REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MACQUARIE OFFSHORE SERVICE PTY LTD. – PHILIPPINE BRANCH, Petitioner,	CTA CASE NOS. 8580 & 8660
	Members:
-versus-	FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 10 2018 11:48 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On May 18, 2018, the Court rendered a Decision,[1] the decretal portion of which states as follows:

> **WHEREFORE**, the Petition for Review in CTA Case No. 8660 is **DENIED** for lack of jurisdiction, while the Petition for Review in CTA Case No. 8580 is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund or issue a TCC in favour of petitioner in the amount of **₱2,361,101.61**, representing its unutilized input VAT for the first quarter of FY 2011 attributable to its zero-rated sales for the second, third and fourth quarters of FY 2011.
>
> **SO ORDERED**.

Unconvinced, the parties filed their respective Motions for Partial Reconsideration, both dated June 7, 2018.

[1] Docket, pp. 2122-2154.

Petitioner's Motion for Partial Reconsideration

Petitioner ascribes error on the Court in holding that its judicial claim for refund covering the 2nd to 4th quarters of TY 2011 was filed out of time. It claims that under Section 112(C) of the NIRC, as amended, respondent has 120-days, reckoned from the submission of complete supporting documents within which to act on its administrative claim for VAT refund. From the lapse of the said 120-day period, the taxpayer has 30 days to lodge its claim for refund before the CTA. Thus, from January 16, 2013, the day petitioner submitted complete documents in support of its claim for refund, respondent had 120 days, or until May 16, 2013 to decide on the administrative claim for refund. Counting 30 days from the lapse of the 120-day period, petitioner had until June 16, 2013 to file appeal via a Petition for Review with the CTA. On the foregoing premise, CTA Case No. 8660 was seasonably instituted on June 14, 2013.

The fact that respondent issued a request for submission of additional supporting documents on November 27, 2012, or beyond the two-year prescriptive period under Section 112 of the NIRC, as amended is not fatal to petitioner's refund claim as such is the duty imposed upon the petitioner and not the BIR. Further, the efficacy of such request was not an issue during the course of the proceedings. Moreover, the act of respondent in requesting petitioner for additional documents is presumed to have been performed in the course of his official duty under RMC Revenue Memorandum Circular (RMC) No. 49-2003. All the cited circumstances veer towards a conclusion that it cannot be faulted for adhering to the literal import of Section 112 of the NIRC, specifically on the commencement of the 120-day period within which respondent may act on its claim. Consequently, its refund claim in CTA Case No. 8660 should be granted.

Respondent on the other hand failed to register his comment despite due notice.[2]

[2] Records verification report dated July 19, 2018.

Respondent's Motion for Partial Reconsideration

Respondent maintains that since petitioner failed to adduce pertinent VAT zero-rated official receipts (ORs) and/or invoices to demonstrate existence of its zero-rated sales for the 1st Quarter of FY 2011, its input tax incurred on the foregoing period to the extent of ₱2,361,101.61 should be ignored outright.

He also rejects the probative value the VAT ORs and/or invoices, as well as Certificates of Inward Remittance proffered by petitioner to establish zero-rated sales for the 2nd to 4th Quarters of TY 2011, branding them as hearsay evidence as the persons[3] who authenticated them did not have personal knowledge on the facts recited on the said documents, relying on Section 36, Rule 130 of the Rules of Court, as well as jurisprudence[4] as bases. In other words, the Court erred in concluding that petitioner has zero-rated sales for the 2nd to 4th Quarters of TY 2011.

On the final note, respondent cites the tenet that tax refunds are in the nature of tax exemptions, hence, construed strictly against claimant-petitioner. For the latter's failure to satisfy all the requisites for refund under Section 112 of the NIRC, as amended, its VAT refund must be denied in its entirety.

In refutation,[5] petitioner counters that: 1) the service invoices[6] to its client and the testimony of its witness Garry Taylor's testimony show that it generated zero-rated sales for the 1st Quarter of FY 2011; 2) the testimonies of its witnesses Taylor and Perocho are not hearsay as they have personal knowledge of the execution, issuance and delivery of the questioned documents[7]; and 3) respondent failed to seasonably register his objection regarding the competency

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[3] Garry Taylor, Timothy John Mulvihill, Ailyn B. Perocho and ICPA Katherine O. Constantino.

[4] *Bayani vs. People of the Philippines,* G.R. No. 155619, August 14, 2007; *Sebastian vs. Roman Catholic Archbishop of Zamboanga,* 60247-R, May 24, 1982.

[5] *Comment/Opposition (Re: BIR's Motion for Partial Reconsideration dated June 7, 2018)* dated July 18, 2018.

[6] Exhibits P-22a to P-22d.

[7] Petitioner's various supplier's VAT ORs and/or invoices, as well as Certificates of Inward Remittance issued in its favor.

of named witnesses, as well as the findings in the ICPA Report.

THE RULING OF THE COURT

Petitioner's Motion for Partial Reconsideration

It is a hornbook principle in refund cases that a taxpayer must prove not only his entitlement to the refund sought but also its compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and judicial claims would result in the denial of the claim.[8]

The periods for VAT refund claims are prescribed in Section 112(A)[9] and (C)[10] of the NIRC, as amended, to wit: 1) an administrative claim for refund with the BIR must be instituted within two (2) years after the close of the taxable quarter when the relevant sales were made; 2) the BIR has 120 days from submission of supporting documents to act on such administrative claim; and 3) 30 days from receipt of the adverse decision or the lapse of the 120-day period, a taxpayer may appeal to the CTA via a Petition for Review.

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[8] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

[9] 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: xxx

[10] (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.

As to when the supporting documents are deemed "complete" signifying the start of the 120-day period, the following case-law[11] on the matter is enlightening, thus:

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

In addition, for VAT Refund claims filed prior to June 11, 2014, as in the instant case, RMC No. 49-2003 and jurisprudence place another limitation as to when a taxpayer may submit supporting documents, viz., within the two-year prescriptive period under Section 112(A) of the NIRC, as amended, lest such submission shall be considered ineffectual.[12]

The rules on the application of the 120-day period and the last day for submission of supporting documents for VAT refund claims filed prior to June 11, 2014[13], are as follows:

1. **Date of filing** of the administrative claim in cases where the submission of complete documents was made upon such filing, or when the taxpayer plainly manifests that he no longer wishes to submit any other additional documents to complete his administrative claim; or

2. **Date of submission** of documents, which must be made within 30 days from the date of filing of the taxpayer's administrative claim; or from receipt of the BIR's request for additional documents, unless given further extension by the CIR;

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[11] See *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.

[12] Ibid.

[13] Note that the foregoing rules only apply for VAT Refund claims filed prior to June 11, 2014.

3. **Date of expiration of the 30 days** from filing of the administrative claim, when complete documents did not accompany the administrative claim, and no request for additional documents was made by the BIR;

4. **In all cases**, the submission of supporting documents must not go beyond the two-year prescriptive period prescribed under Section 112(A).

Guided by the foregoing precepts, counting two years from the close of the 2nd to the 4th quarters of TY 2011 on September 30, 2010, December 31, 2010 and March 31, 2011 respectively, the submission of petitioner's additional documents should be made at the latest on September 30, 2012 for the 2nd quarter, on December 31, 2012 for the 3rd quarter and March 31, 2013 for the 4th quarter of TY 2011. Admittedly, petitioner transmitted additional documents to respondent on January 16, 2013, or clearly beyond the two-year limitation under Section 112(A) of the NIRC, as amended. In fine, the belatedly submitted documents for the 2nd and 3rd quarters for TY 2011 failed to save the day for petitioner.

The rules also grant the taxpayer-claimant, such as petitioner, 30 days to submit the requested additional documents. In this case however, respondent's request for submission of additional documents comprising among others, the 2nd to 4th Quarters of TY 2011 was received by petitioner on November 27, 2012, hence, it had until December 27, 2012 to comply. As admitted by petitioner, it belatedly submitted the requested additional documents on January 16, 2013 in violation of the rules, rendering such compliance without any legal consequence.

Sans submission of additional documents within the prescribed period, the counting of the 120-day period commenced to run from the date the administrative claim was filed on September 28, 2012. On the other hand, the respondent had until January 26, 2013[14] to act on such claim. In view of respond's inaction, petitioner had until February 26, 2013 to seek judicial review before this Court. Undoubtedly, the Petition for Review in CTA Case No. 8660

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[14] 120 days from September 28, 2012.

was belatedly filed on June 14, 2013, depriving the Court of jurisdiction to entertain the same.

Respondent's Motion for Partial Reconsideration

Respondent contends that petitioner failed to demonstrate that it has zero-rated sales for the 1st Quarter of TY 2011, hence, fatal to its input tax refund incurred on such period.

Respondent should be corrected.

In pages 22-23 of the challenged Decision, petitioner has successfully discharged its burden of proving the existence of its zero-rated sales for the 2nd to 4th quarters of TY 2011 in the total amount of ₱641,321,757.73 by presenting the summaries of its zero-rated sales, service invoices, ORs, schedule of remittances and certifications of inward remittances issued by Hong Kong Shanghai Bank Corporation (HSBC). Such amount includes sales made by petitioner in the 1st Quarter of TY 2011 but was only paid, and subsequently declared in the succeeding taxable quarters.

Be that as it may, respondent, for the first time through his Motion for Reconsideration, assails the admissibility of the questioned documents, saying that they are hearsay evidence as the persons who authenticated them are without personal knowledge of their contents, therefore they are devoid of probative value.

Basic is the rule that evidence not objected to may be deemed admitted and may be validly considered by the court in arriving at its judgment. This is true even if by its nature, the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. [15] Stated differently, once evidence is admitted without objection, even though not admissible under an objection, any further attempt to question its admissibility should accordingly be disregarded.[16]

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[15] *Heirs of Doronio vs. Heirs of Doronio*, G.R. No. 169454, December 27, 2007.
[16] See *Interpacific Transit, Inc. vs. Aviles,* G.R. No. 86062, June 6, 1990.

Note that when respondent was directed to comment or interpose objection on petitioner's formal offer exhibits (FOE) and its supplemental, he failed.[17] The admission[18] of the said documents made them property of the case, and all parties are considered amenable to any favorable or unfavorable effects resulting from the said evidence.[19] Therefore, the said documents should be deemed sufficient for purposes of proving petitioner's zero-rated sales for the 2nd to 4th Quarters of TY 2011.

Significantly, respondent's objection was registered way beyond the period provided under the rules. Section 36, Rule 132 of the Rules of Court states, among others, that in cases of a written formal offer of evidence, a party must interpose his objections, if any, within three (3) days after notice of the offer unless the Court prescribes a different period. A party's right to impugn the admissibility of evidence is a mere privilege which can be waived. Necessarily, the objection must be made at the earliest opportunity, lest silence when there is opportunity to speak may operate as a waiver of objections.[20]

During the hearing on August 11, 2014 and October 10, 2016, respondent was granted a period of five (5) days and fifteen (15) days from notice, respectively, or until October 29, 2014 and December 2, 2015 to file his comment/opposition thereon. Respondent's objection interposed for the first time on June 7, 2018, or 1,318 and 919 days after the lapse of the periods prescribed by the Court forfeited his right to question the same.

WHEREFORE, petitioner's and respondent's *Motion for Partial Reconsideration,* both dated June 7, 2018, are **DENIED**. The Decision dated May 18, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[17] Records verification report dated November 3, 2014 and January 7, 2016 respectively.
[18] Resolutions dated July 20, 2015 and January 27, 2016 respectively.
[19] See *Quebral vs. Court of Appeals,* G.R. No. 101941, January 25, 1996.
[20] See *Catuira vs. Court of Appeals,* G.R. No. 105813, September 12, 1994.

I Concur:

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice