Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

***FIRST DIVISION***

**B.W. SHIPPING PHILIPPINES, INC.,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case No. 9115**
For: Refund

Members:

**DEL ROSARIO, P.J., *Chairperson***
**UY, and**
**MINDARO-GRULLA, JJ.**

Promulgated:
MAY 07 2018 3:55 pm

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# DECISION

***MINDARO-GRULLA, J.:***

This is a Petition for Review[1] filed on August 6, 2015 by B.W. Shipping Philippines, Inc. as petitioner, against Commissioner of Internal Revenue as respondent, before the Court in Division, pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[2], as well as Rule 4, Section 3(a)(1), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[3], as amended.

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[1] Docket, vol. I, pp. 17-22.

[2] Sec. 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;

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[3] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner seeks the refund of or the issuance of a tax credit certificate (TCC) in the total amount of ₱1,969,956.00, allegedly representing its unapplied input value-added tax (VAT) paid on domestic purchases of taxable goods and services attributable to its zero-rated sales for the period covering January 1 to December 31, 2013.

Petitioner B.W. Shipping Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines. It is registered as a VAT taxpayer with Taxpayer Identification No. (TIN) 000-160-779-000.[4]

As stated in its Articles of Incorporation, petitioner is engaged in overseas shipping business for the carriage of passengers, freight, mail, livestock, goods and lawful merchandise of every kind and description, by oceans, seas, canals, rivers and other waterway, between any and all parts of the works by means of vessels and other modes of transportation used in the business of overseas shipping which may either be owned by the Corporation or by other shipping corporation, and for such purpose, to hire, purchase, charter, owe or otherwise acquire and work ships and vessels of any class, to establish and maintain lines or regular services of shops or other vessels

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(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(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;

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Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

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[4] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. II, p. 491.

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between any part of the world, to engage in manning and crewing of vessels, and generally to carry on the business of shipping.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide 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 the BIR National Office Building, Agham Road, Diliman, Quezon City.

On various dates, petitioner entered into Service Agreements with various international clients for the purpose of providing manpower services aboard the ships of its foreign clients and provisions to its personnel. For rendering said services to these foreign clients, the companies paid petitioner in US Dollars, electronically remitted to petitioner's bank accounts.[5]

Petitioner submitted its Quarterly VAT Returns for taxable year 2013 on the following dates:

| PERIOD (2013) | DATE FILED |
|---|---|
| 1st Quarter | April 25, 2013 |
| 2nd Quarter (Amended) | November 20, 2013 |
| 3rd Quarter | October 21, 2013 |
| 4th Quarter (Amended) | May 21, 2014 |

On February 27, 2015, petitioner filed its application for tax credits or refund (BIR Form No. 1914) for its unapplied input VAT for taxable year 2013.[6]

According to petitioner, after it filed its application, the BIR instructed it to submit the schedule of vessel utilization on all vessels currently under its operation. Petitioner added that it was given until June 19, 2015 to submit the said documents. On June 17, 2015, petitioner was able to only partially submit schedules due to the volume of documents required by the BIR. On June 22, 2015, another

[5] Exhibit "P-1523", Judicial Affidavit of Carmencita S. Escalante, Docket, vol. I, pp. 370-379.
[6] Exhibit "P-1501", Docket, vol. I, p. 401.

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set of schedule was submitted by petitioner. However, on June 24, 2015, the BIR no longer allowed petitioner to submit another set to complete the schedule of vessel utilization.[7]

On July 7, 2015, petitioner received a letter[8] dated June 25, 2015 from Assistant Commissioner Erlinda A. Simple, denying its application for refund or tax credit for the following reasons:

> "Review of the bank credit memos for remittances revealed excess remittances of $16,015,696.00 on top of the declared export sales amounting to $2,623,744.00 for the taxable year 2013. Said remittances were identified as funding reimbursement received from principal abroad but were not substantiated to support such explanation. (Please refer to Annex 'A' for details).
>
> Due to lack of substation of the excess remittances, it cannot be established that the input VAT being claimed are not subsequently reimbursed to the principal and no income subject to VAT was included in the said remittances.
>
> Based on the foregoing, we regret to inform you that your claim for VAT Credit Certificate covering the period January 01, 2013 to December 31, 2013 is hereby **DENIED** for lack of factual and legal basis."

Upon receipt by petitioner of the adverse decision on July 7, 2015, petitioner filed before this Court the instant Petition for Review on August 6, 2015.

Respondent filed his Answer[9] on October 1, 2015, interposing the following Special and Affirmative Defenses:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

[7] Par. 6, Petition for Review, Docket, vol. I. pp. 18-19.
[8] Exhibit "P-1520", Docket, vol. I, p. 79.
[9] Docket, vol. I, pp. 287-290.

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4) Respondent reiterates and repleads the preceding paragraphs of the Answer as part of the Special and Affirmative Defenses;

5) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

6) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

7) It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204 (C) in relation to Section 229 of the 1997 Tax Code, as amended;

8) Petitioner's claim for refund or issuance of tax credit certificate in the amount of One Million Nine Hundred Sixty Nine Thousand Nine Hundred Fifty Six Pesos (Php 1,969,956.00) as alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the four quarters of taxable year 2013 was not fully substantiated by proper documents, such as sales invoices, official receipts and others;

9) In a claim for tax refund or tax credit, taxpayer must prove not only entitlement to the grant of the claim under substantive law, it must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit (*Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* 518 SCRA 425);

10) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner if Internal Revenue,* 31 SCRA 95) and as such, they are looked upon with disfavour (*Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 121)."

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The Pre-Trial Conference[10] was scheduled on January 28, 2016 but was reset[11] to May 5, 2016. Respondent's Pre-Trial Brief[12] was filed through registered mail on November 9, 2015 and was received by the Court on November 26, 2015; while the Pre-Trial Brief for petitioner[13] was filed on February 15, 2016.

On May 24, 2016, the parties filed their Joint Stipulation of Facts and Issues[14]. Subsequently, the Court issued the Pre-Trial Order[15] on July 27, 2016.

On August 11, 2016, the Court commissioned Mr. Enrico Pizarro as the Independent Certified Public Accountant (CPA) for the case and was given until September 10, 2016 within which to submit his report.[16]

On various hearing dates, petitioner presented Ms. Carmencita S. Escalante[17], Ms. Herminia Dela Peña[18], and Mr. Enrico Pizarro as its witnesses.[19]

Petitioner filed its Formal Offer of Evidence[20] on February 20, 2017. Respondent filed his Comment To Petitioner's Formal Offer of Evidence with Very Urgent Manifestation[21] through registered mail on February 22, 2017 and received by the Court on March 8, 2017.

In the Resolution[22] dated March 31, 2017, the Court admitted all the formally offered exhibits of petitioner and noted respondent's manifestation that he will no longer be presenting any evidence. Accordingly, the hearing set for respondent's presentation of evidence was cancelled.

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[10] Notice of Pre-Trial Conference, Docket, vol. I, pp. 292-293.
[11] Minutes of the Hearing, Docket, vol. I, pp. 353-356.
[12] Docket, vol. I, pp. 298-301.
[13] Docket, vol. I, pp. 305-335.
[14] Docket, vol. II, pp. 491-520.
[15] Docket, vol. II, pp. 558-583.
[16] Minutes of the Hearing, Docket, vol. II, pp. 584-585.
[17] Minutes of the Hearing, Docket, vol. II, pp. 590-591.
[18] Minutes of the Hearing, Docket, vol. II, pp. 594-595.
[19] Minutes of the Hearing, Docket, vol. II, pp. 691-693.
[20] Docket, vol. II, pp. 697-702.
[21] Docket, vol. II, pp. 704-706.
[22] Docket, vol. II, pp. 711-712.

The documentary evidence formally offered by petitioner are as follows:

| **Exhibit:** | **Particulars:** |
|---|---|
| P-1 Motion | Judicial Affidavit of Enrico T. Pizarro dated June 17, 2016 |
| P-1-1-Motion | Signature of Enrico T. Pizarro |
| P-1500 | Certificate of Registration dated January 1, 1997, BIR Form 2303 |
| P-1500.2 | BIR Certificate of Registration dated July 31, 1996 issued to Bergensen D.Y. Philippines, Inc., - formerly: Havtor Management Philippines Inc. (BIR Form 2303) |
| P-1501 | Application for Tax Credits/Refund BIR Form 1914 |
| P-1504.1 | 2013 VAT Quarterly Returns 1st quarter |
| P-1504.2 | 2013 VAT Quarterly Returns 2nd quarter |
| P-1504.3 | 2013 VAT Quarterly Returns 3rd quarter |
| P-1504.4 | 2013 VAT Quarterly Returns 4th quarter |
| P-1505 | Financial Statement and Audit Report for the year 2013 |
| P-1514.1 | Summary List of Sales and related output VAT for the 1st Quarter of 2013 |
| P-1514.2 | Summary List of Sales and related output VAT for the 2nd Quarter of 2013 |
| P-1514.3 | Summary List of Sales and related output VAT for the 3rd Quarter of 2013 |
| P-1514.4 | Summary List of Sales and related output VAT for the 4th Quarter of 2013 |
| P-1515 | Permit to use Computerized Accounting System and permit to use loose-leaf sales invoice and official receipt |
| P-1516.1 | Summary list of purchases and related input VAT for the 1st Quarter of 2013 |
| P-1516.2 | Summary list of purchases and related input VAT for the 2nd Quarter of 2013 |
| P-1516.3 | Summary list of purchases and related input VAT for the 3rd Quarter of 2013 |
| P-1516.4 | Summary list of purchases and related input VAT for the 4th Quarter of 2013 |
| P-1518 | Amended Quarterly Value-Added Tax Return (BIR Form 2550-Q) showing the amount of VAT claims for refund 2nd Quarter |
| P-1519 | Computer Print-outs of Electronic mail exchanges from Revenue Officer – Nayan Maryse Tumbagahan |
| P-1520 | BIR Letter dated June 25, 2015, signed by Asst. Commissioner Erlinda A. Simple |
| P-1521 | VAT Registration Certificate No. 32-4-001509 dated January 8, 1988 under Havtor Management Phils (BIR Form 2550-2) |
| P-1523 | Judicial Affidavit of Carmencita Escalante dated May 12, 2016 |
| P-1523-A | Signature of Carmencita Escalante |

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|---|---|
| P-1524 | Judicial Affidavit of Herminia Dela Pena dated May 12, 2016 |
| P-1524-A | Signature of Herminia Dela Pena |
| P-1526 | Petition for Review dated August 6, 2015 |
| P-1527 | Amended Articles of Incorporation |
| P-1528.1 | Zero rated sales – list of sales reported in 2013 with appropriate supporting documents |
| P-1528.2 | Zero rated sales – list of sales reported in 2013 with no supporting documents |
| P-1529 | Zero rated sales – list of Invoices issued as matched against the inward remittances |
| P-1530.1 | List of official receipts issued for collection of 2013 sales |
| P-1530.2 | List of official receipts issued for collection of 2012 sales |
| P-1530.3 | List of official receipts issued for collection other than sales |
| P-1530.4 | List of official receipts cancelled |
| P-1531 | General ledger extract of Zero-rated sales |
| P-1532 | General ledger extract of input VAT |
| P-1533.1 | Summary of input VAT on local purchases of services with proper supporting document |
| P-1533.2 | Summary of input VAT on local purchases of services that was regularized by supplier where we confirmed either through phone (oral) or written |
| P-1533.3 | Summary of Input VAT on local purchases of services that was regularized by supplier to conform with substantiation requirements |
| P-1534.1 | Summary of Input VAT on local purchase of goods with proper supporting documents |
| P-1534.2 | Summary of Input VAT on local purchase of goods that was regularized by supplier |
| P-1534.3 | Summary of Input VAT on local purchase of goods that was regularized by supplier to conform with substantiation requirement |
| P-1534.4 | Summary of Input VAT on local purchase of goods with supporting documents not dated within the quarter of claim but within the taxable year |
| P-1535.1 | Summary of Input VAT on local purchase of capital goods with proper supporting documents |
| P-1536.1 | Summary of Input VAT on local purchase of services with noted alterations on supporting documents |
| P-1536.2 | Summary of Input VAT on local purchase of services supported with supplier's non-VAT official receipts/invoices |
| P-1536.3 | Summary of Input VAT on local purchase of services with supporting documents not containing customers address |
| P-1536.4 | Summary of Input VAT on local purchase of services with supporting documents not dated within the quarter of claim and not within the taxable year |
| P-1536.5 | Excess of over-claimed Input VAT as the amount per summary list is higher than the supporting documents |
| P-1536.6 | Summary of Input VAT on local purchase of service with original documents not yet provided |

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| P-1536.7 | Summary of Input VAT on local purchase of services with supporting documents not named after the claimant |
| P-1536.8 | Summary of Input VAT on local purchase of services with undated supporting documents |
| P-1537.1 | Summary of Input VAT on local purchase of goods noted alterations on supporting documents |
| P-1537.2 | Summary of Input VAT on local purchases of goods with supporting documents not dated within the quarter of claim and not within the taxable year |
| P-1538.1 | Deferred Input VAT on Capital Goods exceeding 1 million |
| P-1539.1 | Summary of Matching of Payment Vouchers of summary claims against reimbursements from principal-matched through invoices |
| P-1539.2 | Summary of Matching of Payment Vouchers of summary claims against reimbursements from principal-matched through general ledger |
| P-1540 | Summary of Invoices or Receipts returned to Supplier |
| P-1941 | Judicial Affidavit of Enrico T. Pizarro dated January 24, 2017 |
| P-1941-A | Signature of Enrico T. Pizarro |
| P-1942 | ICPA Report CTA Case No. 9115 dated September 9, 2016; including four Boxes containing 5 binders |
| P-1942-A | Signature of Enrico Pizarro |

Petitioner filed its Memorandum[23] on May 3, 2017; while respondent filed his Memorandum[24] through registered mail on April 19, 2017 and was received by the Court on May 9, 2017. Hence, the case was submitted for decision on May 24, 2017.[25]

The parties submitted the following issue[26] for this Court's resolution:

> Whether petitioner is entitled to a refund of or the issuance of a tax credit certificate for its unapplied input VAT payments for the period from January to December 31, 2013 in the total amount of ₱1,969,956.68, which are directly attributable to its zero-rated sales for the year 2013.

[23] Docket, vol. II, pp. 713-725.
[24] Docket, vol. II, pp. 726-730.
[25] Resolution dated May 24, 2016, Docket, vol. II, p. 733.
[26] Pre-Trial Order, Docket, vol. II, p. 559.

The Court shall determine first whether it has jurisdiction to entertain the instant case.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy. It 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 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.[27]

Considering that the Court of Tax Appeals is a court of special jurisdiction, it can only take cognizance of matters which are clearly within its jurisdiction.[28] Section 7(a)(1) and (2) of Republic Act (R.A.) No. 1125, as amended by R.A. Nos. 9282 and 9503, provides:

> "SEC. 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 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

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

[28] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014.

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> charges, penalties in relations 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 of action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

Based on the above provision, the CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the BIR Commissioner in cases involving refund of internal revenue taxes. In cases where the NIRC of 1997, as amended, provides for a specific period for action, the BIR Commissioner's inaction shall be deemed a denial.[29]

In relation to the foregoing, Section 112(A) and (C) of the NIRC of 1997, as amended, governs the filing of the administrative and judicial claims for refund or tax credit of excess and unutilized input tax attributable to zero-rated or effectively zero-rated sales. Section 112(A) and (C) is quoted hereunder for ready reference:

> "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 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or

[29] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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(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.**" (*Emphasis supplied*)

In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[30], the Supreme Court summarized the rules on prescriptive periods for filing claims for refund or tax credit of input VAT vis-à-vis Section 112 of the NIRC of 1997, as amended, to wit:

**"SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT**

[30] G.R. No. 173241, March 25, 2015.

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The lessons of this case may be summed up as follows:

***A. Two-Year Prescriptive Period***

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)

3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008**. *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. (*San Roque*)

***B. 120+30 Day Period***

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi* and *San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

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5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque*)"

Thus, pursuant to Section 112(A) of the NIRC of 1997, as amended, the application for refund or tax credit of unutilized excess input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Petitioner filed its Quarterly VAT Returns for taxable year 2013 on the following dates:

| PERIOD | DATE FILED |
|---|---|
| 1st Quarter | April 25, 2013 |
| 2nd Quarter (amended) | November 20, 2013 |
| 3rd Quarter | October 21, 2013 |
| 4th Quarter (amended) | May 21, 2014 |

The first taxable quarter closed on March 31, 2013. Hence, petitioner had until March 31, 2015 to file its administrative claim for tax refund. Petitioner filed its administrative claim for refund with the BIR on February 27, 2015, which is within two years from the close of the taxable quarter when the alleged zero-rated sales were made.

Section 112(C) of the NIRC of 1997, as amended, on the other hand, provides the period for filing a judicial claim for the refund or tax credit of input VAT. Such provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with the CTA.[31]

It must be noted that the 120-day period begins to run from the date of submission of complete documents.

[31] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

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The BIR issued Revenue Memorandum Circular (RMC) No. 54-2014 on June 11, 2014, clarifying issues relative to the application for VAT refund or tax credit under Section 112 of the NIRC of 1997, as amended.

The RMC requires that the application for VAT refund or tax credit must be accompanied by complete supporting documents. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents and shall further state that the said documents are the only documents which the taxpayer will present to support the claim. It also mandates that upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted or required from the taxpayer in the course of its evaluation.

When petitioner filed its administrative claim with the BIR on February 27, 2015, it also filed an affidavit under oath attesting to the completeness of the documents submitted in compliance with the mandate of RMC No. 54-2014.[32] As a consequence, no other documents must be accepted or required from the taxpayer from February 27, 2015.

The Supreme Court in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[33] has already clarified this matter, to wit:

> "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[al] documents to complete his administrative

[32] Item 2.12, Checklist of Mandatory Requirements for Claims of VAT Credit/Refund received by the BIR on February 27, 2015, Docket, vol. I, p. 402.
[33] G.R. No. 207112, December 8, 2015.

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claim, the 120 day period allowed to the CIR begins to run from the date of filing.

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. 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.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be 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

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> 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.
>
> 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."

Consequently, the 120-day period given to the BIR Commissioner to decide on petitioner's claim for refund/tax credit shall be reckoned from the day of the filing of its application and not on the last day of submission of supporting documents. Any subsequent submission of supporting documents made by petitioner will not move the commencement of the 120-day period.

Since petitioner filed the administrative claim for refund on February 27, 2015, the 120-day period ended on June 27, 2015. Petitioner, therefore, only had until July 27, 2015 to file its judicial claim before this Court considering that respondent has not acted on the application within the said period. As a result, petitioner's judicial claim for refund or tax credit filed before this Court on August 6, 2015 was filed out of time.

As earlier stated, the 30-day period within which to file an appeal of the denial of the claim or inaction on the part of the BIR Commissioner is both mandatory and jurisdictional and non-compliance therewith precludes the CTA from acquiring jurisdiction over the case.

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

**SO ORDERED.**

**CIELITO N. MINDARO-GRULLA**
Associate Justice

WE CONCUR:

(with Concurring Opinion)
**ROMAN G. DEL ROSARIO**
Presiding Justice

**ERLINDA P. UY**
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's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice
Chairperson, 1st Division

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## FIRST DIVISION

**B.W. SHIPPING PHILIPPINES, INC.**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 9115**

Members:

**DEL ROSARIO,** *P.J., Chairperson,*
**UY,** and
**MINDARO-GRULLA,** *JJ.*

Promulgated:

MAY 07 2018 3:55 pm

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## CONCURRING OPINION

***DEL ROSARIO, P.J.:***

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, in denying the Petition for Review filed by petitioner B.W. Shipping Philippines, Inc. on the ground that the same was filed beyond the reglementary period to appeal the "deemed denial" or "inaction" of the respondent Commissioner of Internal Revenue (CIR) on its claim for refund or issuance of a tax credit certificate in the amount of ₱1,969,956.00, representing petitioner's unutilized input VAT paid on domestic purchases of goods and services attributable to zero-rated sales for the year ending December 31, 2013.

Records show the following:

- **February 27, 2015** – petitioner filed its application for tax credit or refund with the Bureau of Internal Revenue (BIR), with supporting documents;

- **June 27, 2015** – end of the *120-day period* for the CIR to decide petitioner's claim for refund;

- **July 7, 2015** – petitioner received the Letter dated June 25, 2015, signed by Erlinda A. Simple, Assistant Commissioner, Assessment Service, denying petitioner's claim for refund for lack of factual and legal basis.

- **July 27, 2015** – end of the *30-day period* (counted from lapse of 120-day period) within which to appeal the inaction of the CIR to the Court of Tax Appeals (CTA);

- **August 6, 2015** – petitioner filed the present Petition for Review appealing the denial of its claim for refund.

The decision of the BIR denying petitioner's claim for refund or issuance of TCC, which was received by petitioner after the lapse of the 120-day period, albeit the Letter denying the claim was dated within the 120-day period, is inconsequential for purposes of reckoning the 30-day period to appeal to the CTA.

A decision made by the CIR **after** the 120+30 day period is irrelevant in determining the timeliness of a petition for review filed with the CTA as the CIR's failure to render a decision during the 120-day period is *"deemed a denial"* of the taxpayer's claim for refund. Hence, the taxpayer must appeal the *"deemed a denial"* decision within thirty (30) days from the lapse of the 120-day period for without a timely appeal filed before the CTA, the *"deemed a denial"* decision of the CIR becomes final and unappealable.

In the case at bar, while it appears that the Letter denying petitioner's claim was dated June 25, 2017 (or apparently within the 120-day period), records show that the same was released and mailed to petitioner **<u>after</u>** the lapse of the 120-day period or on July 2, 2015.[1] Consequently, petitioner received the same only on July 7, 2015 from which petitioner counted the 30-day period to appeal to CTA.

I submit that it was erroneous for petitioner to reckon the 30-day period to appeal from its receipt of the June 25, 2015 Letter considering that at the time of its receipt on July 7, 2015, the 120-day period for the BIR to decide the claim had already expired on June

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[1] CTA Docket, pp. 79 – 81.

27, 2015. Petitioner should have filed its judicial claim within a period of thirty (30) days from receipt of the CIR's decision or after the expiration of the 120-day period within which the CIR must decide on the claim, **whichever is earlier**. Since there was a "deemed denial" of petitioner's claim for refund on June 27, 2015, which is earlier than its receipt on July 7, 2015 of the Letter dated June 25, 2015 of Assistant Commissioner Simple, the "deemed denial" or "inaction" should have been the one appealed to the CTA within the thirty-day period.

The Letter dated June 25, 2015 of Assistant Commissioner Simple, which was issued or mailed on July 2, 2017 and received by petitioner on July 7, 2017, could not be considered as rendered within the 120-day period. In **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**,[2] the Supreme Court clarified:

> "When the BIR validly issues an assessment, within either the three-year or ten-year period, whichever is appropriate, then the BIR has another three years [now five years] **after the assessment** within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. **The <u>assessment of the tax is deemed made</u> and the three-year period [now five-year period] for collection of the assessed tax begins to run on <u>the date the assessment notice had been released, mailed or sent</u> by the BIR to the taxpayer**. (Boldfacing supplied)

Applying by analogy the *BPI case* to the present case, the decision denying petitioner's claim for refund or issuance of TCC is deemed to have been made on the date the Letter dated June 25, 2015 of Assistant Commissioner Simple was released, mailed or sent to petitioner. Since the Letter was released beyond the 120-day period, there was already a "deemed denial" of petitioner's claim as early as June 27, 2015. Hence, the period to appeal to the CTA should have been reckoned therefrom.

It would be perilous to consider that the decision denying the claim was made earlier than the "deemed denial" or inaction just because the Letter of Assistant Commissioner Simple was dated on June 25, 2015, which is still within the 120-day period. To do so will encourage a situation wherein a letter denying the claim may be dated within the 120-day period but mailed one (1) year later thereby making the "denial" appealable to the CTA. The mischievous

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[2] G.R. No. 139736, October 17, 2005.

consequence - - including irregular practices of unscrupulous public officials, cannot be discounted.

In fine, I submit the Petition for Review filed on August 6, 2015 should be dismissed for having been filed beyond thirty (30) days from the lapse of the 120-day period on June 27, 2015 or beyond July 26, 2015. The *"deemed a denial"* decision of the CIR already attained finality for petitioner's failure to make a timely appeal before the CTA.

All told, I VOTE to DISMISS the Petition for Review.

**ROMAN G. DEL ROSARIO**
Presiding Justice