REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TAISEI PHILIPPINES CONSTRUCTION, INC., Petitioner,	**CTA CASE NO. 9008**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** , *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 1 5 2018 3:15 pm

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RESOLUTION

CASTAÑEDA, JR., *J*.:

For resolution is petitioner's **Motion for Reconsideration**, filed through registered mail on December 20, 2017 and received by this Court on January 4, 2018, without respondent's comment despite notice as per Records Verification dated February 5, 2018.

Petitioner seeks reconsideration of the Court's Decision (assailed Decision)[1] promulgated on December 1, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED.**"[2]

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[1] Docket, pp. 520-541.
[2] Docket, p. 540.

The Court denied the Petition for Review as it was filed beyond the prescriptive period provided in Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

In the assailed Decision, the Court held that applying the rules laid down in *Pilipinas Total Gas* and pursuant to Revenue Memorandum Circular (RMC) No. 49-2003, the 120-day prescriptive period shall be counted thirty (30) days from July 30, 2013 when the BIR issued a request for additional documents, or from August 29, 2013. Thus, counting 120 days from August 29, 2013, respondent had until December 29, 2013 within which to act on petitioner's administrative claim for refund while it had until January 29, 2014, within which to file its judicial claim for refund. However, petitioner filed the Petition for Review only on March 13, 2015.

Petitioner argues that there is no basis for the finding of the Court that the 120-day period for the CIR to decide shall be counted 30 days from July 30, 2013 pursuant to RMC No. 49-2003. It contends that the letter dated July 30, 2013 does not contain a request for documents, much less those stated in the Checklist. Petitioner alleges that what the letter contains is a request to extend all facilities because the examination was done in its office premises where the books of accounts and accounting records are stored.

Moreover, petitioner contends that the letters dated July 29, 2013 and July 30, 2013 were given before the audit and it was later during the audit that respondent "asked for schedule of sales and purchases". It alleges that the audit conducted by respondent was continuing process which lasted until after the issuance of RMC No. 54-2014 on June 11, 2014, and during this time, respondent was still requesting for additional documents from petitioner. Petitioner contends that it was merely complying with the requirements of respondent to submit additional documents when it submitted the Sworn Certification and Transmittal Form on October 14, 2014.

Furthermore, petitioner alleges that while it offered as evidence the Checklist provided by respondent in connection with the letters dated July 29, 2013 and July 30, 2013, such reference does not mean that the letters and the Checklist were given simultaneously. It avers that the Checklist was provided during the audit.

The Motion for Reconsideration is bereft of merit.

It must be noted that based on the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue (Pilipinas Total Gas)*[3], the filing of the complete supporting documents by the taxpayer in connection with an administrative claim for VAT refund is subject to the following rules:

1. Upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of processing unit.

2. If in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of the claim, the taxpayer-claimants shall submit such documents within 30 days from request of the investigation/processing unit. Notice of the request for the submission of additional supporting documents is required.

3. It is only upon the submission of the documents by the taxpayer that the 120-day period would begin to run.

4. 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.

In the assailed Decision, the Court found that based on the Checklist attached to the letter dated July 30, 2013, respondent requested petitioner to submit additional documents for the determination of its claim for refund.

Petitioner's argument that the Checklist was given during the audit and not simultaneously with the letter dated July 30, 2013 cannot be given credence. Aside from the assertion of its witness that the Checklist was given during the audit, there is no proof that it was issued to petitioner separate from the letter dated July 30, 2013. Considering that the checklist was not dated, it is more logical to assume that the same was an attachment to the letter dated July 30, 2013. *gr*

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

Moreover, petitioner's contention that it was merely complying with the requirements of respondent to submit additional documents when it submitted the Sworn Certification and Transmittal Form on October 14, 2014, is also inconsequential.

Based on RMC No. 49-2003, petitioner is required to submit the additional documents within 30 days from request of the investigation/processing unit. Considering that respondent requested petitioner for additional documents on July 30, 2013, the submission on October 14, 2014 cannot be considered as the submission when the 120-day period begins to run.

Thus, the findings of the Court in the assailed Decision that the 120-day prescriptive period shall be counted 30 days from July 30, 2013 when the BIR issued a request for additional documents, or from August 29, 2013 must be reiterated. The relevant portion the assailed Decision is as follows:

> "Applying the rules laid down in *Pilipinas Total Gas* and pursuant to RMC No. 49-2003, the 120 day period shall be counted thirty (30) days from July 30, 2013 when the BIR issued a request for additional documents, or from August 29, 2013. Meanwhile, petitioner's submission of complete documents cannot be deemed made on October 14, 2014, considering that RMC No. 49-2003 provides a limitation of only thirty (30) days from the BIR's request for additional documents, within which to submit the same.
>
> Thus, counting 120 days from August 29, 2013, respondent had until December 29, 2013 within which to act on petitioner's administrative claim for refund. Thereafter, petitioner had 30 days from December 29, 2013, or until January 29, 2014, within which to file its judicial claim for refund.
>
> Considering that petitioner filed this Petition for Review only on March 13, 2015, the judicial claim was filed beyond the prescriptive period provided in Section 112(C) of the NIRC of 1997, as amended."

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated December 1, 2017.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
(With Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
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TAISEI PHILIPPINES CONSTRUCTION, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9008

Members :

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:
MAR 15 2018 3:25 pm

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DISSENTING OPINION

MANAHAN, J.:

With all due respect, I cannot join the majority of my esteemed colleagues in their resolution to deny the Motion for Reconsideration filed by petitioner.

The assailed decision promulgated on December 1, 2017 dismissed the Petition for Review for lack of jurisdiction due to their finding that petitioner filed its judicial claim for refund beyond the thirty-day period counted from the lapse of the 120 days from submission of supporting documents.

It is the theory of the majority that the 120-day period should be counted from July 30, 2013, the date of the letter which was sent to the petitioner supposedly requesting for additional documents to support the claim for refund of unutilized input VAT, and I quote:

> "Applying the rules laid down in *Pilipinas Total Gas* and pursuant to RMC No. 49-2003, the 120 day period shall be counted thirty (30) days from July 30, 2013 when the BIR issued a request for additional documents, or from August 29, 2013. Meanwhile, petitioner's submission of complete documents cannot be deemed made on October 14, 2014 considering that RMC No. 49-2003 provides a limitation of only thirty (30) days from the BIR's request for additional documents, within which to submit the same.
>
> Thus, counting the 120 days from August 29, 2013, respondent had until December 29, 2013 within which to act on petitioner's administrative claim for refund. Thereafter, petitioner had 30 days from December 29, 2013, or until January 29, 2014, within which to file its judicial claim for refund.
>
> Considering that petitioner filed this Petition for Review only on March 13, 2015, the judicial claim was filed beyond the prescriptive period provided in Section 112 (C) of the NIRC of 1997, as amended."

In its Motion for Reconsideration of the Decision of the Court dated December 1, 2017, petitioner asserts that the letter from the representative of the Commissioner of Internal Revenue (CIR) dated July 30, 2013 does not contain a request for documents, much less those documents enumerated in the Checklist provided by the revenue examiners in claims of a similar nature.

In the subject Resolution of the Court, the majority found the above assertion of petitioner hard to believe and thus cannot be given credence.

I fail to see why the majority should so hold that it is unbelievable that the letter dated July 30, 2013 does not contain a request for documents as a mere cursory perusal of the contents of said letter[1] would disclose quite clearly that it was a request to petitioner to extend all facilities to the audit team of the BIR to "expedite the examination of the records so as to terminate the investigation at the earliest possible time."

It is quite possible and is almost a given reality in claims for tax refund that the revenue examiners would

[1] Exhibit "P-40" , Docket, page 298.

continue to request for additional documents from the taxpayers based on various reasons, foremost among which, is to enable them to fully study the veracity of the claims for refund. To which requests, the taxpayers are bound to comply so as not to risk outright denial of their claims. I humbly believe that this is what happened to petitioner as evidenced by the Sworn Certification [2] of the petitioner's representative, Mr. Isamu Suzuki, and submitted to the BIR on October 14, 2014 together with a Transmittal Form of Documents also submitted on October 14, 2014. [3]

Petitioner cannot be faulted for its zeal to comply with the continuous requests for documents, whether this be written or verbally made, because cooperation with the revenue examiners at the administrative level may pave the way for the grant of the claim thereby avoiding a full blown trial at the judicial level.

I take this opportunity to offer my perspective on the provisions of Section 112 of the National Internal Revenue Code (NIRC) of 1997 with respect to the submission of documents in claims for refund in light of relevant jurisprudence.

> "Section 112. Refunds or tax credits of input tax.-
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> (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 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."

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[2] Exhibit P-42", Docket, page 298.
[3] Exhibit "P-43", Docket, page 299.

Based on the foregoing, the law mandates that claims for refund of this nature should be filed within two (2) years after the close of the taxable quarter when the sales were made and that the 120-day period shall commence to run from the time of submission of the complete documents in support of the application for refund.

In my view, a wide latitude is given in interpreting the relevant provisions of the NIRC as to the period within which to submit the supporting documents. The law makes mention of the 120-day period to decide the application for refund counted from the submission of the supporting documents but is quiet on the amount of time allotted for such submission.

Revenue Memorandum Circular (RMC) No. 49-2003 provides that taxpayers with pending claims may be required to submit the documentary requirements by the investigating/processing office within thirty (30) days unless given further extension by the head of the processing unit but such extension should not exceed thirty days. Quoted below are the pertinent sections of RMC No. 49-2003, thus:

> "Q-18: For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office?
> xxx xxx xxx
>
> A-18: For pending claims which have not been acted upon by the investigating/processing office due to incomplete documentation, the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.
>
> xxx xxx xxx
>
> For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing the claim, additional documents are required for the proper documentation of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days **from request of the investigating/processing office**, which shall be construed as within the one hundred twenty (120) day period (emphasis supplied)."

The Supreme Court in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[4] ruled that it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period but then in a subsequent statement goes on to say that "whether these documents are actually complete as required by law – is for the CIR and the courts to determine." Then the Supreme Court said "whatever documents a taxpayer intends to file to support his claim must be completed within the two year period."

My earlier disquisition on this matter, specifically my Dissenting Opinion in the case of *Zuellig Pharma Asia Pacific Ltd., Phils. ROHQ vs. Commissioner of Internal Revenue*[5], is applicable and in all fours to the instant case, viz:

> "To resolve, a distinction of the various stages of submission of supporting documents for the refund claim in the administrative or BIR level must be made. It is clear that the taxpayer, at the time of filing his application or claim for refund, is guided by the law and its implementing revenue issuances as to the documents that must be submitted to the BIR in support of its claim for refund. At this stage, taxpayer has no idea on how the assigned revenue examiner will appreciate the sufficiency of the documents submitted. This is the first stage. Upon assignment of the refund claim to a revenue examiner, the latter will now study the application and thereafter communicate his or her findings to the taxpayer. The assigned examiner may or may not ask for additional documents or may not even communicate with the taxpayer at all. This is the second stage.
>
> xxx xxx xxx
>
> My interpretation of the *Total* ruling is that the period of two years to submit the complete documents supporting the claim for refund is true only in the first stage, that is, upon the filing of the application for the issuance of a tax credit certificate (TCC) or refund of unutilized input taxes. This is consistent with the two year prescriptive period to file the claim for refund because certainly the claimant has to file documents in support of said claim as directed under section 112(C) and in accordance with Section 112 (A). At this stage, it is really the

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[4] G.R. No. 207112, December 8, 2015.
[5] CTA Case No. 8899, March 9, 2017.

taxpayer who will determine the completeness of its documents. After the application is filed, then this prerogative is transferred to the BIR which will now determine if the documents submitted in support of the application for refund or TCC are sufficient to warrant a favorable grant. Beggars cannot be choosers. Hence, it is the BIR that will decide whether the application is complete or not."

xxx xxx xxx The Total ruling seems to recognize and confirm my conclusion when it ruled thus:

"xxx *Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms of what additional documents must be presented in support of a claim for tax credit or refund-* it is the taxpayer who has the right and burden of providing any and all documents that would support his claim for tax credit or refund" (italics ours)."

Accordingly, I vote to grant the Motion for Reconsideration filed by petitioner.

CATHERINE T. MANAHAN
Associate Justice