is duly registered and licensed by the Securities and Exchange Commission (SEC) to operate as a regional operating headquarters (ROHQ) in the Philippines,[3] with business address at 7th Floor Robinson Cybergate Plaza, Robinsons Compound, Brgy. Ilaya, Edsa, Mandaluyong City. It is registered as a VAT entity, with Taxpayer's Identification Number (TIN) 252-158-539-000 as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. 3RC0000597452.[4]

Petitioner is engaged in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services and product development; technical support and maintenance; data processing and communication; and business development.[5]

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 (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 28, 2013, petitioner filed its applications for tax credit or refund of unutilized input VAT in the total amount of ₱65,752,855.85 for the four quarters of fiscal year 2012, along with supporting

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2 Exhibit "P-42".
3 Exhibits "P-41" and "P-42".
4 Exhibits "P-43".
5 Exhibits "P-41" and "P-42".

documents, with the BIR Revenue District Office (RDO) No. 41-Mandaluyong.[6]

On July 31, 2013, petitioner received Letter of Authority (LOA) No. LOA-041-2013-00000566[7] dated July 29, 2013 issued by respondent, authorizing revenue officers to examine petitioner's books of accounts and other accounting records for VAT for the period covering October 1, 2011 to September 30, 2012. In this regard, petitioner was asked to present the records and documents as enumerated in the Checklist of Requirements.[8]

On September 4, 2013, petitioner received the First Request for Presentation of Books and Other Accounting Records[9] dated September 2, 2013 issued by respondent.

On September 11, 2013, petitioner received respondent's letter[10] dated September 10, 2013, denying its applications for tax credit or refund in view of petitioner's failure to indicate the amount it is claiming as tax refund as a deduction from its excess input taxes.

On September 24, 2013, petitioner filed a request for reconsideration of respondent's denial of its applications, attaching thereto a copy of its VAT return for the third quarter of fiscal year 2013 which reflected the deduction of the amount claimed.[11]

Petitioner then filed the instant Petition for Review before this Court on February 19, 2014.

Respondent filed his Answer[12] on April 11, 2014, interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

[6] Exhibits "P-30" to "P-34".
[7] Exhibit "P-35".
[8] Exhibit "P-36".
[9] Exhibit "P-37".
[10] Exhibit "P-38".
[11] Exhibit "P-39".
[12] Docket, Vol. I, pp. 126-128.

She reiterates and re-pleads the foregoing paragraphs of this Answer as part of her Special and Affirmative Defenses;

4. The Honorable Court has no jurisdiction on the Petition. Herein Petitioner failed to establish by convincing evidence that the instant Petition for Review was filed on time.

   As admitted by the Petitioner, it filed the administrative claim for refund on June 28, 2013 along with supporting documents. Petitioner filed the instant Petition for Review on February 19, 2014 or two hundred twenty three days from the filing of the administrative claim and submission of documents. Thus, the instant Petition for review was filed out of time.

   With respect to the alleged submission of additional documents in support for its administrative claim for refund on September 24, 2014, cannot be considered as submission of supporting documents. A perusal of Petitioner's Letter (Annex 'V') partake of the nature as request for reconsideration. As such, the filing of the judicial claim for refund should be counted from Petitioner's submission of supporting document on June 28, 2013. Hence, the Petition for Review was filed out of time.

5. In the alternative, the Honorable Court has no jurisdiction on the Petition for Review. As alleged by the Petitioner, the assigned Revenue Officer allegedly conducted an examination at Petitioner's premises on January 20, 2014 or less than a month prior to the filing of the instant Petition for Review. As such, the examination on the claim for refund was still on-going. Hence, the instant case was prematurely filed as there was no failure on the part of the Commissioner to act on the administrative claim for refund."

The Pre-Trial Conference[13] was set on May 22, 2014. Petitioner's Pre-Trial Brief[14] was filed on May 16, 2014; while Respondent's Pre-Trial Brief[15] was filed on June 6, 2014.

The parties filed their Joint Stipulation of Facts and Issues[16] on June 6, 2014, which was approved by the Court in its Pre-Trial Order[17] dated July 2, 2014.

During trial, petitioner presented the following witnesses: (1) Carla Francesca Lim[18]; (2) Pamela Ariaga[19]; and (3) Independent Certified Public Accountant Emmanuel Y. Mendoza.[20]

Petitioner filed its Formal Offer of Evidence[21] on June 4, 2015. Respondent, however, failed to file his comment on petitioner's Formal Offer of Evidence.[22] On August 10, 2015, the Court issued its Resolution[23], which denied some of petitioner's documentary exhibits.

Petitioner filed an Omnibus Motion for Reconsideration (with Motion to set for Commissioner's Hearing and Motion to Recall Ms. Pamela Ariaga)[24] on August 28, 2015. Respondent manifested that he will not file his comment on petitioner's Omnibus Motion for Reconsideration (with Motion to set for Commissioner's Hearing and Motion to Recall Ms. Pamela Ariaga).[25] The Court granted petitioner's Motion to set for Commissioner's Hearing and Motion to Recall Ms. Pamela Ariaga in the Resolution[26] dated October 8, 2015.

Petitioner filed its Supplemental Formal Offer of Evidence[27] on December 21, 2015. Respondent failed to file his comment on petitioner's Supplemental Formal Offer of Evidence.[28] On March 17,

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[13] Notice of Pre-Trial Conference, Docket, Vol. I, p. 129.
[14] Docket, Vol. I, pp. 138-150.
[15] Docket, Vol. III, pp. 772-775.
[16] Docket, Vol. III, pp. 765-771.
[17] Docket, Vol. III, pp. 786-796.
[18] Minutes of the hearing on July 28, 2014, Docket, Vol. III, p. 799.
[19] Minutes of the hearing on July 14, 2014, January 28, 2015, April 20, 2015 and October 28, 2015, Docket, Vol. III, pp. 797, 909, 1035, Docket, Vol. IV, p. 1694.
[20] Minutes of the hearing on August 11, 2014, October 20, 2014, February 18, 2015 and November 23, 2015, Docket, Vol. III, pp. 827, 882-883, 1003-1004, Docket, Vol. IV, p. 1695.
[21] Docket, Vol. III, pp. 1050-1107.
[22] Docket, Vol. III, p. 1108.
[23] Docket, Vol. III, pp. 1113-1119.
[24] Docket, Vol. III, pp. 1126-1137.
[25] Minutes of the hearing on September 23, 2015, Docket, Vol. IV, p. 1504.
[26] Docket, Vol. IV, pp. 1688-1689.
[27] Docket, Vol. IV, pp. 1703-1725.
[28] Records Verification dated January 12, 2016, Docket, Vol. IV, p. 1908.

2016, the Court issued a Resolution[29] that partially granted petitioner's Omnibus Motion for Reconsideration.

Respondent manifested that he has no evidence to present. Hence, the parties were granted a period of thirty (30) days within which to file their respective memoranda. Likewise, petitioner's Tender of Excluded Evidence[30] filed on June 2, 2016 was noted by the Court.[31]

Petitioner filed its Memorandum[32] on August 5, 2016; while respondent failed to file his memorandum as per Records Verification[33] issued by the Court's Judicial Records Division. Hence, the Court declared the instant case deemed submitted for decision.[34]

STATEMENT OF ISSUE

The parties submitted the following issue for the Court's resolution:[35]

> "Whether petitioner is entitled to refund for the unutilized VAT input taxes in the total amount of Sixty Five Million Seven Hundred Fifty Two Thousand Eight Hundred Fifty Five and 85/100 Pesos (Php65,752,855.85), representing unutilized VAT input taxes for the 1st (October 1, 2011 to December 31, 2011), 2nd (January 1, 2012 to March 31, 201[2]), 3rd (April 1, 2012 to June 30, 2012) and 4th (July 1, 2012 to September 30, 2012) quarters of the fiscal year 2012 attributable to its zero-rated sale of services."

DISCUSSION/RULING

Before going into the merits of the case, the Court shall determine first whether the Court has jurisdiction to entertain the present Petition for Review. Je

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[29] Docket, Vol. IV, pp. 1910-1918.
[30] Docket, Vol. IV, pp. 1921-1925.
[31] Minutes of the hearing on June 6, 2016, Docket, Vol. IV, p. 1926.
[32] Docket, Vol. IV, pp. 1932-1954.
[33] Records Verification dated August 10, 2016, Docket, Vol. IV, p. 1955.
[34] Resolution dated August 12, 2016, Docket, Vol. IV, p. 1956.
[35] Joint Stipulation of Facts and Issues, Docket, Vol. III, p. 766.

Petitioner asserts that it is entitled to the refund of its unutilized input VAT attributable to zero-rated sales for the first to fourth quarters of fiscal year 2012. Respondent, on the other hand, argues that the Court has no jurisdiction to act on the present Petition for Review.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[36] 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. The court could not decide the case on the merits.[37]

The Court of Tax Appeals is a court of special or limited jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[38] The jurisdiction of the CTA is conferred by Republic Act (RA) No. 1125, as amended by RA No. 9282. The pertinent provision is quoted hereunder for ready reference:

> "SEC. 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;

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[36] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

[37] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

[38] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010; *Cathay Pacific Airways, 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.

(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;"

Based on the above provision, 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. In cases where the NIRC of 1997, as amended, provides a specific period for action, the CIR's inaction shall be deemed a denial.[39]

In relation thereto, Section 112(A) and (C) of the NIRC of 1997, as amended, governs the filing of administrative and judicial claims for refund or tax credit of excess and unutilized input tax attributable to zero-rated or effectively zero-rated sales. The provision reads:

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

(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

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[39] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.

the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of 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.

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."

In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[40], the Supreme Court summarized the rules on prescriptive periods for filing claims for refund or tax credit of input VAT *vis-a-vis* Section 112 of the NIRC of 1997, as amended, to wit:

"SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

[40] G.R. No. 173241, March 25, 2015.

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. *(Aichi)*

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. *(San Roque)*

3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008**. *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. *(San Roque)*

B. 120+30 Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi and San Roque)*

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque)*

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *(San Roque)"*

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the application for refund or tax credit of unutilized excess input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the first to fourth quarters of fiscal year 2012, which respectively closed on December 31, 2011, March 31, 2012, June 30, 2012, and September 30, 2012. Counting two years from these dates, petitioner had until December 31, 2013, March 31, 2014, June 30, 2014, and September 30, 2014, within which to file its administrative claim. Thus, petitioner's claim filed on June 28, 2013 was seasonably filed, as illustrated in the table below:

FY 2012	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim
1st Qtr	December 31, 2011	December 31, 2013	June 28, 2013[41]
2nd Qtr	March 31, 2012	March 31, 2014	
3rd Qtr	June 30, 2012	June 30, 2014	
4th Qtr	September 30, 2012	September 30, 2014	

Section 112(C) of the NIRC of 1997, as amended, provides the period for filing a judicial claim for the refund or tax credit of input VAT. Said provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with the Court of Tax Appeals.[42]

It bears stressing that the 120-day period begins to run from the date of submission of complete documents in support of the administrative claim.[43] As to when should the submission of supporting documents deemed "completed" for purposes of determining the running of the 120-day period, the Supreme Court's ruling in *Pilipinas*

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[41] Exhibits "P-30" to "P-34".

[42] *ROHM Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[43] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

Total Gas, Inc. vs. Commissioner of Internal Revenue[44] is instructive. The relevant portion of the case reads:

> "*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 is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.
>
> Thus, when the VAT was first introduced through Executive Order No. 273, the pertinent rule was that:
>
> > (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. No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.
> >
> > [Emphasis Supplied]
>
> 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.'
>
> When Republic Act (R.A.) No. 7716 was, however, enacted on May 5, 1994, the law was **amended** to read:

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

(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 support of the application** filed in accordance with sub-paragraphs (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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

[Emphasis Supplied]

Again, while the CIR was given only 60 days within which to act upon an administrative claim for refund or tax credit, the period came to be reckoned '**from the date of submission of complete documents in support of the application.**' With this amendment, the date when a taxpayer made its submission of complete documents became relevant. In order to ensure that such date was at least determinable, RMO No. 4-94 provides:

REVENUE MEMORANDUM ORDER NO. 40-94

SUBJECT: *Prescribing the Modified Procedures on the Processing of Claims for Value-Added Tax Credit/Refund*

III. Procedures

REGIONAL OFFICE

A. Revenue District Office

In General: Jr

> 1. Ascertain the completeness of the supporting documents prior to the receipt of the application for VAT credit/refund from the taxpayer.
>
> 2. Receive application for VAT Credit/Refund (BIR Form No. 2552) in three (3) copies in the following manner:
>
> a. stamp the word 'RECEIVED' on the appropriate space provided in all copies of application;
>
> b. indicate the claim number;
>
> c. **indicate the date of receipt**; and
>
> d. initial by receiving officer.
>
> The application shall be received only if the required attachments prescribed in RAMO 1-91 have been fully complied with. . . .

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.
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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.
>
> [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 '**<u>from the date of submission of complete documents.</u>**'

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, which provided:

> Q-18: *For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the 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.
>
> 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 **<u>within thirty (30) days from request</u> of the investigating/processing office, of the investigating/ processing office, <u>which shall be construed as within the one hundred twenty (120)-day period.</u>**
>
> [Emphases Supplied]

Consequently, 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). Thus: Jc

> (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.

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 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, 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. **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.
>
> 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."

To be sure, 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. Nevertheless, the Supreme Court also emphasized that the foregoing benefit given to taxpayer is not unbridled and, as such, is subject to limitations. Hence, based on the above-quoted portion of *Pilipinas Total Gas*, 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, the right of the taxpayer to determine when it has to submit complete documents in support of its claim for VAT refund is not absolute but is saddled with limitations, as elucidated in *Pilipinas Total Gas*. As bluntly stated by the Supreme Court in the said case:

> "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 submitting complete documents in support of his claim. xxx"

In the present case, petitioner filed its applications for tax credit or refund of unutilized input VAT in the total amount of ₱65,752,855.85 for the first, second, third, and fourth quarters of fiscal year 2012 on June 28, 2013, along with supporting documents, with the BIR Revenue District Office No. 41-Mandaluyong.[45]

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[45] Exhibits "P-30" to "P-34"; Par. 10, Memorandum, Docket, Vol. IV, p. 1937; Par. 4, Answer, Docket, Vol. I, p. 127.

In view thereof, respondent issued a LOA dated July 29, 2013, authorizing revenue officers to examine petitioner's books of accounts and other accounting records for VAT for the period covering October 1, 2011 to September 30, 2012. In connection thereto, petitioner was asked to present the records and documents as enumerated in the Checklist of Requirements. This was then followed by the First Request for Presentation of Books and Other Accounting Records dated September 2, 2013.[46]

In a letter dated September 10, 2013, respondent denied the applications for tax credit or refund because petitioner failed to submit the required document to prove that it deducted the amount claimed in its VAT returns, to wit:[47]

> "A perusal of the quarterly VAT returns you have submitted covering the period of the refund disclosed that you have not indicated the amount you are claiming as tax refund as a deduction from your excess input taxes (Box 23D).
>
> xxx xxx xxx
>
> Since you opted to carry forward the excess input taxes to the succeeding quarters as indicated in the said quarterly VAT returns which you have forwarded to this office, the same cannot be the subject of a VAT refund.
>
> In view of the foregoing, please be informed that your application for VAT refund is hereby denied for lack of merit and legal basis."

On September 24, 2013, petitioner filed a request for reconsideration of respondent's denial of its refund applications, attaching thereto a copy of its VAT return for the third quarter of fiscal year 2013 that reflected the deduction of the amount claimed.[48]

Petitioner maintains that it was only on September 24, 2013 that petitioner has submitted the complete documents in support of its

[46] Exhibits "P-35" to "P-37"; Pars. 11-12, Memorandum, Docket, Vol. IV, p. 1937.
[47] Exhibit "P-38".
[48] Exhibit "P-39"; Par. 57, Memorandum, Docket, Vol. IV, p. 1947.

applications. Accordingly, it is only on this date that the 120-day period for respondent to act on the applications has commenced.[49]

However, the fact that petitioner submitted a copy of its VAT return on September 24, 2013 is of no moment. Perusal of its letter of application for tax credit or refund dated June 28, 2013 discloses that petitioner already submitted the same VAT return on the same date of the filing of its application, to wit:[50]

"**General Requirements**

xxx xxx xxx

- VAT return(s) filed for the quarter(s) showing that the tax credited on purchases of zero-rated sales were not applied against output tax for a certain quarter(s) and VAT return for the succeeding quarter" Annex D

Considering such submission is a mere reiteration, the 120-day period shall be reckoned from June 28, 2013, when petitioner filed its application together with the supporting documents.

Counting 120 days from June 28, 2013, respondent had until October 26, 2013 within which to act on petitioner's administrative claim.

It must be noted, however, that there was a denial of petitioner's claim by respondent on September 10, 2013, which was received by petitioner on September 11, 2013, before the lapse of the 120-day period, the 30-day period, therefore, shall be reckoned from September 11, 2013. Accordingly, petitioner had until October 11, 2013 to appeal respondent's denial of its administrative claim before the CTA. Therefore, petitioner's judicial claim for refund filed before this Court on February 19, 2014 was filed out of time.

To reiterate, 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

[49] Par. 58, Memorandum, Docket, Vol. IV, p. 1947.
[50] Exhibit "P-30".

mandatory and jurisdictional, and non-compliance therewith precludes the CTA from acquiring jurisdiction over the case.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of jurisdiction.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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