REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MITSUBA PHILS. TECHNICAL CENTER CORP., *Petitioner,*	CTA CASE No. 9297
-versus-	Members: DEL ROSARIO, P.J., *Chairperson* UY, and MINDARO-GRULLA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 19 2018 11:13 am

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review,[1] filed by petitioner Mitsuba Phils. Technical Center Corp. on March 18, 2016, pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125,[3] as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section

[1] *Dockets*, pp. 10-22.

[2] 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 Code or other laws administered by the Bureau of Internal Revenue;

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[3] Act Creating the Court of Tax Appeals.

[4] Sec. 3. Cases within the jurisdiction of the Court in Division.- The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

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4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

Petitioner is a corporation duly organized and existing under the laws of the Philippines and registered with the Securities and Exchange Commission, with Registration No. A200006072, and with office address at 3rd Floor, Dusit Hotel Nikko, EDSA corner Arnaiz Avenue, Ayala Center, Makati City. [6]

Petitioner is a duly registered valued added-tax (VAT) enterprise pursuant to Section 236[7] of the National Internal

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(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 Code or other laws administered by the Bureau of Internal Revenue.

[5] Sec. 4. Where to appeal; mode of appeal.-

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] Joint Stipulation of Facts, *Docket,* p. 151.

[7] SEC. 236. Registration Requirements. -

(A) Requirements. - Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Officer:

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(C) Registration of Each Type of Internal Revenue Tax.- Every person who is required to register with the Bureau of Internal Revenue under Subsection (A) hereof, shall register each type of internal revenue tax for which he is obligated, shall file a return and shall pay such taxes, and shall updates such registration of any changes in accordance with Subsection (E) hereof.

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(G) Persons Required to Register for Value-Added Tax.

(1) Any person who, in the course of trade or business, sells, barters or exchanges goods or properties, or engages in the sale or exchange of services, shall be liable to register for value-added tax if:

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Revenue Code (NIRC) of 1997, having been issued by the Bureau of Internal Revenue (BIR) Revenue Region No. 8, Revenue District Office No. 47, Certificate of Registration OCN 9RC0000204195 dated May 25, 2000 with VAT being among its registered tax types. [8]

Respondent Commissioner of Internal Revenue (CIR) is vested with the power to decide tax cases, including applications for refunds and/or tax credits. Respondent is being represented in this case by the legal officers of the Legal Division, Revenue Region 8, Makati City, with office address at 2/F Legal Division, BIR Bldg., No. 313 Sen. Gil J. Puyat Ave, Makati City.[9]

As claimed by petitioner, for taxable year 2013, it generated and recorded zero-rated sales in the total amount of ₱ 125,486,992.15.[10]

According to petitioner, it duly filed its quarterly VAT Returns for the taxable year 2013. For the said taxable year, petitioner had a total allowable input VAT on its domestic purchases of taxable goods and services and importation of capital goods in the amount of ₱3,305,442.00, while it accumulated excess input VAT in the amount of ₱3,305,442.00.[11] Thus, this excess input VAT is attributable

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(a) His gross sales or receipts for the past twelve (12) months, other than those that are exempt under Section 109(A) to (V), have exceeded One million five hundred thousand pesos (P1,500,000); or

(b) There are reasonable grounds to believe that his gross sales or receipts for the next twelve (12) months, other than those that are exempt under Section 109(A) to (V), will exceed One million five hundred thousand pesos (P1,500,000); or

(2) Every person who becomes liable to be registered under paragraph (1) of this Subsection shall register with the Revenue District Office which has jurisdiction over the head office or branch of that person, and shall pay the annual registration fee prescribed in Subsection (B) hereof. If he fails to register, he shall be liable to pay the tax under Title IV as if he were a VAT-registered person, but without the benefit of input tax credits for the period in which he was not properly registered.

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[8] *Supra,* note 6.
[9] *Ibid.*
[10] Petition for Review, pp. 11-12.
[11] *Ibid.*

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to its zero-rated sales and, to this date, has remained unutilized and/or unapplied against its output tax liability.[12]

On September 30, 2015, petitioner claims that it filed with the BIR its administrative claims for the refund of its accumulated excess input VAT in the amount of ₱3,305,442.00.[13]

As rendered by the petitioner, the BIR, through Jonas DP Amora, Revenue Regional Director of RR8, issued a Letter of Authority or LOA (eLA201200036023) dated October 09, 2015 which was received by petitioner on October 23, 2015 asking petitioner to submit documentary requirements enumerated in the said letter.[14]

In its Petition for Review, petitioner alleged that on October 27, 2015, it sent a letter addressed to the Revenue District Officer, Ms. Isabel A. Paulino, submitting additional documents required in LOA. Again on October 30, 2015, petitioner submitted additional documents to support its administrative claim. Subsequent follow ups made with the office of the Revenue Officer (RO), Jeffrey Magpantay towards the end of 2015 and in January 2016. According to the Petition for Review, the BIR yielded the same answer that it was still in the process of assessing and evaluating petitioner's claim.[15]

On March 18, 2016, petitioner filed its Petition for Review.

On May 13, 2016, an Answer[16] was filed by the CIR. The CIR's Pre-Trial Brief[17] was filed on July 27, 2016, while petitioner's Pre-Trial Brief[18] with attached Motion to

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[12] *Ibid.*
[13] *Ibid.*, p. 13.
[14] *Ibid.*
[15] *Ibid.*
[16] *Docket*, pp. 118-120.
[17] *Ibid.*, pp. 124-126.
[18] *Ibid.*, pp. 135-139.

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Commission an Independent Certified Public Accountant (ICPA),[19] was filed on September 14, 2016.

The parties filed their Joint Stipulation of Facts[20] on October 12, 2016, which was approved by the Court *via* Resolution[21] dated October 14, 2016.

During the January 26, 2017 hearing,[22] the Court granted the Motion to Commission an Independent Certified Public Accountant. The ICPA Report[23] was filed on February 27, 2017.

Petitioner presented witnesses Ms. Maribeth Sta. Ana on February 21, 2017[24] and ICPA Commissioner Mr. Neil U. Sison on March 23, 2017.[25]

On May 10, 2017, petitioner filed its Formal Offer of Evidence[26] offering Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6" to "P-9", "P-10" to "P-17", "P-18" to "P-24", "P-25", "P-27", "P-28", "P-30", "P-30-A", "P-31" to "P-31-AJ", "P-32" to "P-32-A", "P-33", "P-33-A" and "P-34" as its documentary evidence. The CIR filed his Comment[27] thereto on May 11, 2017, raising no objections as to the admission of the exhibits.

In a Resolution[28] dated November 2, 2017, the Court admitted Exhibits "P-30", "P-30-A", "P-31" to "P-31-AJ", "P-32" to "P-32-A", "P-33", "P-33-A" and "P-34" but denied the admission of Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6" to "P-9", "P-10" to "P-17", "P-18" to "P-24", "P-25", "P-27" and "P-28" for not being found on the records of the case.

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[19] *Ibid.,* pp. 140-142.
[20] *Ibid.,* pp. 151-154.
[21] *Ibid.,* p. 165.
[22] Order, *Docket*, pp. 178-179.
[23] *Ibid.,* pp. 204-216.
[24] Minutes of the hearing, *Docket*, pp. 197-199.
[25] Minutes of the hearing, *Docket*, pp. 236-239.
[26] *Docket*, pp. 254-258.
[27] *Ibid*, pp. 261-262.
[28] *Ibid*, pp. 275-276.

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Petitioner's admitted documentary exhibits are as follows:

Exhibit:	Description:
P-30 and P-30A	Judicial Affidavit of Maribeth Sta. Ana dated February 20, 2017 and her Signature thereo
P-31 to 31-AJ and P-32 to P-32-A	Independent Certified Public Accountant Report on CTA Case No. 9297 dated February 27, 2017 together with the documents attached thereto
P-33 and P-33-A	Judicial Affidavit of ICPA Neil U. Sison dated March 20, 2017 and his signature thereto
P-34	Compact Disc (CD) copy of all soft copies or scanned copies of all pre-marked receipts, invoices, vouchers, or other documents saved in PDF format

The CIR, through counsel, manifested that he is waiving the presentation of respondent's evidence.[29]

The Memorandum[30] for the petitioner was filed on June 20, 2017, while the Memorandum[31] for the CIR was filed on December 27, 2017. Hence, the case was declared submitted for decision on January 18, 2018.[32]

The parties submitted the following issue[33] for the Court's decision:

> Whether petitioner Mitsuba Phils. Technical Center Corp. is entitled to claim a refund or tax credit in the amount of ₱3,305,442.00 representing alleged unutilized input VAT representing its alleged zero-rated sales for taxable year 2013.

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[29] *Supra,* note 25.
[30] *Docket,* pp. 268-272.
[31] *Ibid.,* pp. 282-286.
[32] *Ibid.,* p. 291.
[33] *Supra,* note 6.

The Court shall determine first whether it has jurisdiction to entertain the instant case. Thus:

> "It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and 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 or nature 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"[34]

Considering that this Court is a court of special jurisdiction, it can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) and (2) of R.A. No. 1125, as amended by R.A. Nos. 9282[35] and 9503[36] provides:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. <u>Decisions of the Commissioner of Internal Revenue in cases involving</u> disputed assessments, <u>refunds of internal revenue taxes</u>, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other

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

[35] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, otherwise known as the Law Creating the Court of Tax Appeals, And For Other Purposes

[36] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for other Purposes.

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laws administered by the Bureau of Internal Revenue;

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

xxx xxx xxx" (Underlining supplied.)

Based on the above provision, this Court shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the CIR in cases involving refund of internal revenue taxes. In cases where the NIRC of 1997, as amended, provides for a specific period for action, the CIR's inaction shall be deemed a denial.[37]

In relation, Section 112(A) and (C) of the NIRC of 1997, as amended, specifies the provisions on filing of the administrative and judicial claims for refund or tax credit of excess and unutilized input tax attributable to zero-rated or effectively zero-rated sales, to wit:

"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

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[37] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. Nos. 187485, 196113,and 197156, February 12, 2013.

> 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
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> xxx xxx xxx
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (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." (Underlining supplied.)

In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing Inc.) vs. Commissioner of Internal Revenue,*[38] 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**
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> The lessons of this case may be summed up as follows:

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[38] 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.

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> 3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi and San Roque*)
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> 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*)
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> 5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque)"* (Emphases in the original.)

Thus, 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 first taxable quarter closed on March 31, 2013. Hence, petitioner had until March 31, 2015 to file its administrative claim for tax refund with respect to the first taxable quarter. The second taxable quarter closed on June 30, 2013. Hence, petitioner had until June 30, 2015 to file its administrative claim for tax refund with respect to the second taxable quarter. The third taxable quarter closed on September 30, 2013. Hence, petitioner had until September 30, 2015 to file its administrative claim for tax refund with respect to the third taxable quarter. Lastly, the fourth taxable quarter closed on December 30, 2013. Hence, petitioner had until December 31, 2015 to file its administrative claim for tax refund with respect to the fourth taxable quarter.

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However, petitioner filed its administrative claim for refund for taxable year 2013 with the BIR only on September 30, 2015,[39] thus, claims of excess input VAT by petitioner for the first and second quarters of taxable year 2013 have already prescribed.

Section 112(C) of the NIRC of 1997, as amended, on the other hand, provides 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 CIR 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 this Court.[40] It must be noted that the 120-day period begins to run from the date of submission of complete documents.

The BIR issued Revenue Memorandum Circular (RMC) No. 54-2014 on June 11, 2014, clarifying issues relative to the application for VAT refund or tax credit under Section 112 of the NIRC of 1997, as amended. The RMC requires that the application for VAT refund or tax credit must be accompanied by complete supporting documents. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents and shall further state that the said documents are the only documents which the taxpayer will present to support the claim. It also mandates that upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted or required from the taxpayer in the course of its evaluation.

When petitioner filed its administrative claim with the BIR on September 30, 2015, it also filed an affidavit under oath[41] attesting to the completeness of the documents submitted in compliance with the mandate of RMC No. 54-

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[39] Exhibit "P-31-C".
[40] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950,January 14, 2015.
[41] Item 2.12, Checklist of Mandatory Requirements for Claims of VAT Credit/Refund received by the BIR on September 30, 2015, Exhibit "P-31-C".

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2014. As a consequence, no other documents must be accepted or required from the taxpayer from September 30, 2015.

The Supreme Court in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[42] has already clarified this matter, to wit:

> "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. The30-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.
>
> It bears mentioning at this point that the foregoing summation of the <u>*rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014*</u>, such as the claim at bench. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:
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> > The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as

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

> enumerated in Annex 'A' hereof. In addition, the taxpayer shall attach a **statement under oath** attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim." (Emphases, underlining and italics in the original.)

Consequently, the 120-day period given to the BIR Commissioner to decide on petitioner's claim for refund/tax credit shall be reckoned from the day of the filing of its application and not on the last day of submission of supporting documents.[43] Any subsequent submission of supporting documents made by petitioner will not move the commencement of the 120-day period.[44]

Since petitioner filed the administrative claim for refund on September 30, 2015, the 120-day period ended on January 28, 2016. Petitioner, therefore, only had until February 27, 2016[45] to file its judicial claim before this Court considering that respondent has not acted on the application within the said period. As a result, petitioner's judicial claim for refund or tax credit filed before this Court on March 18, 2016 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 non-compliance therewith precludes this Court from acquiring jurisdiction over the case.

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

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[43] *B.W. Shipping Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 9115, May 7, 2018.
[44] *Ibid.*
[45] February 27, 2016, which is the 30th from the end of the 120th day, fell on a Saturday.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Chairperson, Special 1st Division