REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

TAGANITO MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1711
(CTA Case No. 8680)

x--x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TAGANITO MINING CORPORATION,
Respondent.

CTA EB NO. 1719
(CTA Case No. 8680)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JAN 08 2020 3:50 p.m.

x---x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is the "Motion for Reconsideration" of the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1719, filed on June 7, 2019[1] asking the Court *en banc* to reconsider its Decision dated May 20, 2019 on the ground that the 30-day period of Taganito

[1] *Rollo*, CTA EB No. 1711, p. 207-215.

Mining Corporation (TMC), petitioner in CTA EB No. 1711, to submit complete supporting documents should have been reckoned from December 31, 2012[2], instead of March 2, 2013, and that the Petition for Review docketed as CTA Case No. 8680 should have been dismissed by the Court in Division for having been filed out of time.

In a Resolution dated August 9, 2019[3] the Court *en banc* ordered TMC to file its Comment.

On September 6, 2019, TMC posted its "Comment (to the CIR's Motion for Reconsideration)"[4] which the Court *en banc* received on September 18, 2019.

In his motion, the CIR's arguments are largely drawn from the Dissenting Opinion of Presiding Justice Del Rosario, in that inasmuch the BIR had not made a prior request to TMC to submit additional documents, the 120-day period for the CIR to act on the claim for refund of input tax attributable to zero-rated sales must be reckoned from the time TMC filed its administrative claim for refund, December 21, 2012, and not March 2, 2013 when it submitted additional supporting documents. Given the allegedly correct reckoning point of the 120-days, the Petition for Review of TMC docketed as CTA Case No. 8680 was filed out of time and ought to have been dismissed, following the rules laid down in *Pilipinas Total Gas vs. Commissioner of Internal Revenue*[5] (Pilipinas Total Gas case).

In its Comment, TMC expounds on the two strains of stare decisis, i.e. vertical stare decisis and horizontal stare decisis, stating that the former involves the duty of lower courts to apply decisions of higher courts to cases involving the same facts, and that the latter, on the other hand, deals with the obligation of high courts to follow its own precedents. TMC then cites *CIR v. Dohle Shipmanagement Philippines Corporation*[6] (Dohle Shipmanagement case) wherein this Court reckoned the 120-day period from the actual date of completion of supporting documents.

After considering the arguments of both parties, *We* find no compelling reason to reconsider *Our* Decision.

---

[2] The date December 31, 2012 as a reckoning date has no basis on the record and appears to be a typographical error as the CIR quoted verbatim the Dissenting Opinion of Presiding Justice Hon. Roman G. Del Rosario promulgated on May 20, 2019. December 21, 2012 is the date when TMC filed its administrative claim for refund.
[3] *Id.* at Note 1, pp. 217-218.
[4] *Id.*, pp. 177-189.
[5] G.R. No. 207112, December 8, 2015.
[6] CTA EB No. 1582, May 14, 2019.

Under the law, a taxpayer is given the remedy of refund in case of unutilized input VAT. The filing of a claim however, is subject to two (2) time requirements: (a) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT *(i.e.,* administrative claim); and (b) the 30-day period for filing an appeal with this Court *(i.e.,* judicial claim).

For clarity and reference, Sections 112(A) and (C) of the National Internal Revenue Code ("NIRC") of 1997, as amended, are reproduced below:

> "SEC. 112. **Refunds or Tax Credits of Input Tax.** -
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero- rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax:** *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(l) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP): Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of**

> **the application filed** in accordance with Subsections (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or **<u>the failure on the part of the Commissioner to act on the application within the period prescribed above</u>, 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]

Pursuant to the above-quoted Section 112(A), the administrative claim for the issuance of TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Anent the timeliness of the judicial appeal, the rule is that the taxpayer can file the appeal in one of two (2) ways:

1) file the judicial claim within thirty days after the Commissioner denies the claim within the one hundred twenty-day period (120-day period), counted from the date of submission of complete documents, or

2) file the judicial claim within thirty (30) days from the expiration of the 120-day period (120+30 days) if the Commissioner does not act within the 120-day period.[8]

The 120-day period is said to be crucial in filing a judicial appeal. In order for the Court to conclude that there is an administrative "denial due to inaction" of the CIR during the 120-day period, the correct reckoning point of the 120-day period is imperative. However, the Tax Code is silent on *when the foregoing supporting documents are considered complete.* To clarify the matter, RMC No. 49- 2003 was issued.

The application of RMC No. 49-2003 was further clarified by the Supreme Court in the *Pilipinas Total Gas* case. Therein, the Supreme Court *en*

[7] Emphasis and underscoring supplied.
[8] *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014 citing *Commissioner of Internal Revenue v. Son Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

banc explicitly declared that the rule set forth in RMC No. 49-2003 encompasses administrative claims for VAT refund filed prior to June 11, 2014.[9] Since TMC instituted its administrative claim for VAT refund on December 21, 2012, there can be no doubt that it is governed by RMC No. 49- 2003.

In the *Pilipinas Total Gas* case, the Supreme Court clarified that for claims filed prior to June 11, 2014, as in the instant case, the period to submit supporting documents is subject to the following limitations set forth in RMC No. 49-2003, 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 additional documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing."[10]

In the *Dohle Shipmanagement* case, this Court already construed when the 120-day period may be reckoned depending on the circumstances of the case, in relation to the mandate of the Supreme Court in the *Pilipinas Total Gas* case, thus:

> "[T]he 120-day period may be reckoned from any of the following dates, whichever may be applicable:
>
> 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

---

[9] Administrative claims for VAT refund filed on or after June 11, 2014, are governed by RMC No. 54-2014.
[10] *Id.* at Note 4.

2. **Date of submission** of *complete* documents, if made within 30 days from the date of filing of the taxpayer's administrative claim; or

3. **Date of completion** of supporting documents, if supporting documents was *partially* submitted within the said 30-day period **and** completed the same at a later date *without* any notice of its insufficiency/deficiency emanating from the CIR;or

4. **Date of expiration of the 30-day period** from filing of the administrative claim when it was instituted *without* any attached supporting documents."[11]

The third instance of reckoning the 120-day period above was derived by the Court from the *Pilipinas Total Gas* case wherein the claimant, Pilipinas Total Gas, Inc. (PTG), filed its administrative claim for refund together with supporting documents on May 15, 2008. It thereafter submitted additional documents pertinent to its administrative claim on August 28, 2008, or 106 days after the filing of such claim. The Supreme Court held that the subject 120-day period began to run from August 28, 2008, or the date when PTG completed its submission of supporting documents since the BIR neither informed it of the inadequacy of its supporting documents, nor did he rule on the administrative claim for insufficiency of evidence.

A similar situation obtains in the present appeal. The record reveals that on December 12, 2012, TMC filed its administrative claim with attached supporting documents.[12] On March 2, 2013, TMC completed its submission of supporting documents[13], explicitly stating the same in a follow-up letter it sent to the CIR on July 3, 2013[14] *sans* any notice from the CIR of the insufficiency or deficiency of its first submission. Indubitably, the facts in this case show that it falls under the third instance the Court identified in *Dohle Shipmanagement*. Counting 120-days from the reckoning date of March 2, 2013, the CIR had until June 30, 2013 within which to decide on the claim which he failed to do. TMC then had thirty (30) days from June 30, 2013, or until July 30, 2013 within which to file its appeal to the CTA. Since TMC filed its Petition for Review docketed as CTA Case No. 8680 on July 30,

[11] *Id.* at Note 5.
[12] *Id.* at Note 1, p. 87.
[13] *Id.*, p. 88.
[14] *Id.*, Exhibit "P-6".

2013, its judicial appeal was timely filed and the Court in Division had jurisdiction over the case.

Considering that the timeliness of TMC's judicial appeal is the crux of the CIR's argument in favor of reconsideration and having disposed of the same, the CIR's "Motion for Reconsideration (Re: Decision promulgated 20 May 2019)" is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(I reiterate my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice