REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2274
(CTA Case No. 9450)

-versus-

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro, and
Reyes-Fajardo, *JJ.*

NEW YORK BAY PHILIPPINES, INC.,
Respondent.

Promulgated:

NOV 2 4 2021 4:19 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before this Court is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) on June 30, 2020 assailing the Decision[1] and Resolution[2] promulgated on July 31, 2019 and on February 26, 2020, respectively, by the Special Third Division ("CTA Division", for brevity) in the case *New York Bay Philippines, Inc. v. Commissioner of Internal Revenue,* docketed as CTA Case No. 9450.

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[1] *Rollo,* pp.13-34; Penned by Associate Justice Esperanza R. Fabon-Victorino (now Retired) and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban.
[2] *Id.,* pp. 42-45.

The dispositive portion of the July 31, 2019 Decision ("Assailed Decision") reads:

> "**WHEREFORE,** the instant *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱37,344,343.15**, representing its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the four quarters of calendar year 2014.
>
> **SO ORDERED.**"

The dispositive portion of the February 26, 2020 Resolution ("Assailed Resolution") reads:

> "**WHEREFORE,** respondent's *Motion for Reconsideration (Decision dated 31 July 2019)* is hereby **DENIED,** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts of this case as stated by the then CTA Division in the assailed Decision,[3] are as follows:

> Petitioner New York Bay Philippines, Inc. is a domestic corporation with principal place of business at Unit 2102, 21st Floor Antel Global Corporate Center, Julia Vargas Avenue, Pasig City. It is registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 43A, as a VAT taxpayer with Taxpayer Identification No. 000-217-994-000.
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> Respondent, on the other hand, is the Commissioner of the BIR with the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at

[3] *Rollo*, pp. 13-17; Citations omitted; The petitioner and the respondent in the CTA Division case are now the respondent and petitioner, respectively, in the CTA *En Banc* case.

the BIR National Office Building, Agham Road, Diliman, Quezon City.

On March 31, 2016, petitioner filed with the BIR RDO No. 43A an administrative claim for refund, with attached Application for Tax Credits/Refunds (BIR Form No. 1914), of its alleged excess and unutilized input VAT for the four quarters of CY 2014 in the amount of ₱39,298,255.95. Allegedly the said amount is attributable to its zero-rated sales of services in the Philippines for the four quarters of CY 2014 to non-resident foreign corporations not engaged in business in the country.

On August 26, 2016, petitioner, citing respondent's inability to act on its administrative claim for refund/tax credit, filed the instant *Petition for Review*.

In his Answer, respondent assails the jurisdiction of the Court to try the case on ground of premature filing. Citing Item II, Paragraph 1 of Revenue Memorandum Circular (RMC) No. 54-2014, in relation to Section 112 (C) of the NIRC of 1997, as amended, respondent submits that since petitioner failed to submit the complete supporting documents upon submission of the administrative claim for VAT refund and the lapse of eighty (80) calendar days from the date of filing of the application/submission of documents, the application for tax credit/refund should be denied.

Respondent further submits that in order to validly claim for tax credit/refund, petitioner must first prove its compliance with the invoicing and accounting requirements mandated under Sections 113 and 114 of the 1997 NIRC, as amended. He also invokes the principle that tax refunds/credits are in the nature of tax exemptions thus, petitioner has the burden of proving the factual and legal bases of its claim.

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues (JSFI) on the basis of which a Pre-Trial Order was issued on March 30, 2017.

To substantiate its claim for refund/tax credit, petitioner presented its Accounting Manager, Ma. Victoria Cruz and the Court-commissioned Independent Certified Public Accountant (ICPA), Madonna Mia S. Dayego.

Witness Ma. Victoria Cruz testified that as petitioner's Accounting Manager, she is responsible for its entire accounting operations, which includes the review of tax returns for filing with the BIR. She also communicates and coordinates with petitioner's: (a) external auditors and government agency representatives for the audit of petitioner's books of accounts; and (b) legal counsel and tax consultants for statutory and tax issues. She is also the custodian of communications and notices to and from the BIR pertaining to any transactions that petitioner had with the BIR.

The instant case, according to the witness involves petitioner's claim for refund of the amount of ₱39,298,255.95, representing its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the four quarters of CY 2014.

As shown in petitioner's Amended Articles of Incorporation issued on January 29, 2002, it is engaged in financial holding activities particularly as a remittance service provider. It utilizes and offers as services to its non-resident clients alternative delivery channels, including door-to-door, deposit to commercial bank account, pick-up from pawnshops and commercial and rural banks, credit cash cards, credit mobile phone remittance, bills payment, and telegraphic transfer.

In 2014, petitioner rendered services to two (2) non-resident clients, namely: (1) Trans-Fast Remittance LLC, a limited liability company created under the laws of Delaware, United States of America (USA) and conducts business in the USA; and (2) Trans-Fast International FZ-LLC, a company existing under the laws of Dubai, United Arab Emirates (UAE) and conducts business in UAE. The two companies are not engaged in business in the Philippines as evidenced by their Articles of Incorporation issued by their respective countries, as well as, the Certifications issued by the Securities and Exchange Commission (SEC) certifying that they are not registered or licensed to do business in the Philippines.

Per petitioner's Amended Quarterly Returns filed with the BIR, petitioner declared VATable and zero-rated sales during the four quarters of CY 2014 of ₱405,403,385.55, for which it incurred input VAT credits on its domestic purchases of goods and services in the amount of ₱39,327,313.92. A portion of the said input tax credits was applied as payment for its output tax of ₱29,057.99, thus, an excess and unutilized input VAT amounting to ₱39,298,255.95, which is the subject of the present claim.

The witness further declared that on March 31, 2016, petitioner filed with the BIR Revenue District Office (RDO) No. 43A an administrative claim for refund of the said excess and unutilized input VAT for the four quarters of CY 2014 amounting to ₱39,298,255.95, with attached supporting documents. Also attached was a Sworn Certification stating that it submitted complete documents for purposes of processing its claim for refund. Respondent allegedly failed to act on the said administrative claim for refund, prompting petitioner to file the instant case on August 26, 2016.

ICPA Madonna Mia S. Dayego testified that per her examination and verification of voluminous supporting documents, petitioner is entitled to refund/TCC in the amount of ₱37,488,753.67 only.

In the Resolutions dated March 7, 2018 and July 5, 2018, the Court admitted all the documents formally offered by petitioner.

During the presentation of evidence for respondent, his counsel manifested that the latter would not present any evidence. Hence, the parties were granted thirty (30) days to submit their respective memoranda. However, only petitioner complied, respondent did not. Hence, the case was deemed submitted for decision on August 6, 2018.

On July 31, 2019, the CTA Division partially granted the Petition for Review. The CTA Division granted the refund or issuance of tax credit certificate in favor of the then petitioner (now, respondent) in the reduced amount of **₱37,344,343.15**, representing its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the four quarters of calendar year 2014.

On February 26, 2020, the CTA Division denied CIR's Motion for Reconsideration (Decision dated 31 July 2019), for lack of merit. The CIR received the resolution denying the motion on March 2, 2020. The CIR had a period of fifteen (15) days or until March 17, 2020 within which to file a Petition for Review.

Within the extended period granted under Administrative Circular No. 39-20,[4] petitioner filed a Petition for Review on June 30, 2020.

On July 22, 2020, the CIR was directed to submit, within a period of five (5) days from receipt of the resolution, the required Verification as specified in Section 4, Rule 7 of the 2019 Amendments to the 1997 Rules of Civil Procedure.

On September 15, 2020, the Court noted the Compliance filed by the CIR on September 1, 2020.

On October 12, 2020, respondent filed its Comment (Re: Petition for Review dated June 23, 2020). Thereafter, this case was submitted for decision.

Hence, this decision.

ISSUE

Whether or not the Honorable Court has jurisdiction over the claim for refund.

The CIR reiterates that the Honorable Court (CTA Division) erred in giving due course to the Petition for Review filed by respondent. In order to bolster its position, he cited Sec. 112 (C) of NIRC of 1997, as amended, and Item I, Paragraph 2 and Item II, Paragraph 1 of Revenue Memorandum Circular (RMC) No. 54-2014[5].

The CIR alleges that respondent failed to submit the verification of delinquent accounts from the concerned Revenue District Office, certified true copy of approved application for zero-rating issued by the appropriate BIR office for effectively zero-rated transactions, reconciliation of export sales and dollar remittances, and compliance on big ticket items per Revenue

[4] The filing of petitions, appeals, complaints, motions, pleadings and other submissions that fall due up to 31 May 2020 before the courts in areas under Modified Enhanced Community Quarantine (MECQ) is extended for 30 calendar days, counted from 1 June 2020. Prior to this, there were already several extensions given due to the enhanced community quarantine or lockdown from March 16, 2020.

[5] *SUBJECT* : *Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended*; June 11, 2014.

Memorandum Order (RMO) No. 16-2007[6] and RMC No. 29-2009[7]. He concludes that since respondent failed to submit the complete supporting documents upon submission of the administrative claim for VAT refund and the lapse of eighty (80) calendar days from the date of the filing of the application/submission of documents, the application for tax credit or refund should be denied.

In its Comment, respondent manifests that the Petition is a mere rehash of the CIR's Motion for Reconsideration (MR) and that CIR failed to cite any error that may serve as basis for reversal of the Assailed Decision.

THIS COURT'S RULING

The petition is denied.

After a careful review of the issues and arguments raised by the CIR in this Petition, this Court finds that these are mere reiterations of what have been considered and passed upon by the CTA Division in the assailed Resolution dated February 26, 2020.

Pertinent to this is Section 112(C) of the NIRC of 1997, as amended, provides:

> "(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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> "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,

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[6] *SUBJECT : Prescribing Additional Procedures in the Audit of Input Taxes Claimed in the VAT Returns by Revenue Officers and Amending "Annex B" of Revenue Memorandum Order (RMO) No. 53-98 with Respect to the Checklist of Documents to be Submitted by a Taxpayer upon Audit of his/its VAT Liabilities as well as the Mandatory Reporting Requirements to be Prepared by the Assigned Revenue Officer/s Relative thereto, All of which shall Form an Integral Part of the Tax Docket*; July 20, 2007.

[7] *SUBJECT : Clarifying Certain Issues Relative to the Processing of Claims for Tax Credit/Refund*; April 16, 2009.

appeal the decision or the unacted claim with the Court of Tax Appeals." *(Emphases supplied)*

"Based on the plain language of the foregoing provision, the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA."[8]

In the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,*[9]*("Pilipinas Total Gas" case),* the Supreme Court *En Banc* ruled that, "From the above [Sec. 112 (C) of the NIRC, as amended], it is apparent that the CIR has 120 days from the date of submission of complete documents to decide a claim for tax credit or refund of creditable input taxes. The taxpayer may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a 'denial due to inaction,' appeal the decision or unacted claim to the CTA."

This case involves claims for tax credit or refund filed after June 11, 2014 (applicability of RMC 54-2014). In the *Pilipinas Total Gas case,* the Supreme Court *En Banc* categorically states that:

"As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:

> The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
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> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be

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[8] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017.
[9] G.R. No. 207112, December 8, 2015.

> accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.'
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> Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, **since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.**" (*Emphases Supplied).*

Based on the foregoing, considering that the administrative claim for refund was filed on March 31, 2016, it means that the reckoning point of the counting of the 120 days is also the date of filing of the said claim.

In this case, the CTA Division stated in the assailed Resolution that, "It was established that petitioner filed its administrative claim for refund of unutilized input VAT for the four (4) quarters of calendar year 2014 on March 31, 2016, with attached supporting documents. **Also accompanying petitioner's administrative claim was a Sworn Certification stating that it submitted complete documents for purposes of processing its claim for refund.** Thus, from the filing of petitioner's administrative claim on March 31, 2016, respondent had 120-days or until July 29, 2016 to decide on the claim. **Since respondent failed to act** on petitioner's claim after the lapse of the 120-day period, petitioner had 30 days from July 29, 2016 or until August 28, 2016, within which to elevate its case to the Court via a Petition for Review. **Thus, the Court acquired jurisdiction over the instant Petition for Review seasonably filed on August 26, 2016.**"[10] *(Emphases Supplied).*

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership,*[11] "The 30-day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by the CIR as well."

[10] *Rollo*, p. 44.
[11] G.R. No. 191498, January 15, 2014.

In the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue,*[12] the Supreme Court *En Banc* discussed that:

> "xxx **The application of the 120+30 day periods was first raised in *Aichi*,[13] which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional.** The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," **the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim.** xxx" *(Emphases Supplied)*

Based on the foregoing discussions, this Court finds that the CTA Division did not err in giving due course to the Petition.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. Accordingly, the assailed Decision and the Resolution promulgated on July 31, 2019 and on February 26, 2020, respectively, by the CTA Special Third Division are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[12] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[13] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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