REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VESTAS SERVICES PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 8877**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 03 2017 2:58 p.m.

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DECISION

CASTAÑEDA, JR., ***J.***:

STATEMENT OF THE CASE

This is a Petition for Review filed by Vestas Services Philippines, Inc. to seek the refund or issuance of tax credit certificate (TCC) in the aggregate amount of ₱65,650,037.39, allegedly representing its excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales of services for the second and third taxable quarters of calendar year (CY) 2013.

STATEMENT OF FACTS

Petitioner Vestas Services Philippines, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office address at 31st Floor, Tower II, RCBC Plaza, Ayala Avenue corner Gil Puyat, Makati City.[1] It was registered with the Securities and Exchange Commission (SEC) on December 14, 2009.[2] Petitioner is likewise registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 50, as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, with Taxpayer Identification Number (TIN) 007-533-154-000.[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its amended Quarterly VAT Returns for the second and third quarters of CY 2013, stating the following details:

EXHIBIT	YEAR 2013	ZERO-RATED SALES/RECEIPTS	INPUT VAT
P-4	2nd Quarter	₱ 477,362,270.32	₱ 3,299,050.06
P-5	3rd Quarter	206,930,735.26	62,350,987.28
TOTAL		**₱684,293,005.58**	**₱65,650,037.34**

Petitioner filed with the BIR Revenue District Office No. 50 an administrative claim for refund of excess/unutilized input VAT for the second and third quarters of CY 2013 on October 9, 2013[4] and on December 11, 2013[5], respectively.

In view of respondent's inaction on its administrative claim for refund, petitioner filed the instant Petition for Review before this Court on August 22, 2014. ✓

[1] Par. 1(a), Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 146.
[2] Par. 1(c), Stipulation of Facts, JSFI, docket, p. 146.
[3] Par. 1(d), Stipulation of Facts, JSFI, docket, p. 147; Exhibit "P-2".
[4] Exhibits "P-6" and "P-8".
[5] Exhibit "P-9".

Respondent filed an Answer with Motion to Dismiss[6] on October 10, 2014 by registered mail and received by the Court on October 16, 2014, interposing the following special and affirmative defenses:

> 5. She reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;
>
> 6. Petitioner's alleged claim for refund/issuance of tax credit certificate is subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 8. Petitioner's claim for refund or issuance of tax credit certificate in the amount of **Php65,650,037.39**, representing its unutilized input VAT paid for the 2nd and 3rd Quarters of taxable year 2013 were not fully substantiated by proper documents, such as sales invoices, official receipts, vouchers and others relevant /pertinent records.
>
> 9. In an action for tax refund/credit, the burden of proof is upon petitioner to establish its right thereto, and failure to adduce sufficient proof is fatal to its claim.
>
> 10. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT.
>
> 11. The amount subject of the claim for refund of petitioner does not pertain in full to its input VAT attributable to its zero-rated sales for the 2nd and 3rd Quarters of taxable year 2013.

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[6] Docket, pp. 46-50.

12. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 16-2005 in relation to Section 113 and 237 of the 1997 Tax Code.

13. Petitioner failed to comply with the conditions/ requirements prescribed under Section 106(A)(2)(a)(3), 110(B) and 112(A)(C)(D) of the 1997 Tax Code.

14. The instant Petition for Review filed by petitioner should be **dismissed** pursuant to **Section 1, Rule 16 of the 1997 Rules of Civil Procedure <u>for failure to state a cause of action</u>** since there was no evidence that petitioner have filed its administrative claim for refund with the respondent's Bureau on a particular date/period, in violation of the requirements under Section 112(A)(B)(C) of 1997 Tax Code, which provides that:

xxx xxx xxx

15. Settled is the rule that a claim for refund duly filed with the Commissioner of Internal Revenue is a condition precedent to the prosecution of a suit before the Court of Tax Appeals (CTA) and failure to comply with this condition subject the petition for dismissal for lack of cause of action ***(Republic vs. Limaco and De Guzman Commercial Co., 5 SCRA 990).***

16. Claims for refund are construed strictly against herein petitioner for the same partakes the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).***

Petitioner filed a Reply/Opposition[7] on October 31, 2014. Jc

[7] Docket, pp. 62-66.

In the Resolution[8] dated November 26, 2014, the Court denied respondent's Motion to Dismiss.

A Notice of Pre-Trial Conference[9] was issued by the Court on December 2, 2014, setting the case for pre-trial conference on January 22, 2015. Accordingly, petitioner's Pre-Trial Brief[10] and Respondent's Pre-Trial Brief[11] were both filed on January 14, 2015.

The pre-trial conference ensued.

The parties submitted their Joint Stipulation of Facts and Issues[12] on February 6, 2015. Thereafter, on February 27, 2015, the Court issued a Pre-Trial Order[13] approving and adopting the parties' joint stipulations and terminating the pre-trial.

Upon motion of petitioner,[14] the Court commissioned Ms. Jackielyn N. Arceño, as the Independent Certified Public Accountant (CPA) for the case.[15]

During trial, petitioner presented (1) Ms. Edna Rose V. Gonzales[16], petitioner's Finance Controller; and (2) Ms. Jackielyn N. Arceño[17], the Independent CPA.

Petitioner filed its Formal Offer of Evidence[18] on July 21, 2015. In the Resolutions dated October 7, 2015[19] and March 21, 2016[20], the Court admitted all of petitioner's evidence except for Exhibits "P-7", "P-7-1", "P-15", "P-15-1", "P-15-2", "P-32", "P-71", "P-90" to "P-93", "P-95" to "P-131", and "P-137" to "P-142".

[8] Docket, pp. 68-71.
[9] Docket, p. 72.
[10] Docket, pp. 81-88.
[11] Docket, pp. 139-141.
[12] Docket, pp. 146-150.
[13] Docket, pp. 156-160.
[14] Motion for Commissioning of Independent Certified Public Accountant filed on January 14, 2015, docket, pp. 73-76.
[15] Minutes of the Hearing dated March 4, 2015, docket, p. 161.
[16] Minutes of the Hearing dated March 11, 2015, docket, p. 163; Exhibit "P-11", docket, pp. 92-99.
[17] Minutes of the Hearing dated May 27, 2015 and June 24, 2015, docket, p. 205 and pp. 290-291, respectively; Judicial Affidavits, docket, pp. 401-416 and 417-419.
[18] Docket, pp. 295-311.
[19] Docket, pp. 421-423.
[20] Docket, pp. 444-445.

On the other hand, respondent manifested that he has no witness to present.[21]

The case was submitted for decision on August 30, 2016[22], considering petitioner's Memorandum[23] filed on July 21, 2016 and the Memorandum for the Respondent[24] filed on August 11, 2016 by registered mail and received by the Court on August 23, 2016.

STATEMENT OF ISSUE

The lone issue submitted by the parties for the Court's resolution is:[25]

> Whether petitioner is entitled to its claim for refund or issuance of a TCC in the amount of Pesos: Sixty Five Million Six Hundred Fifty Thousand Thirty-Seven and 39/100 (₱65,650,037.39) representing unutilized/excess input VAT credits for the second and third quarters of the taxable calendar year 2013.

DISCUSSION/RULING

Pertinent to the resolution of the instant case is Section 112(A) and (C) of the NIRC of 1997, as amended, which provides:

> 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:

[21] Minutes of the Hearing dated June 27, 2016, docket, p. 452.
[22] Resolution dated August 30, 2016, docket, p. 496.
[23] Docket, pp. 456-483.
[24] Docket, pp. 488-494.
[25] Stipulation of Issues, JSFI, docket, p. 147.

> *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) 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.
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> 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 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.

Before delving into the merits, the Court shall determine first whether it has jurisdiction to entertain the present appeal.

The administrative claim was timely filed

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 present claim covers the second and third quarters of CY 2013, which closed on June 30, 2013 and September 30, 2013, respectively. Counting two years from the said dates, petitioner had until June 30, 2015 and September 30, 2015, within which to file its administrative claim for the second and third quarters of CY 2013, respectively. Thus, the filing of petitioner's administrative claims on October 9, 2013[26] for second quarter of CY 2013 and on December 11, 2013[27] for the third quarter of CY 2013 are well within the reglementary period.

The judicial claim is barred by prescription

Section 112(C) of the NIRC of 1997, as amended, states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and the period of 30 days, which refers to the period for filing a judicial claim with the Court of Tax Appeals.

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[28], citing the landmark case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[29] (*San Roque*), the Supreme Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the BIR Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the BIR Commissioner does not act within that period.

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[26] Exhibits "P-6" and "P-8".
[27] Exhibit "P-9".
[28] G.R. No. 168950, January 14, 2015, 745 SCRA 663.
[29] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit – or actually submitted – additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.[30]

In this case, petitioner avers that it submitted documents in support of its administrative claim for refund on February 18, 2014 and on March 25, 2014.[31] However, no evidence was presented showing that petitioner submitted any document on the said dates. Records indicate that petitioner, upon filing of its administrative claim for the second quarter of CY 2013 on October 9, 2013, simultaneously submitted documents in support thereof.[32] Meanwhile, there is no evidence showing the submission of supporting documents for petitioner's claim covering the third quarter of CY 2013; hence, the documents are presumed submitted upon the filing of the corresponding administrative claim on December 11, 2013.[33]

Counting 120 days from October 9, 2013 and December 11, 2013, respondent had until February 6, 2014 and April 10, 2014 within which to act on petitioner's claims for the second and third quarters of CY 2013, respectively. Considering that respondent failed to act on the said claims, petitioner had 30 days after the lapse of the 120-day period or until March 8, 2014 and May 10, 2014, respectively, within which to file a judicial appeal before this Court.

However, petitioner's appeal by way of a Petition for Review was filed only on August 22, 2014, 197 days and 134 days after the lapse of the 120-day period to file a judicial claim for the second and third quarters of CY 2013, respectively. Hence, petitioner's judicial claim was belatedly filed. gr

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[30] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016, 785 SCRA 351.

[31] Par. 31, Memorandum (for Petitioner Vestas Services Philippines, Inc.), docket, p. 464.

[32] Exhibit "P-6".

[33] Exhibit "P-9".

In the *San Roque* case, the Supreme Court emphasized that compliance with the 120+30 day periods prescribed under Section 112(C) of the NIRC is **mandatory** and **jurisdictional**.

Accordingly, petitioner's belated filing of its judicial claim or failure to observe the mandatory 120+30 day periods is fatal to its claim and rendered the Court devoid of jurisdiction over petitioner's claim. Therefore, the dismissal of the instant Petition for Review is in order.

It bears stressing that a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. To repeat, one of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper.[34]

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[34] See Note 29.

ATTESTATION

I attest 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.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice