REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB,
Respondent.

C.T.A. EB No. 1171
(CTA Case No. 8398)

Present:

DEL ROSARIO, *PJ*;
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS and
RINGPIS-LIBAN, JJ.

Promulgated:

MAR 15 2016 10:09 a.m.

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RESOLUTION

FABON-VICTORINO, J.:

Before the Court is the Motion for Reconsideration[1] filed by petitioner Commissioner of Internal Revenue (CIR) on November 27, 2015, impugning the Decision promulgated on October 28, 2015, the dispositive portion of which reads:

> **WHEREFORE**, the Petition for Review filed by the Commissioner of Internal Revenue on May 16, 2014, is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated February 27, 2014 and the Resolution dated April 30, 2014 of the Court in Division in CTA Case No. 8398 are hereby **AFFIRMED *in toto***.

[1] Docket, pp. 71-77.

SO ORDERED.

Petitioner claims that the Court erred in ruling that:

1) Respondent was able to substantiate its claim for refund or tax credit certificate for its alleged unutilized input taxes for the 3rd and 4th quarters of taxable year 2009; and

2) Respondent complied with the provisions of Revenue Memorandum Circular (RMC) No. 29-2009 dated 16 April 2009.

By way of Comment with prayer to deny petitioner's motion[2], respondent Sony Ericsson Mobile Communications International AB points out that petitioner's Motion for Reconsideration is just a reiteration of petitioner's previous allegations which were already determined and passed upon by the Court in the assailed Decision. Besides, it was able to fully substantiate its claim for refund by sufficient evidence as found by the Court.

Verily, petitioner's Motion for Reconsideration fails to raise any new or substantial arguments to warrant the reversal or even modification of the assailed Decision of October 28, 2015. Petitioner merely reiterates the arguments in her previously filed pleadings with the Court in Division and subsequently with the Court *En Banc* on appeal. To discuss them anew is to waste the time and dwindling resources of the Court.

WHEREFORE, the Motion for Reconsideration filed by petitioner Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[2] Docket, pp. 82-89.

We Concur:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1171** (CTA CASE NO. 8398)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB, *Respondent.*	Promulgated: MAR 15 2016 10:09a.m.

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CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in denying the Motion for Reconsideration filed by the Commissioner of Internal Revenue (CIR) on November 27, 2015 impugning the Decision promulgated on October 28, 2015.

Nevertheless, I would like to expound on the issue raised by the CIR that the Court *En Banc* erred when it ruled that respondent complied with the provisions of Revenue Memorandum Circular (RMC) No. 29-2009 dated 16 April 2009.

Review of the records discloses that RMC No. 29-2009 was never mentioned in the CIR's previous pleadings before the Court *En Banc* and the Court in Division. It is only in the present Motion wherein the CIR ascribed to the Court the error of making a pronouncement that Sony Ericsson Mobile Communications International AB (Sony) complied with the provisions of RMC No. 29-2009, which alleged declaration could not be found in the assailed Decision. The Petition for Review of the CIR before the Court *En Banc* raises only the issue about substantiation/invoicing requirements *i.e.*, absence of the word "zero-rated" on the face of the invoice, and that part of the claim includes transactions outside the period of claim.[1] The CIR merely faults the Court in Division in making a decision that respondent was able to fully substantiate its claim.[2]

The CIR's reference, however, to the salient features of RMC No. 29-2009, *i.e.*, the running of the 120-day period shall stop from the date of notification to the taxpayer in cases where the taxpayer fails to comply with the conditions/requirements mentioned in the RMC such as the submission of complete documents; suspension of the 120-day period in case a question of law connected to claim for refund is referred to the BIR Legal Division; and the consequence in the event the taxpayer fails to submit document, would somehow relate to the CIR's contention before the Court in Division that respondent disregarded the doctrine of exhaustion of administrative remedies as the judicial claim was allegedly filed without waiting for the expiration of the 120-day period.[3] The Court in Division, however on this score, made the correct conclusion in this wise:

> "Failure to comply with the 120-day waiting period violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that this Court does not acquire jurisdiction over the taxpayer's petition. xxx
>
> In this case, the administrative claim for refund was filed on July 20, 2011. Counting 120 days from the said date, respondent had until November 17, 2011 to act on petitioner's administrative claim for refund. From November 17, 2011, petitioner had until December 17, 2011 or thirty (30) days to elevate its refund claim before this Court on December 16, 2011, the judicial claim for the third and fourth quarters of 2009 was timely filed.[4]"

Even if the Court entertains the CIR's contention anent RMC No. 29-2009, the conclusion of the case would still be the same.

For reference purposes, quoted hereunder are the pertinent provisions of RMC No. 29-2009, *viz:*

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[1] *Rollo*, pp. 4-6.
[2] *Rollo*, p. 4.
[3] Division Docket, CTA Case No. 8398, p. 37.
[4] *Rollo*, pp. 16-17.

"III. *Period within which Refund or Tax Credit of Input Taxes shall be Made*

Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides, among others, that in proper cases, the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents. For the purpose of defining "proper cases" in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:

a. Submission of complete documents necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;
b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Officer (RO) for audit/verification;
c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and
d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

In cases where taxpayer failed to comply with the above conditions/requirements, i.e., failure to present the accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service,** as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request.

To accurately document the time frame in processing the claim, the taxpayer shall signify in writing the date when the books and records are available for audit/verification by the RO and the date of submission of documents to explain/reconcile discrepancies and findings, if applicable.

In case of simultaneous audit of all internal revenue tax liabilities and claim for VAT refund/credit, the processing of VAT claims shall be prioritized and should not be held in abeyance pending the completion of the audit for all internal revenue tax liabilities.

IV. *Effect of Non-submission of Documents or Non-compliance with Audit/Verification Requirements in Support of the Application for Claim for Tax Refund/Credit*

> **Application for tax refund/TCC shall be denied where the taxpayer/claimant failed to submit complete supporting documents or failed to comply with the audit/verification requirements as stated in Items III.a to III.d hereof, where applicable, after three (3) notifications from the processing/investigating office.** For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant." (*Emphasis supplied*)

As culled from the case records, Sony filed its application for the issuance of a tax credit certificate or refund with the Bureau of Internal Revenue (BIR) on **July 20, 2011** and its judicial claim on **December 16, 2011**. Interestingly, it was only in a Letter[5] dated **January 26, 2012** (or way beyond 120 days from the date of filing of the administrative claim) that the BIR sent a written notice requiring Sony to submit additional documents. While such written notice would have affected the reckoning of the 120-day period under RMC 29-2009 had it been issued within the period allowed by law, yet, since it was belatedly sent, the filing of the judicial claim was proper and justified. The recent *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* case (*Total Gas case*)[6] is instructive on this point, *viz*:

> "To summarize, for the just disposition of the subject controversy, the rule is that **from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.**
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> xxx *First,* the 120-day period had commenced to run and the 120+30 day period was, in fact, complied with. As already discussed, **it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120- day period. It must again be pointed out that *this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying the claim if the taxpayer fails to submit the additional documents requested.***

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[5] Exhibit 2, CTA Case No. 8398, BIR Records.
[6] G.R. No. 207112, December 8, 2015.

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> *Second,* the CIR **sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents.** As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, **by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents."** (*Emphases supplied*)

Thus, considering that the notice for additional documents has been issued after the claim has been elevated before the Court in Division due to the inaction of the CIR within the 120-day period, the aforementioned notice of the BIR becomes inconsequential. The Court in Division correctly reckoned the 120-day period from filing of the administrative claim consistent with the pronouncement in the *Total Gas case*.

Novel also in the *Total Gas case* is the distinction between an appeal from the CIR's decision on the merits and inaction on the taxpayer's claim for refund involving input Value-Added Tax (VAT), *viz*:

> "A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. **If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request**, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim.** It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. **Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.**
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> In the present case, however, Total Gas filed **its judicial claim due to the inaction of the BIR.** Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se.* Consequently, **the CTA may give**

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> **credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim." (*Emphases supplied*)

In other words, if the appeal was made from the CIR's decision on the merits, it is crucial for the taxpayer to have submitted all the documents in the administrative level. Failure to do so would bar the taxpayer from presenting additional documents to this Court. If the appeal was made due to the CIR's inaction, the taxpayer is not precluded from submitting additional documents to prove its claim for refund.

In the case at bar, the appeal involves the CIR's inaction. Thus, Sony was allowed to present in evidence additional documents not submitted in the administrative level and the Court in Division correctly considered the same in arriving at the assailed Decision to refund or issue a Tax Credit Certificate in favor of Sony.

All told, I **VOTE** to **DENY** the Motion for Reconsideration for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice