Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CBK POWER COMPANY LIMITED,
Respondent.

CTA EB CASE NO. 1399
(CTA Case No. 8624)

Present:
DEL ROSARIO, P.J.
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA and
RINGPIS-LIBAN, JJ.

Promulgated:
SEP 26 2016 9:55 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2] dated September 14, 2015, rendered by the Second Division

[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc Docket, pp. 20-54.

of this Court ("Court's Division") in CTA Case No. 8624, and its Resolution[3] dated November 23, 2015. The Court's Division finds that respondent CBK Power Company Limited (CBK) is entitled to a refund of the unutilized excess input Value Added Tax (VAT) incurred in relation to zero-rated sales of electricity to the National Power Corporation (NPC) for the year 2011.

Petitioner Commissioner of Internal Revenue (CIR) claims that the Court of Tax Appeals (CTA) lacks jurisdiction and assails both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated September 14, 2015:

> "***WHEREFORE***, *the instant Petition for Review is hereby* ***PARTIALLY GRANTED.*** *Accordingly, respondent is hereby* ***ORDERED to ISSUE a TAX REFUND,*** *in favour of petitioner, in the reduced amount of P66,701,986.82 representing unutilized excess input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the period January 1, 2011 to December 31, 2011.*
>
> ***SO ORDERED.***"

Resolution dated November 23, 2015:

> "***WHEREFORE***, *premises considered, respondent's Motion for Reconsideration is hereby* ***DENIED*** *for lack of merit.*
>
> ***SO ORDERED.***"

The pertinent facts as narrated by this Court's Division in its Decision are as follows:

[3] En banc Docket, pp. 55-58.

"Petitioner[4] is a partnership duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at the NPC Compound, Kalayaan, Laguna.

On the other hand, respondent[5] is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including inter alia, the power to decide, approve and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law, with office address at the BIR National Office Building, Diliman, Quezon City, where she may be served with summons and other court processes.

On November 28, 2012, petitioner filed with the BIR Large Taxpayers Service, Revenue District Office No. 121, BIR National Office Building, its administrative claim for the issuance of a cash refund/tax refund in the amount of P69,525,624.24, representing unutilized input taxes on its local purchases of goods other than capital goods, importation of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, and amortized input taxes on purchases of capital goods exceeding P1 million, for the period January 1, 2011 to December 31, 2011 , all attributable to zero-rated sale for the period January 1, 2011 to December 31, 2011.

Due to respondent's inaction, petitioner filed its Petition for Review with this Court on April 1, 2013.

On June 27, 2013, respondent filed her Answer, interposing the following Special and Affirmative Defenses

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'SEC. 112. Refunds or Tax Credits of Input Tax.

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[4] CBK Power Company Limited was the petitioner while the Commissioner of Internal Revenue(CIR) was respondent in the Court's Division. Before the Court en banc, CBK Power Company Limited is the respondent while the Commissioner of Internal Revenue (CIR) is the petitioner.

[5] CBK Power Company Limited was the petitioner while the Commissioner of Internal Revenue(CIR) was respondent in the Court's Division. Before the Court en banc, CBK Power Company Limited is the respondent while the Commissioner of Internal Revenue (CIR) is the petitioner.

> ***(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 complete 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)*
>
> *Pursuant to the aforequoted provision of law, the Commissioner of Internal Revenue ('CIR', for brevity) has 120 days from the* ***submission of the complete supporting documents*** *to decide the claim for refund.* ***It logically follows that a taxpayer must first submit the complete supporting documents before the 120-day period should commence****. The CIR cannot decide the claim for refund without the complete supporting documents.*
>
> *The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:*
>
> *VALUE-ADDED TAX (For audit involving Claim for Refund/TCC)*
>
> *A.) Requirements from Taxpayer*
> *I. Requirements mentioned in Annex B*
> *II. Additional General Requirements*
> *1) 3 copies of 'Application for VAT Credit/Refund'*
> *2) Summary List of Local Purchases specifying the following:*
>
> *xxx*
>
> *3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipt must be arranged according to the summary list)*

4) Summary of importations made and during the period with the following details: XXX XXX XXX
5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)
6) VAT Returns filed for the quarters showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter
7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales
8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and the date of transaction, where the applicant's zero-rated transactions are regulated by certain government agency.
9) Articles of Incorporation-for first time filers
10) Sales Contract Agreement
11) 801 Certificate of Registration
12) BIR Certificate of Registration
13) Certification from OOF, BOG, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.
14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.
15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect importer.
16) Copy of the ITR and Certified Financial Statements, if applicable.
17) Beginning and ending inventory of raw materials, work-in process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)

a. Authenticated copies of the contract/s showing the persons for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.
b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and the amount remitted in pesos.
c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:
VALUE-ADDED TAX

A) Requirements from Taxpayers
1) Proof of claimed tax credits
2) Proof of Tax Compliance Certificates applied
3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TOM at the back, if applicable
4) Proof of payment of deficiency tax, if any a) current year/period b) previous year/period
5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable
7) Proof of exemption under special law, if applicable
8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable ℓ

11) Sample invoices for 'Export/Exempt Sales,' if applicable

12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

Indubitably, the law requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

15. Upon examination of the BIR records shows that petitioner failed to prove that it has submitted the complete documents to substantiate its administrative claim for refund and to reckon the commencement of the 120-day period for the CIR. This is a requirement established by law and jurisprudence. Ergo, respondent humbly submits that failure on the part of petitioner to submit the required complete supporting documents would render the instant petition with this Honorable Court to have been prematurely filed.

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On July 19, 2013, the Court issued a Notice of Pre-Trial Conference setting the hearing for the same on September 12, 2013 at 1:30 p.m. and requiring the parties to file their respective pre-trial brief. In compliance therewith, petitioner filed its Pre-Trial Brief on September 5, 2013, while the Pre-Trial Brief for respondent was filed on September 9, 2013.

On October 1, 2013, the parties filed their Joint Stipulation of Facts and Issues, which resulted to the issuance of a Pre-Trial Order dated October 11, 2013.

Thereafter, the trial of the case proceeded giving both parties the opportunity to present their documentary and testimonial evidence. Petitioner filed its Formal Offer of Evidence-First Part on February 21, 2014 and its Formal Offer of Evidence-Second Part on March 28, 2014, which were all admitted in a Resolution promulgated on May 20, 2014. For her part, respondent manifested, in her

Manifestation with Motion dated July 2, 2014 that she will no longer present evidence.

On September 16, 2014, the case was submitted for decision, taking into consideration the Memorandum for the Petitioner and respondent's Memorandum filed on July 15, 2014 and September 9, 2014, respectively."

On September 14, 2015, this Court's Division ruled that CBK is entitled to a refund of the unutilized excess input VAT incurred in relation to zero-rated sales of electricity to the NPC for the year 2011 in the reduced amount of P66,701,986.82. CIR filed a Motion for Reconsideration but it was denied for lack of merit, hence, the present petition.

Petitioner CIR maintains that the Court of Tax Appeals (CTA) is without jurisdiction over the case for failure to exhaust all the remedies available in the administrative level prior to the filing of the petition before the CTA. Petitioner CIR claims that under Section 112 (C)[6], the CIR has 120 days from the submission of complete documents within which to act on the claim for refund. Petitioner CIR insists that respondent CBK failed to submit the complete documents, thus, the 120 days will not commence to run, rendering the CTA without jurisdiction.

We resolve. The petition has no merit.

The issue on whether the supporting documents have been completed or when the 120 days period has commenced to run under Section 112 (C)[7] is no longer novel since it has been settled by the Supreme Court en banc in

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[6] (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 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.

[7] Ibid.

the case of Pilipinas Total Gas, Inc. vs. CIR[8]. The Supreme Court en banc ruled 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. The Supreme Court envisions the following scenarios:

1. The taxpayer 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.

2. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003[9].

3. The taxpayer 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.

Moreover, the Supreme Court ruled that 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

[8] Pilipinas Total Gas, Inc. v. CIR,G.R. No. 207112, December 8, 2015 SC En Banc.
[9] Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

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. To wit:

> *"Indeed, the 120-day period granted to the CIR to decide the administrative claim under Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.*
>
> *A hypothetical situation illustrates the hazards of granting the CIR the authority to decide when complete documents have been submitted - A taxpayer files its administrative claim for VAT refund/credit with supporting documents. After 121 days, the CIR informs the taxpayer that it must submit additional documents. Considering that the CIR had determined that complete documents have not yet been submitted, the 120-day period to decide the administrative claim has not yet begun to run. In the meantime, more than 120 days have already passed since the application with the supporting documents was filed to the detriment of the taxpayer, who has no opportunity to file a judicial claim until the lapse of the 120+30 day period in Section 112(C). With no limitation to the period for the CIR to determine when complete documents have been submitted, the taxpayer may be left in a limbo and at the mercy of the CIR, with no adequate remedy available to hasten the processing of its administrative claim.*
>
> *Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: Under present law, when should the submission of documents be deemed "completed" for purposes of determining the running of the 120-day period?*

Ideally, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund of excess unutilized 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 of 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 maybe. [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, 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:

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 RMO 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 complete 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?

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

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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."[10]

In this case, respondent CBK filed on November 28, 2012 its administrative claim for excess unutilized VAT. Respondent CBK did not manifest that it no longer wishes to submit any other additional documents to complete the administrative claim. In fact respondent CBK did not submit any additional document in support of its administrative claim. Neither did petitioner CIR require respondent CBK additional documents necessary to decide the claim, nor deny the claim for failure to submit the additional documents requested. Thus, the 120 days period shall commence to run on November 28, 2012.

Section 112(C) of the NIRC[11] provides that 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 120 days period, the taxpayer may,

[10] Ibid.
[11] Supra. Note 6.

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 this case, from November 28, 2012, the CIR has 120 days or until March 28, 2013, within which to decide the administrative claim for tax credit or refund. Petitioner CIR failed to act within the 120 days period. Thus, respondent CBK may appeal the unacted administrative claim within 30 days from March 28, 2013 or until April 27, 2013. Hence, that the Petition for Review was filed with this Court's Division on April 1, 2013 is within the 30 days period.

Evidently, the alleged failure of respondent CBK to submit the complete documents at the administrative level did not render its petition for review with the Court's Division dismissible for lack of jurisdiction. First, the 120-day period had commenced to run on November 28, 2012 and the 120+30 day period was, in fact, complied with. As clarified by the Supreme Court in the Pilipinas Total Gas Case[12] it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period.

To reiterate petitioner CIR did not require additional documents necessary to decide the claim, nor deny the claim for failure to submit the additional documents or for insufficiency of evidence for that matter. It was precisely the inaction of the BIR which prompted respondent CBK to file the judicial claim. Thus, the BIR cannot now argue that the 120 days did not commence to run, rendering the Court of Tax Appeals without jurisdiction.

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by the evidence on record and is consistent with prevailing law and jurisprudence.

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[12] Supra. Note 7.

WHEREFORE, the Petition for Review filed by petitioner Commissioner of Internal Revenue is **DENIED,** for lack of merit. Accordingly, the Decision of the Second Division promulgated on September 14, 2015 and Resolution dated November 23, 2015, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S.
MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice