REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SMCC PHILIPPINES, INC., *Petitioner,*	CTA EB No. 1360 (CTA CASE No. 8356)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 21 2017 3:05pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision of this Court *En Banc* is a Petition for Review filed by SMCC Philippines, Inc. (SMCC), under *Section 2, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended*, seeking the reversal of

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[1] RULE 4, Sec 2. Revised Rules of the Court of Tax Appeals.

> RULE 4, Sec 2. *Cases within the jurisdiction of the Court en banc*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
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> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

the Decision dated April 1, 2015[2] and the Resolution dated August 18, 2015[3] rendered by the Third Division of this Court denying petitioner's claim for refund or issuance of a tax credit certificate in the amount of P16,981,349.73 representing unutilized input VAT arising from its zero-rated sales for the four quarters of taxable year 2008, the dispositive portions of which, respectively, read as follows:

Decision dated April 1, 2015:

"**WHEREFORE,** the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED."

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(1) Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

(3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;

(b) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their appellate jurisdiction;

(c) Decisions, resolutions or orders of the Regional Trial Courts in tax collection cases decided or resolved by them in the exercise of their appellate jurisdiction;

(d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;

(e) Decisions of the Central Board of Assessment Appeals (CBAA) in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs;

(g) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over criminal offenses mentioned in the preceding subparagraph; and

(h) Decisions, resolutions or orders of the Regional trial Courts in the exercise of their appellate jurisdiction over criminal offenses mentioned in subparagraph (f).

[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino, En Banc Docket, p. 29-46.

[3] Id., pp.48-54.

<u>Resolution dated August 18, 2015:</u>

"**WHEREFORE**, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

The following facts of the case as recited by the Court in Division in its Decision[4] and as established by evidence on record[5], read as follows:

Petitioner is registered with the BIR and was issued TIN 004-813-382-000 and BIR Certificate of VAT Registration bearing RDO Control No. 9RC0000141056.

Petitioner is engaged in general construction business, manufacturing, acquiring, and furnishing all building and other tools and equipment connected therewith or required therefore, as well as manufacturing things incidental to or used in connection with any of such activities as shown in its Securities and Exchange Commission Certificate of Registration numbered AS 095-09484.

Petitioner filed with the BIR its monthly and quarterly VAT returns for the period covering January 2008 to December 2008.

MONTHLY RETURN FOR TAXABLE YEAR 2008	Date Filed ORIGINAL VAT RETURN	Date Filed AMENDED VAT RETURN	Date Filed SECOND AMENDED VAT RETURN
January 2008	February 26, 2008	March 25, 2008	October 14, 2010
February 2008	March 25, 2008	October 14, 2010	
April 2008	May 28, 2008	October 15, 2010	
May 2008	June 24, 2008	October 14, 2010	
July 2008	August 28, 2008	October 14, 2010	
August 2008	September 25, 2008	October 14, 2010	
October 2008	November 25, 2008	October 14, 2010	
November 2008	December 24, 2008	October 14, 2010	

[4] Supra note 2.
[5] Joint Stipulation of Facts and Issues dated June 4, 2014, Division Docket pp. 431-438.

MONTHLY RETURN FOR TAXABLE YEAR 2009	Date Filed ORIGINAL VAT RETURN	Date Filed AMENDED VAT RETURN	Date Filed SECOND AMENDED VAT RETURN
January 2009	February 23, 2009	October 14, 2009	
February 2009	March 23, 2009	October 14, 2009	October 22, 2010

QUARTERLY RETURN FOR TAXABLE YEAR 2008	Date Filed ORIGINAL VAT RETURN	Date Filed AMENDED VAT RETURN	Date Filed SECOND AMENDED VAT RETURN
1st Quarterly Return (January to March 2008)	April 25, 2008	January 8, 2009	October 14, 2010
2nd Quarterly Return (April to June 2008)	July 25, 2008	January 8, 2009	October 14, 2010
3rd Quarterly Return (July to September 2008)	October 24, 2008	October 14, 2010	
4th Quarterly Return (October to December 2008)	January 26, 2009	October 14, 2010	

QUARTERLY RETURN FOR TAXABLE YEAR 2009	Date Filed ORIGINAL VAT RETURN	Date Filed AMENDED VAT RETURN	Date Filed SECOND AMENDED VAT RETURN
1st Quarterly Return (January to March 2009)	April 24, 2009	October 18, 2010	October 22, 2010

Petitioner filed with the BIR-Revenue District Office ("RDO") No. 47 its Application for Refund/Tax Credit for excess input VAT for the four quarters of taxable year 2008 on 5 March 2010.

Petitioner received a letter from Respondent on 20 September 2011 denying the administrative claim for refund or issuance of TCC.

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The Summons was issued on November 4, 2011[6].

On November 23, 2011, the CIR filed a Motion for Extension of Time to File Answer, which motion was granted by the Court in an Order dated December 11, 2011.

Instead of filing an Answer, respondent filed on December 23, 2011, a Motion to Dismiss on the ground that the claim for refund or TCC was filed out of time. She prayed that the instant case be dismissed due to prescription or for lack of jurisdiction.

On January 3, 2012, the Court ordered petitioner to file its Comment or Opposition to the Motion to Dismiss.

On January 5, 2012, petitioner filed its Opposition and prayed that the Motion to Dismiss be denied because the petition was filed on time in accordance with the Tax Code, recent jurisprudence and other applicable laws.

On May 8, 2012, the Court issued a Resolution which denied the Motion to Dismiss for lack of merit. The Court ruled that petitioner timely filed its administrative claim for refund on March 5, 2012, since it was filed within two (2) years after the close of the taxable quarter when the sales were made. The Court also ruled that petitioner timely filed the instant petition because the same was filed within 30 days from receipt of the decision of respondent on September 20, 2011.

Respondent filed a Motion for Reconsideration (of the Resolution dated May 8, 2012).

On June 15, 2012, petitioner filed its Comment (to Respondent's Motion for Reconsideration).

[6] Division Docket, p. 336.

On August 1, 2012, the Court denied the Motion for Reconsideration and ruled that petitioner timely filed both its administrative and judicial claims for refund[7].

On August 23, 2012, the CIR filed her Answer, interposing as its Special and Affirmative defenses that petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue; petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected; and that petitioner's claim for refund or issuance of tax credit certificate in the amount of Php16,981,349.73 as alleged unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the four quarters of taxable year 2008 was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

On October 10, 2012, the parties filed their Joint Stipulation of Facts and Issues. On October 17, 2012, the Court issued the Pre-Trial Order[8].

Trial thereafter ensued.

Petitioner presented Mr. Felix Anton Dishanta Dhalmedha Nissanka Arachchige Don and Ms. Myra Celeste O. Dabalos as its witnesses and the documentary evidence marked as Exhibits "A" to "SS-1" inclusive of sub-markings.

During the hearing on March 17, 2014, Atty. Catherine N. Herrera manifested that respondent will no longer present any evidence and is submitting the case for decision based on the pleadings and evidence presented by petitioner.

In the Resolution[9] dated March 26, 2014, the parties were ordered to file their respective

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[7] Ibid., p. 406.
[8] Ibid., 447-451.
[9] Division Docket, p.1522.

memoranda. On May 16, 2014, SMCC filed its Memorandum[10].

On May 15, 2014, respondent filed her Memorandum.[11]

This case was deemed submitted for decision in a Resolution[12] dated May 22, 2014.

Hence, this Petition was filed.

We rule to DENY the Petition for Review.

In the instant Petition for Review, SMCC maintains that the Court in Division erred in ruling that it failed to substantiate with documentary evidence its claim for refund on its alleged unutilized input tax attributable to its zero-rated sales for the four quarters of taxable year 2008.

Petitioner alleges that it is entitled to a refund of input taxes related to VAT zero-rated sales, regardless of the amount of total input taxes and output taxes, pursuant to Section 112 (A) of the 1997 NIRC[13].

In the same vein, certain requisites have been jurisprudentially formulated which must be complied with in

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[10] Ibid., 1533-1559.
[11] Ibid., 1560-1568.
[12] Ibid.,1571.
[13] 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 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.

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order to be entitled to a refund or tax credit of unutilized input VAT, to wit;

> As to the timeliness of the filing of the administrative and judicial claims:
>
> 1. The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made[14];
>
> 2. That in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period[15];
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> With reference to the taxpayer's registration with the BIR:
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> 3. The taxpayer is VAT registered[16];
>
> In relation to the taxpayer's output VAT:
>
> 4. The taxpayer is engaged in zero-rated or effectively zero-rated sales[17];
>
> 5. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(8); and 108(8)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations[18];
>
> As regards the taxpayer's input VAT being refunded:

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[14] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. vs Commissioner of Internal Revenue, G.R. No. 182364, August 3, 2010.
[15] Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015.
[16] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra; San Roque Power Corporation vs. Commissioner of Internal Revenue, supra; and AT&T Communications Services Philippines, Inc., supra.
[17] *Id.*,
[18] *Id.*,

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6. The input taxes are due or paid[19];

7. The input taxes are not transitional input taxes[20];

8. The input taxes claimed are attributable to zero rated or effectively zero-rated sales[21];

9. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume[22]; and

10. The input taxes have not been applied against output taxes during and in the succeeding quarters[23].

Based on the foregoing, the Court in Division has already resolved that the first two requisites have been complied with. Petitioner's filing of its administrative and judicial claims for issuance of tax credit certificates or tax refund for its input VAT was well within the prescriptive period.

As shown in the table below, petitioner's subject claims cover the four quarters of taxable year 2008. Petitioner therefore has two years to file a claim for refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales reckoned from the close of the taxable quarter when the sales were made[24], thus:

Period Covered	**Close of Taxable Quarter**	**End of 2 year period to file Administrative Claim**

[19] *Id.*,
[20] *Id.*,
[21] *Id.*,
[22] *Id.*,
[23] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra; and San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.
[24] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.), G.R. No. 172129, September 12, 2008.

<table>
<tr><td>January 2008</td><td rowspan="3">March 30, 2008</td><td rowspan="3">March 30, 2010</td></tr>
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<tr><td>November 2008</td></tr>
<tr><td>December 2008</td></tr>
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Records show that petitioner SMCC Philippines filed its administrative claim with the BIR on March 5, 2010[25].

With regard to the second requisite, the same is taken from the above-quoted Section 112(C) of the NIRC of 1997, as amended by RA No. 9337, which enunciates the 120+30 mandatory and jurisdictional periods. Petitioner filed its judicial claim for refund on October 19, 2011 after it received a letter dated September 20, 2011 denying its administrative claim for refund. Under the premises, petitioner's judicial claims for the four quarters of taxable year 2008 were likewise timely filed within the prescriptive period provided for by law.

As to the third requisite, the same states that the taxpayer must be VAT registered. Petitioner has shown compliance by presenting its Certificate of Registration issued by BIR with TIN 004-813-382-000 and numbered as OCN 9RC0000141056[26].

Finally, the fourth requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales. This Court agrees with the Court in Division that petitioner's sales of service to various entities registered with the Philippine

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[25] Division Docket, Exhibit "S".
[26] Division Docket, Exhibit "C".

Economic Zone Authority (PEZA) are subject to VAT at 0% pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, to reiterate:

> **Section 108. Value-Added Tax on Sale of Services and Use or Lease of Properties.** -
>
> xxx xxx xxx
>
> (B) Transactions Subject to Zero Percent (0%) Rate. - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**; (Emphasis supplied)

Relative thereto, Section 4.108-5 of Revenue Regulations (RR) No. 16-05, as amended by RR No. 04-07 states:

> **SECTION 4.108-5. Zero-Rated Sale of Services.** -
>
> (a) In general. - A zero-rated sale of service (by a VAT -registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the **input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations**.
>
> xxx xxx xxx
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such

services to zero percent (0%) rate; (Emphasis supplied)

In its 2008 final amended VAT Returns[27], petitioner's declared zero-rated sales amounted to P272,529,293.22, broken down as follows:

Taxable Year 2008	Zero- rated Sales/Receipts
First Quarter	P39,998,958.54
Second Quarter	P60,174,661.17
Third Quarter	P57,680,382.64
Fourth Quarter	P114,675,290.22
TOTAL:	**P272,529,293.22**

Consistent and in compliance with the above-quoted provisions of Section 108(B)(3) of the NIRC of 1997, as amended, and Section 4.108-5 of Revenue Regulations (RR) No. 16-05, as amended by RR No. 04-07, petitioner presented the following in order to substantiate its zero-rated sales:

a. Summary of Zero-Rated sales for the month of January to December 2008[28];
b. Certifications from PEZA[29] attesting that the enterprises listed therein are registered with PEZA;
c. Certification for the Board of Investments (BOI)[30] attesting that Taganito Mining Corporation is a BOI registered entity which exported 100% of its total sales; and
d. VAT Zero-rated official receipts[31].

Petitioner was able to establish through various PEZA Certifications that it rendered services to PEZA registered entities[32] which qualify its gross receipts from services rendered to such entities, duly covered by VAT zero rated official receipts, to be subject to zero (0%) percent pursuant to Section 108(B)(3) of the NIRC of 1997, as amended.

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27 Division Docket, Exhibits "F-2", "I-2", "L-1", "O-1".
28 Division Docket, Exhibits "V-1" to "V-12".
29 Division Docket, Exhibits "U-1" to "U-11".
30 Division Docket, Exhibit "U-12".
31 Division Docket, Exhibits "LL-1" to "LL-355".
32 En Banc Docket, p.10.

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Corollary thereto, petitioner also proved that it engaged in export sales which also qualify for VAT at zero (0%) percentage rate. The Court in Division cites Section 4.106 of RR no. 16-05, as amended by RR No. 04-07 which classifies as "export sales" sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported. To reiterate:

> **SEC. 4.106-5. Zero-Rated Sales of Goods or Properties. –**
>
> xxx xxx xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) **Export Sales**. - "Export Sales" shall mean:
>
> xxx xxx xxx
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
>
> **"Considered export sales under Executive Order No. 226"** shall mean the Philippine Port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; xxx
>
> xxx xxx xxx
>
> For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and **Provided, finally, that sales of**

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> **goods, properties or services made by a VAT-registered supplier to a BOI registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently reissued by the BOI**. (Emphasis supplied)

Notwithstanding proof that its sales are qualified for VAT at zero (0%) percentage rate, this Court notes that only the amount of P140,840,327.90 were duly substantiated by PEZA and BOI Certifications, and VAT zero-rated official receipts. Consequently, only the portion of the input VAT claim attributable to the substantiated zero-rated sales will be considered for refund.

In the instant case, while the final amended Quarterly Vat Returns of petitioner for the taxable year 2008 reflect that it incurred input VAT in the amount of P67,272,336.82[33], the subject of the present input VAT claim for refund only amounts to P16,981,349.73. Thus, the examination and verification by the Court Commissioned Independent Certified Public Accountant (ICPA), Ms. Myra Celeste O. Dabalos, of all the suppliers' invoices, official receipts and other documents submitted by herein petitioner were based on such claimed amount. In her Final Amended Report[34], she noted that P4,179,641.99 should be disallowed. Her findings are summarized below:

Findings	Input Tax
Input Tax claimed on purchase of services without VAT official receipts.	P190,562.59
Input Tax claimed on purchase of goods that are not supported by VAT invoices.	P483,801.54
Input Tax claimed on purchase of services supported by acknowledgment receipts.	P10,671.56
Input Tax claimed on purchases with missing supports.	P1,938,570.48
Input Tax claimed on purchase of services that are supported by Non-VAT or TIN official receipts.	P1,557.16
Input Tax claimed on purchases that are supported by invoice (for goods)/OR (for services) dated not within the taxable year.	P565,902.87
Input Tax claimed on purchase of goods/services that are supported by VAT invoice/OR without BIR accreditation or permit to print.	P251.68

[33] Division Docket, Exhibit "Y".
[34] Division Docket, Vol. 3, Exhibit "OO", pp.1312-1313.

Input Tax claimed on purchase of goods that are supported by VAT invoice or purchase of services that are supported by VAT official receipts but not issued in petitioner's name, or with incorrect TIN or address.	P 256,433.51
Input Tax claimed on purchases of goods and service that are supported by photocopy of invoices/official receipts only.	P21,322.18
Input Tax claimed on purchases of goods and service that are supported by provisional receipts only.	P68,474.40
Input Tax claimed on purchases with discrepancies between the invoice/OR amount against the amount recorded by petitioner-overclaimed input tax.	P133,478.74
Input Tax supported by invoices/official receipts without petitioner's TIN/or address the primary document (i.e Invoice for goods, Official receipts for services)- P1,000 and above.	P508,615.28
Total Disallowable Input Tax	**P4,179,641.99**
Input Tax claimed on purchase of goods that are supported by certified copy of invoice.	P1,206.43
Input Tax allowable on purchases with discrepancies between the invoice/OR amount against the amount recorded by petitioner.	P 661,330.27
Input Tax claimed on purchases that are supported by invoice/OR dated not within the taxable quarter but within the taxable year.	P872,129.93
Input Tax claimed on purchases with proper supporting documents.	P11,267,041.93
Total Input Tax Reviewed	**P16,981,349.73**
Total Input Tax claimed	**P16,981,349.73**

Although it is true that this Court is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements under the VAT law must, nevertheless, be followed because it is the only way to determine the veracity of petitioner's claim.

Therefore, out of petitioner's declared VAT input tax of P16,981,349.73, only the amount of P12,801,707.74, as computed below, represents petitioner's valid input VAT;

Total Input VAT claimed		P16,981,349.73
Less:	Disallowances	
	Not properly substantiated input VAT per ICPA's report.	P4,179,641.99
Valid Input VAT		**P12,801,707.74**

Proceeding from the aforesaid disallowances, this Court now takes into consideration if petitioner's substantiated input VAT claim was applied against any output VAT. It bears emphasis that substantiated input taxes attributable to zero-rated sales may be refunded if the same has not been applied to any output tax, a comparison of the amounts of creditable input taxes and that of output taxes for the period necessary.

The input and output VAT transactions of petitioner for the taxable year 2008 are summarized as follows:

Excess Input VAT -2007	P56,110,469342
Less: TCC Applied for 2007	28,963,994.33
Balance- Excess Input VAT 2007	27,146,475.09
Input VAT-2008	
PEZA Transactions	P16,981,349.73
Non-PEZA Transactions	50,290,987.09
Total Input VAT- 2008	67,272,336.82
Excess Input VAT 2007	P27,146,475.09
2008 Input VAT from Non PEZA transactions	50,290,987.09
Total Available Tax Credits	77,437,462.18
Less: 2008 Output VAT	49,444,183.99
Excess 2008 Input VAT from Non-PEZA Transactions	**P27,993,278.19**

As shown above, petitioner's claimed input VAT remained unutilized because the input VAT carried over from the previous year and the input VAT for the year 2008 from its non-PEZA transactions were more than sufficient to cover its output VAT liability. While it is true that, after offsetting the 2008 output VAT from the total available tax credits, a remaining input VAT in the amount of P27,993,278.19 credits can be applied to the succeeding taxable period, the Court in Division correctly found that since petitioner failed to present VAT invoices or receipts to prove the existence of such amount, said input taxes cannot be applied against petitioner's 2008 output VAT liability pursuant to Section 110(A)(1) in relation to Section 110(B) of the NIRC of 1997, as amended.

Section 110(A)(1) in relation to Section 110(B) of the NIRC of 1997, as amended, states:

SEC. 110. Tax Credits. -

A Creditable Input Tax. -

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> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx xxx
>
> (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.

Considering that the substantiated input VAT attributable to petitioner's zero-rated sales only amount to P12,801,707.14, there is clearly no excess input VAT which may be the subject of a claim for refund/tax credit certificate under Section 112 (A) of the NIRC of 1997, as amended. Hence, the instant claim must be denied.

And, lastly, the Court En Banc finds no merit in petitioner's contention that it was deprived of due process when the Court in Division required it to present VAT invoices or receipts to prove existence of its claimed Input Tax carried over from the previous year or its non-PEZA transactions.

It is clear from the last proviso of Section 110 (B) of the NIRC of 1997, as amended, that the refund or credit of any input tax attributable to zero-rated sales by a VAT-registered person is subject to the provisions of Section 112 of the NIRC of 1997. Correspondingly, the grant of refund or credit cannot be confined merely to the provisions of paragraph (A) of Section 112, but to the whole of Section 112.

Sections 110 (B) and 112(A) of the NIRC of 1997 provide as follows:

> **SEC. 110. Tax Credits.** -
>
> xxx xxx xxx

"(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. **<u>If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: 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</u>**, subject to the provisions of Section 112." (Emphasis supplied)

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, **<u>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</u>**: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(l), (2) and (B) and Section 108(B)(l) 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 sales 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." (Emphasis supplied)

A cursory reading of Sections 110(B) and 112(A) of the 1997 NIRC reveals that it is not the intention of the law for input VAT and output VAT to be considered in isolation.

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In the case of *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*[35] , the Supreme Court ruled in this wise:

> "Legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision alone. This is a cardinal rule in statutory construction. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Thus, an apparently general provision may have a limited application if viewed together with the other provisions".

Under the premises, every part of the statute must be considered with the other parts. Accordingly, the whole of Section 112(A) of the 1997 NIRC should be read in conjunction with Section 110(B) of the 1997 NIRC so as to give life to all the provisions intended for a claim for refund of input VAT.

Section 110(B) of the 1997 NIRC already provides that if the output tax exceeds the input tax, the excess shall be paid. However, should the input tax exceed the output tax, the excess may be carried over to the succeeding quarter/s; and any input tax attributable to zero-rated sales by VAT - registered entities may be refunded or credited against other internal revenue taxes.

Furthermore, in the case of *San Roque Power Corporation v. Commissioner of Internal Revenue*[36], the Supreme Court was able to lay down the criteria governing claims for refund or tax credit under Section 112(A) of the 1997 NIRC which includes the requirement that the input taxes have not been applied against output taxes during and in the succeeding quarters.

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[35] AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue, G.R. No. 185969, November 19, 2014.
[36] San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009.

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Let it be stressed that statutes granting tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to VAT are in the nature of such exemptions[37]. Petitioner has the burden of proof to establish the factual basis of its claim for tax refund, which it has failed to discharge in this case[38].

From the foregoing discussions, the Court En Banc finds no cogent reason to reverse and set aside the Assailed Decision.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision of the Third Division of this Court in CTA Case. No. 8356 dated April 1, 2015, and its Resolution dated August 18, 2015, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

[37] Panasonic Communication Imaging Corporation of the Philippines vs.Commissioner of Internal Revenue, G.R. No. 178090, February 8, 2010.
[38] Citibank, N.A. vs. Court of Appeals, eta!., G.R. No. 107434, October 10, 1997.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

SMCC PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1360
(CTA Case No. 8356)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:
MAR 21 2017
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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the present Petition for Review filed by SMCC Philippines, Inc. (SMCC). It is my view that the belated filing of SMCC's Petition for Review before the Court in Division deprived the latter of its jurisdiction to act on the same.

Records show that SMCC filed its administrative claim for refund of its alleged unutilized input tax attributable to zero-rated sales for taxable year 2008 on March 5, 2010.[1] SMCC received a letter from the BIR on September 20, 2011 denying its claim.[2] In said letter-denial, the BIR alleged that a checklist of requirements for submission was served on SMCC on April 20, 2010, and that SMCC failed to submit the same despite several follow-ups; hence, the BIR's

[1] Exhibit "S"; CTA Case No. 8356 Division Docket, p. 960.
[2] Exhibit "AA"; CTA Case No. 8356 Division Docket, p. 1162.

denial of SMCC's administrative claim due to the latter's lack of interest in performing its part in the conduct of the investigation.

In SMCC's Petition for Review[3] and Memorandum[4] filed before the Court in Division, and even in SMCC's Petition for Review[5] before the Court *En Banc*, SMCC alleges that it submitted to the BIR the following documents: (a) Certification of taxpayer showing the amount of zero-rated, taxable and exempt sales, where applicable; (b) Certification from Board of Investments, Department of Finance (One-Stop Shop Tax Credit and Duty Drawback Center) and/or Bureau of Customs that subject taxpayer has not filed similar claims for tax credits for the period under audit; (c) Certifications from PEZA that the corporations to which SMCC sold goods/services are PEZA-registered entities; and (d) Schedule of Input Taxes for PEZA and non-PEZA sales.[6]

While there was an allegation in its Petition for Review that SMCC submitted documents in support of its administrative claim, **there is nothing on record which would establish the date when SMCC submitted said supporting documents.** What seems clear is the admission in the letter-denial of the BIR, which SMCC received on September 20, 2011, **that a checklist of requirements for submission was served on SMCC on April 20, 2010**, and that SMCC failed to submit documents despite several follow-ups. The said checklist of requirements which SMCC received from the BIR on April 20, 2010 may be treated as a request from the BIR within the contemplation of Revenue Memorandum Circular No. 49-2003, which correspondingly requires the submission of documents within thirty (30) days from the request of the investigating/processing office during investigation process, *viz.:*

> "II.) Additional paragraphs are hereto added to the last paragraph of RMC No. 42-2003 to read as follows:
>
> Q-18: For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?
>
> A-18: For pending claims which have not been acted upon by the investigating/processing office due to incomplete documentation,

[3] CTA Case No. 8356 Division Docket, pp. 6-31.
[4] CTA Case No. 8356 Division Docket, pp. 1533-1559.
[5] CTA EB No. 1360 Rollo, pp. 6-23.
[6] Petition for Review, and Memorandum, CTA Case No. 8356 Docket, pp. 21 and 1541; Petition for Review, CTA EB 1360 Rollo, pp. 9-10.

> the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.
>
> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be officially received only upon submission of complete documents.
>
> For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. **If, in the course of the investigation and processing 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 (30) days from request of the investigating/processing office**, which shall be construed as within the one hundred twenty (120) day period." (Boldfacing supplied)

In the absence of evidence showing the date when SMCC submitted the supporting documents, I submit that the 120-day period should be reckoned from May 20, 2010 *(which is the 30th day from SMCC's receipt of the BIR's checklist of requirements on April 20, 2010)*. Thus, the BIR had 120 days from May 20, 2010 or until September 17, 2010 within which to act on SMCC's administrative claim for refund. In view of respondent's inaction within the said period, which inaction is tantamount to a "denial" of SMCC's administrative claim, SMCC had thirty (30) days from the lapse of the 120-day period on September 17, 2010 or until October 17, 2010 within which to file an appeal before the Court in Division. SMCC's Petition for Review before the Court in Division, which was filed on October 19, 2011, was filed out of time.

The pronouncement of the Supreme Court in *CIR vs. San Roque Power Corporation*[7] as to what constitute decisions of respondent that are appealable to the CTA is instructive:

> "The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the

[7] G.R. Nos. 187485, 196113 & 197156, February 12, 2013 *quoted in Chemrez, Inc. vs. Commissioner of Internal Revenue, supra.*

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> Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within **"a specific period" required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review**. *(Boldfacing supplied)*

Applying the foregoing to the present case, the decision of the BIR denying SMCC's claim for refund **on September 20, 2011**, which was issued **after** the 120+30 day period, is inconsequential for purposes of reckoning the 30-day period to appeal to the CTA. **Respondent's *"deemed denial decision"* became final and unappealable in view of SMCC's failure to make a timely appeal to the CTA within thirty (30) days from the lapse of the 120-day period on September 17, 2010 or until October 17, 2010.**

In ***Chemrez, Inc. vs. Commissioner of Internal Revenue***,[8] the Court *En Banc* articulated on the concept of a *"deemed denial decision"* after the lapse of the 120-day period without the BIR's action on the claim, which *"deemed denial"* if not timely appealed with the CTA becomes final and inappealable, *viz.:*

> "Section 112(C)[9] of the NIRC, as amended[10] provides judicial remedy relative to taxpayers' claim for refund of input VAT attributable to zero-rated sales, viz:
>
> > "SEC. 112. Refunds or Tax Credits of Input Tax. – 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.
> >
> > **In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of**

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[8] CTA EB No. 1448, May 30, 2016.
[9] Formerly Section 112(D) of the NIRC (Republic Act No. 8424).
[10] Republic Act No. 9337.

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> **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.**" *(Boldfacing supplied)*

In *CIR vs. Aichi Forging Company of Asia, Inc.*,[11] the Supreme Court clarified the two scenarios contemplated under Section 112(D) of the NIRC *[now Sec. 112(C)]* which are appealable to the CTA within the 30-day period, viz:

> "In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a <u>decision</u> is issued by the CIR <u>before the lapse of the 120-day period</u>; and (2) when <u>no decision</u> is made <u>after the 120-day period</u>. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA**. As we see it then, the 120-day period is crucial in filing an appeal with the CTA." *(Boldfacing and underscoring supplied)*

Petitioner obviously fails to consider the concept of a *"deemed a denial decision"* of a claim for VAT refund after the lapse of the 120-day period under Section 112 (C) of the 1997 NIRC, as amended, which if not timely appealed with the CTA becomes final and unappealable as elucidated in *San Roque, supra*,[12] *viz.:*

> "The Atlas doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner** on Philex's claim **during the 120-day period is, by express provision of law, 'deemed a denial' of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the 'deemed a denial' decision of the Commissioner final and inappealable**. The right to appeal to the CTA from a decision or 'deemed a denial' decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and

[11] G.R. No. 184823, October 6, 2010.
[12] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

of

> must thus bear the consequences." *(Boldfacing supplied)*

In other words, a decision made by the BIR after the 120+30 day period like in the appealed case, is therefore inconsequential as the inaction of the CIR during the 120-day period is "deemed a denial" of a claim for refund, and without a timely appeal filed by the taxpayer, the "deemed a denial" decision of the CIR becomes final and unappealable.

The 120-day period is said to be crucial in filing an appeal with the CTA.[13] In order for the Court to conclude that there is "deemed a denial decision" due to inaction during the 120-day period, a correct reckoning point of the 120-day period is imperative. In this regard, the pronouncement in *Pilipinas Total Gas, Inc.*[14] is instructive:

> "Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: Under present law, **when should the submission of documents be deemed "completed" for purposes of determining the running of the 120-day period?**
>
> 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**.
>
> xxx xxx xxx
>
> 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**

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[13] Note 19, *supra.*

[14] Pilipinas Total Gas, Inc.vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015 *(footnote supplied).*

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, <u>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</u>.

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.

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, <u>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</u>

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> **<u>taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office</u>**. Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.
>
> Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, ***before the adminstrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, "officially received"*** as provided under RMC No. 49-2003.
>
> To summarize, for the just disposition of the subject controversy, **<u>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</u>**.
>
> 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. *(Boldfacing & underscoring supplied)*

Elsewise stated, the 120-day period may be reckoned from either of the following dates, whichever may be applicable:

1. Date of filing of the administrative claim if necessary documents were already completed the moment the taxpayer filed the administrative claim, or the taxpayer plainly manifests that he no longer wishes to submit

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any other additional documents to complete his administrative claim; or

2. Date of submission of documents, which may be made within 30 days from the date of filing of administrative claim, unless given further extension by the CIR.

Based from the foregoing discussion, the Court in Division correctly counted the 120-day period from the date of filing of petitioner's administrative claim for refund on **December 26, 2007** as the Petition for Review does not disclose any allegation and supporting proof that petitioner submitted additional documents within 30 days from the date of filing of its administrative claim; or that petitioner was given further extension by the CIR to submit documents in support of its administrative claim for refund; or that the BIR made a request for petitioner to produce documents in the course of the investigation and processing of petitioner's claim.

Counting the 120-day period from December 26, 2007, the CIR, therefore, had until **April 24, 2008** to act on petitioner's administrative claim for refund. As there was "inaction" on the part of the CIR during the 120-day period, such inaction is "deemed a denial decision" of the CIR which is ripe for appeal with the Court within 30 days from the lapse of such period. Petitioner's failure to appeal the "inaction" or "deemed a denial decision" of the CIR with the Court within 30 days from the lapse of the 120-day period or until **May 24, 2008**, the CIR's "deemed a denial decision" becomes final and unappealable following *San Roque*.[15]"

(Additional emphasis of words in italics with boldfacing supplied)

Thus, apart from the findings of the Court in Division that there is no unutilized excess input tax in this case, SMCC's Petition for Review filed before the Court in Division should have been dismissed as the ***"deemed denial decision"*** of the CIR already attained finality due to SMCC's failure to make a timely appeal to the Court in Division.

All told, I VOTE to deny the present Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice

[15] Note 20, *supra*.