REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HEDCOR, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8964

Members:

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

Promulgated:

MAY 1 6 2018 9:20 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is petitioner's **Motion for Reconsideration (Re: Decision dated December 11, 2017)**, filed on December 27, 2017, with respondent's **Opposition Re: Petitioner's Motion for Reconsideration**, filed on February 2, 2018, and petitioner's **Reply (To: Opposition dated February 2, 2018)**, filed on February 28, 2018.

Petitioner moves for the reconsideration of the Decision dated December 11, 2017 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."

In its motion, petitioner avers that in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue (CIR)*[1], Pilipinas Total Gas was deemed to have filed its judicial claim within the prescribed period even when it filed additional documents ninety (90) days after it filed its administrative case, without any notice or request from the CIR.

Moreover, petitioner reiterates that the word "action" is not the same as "decision", and that its claim was acted upon and expressly denied precluding the application of the 120+30-day period or the "deemed denial" doctrine. Petitioner argues that according to Revenue Memorandum Circular (RMC) No. 49-03[2], respondent can continuously and separately act on and process a claim administratively, as the RMC allows concurrent actions in both the administrative and judicial level.

Petitioner contends that respondent continued to have jurisdiction to act on petitioner's administrative claim for tax refund/credit after the lapse of the 120+30-day period as confirmed by Revenue Regulation (RR) No. 1-2017[3]. Petitioner posits that the said RR proves that: (1) there has been a wholesale denial of input value-added tax (VAT) refund claims based on RMC No. 54-2014[4] despite being filed prior to the effectivity of said RMC to such an extent that it compelled the enactment of a revenue regulation; and (2) respondent himself recognizes the need to correct this injustice by providing guidelines specifically for claims filed prior to the effectivity of the RMC and denied based on said RMC. Petitioner asserts that the issuance of this directive validates petitioner's decision to wait for an express denial as this decision stems from the principle behind the enactment of RR No. 1-2017.

Petitioner also contends that the interpretation of the purpose of the 120+30-day period should be consistent with the legislative intent behind the amendment to Section 112 (C) of the National Internal Revenue Code of 1997, as amended (Tax Code). It claims

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

[2] Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

[3] Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014.

[4] Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

that the 120+30-day period was intended to give respondent adequate time to process a claim and to protect taxpayers from prejudicial delays, and not to remove respondent's jurisdiction thereon despite the lapse of such period or when a taxpayer makes a judicial appeal. Petitioner also avers that the amendment introduced by Republic Act (RA) No. 7716[5] to the Tax Code merely gave the taxpayer the option to appeal to this Court without need of waiting for a final decision of the CIR.

Lastly, petitioner avers that petitioner's right to appeal the actual denial of its administrative claim for input VAT refund and/or issuance of TCC is granted by statute, and its unwarranted denial violates the due process clause under the Constitution.

In his Opposition, respondent avers that Section 112 of the Tax Code does not provide for the remedy of waiting for the decision beyond the 120-day period provided therein. Respondent cites the case of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[6], and states that petitioner is provided with only two alternative remedies, namely: (1) within thirty (30) days from receipt of the decision denying its application for tax refund, appeal said decision to this Court; or (2) if no decision is rendered within one hundred twenty (120) days from submission of complete documents, appeal the deemed denial by inaction to this Court within thirty (30) days from the expiration of such 120-day period. Hence, respondent argues that if no decision is issued within the 120-day period, the same shall be considered as unacted and equivalent to a "deemed denial" decision.

Moreover, respondent claims that RMC No. 54-2014 merely called for the application of the provisions of the Tax Code, in the advent of the decisions of the Supreme Court. He also argues that petitioner's reliance on RMC No. 49-03 and RR No. 1-2017 is misplaced and erroneous, as the specific provision applicable in all claims for refund/tax credit of unutilized input VAT attributable to zero-rated sale is Section 112 of the Tax Code. He avers that petitioner's administrative claim is not covered by RR No. 1-2017, as admitted by petitioner in his Motion for Reconsideration.

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[5] An Act Restructuring the Value-Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration, and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as amended, and for Other Purposes.
[6] G.R. Nos. 193301 and 194637, March 11, 2013.

In its Reply, petitioner claims that the term "deemed denial" cannot be found in Section 112 (C), as it is merely a construct of RMC No. 54-2014. Petitioner further argues that "action", as distinguished from "decision" covers a spectrum of explicit, external incidents related to the processing of administrative claims, and the existence of any action in the context of an administrative claim removes such claims from those "unacted" and/or "deemed denied". Petitioner argues that RMC No. 54-2014 is not just a mere reiteration of Section 112 (C), but set new requirements which are substantive, and hence, there is a clear violation of substantive due process when its administrative claim for refund was decided on the basis of such issuance.

After a careful review of the grounds raised in the Motion for Reconsideration, as well as in respondent's Opposition and petitioner's Reply, the Court finds petitioner's arguments without merit.

In the assailed Decision, the Court ruled that the instant Petition for Review was belatedly filed, to wit:

> "To be sure, 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. Nevertheless, the Supreme Court also emphasized that the foregoing benefit given to taxpayer is not unbridled and, as such, is subject to limitations.
>
> Hence, based on the pertinent portion of *Pilipinas Total Gas*, for claims filed before June 11, 2014, or prior to the effectivity of RMC No. 54-14, the rules under RMC No. 49-03 in relation to Section 112 of the Tax Code shall apply.
>
> In sum, the rule is that from the date that an administrative claim for refund/tax credit of excess unutilized input VAT is filed, a taxpayer only has thirty (30) days within which to submit all the documentary requirements that would substantiate his claim, unless the CIR gives further extension through a written notice.

In the instant case, petitioner filed its administrative claims covering the four quarters of CY 2010 on June 22, 2011. Consequently, petitioner had thirty (30) days therefrom or until July 22, 2011 within which to submit all pertinent supporting documents.

Subsequent to the filing of its administrative claim on June 22, 2011, petitioner submitted additional supporting documents on the following dates:

DATE OF SUBMISSION TO THE BIR	**EXHIBIT REFERENCE**
September 30, 2011	"P-34"
April 12, 2012	"P-32"
April 10, 2012	"P-36"
June 6, 2012	"P-37"
June 11, 2012	"P-38"
June 11, 2012	"P-39"
June 26, 2012	"P-35"
August 17, 2012	"P-40"
December 18, 2013	"P-41"
July 14, 2014	"P-42"

Since the foregoing submissions were made beyond the 30-day period required by RMC No. 49-03 and there is no evidence that petitioner was given further extension by the CIR to submit documents in support of its administrative claim for refund, it is presumed that complete documents accompanied the claim when it was filed.

Thus, the 120-day period shall be reckoned from June 22, 2011 and shall run until October 20, 2011. Considering that respondent failed to act on the subject claim, petitioner had thirty (30) days after the lapse of the 120-day period on October 20, 2011 or until November 19, 2011 within which to file a judicial appeal before this Court. However, the present Petition for Review was filed only on January 7, 2015. Hence, it is clear that petitioner's judicial claim was belatedly filed.

Petitioner avers that the Supreme Court sustained the right of Total Gas to determine the completeness of its documentary requirements, extending beyond 30 days from submission of administrative claim, even without any notice or request from the CIR to submit additional documents. Petitioner claims that this Court has retrospectively applied RMC No. 54-2014 by substituting the Court's discretion as to when petitioner is deemed to have completed the submission of its documentary requirements.

Petitioner's argument is of no moment. Assuming *arguendo* that the 120-day period commences on the last date petitioner submitted additional documents, or on July 14, 2014, the 120-day period ends on November 11, 2014. Accordingly, petitioner had only until December 11, 2014 to file its judicial claim. Consequently, the present Petition which petitioner filed on January 7, 2015 is still belatedly filed.

Petitioner also argues that RMC No. 49-03 allows concurrent actions in both the administrative and judicial level, and that the term "deemed denial" is merely a construct of RMC No. 54-2014. Petitioner claims that RA No. 7716, which amended the Tax Code, never intended for respondent to lose its jurisdiction to continuously and separately act on the claim at the administrative level until a final decision of the Court or a decision at the administrative level is issued.

The relevant portions of RMC No. 49-03 state:

> "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a

final decision has been reached by either the CTA or the administrative agency.

If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office." *(Underscoring supplied)*

"While it is true that the CIR can still evaluate the administrative claim even after the lapse of the 120-day period and after filing of judicial claim, it bears stressing that such authority is for purposes of opposing or conceding to the judicial claim."[7] Pursuant to the afore-quoted provision, if the BIR is able to process the administrative claim and the taxpayer is amenable to its findings, the taxpayer must file a motion to withdraw the judicial claim. If, on the other hand, the taxpayer decides to continue with its judicial claim, the result of the investigation will be presented as evidence against the taxpayer's claim. In both instances, the judicial claim stands.

[7] *Allegro Microsystems Philippines, Inc. vs. The Undersecretary of the Department of Finance and Chairman of the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center, et al.*, CTA EB No. 1327 (CTA Case No. 8882) Resolution dated June 22, 2017.

In this connection, Sections 7(a)(1) and (2), and 11 of Republic Act (RA) No. 1125[8], as amended, provides:

> SECTION 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
> >
> > (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial; xxx" *(Underscoring supplied)*
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> "SEC. 11. *Who may appeal; Mode of Appeal; Effect of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."
>
> xxx xxx xxx" *(Underscoring supplied)* Jr

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[8] An Act Creating the Court of Tax Appeals.

The Court reiterates the ruling pronounced in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[9] that when the 120-day period lapses and there is inaction on the part of the BIR, taxpayers must no longer wait for it to come up with a decision thereafter, as the inaction is the decision itself. The Supreme Court ruled as follows:

> "The error of the taxpayer lies in the fact that it had mistakenly believed that a judicial claim need not be filed within 30 days from the lapse of the 120-day period. It had believed that the only requirement is that the judicial claim must be filed within the two-year period under Sections 112(A) and (B) of the 1997 Tax Code. In other words, Rohm Apollo erroneously thought that the 30-day period does not apply to cases of the CIR's inaction after the lapse of the 120-day waiting period, and that a judicial claim is seasonably filed so long as it is done within the two year-period. Thus, it filed the Petition for Review with the CTA only on 11 September 2002.
>
> These mistaken notions have already been dispelled by *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)* and *San Roque. Aichi* clarified that it is only the administrative claim that must be filed within the two-year prescriptive period. *San Roque,* on the other hand, has ruled that the 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
>
> xxx xxx xxx
>
> A final note, <u>the taxpayers are reminded that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period.</u>" *(Underscoring supplied)*

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[9] G.R. No. 168950, January 14, 2015.

Based on the foregoing, it is clear that an inaction within a period fixed by law for action is already deemed a denial, and thus, should already be appealed after the expiration of the said prescribed period, which in this case, refers to the 120-day period under Section 112 (C) of the Tax Code.[10]

RA No. 9282[11], which amended RA No. 1125, expressly provided that inaction by the CIR, where the Tax Code provides a specific period for action, is deemed a denial. The said legislation was made effective on April 23, 2004. On the other hand, RA No. 7716 was approved on May 5, 1994, or almost ten years before RA No. 9282. Assuming that the original intent of Congress is such as petitioner posits, the subsequent passage of RA No. 9282 shows the legislature's modification of such original intent.

As to petitioner's argument that the issuance of RR No. 1-2017 impliedly confirmed its proposition that the judicial claim was timely filed, the Court finds the same bereft of merit. The case at bar is not covered by RR No. 1-2017.[12] Even assuming that RR No. 1-2017 applies, Section 3 of the RR expressly states that the Commissioner, or his duly authorized representative, should have decided on the claim for tax refund within 120 days from the submission of complete documents, or from the date of filing of the application if no additional documents were submitted. It reads:

> "SEC. 3. *Processing of Administrative Claims.* – VAT claims filed and pending prior to the effectivity of RMC 54-2014, the claims solely covered by these Regulations, shall be processed and approved in accordance with the following rules:
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> xxx xxx xxx
>
> 2. 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 Tax Code, as amended, and the Commissioner, or his

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[10] *Petnet, Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 1479 (CTA Case No. 9113), February 1, 2018.
[11] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.
[12] Sec.4 (4) of RR No. 1-2017.

> duly authorized representative, should have decided on the claim for tax credit or refund within 120 days from the date of submission of complete documents, or from the date filing of the application, if the claimant-taxpayer did not submit additional documents.
>
> xxx xxx xxx" *(Underscoring supplied)*

In the *Pilipinas Total Gas* case[13], the Supreme Court ruled that RMC No. 54-2014 cannot be applied retroactively since it imposes new obligations upon taxpayers in order to perfect their administrative claim, which are: (1) compliance with the mandate to submit the "supporting documents" enumerated under RMC 54-2014 under its "Annex A"; and (2) the filing of "a statement under oath attesting to the completeness of the submitted documents," referred to in RMC 54-2014 as "Annex B."[14]

Hence, RR No. 1-2017 recognized that RMC No. 54-2014 was being given retroactive effect, but only as to the manner of submission of the supporting documents, *viz:*

> "It appears that RMC No. 54-2014 was being given retroactive effect because pending claims were deemed denied upon expiration of the 120-day period from the date the claims were filed even though the taxpayer-claimants are still in the process of submitting the complete documents which was allowed under RMC No. 49-2003. It presumed that the pending claims had been filed with complete documents and the same have remained unacted upon beyond the 120-day period."

Clearly, petitioner's argument that RR No. 1-2017 validates its decision to wait for an express denial on its administrative claim has no merit.

The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the

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[13] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.
[14] Supra, note 1, p.15.

requirements of the Rules.[15] Since petitioner failed to do so, it has consequently lost its right to appeal.

For the foregoing reasons, the Court finds no compelling reason to modify or amend the assailed Decision.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's **Motion for Reconsideration (Re: Decision dated December 11, 2017)** 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 all due respect, please see my Concurring and Dissenting Opinion.)
CATHERINE T. MANAHAN
Associate Justice

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[15] *Neypes vs. Court of Appeals*, G.R. No. 141524, September 14, 2005.

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COURT OF TAX APPEALS
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Second Division

HEDCOR, INC.,
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-versus-

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Respondent.

CTA No. 8964

Members:

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

Promulgated:

MAY 16 2018 9:20 am

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CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I have no objections to the denial of the Motion for Reconsideration filed by petitioner and its consequent affirmance of the Decision of the Court in Division promulgated on December 11, 2017 dismissing the Petition for Review for lack of jurisdiction.

With due respect, however, I dissent to the reckoning date in counting the 120-day period embodied in the Decision of the Court in Division. I maintain that the counting of the 120 + 30 days (in claims for refund of excess input taxes) must begin from July 14, 2014 which is the last day when petitioner submitted the last batch of complete documents per request of the revenue examiners and not from the date the administrative claim for refund was filed as proposed by my esteemed colleagues.

Historically, the law and implementing rules as affirmed by the Supreme Court have always reckoned the counting of the

120-day period from the submission of complete documents and not from the filing of the administrative claim for refund. This was properly enunciated by the Supreme Court in the case of *Pilipinas Total Gas, Inc. vs. CIR*[1] and I quote:

> "*Ideally*, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, *ideally*, the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.
>
> Thus, when the VAT was first introduced through Executive Order No. 273, the pertinent rule was that:
>
>> (e) Period within which refund of input taxes may be made by the Commissioner. The Commissioner shall refund input taxes within 60 days **from the date the application for refund was filed** with him or his duly authorized representative. No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.
>>
>> [Emphasis supplied]
>
> Here, the CIR was not only given 60 days within which to decide an administrative claim for refund of input taxes, but the beginning of the period was reckoned 'from the date the application for refund was filed.'
>
> When Republic Act *(R.A.)* No. 7716 was, however, enacted on May 5, 1994, the law was **amended** to read:
>
>> (d) 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 for creditable input taxes within sixty (60) days **from the date of submission of complete documents in support of the application** filed in accordance with sub-

[1] G.R. No. 207112, December 6, 2015.

> paragraphs (a) and (b) 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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.
>
> [Emphasis supplied]

Again, while the CIR was given only 60 days within which to act upon an administrative claim for refund or tax credit, the period came to be reckoned '**<u>from the date of submission of complete documents in support of the application</u>**.' With this amendment, the date when a taxpayer made its submission of complete documents became relevant. In order to ensure that such date was at least determinable, RMO No. 4-94 provides:

> REVENUE MEMORANDUM ORDER NO. 40-94
>
> SUBJECT: *Prescribing the Modified Procedures on the Processing of Claims for Value-Added Tax Credit/Refund*
>
> III. Procedures
> REGIONAL OFFICE
> A. Revenue District Office
> In General:
>
> 1. Ascertain the completeness of the supporting documents prior to the receipt of the application for VAT credit/refund from the taxpayer.
>
> 2. Receive application for VAT Credit/Refund (BIR Form No. 2552) in three (3) copies in the following manner:
>
>   a. stamp the word 'RECEIVED' on the appropriate space provided in all copies of application;
>
>   b. indicate the claim number;
>
>   c. **indicate the date of receipt**; and
>
>   d. initial by receiving officer.

> The application shall be received only if the required attachments prescribed in RAMO 1-91 have been fully complied with x x x

Then, when the NIRC was enacted on January 1, 1998, the rule was once more amended to read:

> (D) *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) and (B) 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.
>
> [Emphasis supplied]

This time, the period granted to the CIR to act upon an administrative claim for refund was extended to 120 days. The reckoning point however, remained **'from the date of submission of complete documents.'**

xxx xxx xxx

Then when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112 (B) of the NIRC, Section 112 (D) was amended and renamed 112 (C), Thus:

> (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.

With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, **for purposes of determining when the supporting documents have been completed – 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.** After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

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 ***what*** additional document must be presented in support of a claim for tax credit or refund – it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are *actually* complete as required by law – is for the CIR and the courts to determine. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State." (Emphasis supplied)

This is further buttressed by another ruling of the Supreme Court in the case of *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. CIR*[2] and I quote:

> "**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." (emphasis supplied)

I also take exception to the argument of petitioner that the 120 + 30-day period to appeal to the Court of Tax Appeals (CTA) from the inaction of the Commissioner of Internal Revenue (CIR) is *not* mandatory and that the taxpayer still has the option to wait for the categorical denial of the claim before a taxpayer may opt to appeal to the Court.

Petitioner's argument contravenes the well-established rule that in claims for refund of excess or unutilized input VAT, the 120 + 30 day-period is mandatory and jurisdictional.[3]

As to the counting of the 120 + 30-day period, I maintain and reiterate my separate opinion which I have held in the case of *Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ vs. Commissioner of Internal Revenue* [4] where similar facts were in dispute. I likewise quote below portions of my discourse in a case involving the same parties[5], thus:

> The existing jurisprudence relative to the lapse of the 120 day period in claims for refund under Section 112 (d) of the Tax Code moves us to rule that failure on the part of the taxpayer to elevate an appeal to this Court within the 30 days after the lapse of the 120 day period is fatal to its claim for refund because the Court loses its jurisdiction to take cognizance of the same.
>
> The only two options available to the taxpayer upon the lapse of the 120 day period is to file an appeal to the Court of Tax Appeals (CTA) or not to file an appeal at all. The alternative of

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[2] G.R. No. 182737, March 2, 2016.
[3] Philex Mining vs. CIR, G.R. No. 207112, December 6, 2015; Marubeni Philippines vs. CIR, G.R. No. 198485, January 5, 2017.
[4] CTA Case No. 8899, March 9, 2017.
[5] Hedcor , Inc. vs. CIR, CTA Case No. 8967, June 7, 2017.

awaiting the decision of the Commissioner of Internal Revenue (CIR) and appealing said decision to the CTA is viable only within the 120 + 30 days provided in the aforecited Section 112 (d) of the Tax Code. It is not an available remedy if the decision of the CIR is issued after the 120 + 30 day period. The ruling of the Supreme Court in the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue* refers only to assessment cases and not to claims for refund, however persuasive the argument of the petitioner may be in this regard.

My reluctance to wholly assent to the entire context of the decision stems from my disagreement with some of the doctrinal pronouncements relative to the submission of relevant supporting documents to support the claim for refund as this relates to the counting of the 120-day period provided in Section 112 (c). The majority opinion rightfully distinguishes between claims for refund under Revenue Memorandum Circular (RMC) No. 49-03 and RMC No. 54-14. The provisions of RMC 49-03 apply to claims for refund filed before June 14, 2013 while RMC 54-14 applies to claims filed starting June 11, 2014 onwards. I also agree that as to the instant claim for refund, the provisions of RMC 49-03 prevail.

My bone of contention is the timeline within which the supporting documents are deemed to have been submitted for purposes of counting the 120-day period. For purposes of discussion, I quote Section 112 (A) and (C) and the relevant provisions of RMC 49-03, thus:

Section 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 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.

RMC 49-03

A-18. xxx xxx xxx

> "For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty days from receipt of the complete documents. 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 claim, the taxpayer claimants shall submit such documents within thirty days from request of the investigating/processing office, which shall be construed as within the one hundred twenty day period."

The majority opinion interprets the above provisions in this wise:

> " To reiterate, RMC 49-03 applies in claims filed before June 11, 2014. In this regard, a taxpayer has thirty days from the date an administrative claim for excess unutilized input VAT is filed, within which to submit supporting documents, unless granted further extension by the BIR. If in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer claimants shall submit such documents within thirty days from the request of the investigating/processing office. It must be stressed, however, that notice, by way of a request from the tax collection authority to produce the complete documents, in these cases, is necessary."

The undersigned agrees with the above contention that the submission of documents for purposes of counting the 120 day period under the milieu of RMC 49-03 may be extended if the investigating revenue officers make a request for additional documents in the course of their investigation. Certainly, the taxpayer is at the mercy of the revenue officers who have the prerogative to grant or deny the claim for refund. I do however believe that the request or requests for additional documents by the investigating revenue officers need not be written, contrary to the view of my colleagues when they wrote, thus :

> "The records, however, do not show of *any written notice from the BIR requiring petitioner* to submit certain documents in support of the claims. Neither does it show that petitioner was given further extension in the submission of its supporting documents." (italics ours)

There is nothing in RMC 49-03 which requires the request for additional documents to be written for the extension to apply. In the processing of administrative claims for refund with the BIR, the claimants would naturally follow up their claims on a regular basis and request for meetings with the assigned examiners in order to facilitate and hopefully expedite a successful outcome. Sometimes it would be the revenue examiners who would invite the claimants to discuss their findings. During said meetings, the revenue examiners may request for additional documents which, more often than not, are relayed verbally without any written note to produce said documents. It is this reality that I described in my Dissenting

Opinion in the case of Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ vs. Commissioner of Internal Revenue, viz:

> "It is clear that the taxpayer, at the time of filing his application 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 the claim for refund. At this stage, taxpayer has no idea on how the assigned revenue examiner will appreciate the sufficiency of the documentation submitted. This is the first stage. Upon assignment of the refund claim to an examiner, the latter will now study the application and thereby 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."

Indeed the provisions of Section 112 (c) of the Tax Code on the counting of the 120 day period still has more room for interpretation and clarification and is ripe for more jurisprudential dissertations. But having said this, we should also strive to achieve a healthy balance between the principles of strict construction of tax refunds with that of the principles of fairness and equity coupled with the actual reality prevailing on the ground."

WHEREFORE, in view of the foregoing, I vote to **DENY** the Motion for Reconsideration filed by petitioner for reasons aforestated.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice