REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ, *Petitioner,*	**CTA Case No. 8899** Members: **CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** and **MANAHAN,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 09 2017 10:15 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a Petition for Review[1] filed by Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ on September 25, 2014 to seek the refund or issuance of tax credit certificate (TCC) in the amount of ₱39,931,971.21, allegedly representing its excess and unutilized input value-added tax (VAT) paid on its domestic purchases of taxable goods and services attributable to its zero-rated sales for calendar year (CY) 2010.

[1] Petition for Review, Docket, Vol. I, pp. 14-23.

THE FACTS

Petitioner is the regional operating headquarters (ROHQ) of Zuellig Pharma Asia Pacific Ltd., a foreign corporation duly organized and existing under the laws of Hong Kong.[2] Petitioner's office is located at the 27th Floor, Philippine AXA Life Centre, Sen. Gil Puyat Avenue cor. Tindalo Street, Makati City.[3]

Petitioner was licensed by the Securities and Exchange Commission (SEC) to do business as an ROHQ in the Philippines on December 4, 2001, pursuant to the Omnibus Investments Code of 1987, as amended by Republic Act No. 8756, and its implementing rules and regulations, to engage in the business development, general administration and planning, sourcing of IT components and services, marketing control, sales promotion, training, technical support and maintenance.[4]

Petitioner is registered with the BIR as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code of 1997, as amended (1997 NIRC) with Tax Identification No. 215-025-090-000.[5]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) empowered to perform the duties of said office including, among others, the power to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes, as provided by law.[6] She may be served with summons, pleadings, and other processes of this Court at her office located at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[7]

Petitioner filed its original Quarterly VAT Returns (BIR Form No. 2550-Q) for the 1st to 4th quarters of CY 2010 with the BIR on the following dates through the BIR's Electronic Filing and Payment System (EFPS):

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[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, p. 333.
[3] *Id.*
[4] Par. 3, Stipulation of Facts, JSFI, Docket, Vol. I, p. 334.
[5] Par. 4, Stipulation of Facts, JSFI, Docket, Vol. I, p. 334.
[6] Par. 2, Stipulation of Facts, JSFI, Docket, Vol. I, p. 333.
[7] Par. 2, Stipulation of Facts, JSFI, Docket, Vol. I, pp. 333-334.

Taxable Quarter	Date of Filing of Return
1st	April 22, 2010[8]
2nd	July 21, 2010[9]
3rd	October 20, 2010[10]
4th	January 20, 2011[11]

On the following dates, petitioner electronically filed with the BIR its amended Quarterly VAT Returns (BIR Form No. 2550-Q) for the 1st to 4th quarters of CY 2010:

Taxable Quarter	Date of Filing of Return
1st	February 15, 2011[12]
2nd	February 15, 2011[13]
3rd	February 15, 2011[14]
4th	February 16, 2011[15]

On February 17, 2011, petitioner filed with the BIR, Revenue District Office (RDO) No. 49 an administrative claim for refund, with attached Application for Tax Credits/Refunds (BIR Form No. 1914), requesting the refund of its excess and unutilized input VAT for the four quarters of CY 2010 in the total amount of ₱39,931,971.21.[16]

On March 3, 2011, petitioner received from the BIR Letter of Authority (LOA) No. eLA201000037096 authorizing Revenue Officer Joaquin Tinio and Group Supervisor Socrates Regala to examine petitioner's books of accounts and other accounting records for VAT for the period covering January 1, 2010 to December 31, 2010, in connection with petitioner's administrative claim for refund of excess and unutilized input VAT for the four quarters of CY 2010.[17]

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[8] Exhibit "P-4", Docket, Vol. I, pp. 449-456.
[9] Exhibit "P-5", Docket, Vol. I, pp. 457-462.
[10] Exhibit "P-6", Docket, Vol. I, pp. 463-471.
[11] Exhibit "P-7", Docket, Vol. I, pp. 472-478.
[12] Exhibit "P-8", Docket, Vol. I, pp. 479-482.
[13] Exhibit "P-9", Docket, Vol. I, pp. 483-485.
[14] Exhibit "P-10", Docket, Vol. I, pp. 486-488.
[15] Exhibit "P-12", Docket, Vol. I, pp. 492-494.
[16] Exhibit "P-17", Docket, Vol. I, pp. 549-550; Par. 6, Stipulation of Facts, JSFI, Docket, Vol. I, p. 334.
[17] Par. 7, Stipulation of Facts, JSFI, Docket, Vol. I, p. 334.

On June 29, 2011, respondent requested the presentation of the Company's records and the submission of supporting documents in relation to its administrative claim for refund of excess and unutilized input VAT.[18]

Accordingly, on July 5, 2011, petitioner submitted the requested documents to the BIR.[19] Petitioner likewise submitted additional documents in support of its administrative claim for refund on the following dates:

- May 8, 2012;[20]
- July 25, 2012;[21]
- December 6, 2012;[22]
- September 11, 2013;[23]
- December 5, 2013;[24] and
- April 29, 2014.[25]

In its letter dated April 29, 2014, petitioner manifested that it has already submitted the complete supporting documents for its administrative claim for refund of excess and unutilized input VAT for the four quarters of CY 2010.[26]

Due to respondent's inaction on petitioner's administrative claim for refund, petitioner filed the present Petition for Review before this Court on September 25, 2014.[27]

Respondent filed her Answer[28] on November 13, 2014 wherein she interposed the following Special and Affirmative Defenses:

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[18] Exhibit "P-18", Docket, Vol. I, pp. 568-570; Par. 8, Stipulation of Facts, JSFI, Docket, Vol. I, p. 334.
[19] Exhibit "P-19", Docket, Vol. I, p. 571.
[20] Exhibit "P-20", Docket, Vol. I, pp. 572-592.
[21] Exhibit "P-21", Docket, Vol. I, p. 593.
[22] Exhibit "P-22", Docket, Vol. I, pp. 594-597.
[23] Exhibit "P-23", Docket, Vol. I, p. 598-601.
[24] Exhibit "P-24", Docket, Vol. I, pp. 602-607.
[25] Exhibit "P-27", Docket, Vol. I, pp. 611-612.
[26] *Id.*
[27] *Supra*, Note 1.
[28] Docket, Vol. I, pp. 76-83.

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.

WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION

5. Section 112 (C) of the National Internal Revenue Code explicitly provides:

> Section. 112. **Refunds or Tax Credits of Input Tax**.
> xxx
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.** (Emphasis ours)

6. Petitioner submits that the subject of its claim for refund are alleged accumulated unutilized input Value Added Tax (VAT) from purchases of goods and services for the first to fourth quarters of taxable year 2010 in the total amount of P39,931,971.21.

7. Corollary thereto, petitioner filed its administrative claim for refund on February 17, 2011 with respondent's Revenue District Office (RDO) No. 49. Respondent therefore, had a period of 120 days, or until June 11, 2011, to act on the claim.

8. Respondent failed to act on the claim within the 120[-]day period, hence, petitioner should have filed its judicial claim before the Honorable Court within thirty (30) days from June 11, 2011 or until July 11, 2011.

9. Petitioner, however, filed its judicial claim through the instant petition only on September 25, 2014, 1,140 days after the lapse of the 30-day period on July 11, 2014. Thus, respondent strongly submits that the judicial claim was filed belatedly.

10. In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[,] the Honorable Supreme Court made it explicit that the thirty (30) day period to appeal is both mandatory and jurisdictional. Therefore, the Honorable Court can not (sic) jurisdiction over the instant petition for it was filed beyond the period allowed by law.

ASSUMING WITHOUT CONCEEDING (sic) THAT THE HONORABLE COURT HAS JURISDICTION, TAX REFUNDS ARE SUBJECT TO ADMINISTRATIVE ROUTINARY INVESTIGATION

11. The petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim. The Honorable Supreme Court in the case of *J.R.A. Philippines vs. Commissioner of Internal Revenue* was unequivocal in

ruling that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.

12. Thus, petitioner must prove that it is a VAT registered taxpayer and that it is paid the alleged VAT input taxes for the period in question.

13. Petitioner must prove that the same alleged input VAT in the amount of Thirty Nine Million Nine Hundred Thirty One Thousand Nine Hundred Seventy One Pesos and 21/100 (P39,931,971.21) was not utilized against any output VAT liability and was not carried over to the succeeding taxable quarter or quarters.

14. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112 (A) of the Tax Code of 1997.

15. Petitioner must prove that it complied with the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the National Internal Revenue Code ("NIRC").

16. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales.

17. Petitioner must prove that its administrative application and petition for review were filed within the period prescribed by law.

18. Petitioner must prove that its domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A)(2)

and 113 of the NIRC and pursuant to the provisions of Revenue Regulation[s] No. 14-2005.

ASSUMING WITHOUT CONCEEDING (sic) THAT THE HONORABLE COURT HAS JURISDICTION, TAX REFUNDS ARE STRICTLY CONSTRUED AGAINST THE TAXPAYER

19. The Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Pineda* made it explicit that: **'Upon taxation depends the Government's ability to serve the people for whose benefit taxes are collected'** (Emphasis ours).

20. Taxes are essential to the very existence of the government, hence, the dictum that 'taxes are the lifeblood of the government'. For this reason, the right of taxation cannot easily be surrendered.

21. Tax refunds partake the nature of tax exemptions which are derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State such that he who claims a refund or exemption must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

22. Taxes collected are presumed to be in accordance with laws and regulations. Therefore, any doubt should be resolved in favor of the power of taxation.

23. Entrenched in our jurisprudence is the principle that tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government. As tax refunds involve a return of revenue from the government, the claimant must show indubitably the specific provision of law from which its right arises; it cannot be allowed to exist upon a mere vague implication

or inference nor can it be extended beyond the ordinary and reasonable intendment of the language *actually used* by the legislature in granting the refund. To repeat, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied in this jurisdiction.

24. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

25. The Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Solidbank Corporation* made it unequivocal that taxes are essential to government's very existence; hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions and these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption.

26. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."[29]

The Pre-Trial Conference[30] was held on March 5, 2015. Respondent's Pre-Trial Brief[31] was filed on January 14, 2015 while petitioner's Pre-Trial Brief[32] was filed on February 6, 2015.

[29] Citations omitted.
[30] Minutes of the Hearing dated March 5, 2015, Docket, Vol. I, p. 307.
[31] Docket, Vol. I, pp. 88-92.
[32] Docket, Vol. I, pp. 104-126.

The parties filed their Joint Stipulation of Facts and Issues[33] on March 25, 2015, which was approved by the Court upon issuance of the Pre-Trial Order[34] on March 31, 2015.

On April 24, 2015, petitioner filed its Motion to Amend Pre-Trial Order[35] praying for this Court to issue an Amended Pre-Trial Order to include certain documents enumerated in its Pre-Trial Brief but were inadvertently excluded from the enumeration of documentary exhibits in the Pre-Trial Order dated March 31, 2015. On July 6, 2015, this Court granted petitioner's Motion and issued an Amended Pre-Trial Order.[36]

During trial, petitioner presented the following witnesses: (1) Ms. Katherine O. Constantino[37] – the Court-commissioned Independent Certified Public Accountant (ICPA); and (2) Ms. Carolina Zenaida A. Magat[38] – petitioner's Senior Accounting Manager.

On July 30, 2015, petitioner formally offered its documentary evidence.[39] Respondent, in its Comment filed on August 10, 2015,[40] stated that she has no objection to the admission of petitioner's documentary exhibits without, however, admitting the truth of the contents, relevancy, materiality, probative value of said evidence and the validity of the purposes for which said exhibits were offered.

On September 15, 2015, the Court issued a Resolution[41] admitting, as petitioner's evidence, Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-28-a", "P-29", "P-30 to P-53", "P-54 to P-78", "P-79 to P-101", "P-102 to P-117", "P-118 to P-266", "P-267 to P-423", "P-424 to P-603", "P-604 to P-785", "P-786 to P-788", "P-789", "P-790 to P-810", "P-811 to P-825", "P-826 to P-831", "P-832 to P-841", inclusive of sub-markings, "P-842", "P-843", "P-844", "P-845", "P-846", "P-847", inclusive of sub-markings, "P-848", "P-849", "P-850", "P-851", "P-852", "P-853", "P-854 to P-857",

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[33] Docket, Vol. I, pp. 333-341.
[34] Docket, Vol. I, pp. 342-349.
[35] Docket, Vol. I, pp. 353-358.
[36] Docket, Vol. I, pp. 395-402.
[37] Minutes of the Hearing dated June 8, 2015, Docket, Vol. I, p. 378.
[38] Minutes of the Hearing dated April 20, 2015, Docket, Vol. I, p. 350; Minutes of the Hearing dated July 8, 2015, Docket, Vol. I, p. 403.
[39] Docket, Vol. I, pp. 408-427.
[40] Docket, Vol. II, pp. 613-615.
[41] Docket, Vol. II, pp. 618-619.

"P-858 to P-861", "P-862 to P-865", "P-866 to P-869", "P-870", "P-871", "P-872", "P-873", "P-874", "P-875 to P-877", "P-878", and "P-878-1". The Court likewise admitted as evidence the "Sworn Statement of Ms. Katherine O. Constantino to Questions Propounded by Atty. Mardomeo N. Raymundo, Jr. dated June 3, 2015" and "Signature of Ms. Constantino on page 11 of her Sworn Statement dated June 3, 2015".[42]

On the other hand, respondent did not present any witness.[43]

As directed by the Court, petitioner filed its Memorandum[44] on December 2, 2015 while respondent filed his Memorandum[45] on November 23, 2015. Consequently, the case was declared submitted for decision on March 16, 2016.[46]

THE ISSUES

The parties submitted the issue[47] stated below for the Court's resolution:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF OR ISSUANCE OF TCC FOR EXCESS AND UNUTILIZED INPUT VAT FOR THE FOUR QUARTERS OF CY 2010 IN THE TOTAL AMOUNT OF PHP39,931,971.21."

THE COURT'S RULING

Petitioner submits that it is entitled to the refund of excess and unutilized input VAT for CY 2010. Respondent, on the other hand, argues that this Court has no jurisdiction to act on the present Petition for Review.

Before delving into the merits, the Court shall first determine whether it has jurisdiction to entertain present Petition for Review.

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[42] *Id.*
[43] *Id.*; Minutes of the Hearing dated July 8, 2015, Docket, Vol. I, p. 403.
[44] Docket, Vol. II, pp. 643-674.
[45] Docket, Vol. II, pp. 629-641.
[46] Docket, Vol. II, p. 718.
[47] JSFI, Docket, Vol. I, p. 335.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[48] 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.[49] 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.[50] 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.[51]

The Court of Tax Appeals (CTA) is a court of special jurisdiction and can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, provides:

> "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;
>
> (2) Inaction by 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 Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific

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[48] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, 749 SCRA 570.
[49] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014, 718 SCRA 533 citing *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3, 4 (1968).
[50] *Id.*, citing *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156, 169.
[51] *Id.*

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 CIR in cases involving refunds of internal revenue taxes. In cases where the 1997 NIRC provides a specific period for action, the CIR's inaction shall be deemed a denial.[52]

In relation to the foregoing, Section 112(A) and (C) of the 1997 NIRC 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 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.

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[52] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 336.

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.) v. Commissioner of Internal Revenue*,[53] the Supreme Court summarized the rules on prescriptive periods for filing claims for refund or tax credit of input VAT vis-à-vis Section 112 of the 1997 NIRC, 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:

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

[53] G.R. No. 173241, March 25, 2015, 754 SCRA 291, 292.

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 1997 NIRC, 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 1st to 4th quarters of CY 2010, which respectively closed on March 31, 2010, on June 30, 2010, on September 30, 2010, and on December 31, 2010. Counting two years from the said dates, petitioner had until March 31, 2012, June 30, 2012, September 30, 2012, and December 31, 2012, within which to file its administrative claim for refund or issuance of tax credit certificate. Thus, petitioner's administrative claim filed on February 17, 2011 was seasonably filed, as shown below:

CY 2010	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**	**Date of Filing of Administrative Claim**
1st Quarter	March 31, 2010	March 31, 2012	February 17, 2011[54]
2nd Quarter	June 30, 2010	June 30, 2012	
3rd Quarter	September 30, 2010	September 30, 2012	
4th Quarter	December 31, 2010	December 31, 2012	

Section 112(C) of the 1997 NIRC prescribes the period for filing a judicial claim for the refund or tax credit of input VAT. Such 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.[55]

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.[56] 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 Total Gas, Inc. v. Commissioner of Internal Revenue ("Pilipinas Total Gas")* [57] is instructive. The relevant portion of the said decision 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

[54] Exhibit "P-17", Docket, Vol. I, p. 549; par. 6, Stipulation of Facts, JSFI, Docket, Vol. I, p. 334.
[55] *ROHM Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015, 745 SCRA 669.
[56] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.
[57] G.R. No. 207112, December 8, 2015.

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:

> (d) Period within which refund or tax credit of input taxes shall be made. — In proper cases, [t]he 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:
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> 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. x x x

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 comp[l]ete 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, 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?*
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> 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.**
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> 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 **within thirty (30) days from request of the investigating/processing office, which shall be construed as within the one hundred twenty (120)-day period.**
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> [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:

> (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.

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

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.*[58] 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." *(Emphasis supplied)*

In the present case, it was established that on **June 29, 2011**, respondent requested the presentation of petitioner's company records and the submission of supporting documents in relation to petitioner's administrative claim for refund of excess and unutilized input VAT for CY 2010.[59]

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[58] *Id.*
[59] Exhibit "P-18", Docket, Vol. I, p. 252; par. 8, Stipulation of Facts, JSFI, Docket, Vol. I, p. 334.

On July 5, 2011, or six (6) days from date of respondent's request, petitioner submitted additional supporting documents.

However, it was likewise established that after the lapse of three hundred eight (308) days from the foregoing submission, petitioner made subsequent submissions of additional documents on the following dates:

- May 8, 2012;
- July 25, 2012;
- December 6, 2012;
- September 11, 2013;
- December 5, 2013; and
- April 29, 2014.

Taking into account the rules laid down by the Supreme Court in *Pilipinas Total Gas*, this Court holds that the 120-day period within which the CIR should act on the administrative claim shall be reckoned from **July 5, 2011,** when petitioner submitted additional documents in response to respondent's request dated June 29, 2011. Petitioner's other submissions starting on May 8, 2012 onwards cannot be considered for purposes of counting the 120-day period because these were made way beyond the 30-day period from date of respondent's request to submit additional supporting documents. Furthermore, these later submissions were likewise made beyond the two-year period prescribed under Section 112(A) of the 1997 NIRC.

Thus, counting one hundred twenty (120) days from July 5, 2011, respondent had until **November 2, 2011** within which to act on petitioner's administrative claim. Accordingly, petitioner had thirty (30) days from November 2, 2011 or until **December 2, 2011** to file its appeal of respondent's inaction on its administrative claim before the CTA. Consequently, petitioner's judicial claim for refund or tax credit filed before this Court on **September 25, 2014** was filed out of time.

As earlier stated, 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 noncompliance therewith precludes the CTA from acquiring jurisdiction over the case.

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(With Dissenting Opinion)
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Second Division

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ	**CTA Case No. 8899**
Petitioner,	Members :
	CASTAÑEDA, JR., *Chairperson*
	CASANOVA, and
-versus-	**MANAHAN,** *JJ.*
	Promulgated:
	MAR 09 2017
	10:15 a.m.
COMMISSIONER OF INTERNAL REVENUE,	
Respondent.	

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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 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.

Based on the foregoing, the law mandates that claims for refund of this nature should be filed within two (2) years after the close of the taxable quarter when the sales were made and that the 120-day period shall commence to run from the time of submission of the complete documents in support of the application for refund.

The ponencia cites in particular the ruling of the Supreme Court in the case of **Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015** ("Total ruling") that the submission of the complete supporting documents should be done within the two-year period provided under the aforequoted Section 112 (A) of the NIRC. The ruling in contention reads as follows:

> "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 expiration of the 120 day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected." (underscoring supplied)

Following the Total ruling, there are two (2) critical periods as far as the processing of claim for refund of input taxes attributable to zero-rated sales is concerned, namely: the two-year period to file the claim and submit all supporting documents with the Bureau of Internal Revenue (BIR) and the 30-day period from denial of the claim or from expiration of the 120 day period to appeal to the Court of Tax Appeals (CTA) the denial or inaction of the Commissioner of Internal Revenue on the claim. It is my position that the 30 day period from the expiration of the 120 day is outside the ambit of the 2-year period to file and constitutes a different

period. As the ruling states, the 30 day period from the expiration of the 120 day period must also be respected.

The overriding question in this case is who has the prerogative to determine the sufficiency or completeness of the documents to support the claim for refund as this will trigger the running of the 120 day period that can spell the absence or presence of jurisdiction of the CTA on the petition for review.

The Total ruling states that **"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"** but then in another statement, it goes on to say that **"whether these documents are actually complete as required by law – is for the CIR and the courts to determine**." And the penultimate statement in the ruling is that **"whatever documents a taxpayer intends to file to support his claim must be completed within the two year period."** This last statement became the basis of the majority opinion to deny the petition for lack of jurisdiction.

To resolve, a distinction of the various stages of submission of supporting documents for the refund claim in the administrative or BIR level must be made. It is clear that the taxpayer, at the time of filing its application for refund, is guided by the law and its implementing revenue issuances as to the documents that must be submitted to the BIR in support of its claim for refund. At this stage, taxpayer has no idea on how the assigned revenue examiner will appreciate the sufficiency of the documents submitted. This is the first stage. Upon assignment of the refund claim to a revenue examiner, the latter will now study the application and thereafter communicate his or her findings to the taxpayer. The assigned examiner may or may not ask for additional documents or may not even communicate with the taxpayer at all. This is the second stage.

Based on the case records, the examiner, in the process of studying the claim, made a written request for additional documents on June 29, 2011 to which the petitioner complied on July 1, 2011 (Exhibit P-49). Subsequently, in the process of regular follow-ups by the petitioner of its pending claim, the revenue examiner assigned to handle the case continued to ask for more documents, as evidenced by the sworn statement of the petitioner's senior accounting manager. This document was identified as Exhibit P-28 by the petitioner and was never controverted by the

respondent. Letters of the petitioner to the respondent dated May 8, 2012, July 25, 2012, December 6, 2012 and September 11, 2013 transmitting these additional documents being requested by the respondent were attached as annexes to the sworn statement which were never objected to by the respondent in the course of the hearing of the case.

Revenue Memorandum Circular (RMC) No. 49-2003 provides that if in the course of the investigation and processing of the claim, additional documents are required for the proper documentation of the legitimate amount of claim, the taxpayer-claimant shall submit such documents within thirty (30) days from request of the investigating/processing office. There is nothing in the foregoing RMC which requires the request for additional documents to be in writing which is what exactly happened in this case. The petitioner which exercised due diligence in regularly following up its application for refund was met with several requests for additional documents which it complied with faithfully.

Considering the length of time that the respondent had been handling the refund, petitioner finally on April 29, 2014, wrote a letter to the BIR (which was received by the BIR on same date) that it had already submitted the complete documents. Following the Total ruling that it is the taxpayer who ultimately determines when complete documents have been submitted, the petitioner in this case counted the 120 days from the date of such submission and within the 30 day period *from* its expiration, filed the petition for review with the CTA on September 25, 2014.

My interpretation of the Total ruling is that the period of two years to submit the complete documents supporting the claim for refund is true only in the first stage, that is, upon the filing of the application for the issuance of a tax credit certificate (TCC) or refund of unutilized input taxes. This is consistent with the two year prescriptive period to file the claim for refund because certainly the claimant has to file documents in support of said claim as directed under section 112(C) of the NIRC and in accordance with Section 112 (A). At this stage, it is really the taxpayer who will determine the completeness of its documents. After the application is filed, then this prerogative is transferred to the BIR which will now determine if the documents submitted in support of the application for refund or TCC are sufficient to warrant a favorable grant. Beggars cannot be choosers. Hence, it is the BIR that will decide whether the application is complete or not.

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In the instant case, the respondent continued to request for documents even beyond the two- year period so the exception to the two-year period should apply, i.e., the 30 day period from expiration of the 120 day. The Total ruling seems to recognize and confirm my conclusion when it ruled thus:

> "xxx *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 of what additional documents must be presented in support of a claim for tax credit or refund-* it is the taxpayer who has the right and burden of providing any and all documents that would support his claim for tax credit or refund" (italics ours).

In view of the foregoing, I dissent with the majority opinion and vote to GIVE DUE COURSE to the petition for review.

CATHERINE T. MANAHAN
Associate Justice