REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DOHLE SHIPMANAGEMENT PHILS. CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and the ONE-STOP SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER OF THE DEPARTMENT OF FINANCE,
Respondents.

CTA CASE NO. 8702

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

APR 04 2017
10:35 a.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review dated August 29, 2013, petitioner Dohle Shipmanagement Phils. Corp. (Dohle) prays for the refund or the issuance of a tax credit certificate for unapplied input value-added tax (VAT) paid on its domestic purchases of taxable goods and services attributable to zero-rated sales for taxable year 2010 in the amount of P38,515,004.35.

Petitioner is a domestic corporation registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 004-500-132-000. It is a duly registered VAT taxpayer as of the year 2010, the taxable year pertinent to this case.[1]

[1] Par. 1, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues dated March 14, 2014, docket pp. 733-735.

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), vested with the power and authority to grant a refund/tax credit for input VAT attributable to zero-rated sales. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

The other respondent, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSS-DOF), is a government office empowered to accept and process applications for tax credits and/or duty drawbacks. Its office address is at 3F Executive Tower, BSP Complex, Roxas Boulevard, corner Pablo Ocampo Street, Manila.[3]

On August 12, 2011, petitioner filed with respondent OSS-DOF applications for refund/tax credits of its unapplied input VAT for the four quarters of the year 2010, as follows:[4]

Period	Amount (Php)
1st Quarter	3,125,191.92
2nd Quarter	12,952,946.46
3rd Quarter	10,431,504.06
4th Quarter	12,005,361.91
TOTAL	38,515,004.35

On separate occasions, petitioner submitted documents to substantiate its administrative claim for refund/tax credit, the last being on April 12, 2013.[5]

On August 30, 2013, petitioner filed the instant Petition for Review citing inaction on the part of respondent CIR on its administrative claim for refund/tax credit.

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[2] Par. 2, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues dated March 14, 2014, docket pp. 733-735.
[3] Par. 3, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues dated March 14, 2014, docket pp. 733-735.
[4] Par. 4, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues dated March 14, 2014, docket pp. 733-735.
[5] Par. 6, Petition for Review dated August 29, 2013, docket pp. 14-24.

On October 7, 2013, respondent CIR posted his Answer[6] to the Petition for Review, while respondent OSS-DOF posted its own[7] on November 14, 2013.

In his Answer, respondent CIR cites his usual defense that the instant claim for refund is still subject to examination. In addition, he states that petitioner needs to prove the merits of its claim since claims for refund are strictly construed against the claimants.

The other respondent OSS-DOF takes a different direction by questioning the Court's jurisdiction over the case saying that petitioner failed to comply with the mandatory 120-day period under Section 112 of the National Internal Revenue Code (NIRC), as amended. The said 120-day prescriptive period was yet to lapse when the present appeal was instituted rendering it premature per Revenue Memorandum Circular (RMC) No. 29-2009. Per respondent OSS-DOF, the 120-day prescriptive period stopped running from the time petitioner was required to submit the Agreement Form indicting petitioner's concurence with the result of the BIR audit on the administrative claim for refund/tax credit. Despite receipt of the letter dated March 13, 2013, petitioner failed to submit the required Agreement Form which effectively suspended the running of the 120-day period. It is therefore inaccurate to say that there was already inaction on the part of respondent CIR entitling petitioner to seek judicial intervention.

Even if the Court assumes jurisdiction over the case, the amount of the claim must be reduced for not all are attributable to petitioner's zero-rated transactions for the year 2010. Respondent OSS-DOF questions the purchases of services relative to the construction of a building which was completed only after 2010. It suspects that the building might be used in a manner not exclusively attributable to zero-rated transactions, hence, would not involve input VAT.

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[6] Docket, pp. 78-80.
[7] Docket, pp. 111-120.

In its Reply[8], petitioner argues that an Agreement Form is not a requirement in a claim for refund/tax credit of unutilized input VAT under Section 112 of the NIRC and RMC No. 029-09. Thus, the non-submission of the Agreement Form would not suspend the running of the 120-day period under Section 112 of the NIRC. Further, there is nothing in Section 112 of the same Tax Code that lays the basis for the suspension of the 120-day period and respondent cannot validly add such requirement to the law which he is mandated to implement. To require such document is to deny petitioner of its right to due process. By virtue of such document, petitioner would not be able to dispute the BIR finding nor seek review by higher authority in violation of its right to be heard.

Petitioner points out that it submitted additional supporting documents on April 12, 2013, hence, the 120-day period expired on August 10, 2013 giving petitioner 30 days, or until September 9, 2013, to file a petition for review with this Court. Hence, its Petition for Review was seasonably filed on August 30, 2013 vesting the Court jurisdiction to hear and determine the case.

With regard the issue that petitioner's building was completed beyond 2010, therefore, purchases of services in connection thereto cannot be attributed to its zero-rated transactions for the year 2010, petitioner counters that compliance with Section 112 of the NIRC was sufficient. Payments in connection with its purchases of services in relation to the building were actually and constructively received in 2010, thus, attributable to its zero-rated transactions.

After the pre-trial conference, a Pre-Trial Order[9] was issued on April 16, 2014.

To prove its case, petitioner presented Bethoven S. Saguid, Kerry Lamb, ICPA Myra Celeste O. Dabalos, and James Richard Stevenson as its witnesses.

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[8] Docket, pp. 174-187.
[9] Docket, pp. 744-751.

Petitioner's Senior Vice-President and General Manager **Bethoven S. Saguid**,[10] testified that petitioner is in the business of managing ships, acts for and in behalf of any foreign shipping corporation for purposes of hiring seamen, and equipping the ship or vessel. Petitioner, formerly known as Midocean Shipmanagement Corporation was renamed Dohle Shipmanagement Phils. Corporation in August 2005.

On January 1, 2009, petitioner executed a Service Agreement with Dohle (IOM) Limited [DIOML] under which it shall render crewing operations, crew accounting services, crew travel services, and crew training. Under the same Service Agreement, petitioner obliged to build a site in 2010 for all these services. For services rendered, petitioner would pay all the costs of such services plus a certain margin.

The Service Agreement was amended in August of 2010 to include commercial and technical services. However, petitioner was unable to provide the technical and commercial services for the year 2010 since there was a stipulation in the amendment that it should first finish the construction of its building before rendering the additional services. In any event, upon completion of the building and after moving in, petitioner commenced rendering the additional services.

The instant Petition for Review was lodged as respondent failed to act on petitioner's administrative claim for refund/tax credit of its unapplied input VAT for the year 2010 within the period granted to him.

On August 12, 2011, petitioner filed four (4) applications for VAT refund/tax credit, one for each quarter of the year, attaching thereto supporting documents, i.e. Quarterly VAT Returns and official receipts.

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[10] See Minutes of hearing dated April 21, 2014, docket p. 752 ; Judicial Affidavit of Bethoven S. Saguid dated January 15, 2014, docket pp. 333-351; cross examination conducted by respondent CIR (TSN dated April 21, 2014 pp. 6-8) but not by respondent OSS-DOF.

In an email dated April 24, 2012,[11] respondent OSS-DOF informed petitioner of its initial finding that out of the P38,515,004.35 being claimed for refund/tax credit, the amount of P37,006,162.01 was disallowed and only P1,508,842.34 was considered allowable input tax for refund/tax credits. The details of the findings were communicated to petitioner in an informal meeting and through BIR computer print-outs.[12]

In a letter dated June 26, 2012,[13] petitioner assailed the cited initial finding attaching thereto additional documents to substantiate its position, all received by respondent OSS-DOF on even date.

On March 14, 2013, petitioner received a letter dated March 13, 2013[14] from respondent OSS-DOF pertaining to its VAT claim for refund/tax credit in the amount of P38,515,004.35. The said letter indicated that the approved amount for refund/tax credit was P2,130,630.70, contingent on its submission of an Agreement Form stating that petitioner agrees with the respondent OSS-DOF findings and the amount stated therein.

In a letter dated April 12, 2013,[15] petitioner refused to execute the Agreement Form for it disagreed with respondent OSS-DOF's findings. Together with the said letter were additional supporting documents, received by respondent OSS-DOF on the same date. The Letter specifically indicated that at that point, petitioner had submitted all its documents to substantiate its claim for refund/tax credit.

Since no further communication on the matter was received, petitioner filed the present Petition for Review on August 30, 2013.

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[11] Exhibit P-14-B.
[12] Exhibits P-14 and P-14-A.
[13] Exhibit P-15.
[14] Exhibit P-16.
[15] Exhibit P-17.

Witness **Kerry Lamb** ("Lamb")[16] testified that he is the Vice President for Finance of petitioner since January of 2010, and the one in-charge of petitioner's finances and compliance with financial tax laws and regulations, including the filing of tax returns. By virtue of his position and functions, he knows that petitioner is a duly registered VAT taxpayer with Certificate of Registration[17] and TIN 004-500-132-000.

Based on petitioner's Amended Articles of Incorporation, it is primarily engaged in providing business process outsourcing (BPO) services in the area of ship management and related shipping and non-shipping services, as well as the acquiring and owning of buildings, machineries, among others, and other personal property incidental to its main purpose. In 2010, petitioner performed the named services to its sole client, DIOML, from which it derived the entirety of its income for 2010 pursuant to the Service Agreement[18] it executed with DIOML on January 1, 2009.

Subsequently, the said Service Agreement was amended[19] to include commercial and technical services to be rendered to DIOML to commence within 3 months after moving in to a new building. Since petitioner had no office of its own or place of business in the Philippines, it constructed a new edifice and moved in sometime in April 2011.

Witness Lamb further declared that petitioner's sole client, DIOML, is a foreign corporation not doing business in the Philippines. For services rendered in 2010, petitioner was compensated by DIOML in US dollars through inward remittances to Rizal Commercial Banking Corporation (RCBC), duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), for

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[16] See Minutes of hearing dated May 12, 2014, docket p. 754; Judicial Affidavit dated January 17, 2014, docket pp. 296-332; Supplemental Judicial Affidavit dated February 21, 2014, docket pp. 703-709; cross-examination conducted by respondent CIR (TSN dated May 12, 2014, pp. 9-13) and respondent OSS-DOF (TSN dated May 12, 2014, pp. 13-16).
[17] Exhibit P-7.
[18] Exhibit P-8.
[19] Exhibit P-9, Addendum No. 1 to Service Agreement.

which payments petitioner issued VAT zero-rated official receipts/invoices.

Thus, for 2010, petitioner had unutilized input VAT arising from its domestic purchases of goods and services attributable to its zero-rated sales. For the pertinent period, petitioner filed the requisite quarterly VAT Returns electronically or through the BIR's Electronic Filing and Payment System (EFPS). The said unutilized input VAT was carried forward until the first quarter of the year 2011 but was later deducted as a claim for VAT refund in the second quarter of the same year.

Finally, the construction of a building for petitioner's office was necessary to accomplish its contracted services and had a direct connection with the accomplishment of its zero-rated activities. The subject input VAT arose from petitioner's purchases of goods and services relative to the construction of its building. However, the building is not used solely and exclusively for purposes of generating zero-rated sales and revenues for petitioner. Moreover, petitioner merely leased for a period of years, renewable thereafter, the land upon which it constructed the building which has a depreciable life of fifty (50) years.

The court-commissioned Independent Certified Public Accountant (ICPA) **Myra Celeste O. Dabalos**,[20] testified that after examination of the voluminous documents pertinent to petitioner's claim for refund of unutilized and unapplied input VAT for the year 2010, she prepared an ICPA Report with her findings and observations, which she submitted to the Court on November 29, 2013.

The witness claimed that her audit revealed that petitioner's sales for the year 2010 were all to DIOML, a non-resident foreign corporation not doing business in the Philippines. Petitioner's collection from DIOML were supported by official receipts with VAT registered TIN

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[20] See Minutes of hearing dated July 14, 2014, docket p. 757; Judicial Affidavit dated January 16, 2014, docket pp. 270-295; cross examination conducted by respondent CIR (TSN dated July 14, 2014, pp. 15-21) and not by respondent OSS-DOF.

numbers pre-printed thereon with the stamp of "VAT Zero Rated Sale" on its face. The gross revenues reported in petitioner's Quarterly VAT Returns for the same year tally with the revenue recorded in petitioner's General Ledger, Annual Income Tax Return (ITR), and Audited Financial Statements (AFS).

The amount of input VAT subject of the present claim remained unutilized in the subsequent periods. Petitioner deducted the amount of input tax subject of this claim for refund from its Quarterly VAT Return for the second quarter of 2011, and the said amount was no longer carried over nor applied against any output taxes in the succeeding periods.

Out of the total amount of the claim, the amount of P1,500,000.00 should be disallowed for being unsupported by documents, or supported by mere photocopies, invalid official receipts or invoices, as detailed in her report.

After petitioner rested its case[21], respondent CIR presented its sole witness, Revenue Officer **Norine L. Cruz,**[22] from the office of respondent OSS-DOF. She declared that she learned about petitioner's claim for refund/tax credit when she received an Electronic Letter of Authority (LOA) dated September 6, 2011 authorizing her and two other revenue officers to audit petitioner's books to determine its entitlement to refund. She personally served a copy of the LOA to petitioner on November 11, 2011. This was followed by several notices requiring it to submit its book of accounts to support its claim for refund/tax credit. Petitioner complied but the documents submitted were not sufficient to support its position.

In a Memorandum Report dated August 31, 2012, their group recommended to grant petitioner's claim for refund/tax credit but in a reduced amount.

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[21] Docket pp. 1234-1236.

[22] See Minutes of hearing dated April 21, 2015, docket p. 1381; Judicial Affidavit dated February 19, 2014, docket pp. 674-682; cross examination conducted by petitioner (TSN dated April 21, 2015, pp. 16-21).

Subsequently, the BIR issued a Memorandum dated November 12, 2012 requiring the investigating group to justify their recommendation and submit documents for possible disallowances of petitioner's claim. In view thereof, she prepared a Memorandum Report dated December 28, 2012.

The BIR issued another Memorandum dated January 25, 2013, indicating additional disallowances with recommendation for further reduction in the amount for refund/tax credit. In relation to the foregoing Memorandum, the BIR, through the OSS-DOF, issued a Letter dated March 13, 2013 containing its finding on the claim for refund and requiring petitioner to submit an Agreement Form pursuant to Revenue Memorandum Circular (RMC) No. 29-2009 stating that it is in conformity with such finding. The letter was received by petitioner on March 14, 2013.

Under RMC No. 29-2009, the failure of petitioner to submit the required Agreement Form would halt the running of the 120-day period from notice as provided in Section 112 of the NIRC, as amended.

Petitioner filed a letter protest dated April 12, 2013, received by the OSS-DOF on the same date. The witness admitted that petitioner complied with the substantiation requirements and submitted supporting documents.

Respondent OSS-DOF did not present any evidence but manifested that it would adopt the evidence presented by respondent CIR.

In the Resolution dated June 15, 2015[23] the Court admitted all the documentary exhibits offered by respondent CIR.

When the case was re-opened[24], petitioner presented its last witness **James Richard Stevenson**,[25] a resident of

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[23] Docket pp. 1411-1412.
[24] See Resolution dated September 8, 2015, docket pp. 1501-1504.

the British Isles who works as consultant for DIOML and its joint venture subsidiary, among others.

He testified that he was the Director of Finance and Administration and Chief Financial Officer of DIOML in 2010. He was a signatory in the Service Agreement executed between petitioner and DIOML, hence, familiar with the case. Based on its Certificate of Incorporation,[26] Memorandum of Association,[27] and Articles of Association,[28] DIOML was incorporated in the Isle of Man, British Isles under the name Midocean Maritime Limited. DIOML was later changed to its present name, Dohle (IOM) Limited, as shown by its Certificate of Change of Name.[29]

DIOML holds office at the Isle of Man, British Isles. It is the holding company for the Peter Dohle Group offshore interests and covers a diverse range of subsidiaries and joint ventures which are, most of the time, related to the maritime sector, including ship owning, ship management, marine insurance, manning agencies, corporate and trust services, real estate development and investments. In 2010, DIOML conducted its business only in the Isle of Man. It never conducted business in the Philippines.

Petitioner is a wholly-owned subsidiary of DIOML and they are the parties who executed the Service Agreement by virtue of which, petitioner rendered services to DIOML in 2010.

The witness further testified that for efficiency, the parties modified the Service Agreement through an Addendum to include commercial and technical services, accommodation and training facilities for seafarers, and expansion to technical management involving the actual operation of the vessels. He was also a signatory to the

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[25] See Minutes of hearing dated November 23, 2015, docket p. 1519; Judicial Affidavit dated February 11, 2015, docket pp. 1288-1300; cross examination conducted by respondent CIR (TSN dated November 23, 2015, pp. 13-16) and not by respondent OSS-DOF.
[26] Docket p. 1303.
[27] Docket pp. 1530-1531.
[28] Docket pp. 1532-1535.
[29] Docket p. 1536.

Addendum. With the Addendum, petitioner was required to construct a building for it to render the additional services.

After the testimony of its last witness, petitioner filed a Supplemental Formal Offer of Evidence,[30] which the Court resolved in the Resolution dated March 1, 2016.[31]

The parties submitted the following issues for the determination of the Court, to wit:[32]

1. Whether the Court has jurisdiction over the present Petition.
2. Whether or not petitioner's sales during the taxable year 2010 qualify as zero-rated sales, or are subject to zero percent rate under Section 108(B)(2) of the Tax Code.
3. Whether or not petitioner is entitled to a refund of or the issuance of tax credit certificate for its unapplied input VAT payments for the period January to December 2010 in the total amount of P38,515,004.35, which are directly attributable to its zero-rated sales for the year 2010.

DISCUSSION/RULING

Sections 110 (B) and 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide as follows:

> "SEC. 110. *Tax Credits.* -
>
> xxx xxx xxx
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> (B) *Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters:

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[30] Docket pp. 1523-1526.
[31] Docket pp. 1578-1580.
[32] Pars. 1-3, Jointly Stipulated Issues, Joint Stipulation of Facts and Issues dated March 14, 2014, docket pp. 733-735.

Provided, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

"SEC. 112. *Refunds or Tax Credits of Input Tax.-*

(A) *Zero-rated or Effectively Zero-rated Sales*. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(8)(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 or 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.

(B) x x x   x x x   x x x

(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."

Under Section 112(A), a VAT-registered taxpayer whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the relevant sales were made, apply for refund or tax credit of its creditable input tax due or paid attributable to such sales. Jurisprudence however clarified that (1) only the administrative claim must be filed within the two-year prescriptive period; and (2) the two-year prescriptive period begins to run from the close of the taxable quarter when the relevant sales were made. [33]

In this case, petitioner seeks to refund its unapplied input VAT paid on its domestic purchases of taxable goods and services attributable to its zero-rated sales for taxable year 2010.

Counting two years from the close of each of the four (4) quarters of the year 2010, petitioner had until March 31, 2012, June 30, 2012, September 30, 2012, and December 31, 2012, respectively, to file administrative claim for refund/tax credit.

It appears from the foregoing dates that petitioner seasonably filed its administrative claim for the four (4) quarters of the year 2010 on August 12, 2011.[34]

With respect to judicial claim, Section 112(C) of the NIRC provides that a taxpayer-claimant may file a petition for review with this Court within 30 days from (1) the receipt of the adverse decision of the CIR; or from (2) the lapse of the 120-day period for the CIR to decide the administrative claim for refund /tax credit.[35]

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[33] Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership, G.R. No. 191498, January, 15, 2014.
[34] Exhibits P-10, P-11, P-12, P-13, docket pp. 825-828.
[35] Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation), G.R. No. 194105, February 5, 2014.

As there was no action on the part of respondents on petitioner's administrative claim, the 30-day period to file a judicial claim through a petition for review is from the lapse of the 120-day period under Section 112 of the NIRC.

Significance must however be given to Section 112 (C) which provides that "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 fine, the 120-day period commences to run only from the submission of complete documents in support of the administrative claim for refund/tax credit. However, the submission of complete documents after the filing of the administrative claim for refund/tax credit is not entirely left to the whim or discretion of the taxpayer, but subject to existing rules. The Supreme Court has spoken on the matter, thus:

> To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
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> **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.** The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

> It bears mentioning at this point that the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014, such as the claim at bench.[36] (emphasis ours)

The foregoing tenet applies squarely to the instant case since petitioner filed both its administrative claim and judicial claim prior to June 11, 2014, or on August 12, 2011 and on August 30, 2013, respectively.

The record shows that petitioner submitted to respondent the last batch of its supporting documents on April 12, 2013, the date when the 120-day period for respondent to act on petitioner's claim for refund was supposed to commence. The 120-day period lapsed on August 10, 2013. Counting from August 10, 2013, the 30-day period to file an appeal fell on September 9, 2013. It would therefore appear that petitioner's Petition for Review was seasonably filed on August 30, 2013.

However, April 12, 2013, the date when petitioner submitted complete supporting documents for its administrative claim could not be considered as the reckoning date for the 120-day period neither could it be considered in the computation of the 30-day period to appeal.

Note that under the cited jurisprudence, "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" or within the two-year period for the filing of the administrative claim reckoned from the close of the taxable quarter when the relevant sales were made.

Thus, even if petitioner filed its administrative claim on August 12, 2011, submission of complete documents in support of the application for refund/tax credit for the four quarters of 2010 should only be until March 31, 2012, June 30, 2012, September 30, 2012, and December 31, 2012,

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[36] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.

respectively, or the very deadlines for the filing of the administrative claim for the year 2010.

Therefore, April 12, 2013, - the date when petitioner completed its supporting documents - could not be the reckoning point for the 120-day period as the said date was already beyond the 2-year period for the filing of the administrative claim provided under Section 112(A) of the NIRC, as amended, and submission of complete documents.

Applying the cited jurisprudence to the present case, the 120-day period for the four quarters of year 2010 commenced to run from March 31, 2012, June 30, 2012, September 30, 2012, and December 31, 2012, respectively.

From these dates, respondent had until July 29, 2012, October 28, 2012, January 28, 2013, and April 30, 2013, respectively, to act on the administrative claim.

From the lapse of the 120-day period, petitioner had 30 days or until August 28, 2012, November 27, 2012, February 27, 2013, and May 30, 2013, respectively, to seek judicial review via a petition for review with this Court.

Clearly, the instant Petition for Review was filed out of time on August 30, 2013.

It has been held that if the CIR decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file its judicial claim with the CTA; otherwise, the judicial claim would be, properly speaking, dismissed for being filed out of time x x x. It bears emphasis that Section 112 (D) (now renumbered as Section 112[C]) of RA 8424, which is explicit on the mandatory and jurisdictional nature of the 120+30-day period, was already effective on January 1, 1998.[37] Considering that the nature of the 120+30 day period was first settled in *Aichi*, the interpretation by the Court of its

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[37] Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 190021, October 22, 2014

being mandatory and jurisdictional in nature retroacts to the date the NIRC was enacted.[38]

Thus, the 120/30 day prescriptive periods are mandatory and jurisdictional, and the matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[39]

It is evident from the foregoing jurisprudential pronouncements that a taxpayer-claimant only had a limited period of thirty (30) days from the expiration of the one hundred twenty (120)-day period of inaction of the Commissioner of Internal Revenue (CIR) to file its judicial claim with the CTA, x x x. Failure to do so, the judicial claim shall prescribe or be considered as filed out of time.[40]

It is worth to note that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits. Needless to state, to obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties. As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings. Therefore, even if there was no jurisdictional issue raised by any party, the Court may look into it at anytime of the proceedings, even during this appeal.

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[38] Visayas Geothermal Power Company vs. Commissioner of Internal Revenue, G.R. No. 197525, June 4, 2014

[39] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 173241, March 25, 2015

[40] Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue, G.R. No. 185666, February 4, 2015

It has long been established that the CTA is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction. Hence, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[41]

WHEREFORE, the Petition for Review dated August 29, 2013 filed by petitioner Dohle Shipmanagement Phils. Corp. (Dohle) is **DISMISSED** on jurisdictional ground.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

(Inhibited)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[41] AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 185969, November 19, 2014

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice