REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MITSUBA PHILIPPINES TECHNICAL CENTER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10025

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
OCT 06 2021 3:10 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Mitsuba Philippines Technical Center Corporation (**petitioner/MPTCC**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(2)[3], Rule 4 of the

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1 Filed on 19 February 2019, Division Docket, Volume I, pp. 10-98, with annexes.

2 **SEC. 3.** *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the issuance of a tax credit certificate (**TCC**) of its alleged excess and unutilized input value-added tax (**VAT**) on its local purchases of goods and services attributable to zero-rated sales for the period from 01 July 2016 to 31 December 2016 or the 3rd and 4th quarters of taxable year (**TY**) 2016 in the aggregate amount of ₱3,265,900.00.

PARTIES OF THE CASE

Petitioner is a domestic corporation registered with the Securities and Exchange Commission (**SEC**) with Company Registration No. A200006072[4] and office address at 3rd Floor, Dusit Thani Manila, EDSA corner Arnaiz Avenue, Ayala Center, Makati City.[5] It is also registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer with Taxpayer's Identification No. (**TIN**) 206-234-187-000, as evidenced by BIR Certificate of Registration No. OCN 9RC0000613432.[6] Its primary purpose is to provide technical design, trial drawings and production drawings for autoparts, such as but not limited to electrical body parts, wiper system, sunroof motors, power seat, electrical chassis parts, electrical engine parts and its components.[7]

Respondent, on the other hand, is the Commissioner of Internal Revenue (**respondent/CIR**), who was duly appointed and is empowered to perform the duties of his office, including the power to

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

...

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]

4 Exhibit "P-1", Division Docket, Volume II, p. 535.

5 Paragraph 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), id., Volume I, p. 354.

6 Exhibit "P-3", id., Volume II, pp. 544-545.

7 Exhibit "P-2-A", id., p. 537.

grant or deny a refund for creditable input taxes pursuant to Section 112(C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS OF THE CASE

Petitioner duly filed its Quarterly VAT Returns for the 3rd and 4th quarters of TY 2016 on 21 October 2016[8] and 25 January 2017[9], respectively.

On 27 September 2018, petitioner filed with the BIR Revenue District Office (**RDO**) No. 47 - East Makati its Application for Tax Credits/Refunds (BIR Form No. 1914)[10], covering the period from 01 July 2016 to 31 December 2016 (or the 3rd and 4th quarters of TY 2016), in the aggregate amount of ₱3,265,900.00. On even date, Revenue Officer (**RO**) Ragelyn Dicta (**Dicta**) executed the Revised Checklist of Mandatory Requirements for Claims for VAT Refund[11], noting the filing of the supporting documents to petitioner's administrative claim.

On 22 October 2018, petitioner, through a letter[12] addressed to RO John Paul L. Virtudes (**Virtudes**), submitted the original copies of sales invoices, billing invoices and official receipts (**ORs**) for purchases of goods and services for the 3rd and 4th quarters of TY 2016.

Thereafter, the BIR issued Tax Verification Notice (**TVN**) dated 03 October 2018[13], informing petitioner that RO Virtudes of RDO 47 - East Makati was authorized to verify the supporting documents and/or pertinent records relative to petitioner's claim for VAT refund covering the period 01 July 2016 to 31 December 2016. Revenue District Officer Mahinardo G. Mailig (**RDO Mailig**) signed the said TVN.

Petitioner alleges that respondent has not acted on its administrative claim since 22 October 2018 when it submitted the

8 Exhibit "P-23", id., pp. 678-679.
9 Exhibit "P-24", id., pp. 686-687.
10 Exhibit "P-29", id., p. 702.
11 Exhibit "P-30", id., p. 703.
12 Exhibit "P-31", id., p. 704.
13 Exhibit "P-34", id., p. 718.

original copies of the relevant supporting documents. According to it, on 20 January 2019, the 90-day period from the date of submission of the ORs or invoices and other documents in support of petitioner's application has lapsed without petitioner receiving respondent's decision and thus, its administrative claim remained unresolved.

On 19 February 2019 and within thirty (30) days from the lapse of the aforesaid 90-day period for respondent to act on its administrative claim (counted from date of submission of the ORs or invoices in support thereof, *i.e.*, 22 October 2018), petitioner filed the instant Petition for Review before the Court in Division to appeal the deemed denial due to inaction on its administrative claim.[14] The same was raffled to the Second Division and docketed as CTA Case No. 10025.[15]

After being granted an extension by the Second Division[16], respondent filed his Answer[17] on 12 April 2019, interposing two (2) special and affirmative defenses. *First*, respondent contends that the Court in Division lacks jurisdiction over the present petition as the remedy of appeal in case of the CIR's inaction was removed or withdrawn when Republic Act (**RA**) No. 10963 of the Tax Reform for Acceleration and Inclusion (**TRAIN Law**) amended Section 112(C) of the NIRC of 1997. *Second*, respondent alleges that petitioner failed to state a cause of action as an appeal with the Court in Division may only ripen after receipt of the CIR's decision denying the claim for refund or issuance of a TCC for excess and unutilized input VAT.

On 22 April 2019, respondent forwarded to the Second Division the entire BIR Records of the present case consisting of three (3) folders.[18] The Second Division noted the same in the Minute Resolution dated 10 May 2019.[19]

On 02 May 2019, the Court issued a Notice of Pre-Trial Conference[20], setting the Pre-Trial Conference on 23 May 2019.

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14 Supra at note 1.
15 The Second Division is composed of Hon. Associate Justice Juanito C. Castañeda, as Chairperson, and Hon. Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Member.
16 See Order dated 27 March 2019, Division Docket, Volume I, p. 105.
17 Id., pp. 106-113.
18 See Compliance dated 22 April 2019, id., p. 115.
19 Id., p. 118.
20 Id., pp. 116-117.

Accordingly, respondent filed his Pre-Trial Brief[21] on 20 May 2019, while petitioner filed its Pre-Trial Brief[22] on 06 June 2019. Later, petitioner moved to reset the Pre-Trial Conference[23] but it still pushed through as petitioner's counsel was present at the hearing.[24]

At the 23 May 2019 Pre-Trial Conference, the Second Division granted both parties fifteen (15) days within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[25] On 07 June 2019, the parties submitted their JSFI.[26]

On 06 June 2019, petitioner filed a motion for the commissioning of Juanito A. Fullecido (**Fullecido**) as the Independent Certified Public Accountant (**ICPA**).[27] Subsequently, on 20 June 2019, petitioner asked that Jonathan David A. Balagot (**Balagot**) substitute Fullecido, who has worked as petitioner's Financial Statements (**FS**) Compiler, as the proposed ICPA.[28] In the Order dated 15 July 2019[29], the Second Division appointed Balagot as the ICPA and directed him to submit his report within 30 days therefrom.

On 24 June 2019, the Second Division issued a Pre-Trial Order[30] approving the parties' JSFI and terminating the pre-trial. Thereafter or on 16 September 2019, ICPA Balagot filed his report, with supporting documents.[31]

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of its witnesses, namely: (1) Maribeth S. Sta. Ana (**Sta. Ana**), petitioner's Accounting/ Finance Manager; and, (2) Balagot, the Court-commissioned ICPA.

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21 Id., pp. 122-126.
22 Id., pp. 136-155.
23 See Motion to Reset Pre-Trial Conference, id., pp. 119-121.
24 See Minutes of the Hearing dated 23 May 2019, id., p. 127.
25 See Order dated 23 May 2019, id., p. 128.
26 Id., pp. 354-364.
27 See Motion to Commission (An Independent Certified Public Accountant) dated 04 June 2019, id., pp. 129-134.
28 See Motion to Substitute Proposed Independent Certified Public Accountant dated 19 June 2019, id., pp. 373-378.
29 Id., Volume II, pp. 417-418.
30 Id., pp. 384-389.
31 Exhibit "P-38", id., pp. 430-507.

On the witness stand, Sta. Ana, who testified by way of her Judicial Affidavit[32], declared essentially that: (1) as petitioner's Accounting/Finance Manager, her functions include, among others, supervising petitioner's compliance with pertinent laws and government rules and regulations as well as payment of taxes, licenses and fees; (2) petitioner had unutilized and unapplied input tax credits which are directly attributable to its VAT zero-rated sales for the 3rd and 4th quarters of TY 2016; (3) petitioner timely filed its administrative claim for refund of excess and unutilized input VAT in the aggregate amount of ₱3,265,900.00; and, (4) petitioner rendered services to non-resident foreign corporations (**NRFCs**) doing business outside the Philippines, namely: (**a**) American Mitsuba Corporation (**AMC**), (**b**) Mitsuba Corporation (**MC**), (**c**) Mitsuba Germany GMBH (**MGG**), (**d**) Mitsuba Manufacturing France (**MMF**), (**e**) Mitsuba Sical India Private Ltd. (**MSIPL**) and, (**f**) Sanko Engineering Co. Ltd. (**SECL**), specifically by improving their management structure.

On cross-examination, Sta. Ana clarified her statement - "petitioner contributed to the improvement of the management structure". According to her, she meant that petitioner and its NRFC clients were related parties. She also confirmed that the Transaction Basic Agreements between petitioner, on the one hand, and AMC, MGG and MMF, on the other, marked as Exhibits "**P-16**", "**P-17**" and "**P-18**", respectively, were valid only for three (3) years and would have expired thereafter.[33]

In the same cross-examination, while she claimed that such contracts were validly extended, Sta. Ana's testimony did not include or make reference to any proof to that effect.[34]

As for ICPA Balagot, he identified his ICPA Report dated 13 September 2019[35] and his Judicial Affidavit dated 25 September 2019[36] in relation thereto during the hearing held on 28 October 2019.[37] *Per* his examination and as stated in his ICPA Report, ICPA Balagot's findings and observations are as follows: (1) petitioner's zero-rated

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32 Exhibit "P-37", id., Volume I, pp. 160-353, with exhibits.
33 See TSN dated 15 July 2019.
34 Id.
35 Exhibit "P-38", supra at note 31.
36 Exhibit "P-43", Division Docket, Volume II, pp. 510-516.
37 See TSN dated 28 October 2019.

sales totalling ₱105,973,191.75 for the period 01 July 2016 to 31 December 2016 were received, inwardly remitted to petitioner's bank account in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (**BSP**); (2) petitioner's receipts in the aggregate amount of ₱1,431,137.95 in 2017 did not pertain to zero-rated sales of services but rather to reimbursements of expenses advanced by petitioner in behalf of its related parties; (3) input taxes of ₱3,265,900.00 were properly supported with documents that were compliant with the substantiation requirements, except for the findings summarized in Table 12 totalling ₱551,637.81; and, (4) the amount being claimed for the issuance of a TCC of ₱3,265,900.00 was not subsequently utilized against any output VAT.

On 30 October 2019, after completing the presentation of its testimonial evidence, petitioner filed its Formal Offer of Evidence[38] (**FOE**) consisting of Exhibits "P-1" to "P-43-A", inclusive of sub-markings. On 05 November 2019, respondent filed his Comment[39] thereto.

On 05 November 2019, respondent filed a "Manifestation"[40] that he will no longer present the revenue officer (**RO**) who conducted the audit and investigation of petitioner's claim for the issuance of a TCC and, in lieu thereof, he asked the Court to allow him to submit a memorandum. In the Resolution dated 08 November 2019[41], the Court cancelled the presentation of evidence for respondent previously set on 09 December 2019 and submitted petitioner's FOE for resolution.

In the Resolution dated 13 February 2020[42], the Second Division admitted petitioner's exhibits *except* for: (1) Exhibits "P-16", "P-19", "P-39-O" and "P-39-R"[43], for not being found in the records; and,

38 Division Docket, Volume II, pp. 520-534.
39 Id., pp. 720-721.
40 Id., pp. 723-724.
41 Id., p. 726.
42 Id., pp. 731-732.
43

Exhibit No.	Description
"P-16"	Transaction Basic Agreement between American Mitsuba Corporation (AMC) and petitioner.
"P-19"	Business Consignment Agreement between Sanko Engineering Co. Ltd. and petitioner.

(2) Exhibits "P-6" and "P-9"[44], for failure to provide a translation of the document written in an unofficial language.

On 10 March 2020, petitioner filed a "Motion for Reconsideration to the Resolution dated February 13, 2020"[45] (**MR on the FOE Resolution**), asking the Second Division to admit Exhibits "P-6", "P-9", "P-16" and "P-19"[46] as the same documents marked as Exhibits "P-39-B-2-3", "P-39-B-2-5", "P-40-B-2-2" and "P-40-B-2-5", respectively, were saved to the USB flash drive submitted by petitioner and marked as Exhibit "P-38-B"[47] that formed part of the exhibits admitted *per* Resolution dated 13 February 2020. Petitioner likewise argued that Exhibits "P-6" and "P-9" have official translations attached to the records of the case.

On 12 March 2020, the Second Division ordered respondent to comment on petitioner's MR on the FOE Resolution within ten (10) days from notice thereof.[48] On 22 June 2020, respondent filed his "Comment"[49] to petitioner's MR on the FOE Resolution, asking the Court (1) to declare as inadmissible Exhibits "P-6" and "P-9" as these are in foreign languages and lack the required official translations, and (2) to expunge Exhibits "P-16" and "P-19" from the records of the case as these are inexistent markings. Respondent also manifested that he was never furnished soft copies of the ICPA Report and the related supporting documents.

In the Resolution dated 24 July 2020[50], the Second Division partially granted petitioner's MR on the FOE Resolution and admitted

"P-39-O"	No description in the Formal Officer of Evidence (FOE) and not found in the records.
"P-39-R"	No description in the FOE and not found in the records.

44

Exhibit No.	Description
"P-6"	Authenticated Articles of Incorporation of Mitsuba Germany GMBH (MGG).
"P-9"	Authenticated Articles of Incorporation of Sanko Engineering Co. Ltd. (SECL).

45 Division Docket, Volume II, pp. 735-737.

46 Supra at notes 43 and 44.

47

Exhibit No.	Description
"P-38-B"	USB containing the supporting documents of the ICPA Report.

48 See Resolution dated 12 March 2020, Division Docket, Volume II, p. 734.

49 Id., pp. 738-742.

50 Id., pp. 745-747.

Exhibits "P-9"[51] and "P-16".[52] On the other hand, it still denied admission of Exhibits "P-6"[53] and "P-19".[54] Considering respondent's 05 November 2019 "Manifestation" that he will no longer present witnesses, the Court, in the same Resolution, gave the parties a period of 30 days within which to file their respective memoranda.

Thereafter, on 11 September 2020, respondent filed his Memorandum[55] *via* LBC (a private courier). On 14 September 2020, the Court received the same. Petitioner, on the other hand, filed its Memorandum[56] on 02 October 2020. Accordingly, on 12 October 2020, the Second Division considered the case submitted for decision.[57]

ISSUE

The main issue[58] for the Court's resolution is —

WHETHER PETITIONER MITSUBA PHILIPPINES TECHNICAL CENTER CORPORATION IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) OF ITS EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) IN THE TOTAL AMOUNT OF ₱3,265,900.00 FOR THE PERIOD 01 JULY 2016 to 31 DECEMBER 2016 (3RD AND 4TH QUARTERS OF TAXABLE YEAR 2016).

Petitioner submits that it is entitled to the refund of excess and unutilized input VAT for the 3rd and 4th quarters of TY 2016 on the ground that it has sufficiently established all the requisites for a claim for refund, namely: (1) it is a VAT-registered taxpayer whose sales are entitled to VAT zero-rating; (2) it had unutilized and unapplied input

51 Exhibit "P-39-B-2-5", which is already admitted in the 13 February 2020 Resolution, contains the necessary translation of Exhibit "P-9".

52 Exhibit "P-16" is the same as Exhibit "P-40-B-2-2", which is already admitted in the 13 February 2020 Resolution.

53 Exhibit "P-6", which is offered as an "Authenticated Articles of Incorporation of Mitsuba Germany GmbH", is different from Exhibit "P-39-2-3", which instead refers to an "Application for the Commercial Register Division B of Company Mitsuba Germany GmbH" as noted in the Certificate of Authentication in the first page of the said exhibit.

54 Exhibit "P-19", which is offered as a "Business Consignment Agreement between Sanko Engineering Co. Ltd. and petitioner", is different from Exhibit "P-40-B-2-5", which instead refers to a "Business Consignment Agreement between Mitsuba Sical India Private Ltd. and petitioner".

55 Division Docket, Volume II, pp. 748-761.

56 Id., pp. 763-787.

57 See Resolution dated 12 October 2020, id., p. 788.

58 Joint Stipulation of Facts and Issues (JSFI), id., Volume I, p. 355.

tax credits for the subject period directly attributable to its zero-rated sales in the aggregate amount of ₱3,265,900.00; (3) it timely filed its administrative claim for the issuance of a TCC within the two-year prescriptive period; and, (4) it has seasonably filed the present Petition for Review against the "deemed denial decision" due to inaction of respondent after the lapse of the mandatory 90-day period under Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law reckoned from the date of submission of the ORs or invoices in support of its administrative claim (*i.e.*, 22 October 2018).

Respondent, on the other hand, argues that this Court has no jurisdiction to act on the present Petition for Review. He maintains that it was filed out of time, that is, beyond the 30-day period allowed by law within which to perfect an appeal of the "deemed denial decision" due to his inaction (upon the expiration of the 90-day period reckoned from the date of filing of its administrative claim or on 27 September 2018).

RULING OF THE COURT

Before delving into the merits, the Court shall first determine whether it has jurisdiction to entertain the present Petition for Review.

It is settled that jurisdiction over the subject matter or the nature of an action is fundamental for a court to act on a given controversy.[59] 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.[60] 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.[61] 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.[62]

[59] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, 04 February 2015, 749 SCRA 570.

[60] Id.

[61] Id., citing *Laresma v. Abellana*, G.R. No. 140973, 11 November 2004.

[62] Id., citing *Lt. Col. De Guzman, et al. v. Municipal Circuit Judge Escalona, et al.*, G.R. No. L-51773, 16 May 1980.

The Court of Tax Appeals (CTA) is a court of special jurisdiction and can only take cognizance of matters which are clearly within its jurisdiction.[63] Section 7(a)(1) of RA 1125[64], as amended by RA 9282[65], 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 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[.]
>
> ...

Based on the aforequoted provision of law, the CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the CIR in cases involving refunds of internal revenue taxes. In cases where the NIRC of 1997, as amended, provides a specific period for action, the CIR's inaction shall be deemed a denial.[66]

Relative to the foregoing, Section 112(A) and (C) of the NIRC of 1997, as amended by RA 10963 or the TRAIN Law, governs the filing of

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

[64] AN ACT CREATING THE COURT OF TAX APPEALS.

[65] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[66] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013, 690 SCRA 336.

administrative and judicial claims for refund or tax credit of excess and unutilized input tax attributable to zero-rated or effectively zero-rated sales. The provision reads:

> ...
> **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 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 for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof:** *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals:** *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application

within the ninety (90)-day period shall be punishable under Section 269 of this Code.[67]

...

In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[68], 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

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 [now 90] + 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 [now 90-day] period, or (2) file the judicial claim within thirty days from the expiration of the 120-day [now 90-day] period if the Commissioner does not act within the 120-day [now 90-day] period.

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

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67 Italics in the original text and emphasis supplied.
68 G.R. No. 173241, 25 March 2015, 754 SCRA 291.

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)*

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

...

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The subject administrative claim covers the 3rd and 4th quarters of TY 2016. Thus, petitioner's last day for the filing of its administrative claim for the last two (2) taxable quarters of TY 2016 fell on the following dates:

TY 2016	Close of the Taxable Quarter	Last day of the two (2)-year period
3rd Quarter	30 September 2016	September 30, 2018
4th Quarter	31 December 2016	December 31, 2018

Petitioner filed its administrative claim for the issuance of a TCC in the aggregate amount of ₱3,265,900.00 on <u>27 September 2018</u>.[69] Clearly, petitioner's administrative claim was filed well within the two-year prescriptive period.

Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, prescribes the period for filing a judicial claim for the refund or tax credit of alleged excess or unutilized input VAT. It speaks of two (2) periods: (1) the period of 90 days (previously 120 days), which serves as a waiting period to give time for the CIR to act on the

[69] Supra at note 10.

administrative claim for a refund or credit; and, (2) the period of 30 days, which refers to the period for filing a judicial claim with the CTA.

Significant to the reckoning of the 90-day (previously 120-day) period is the declaration of the Supreme Court that the application for VAT refund or tax credit must be accompanied by complete supporting documents with a statement under oath, attesting to the completeness of said supporting documents pursuant to Revenue Memorandum Circular (**RMC**) No. 54-2014.[70] The affidavit shall also state that these documents are sufficient to support the claim and no other documents shall be accepted from the taxpayer in order for the CIR to render his decision. Below is the pertinent portion of the Supreme Court's ruling in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[71] (**Total Gas**):

> ...
> ... 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 to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare

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[70] *Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended.*

[71] G.R. No. 207112, 08 December 2015; Emphasis in the original text.

> 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.
>
> ...

Similarly, in the recent case of *Zuellig-Pharma Asia Pacific Ltd. Phils. ROQH v. Commissioner of Internal Revenue*[72] (**Zuellig-Pharma**), the Supreme Court categorically declared that upon the effectivity of RMC No. 54-2014, or on 11 June 2014, the reckoning point should be date of submission of complete supporting documents which should coincide with the date of filing of the administrative claim, *viz*:

> ...
>
> As a final note, the Court clarifies that the above disquisition only finds application to those claims for refund made ***prior to*** June 11, 2014 (*i.e.*, the date that RMC No. 54-2014 was issued). Under this new circular, **the taxpayer is now required to submit complete documents** ***upon its filing of an administrative claim for VAT refund/tax credit***, as no other documents shall be accepted thereafter. For this purpose, the taxpayer shall also execute a statement under oath attesting to the completeness of said documents which shall also be submitted upon such filing. Thus, under the auspices of RMC No. 54-2014, there is no more need to delineate between verbal or written requests for additional documents because the submission thereof is not anymore allowed. To reiterate, the prevailing rule now is that all complete documents are to be submitted upon the filing of the taxpayer's administrative claim for refund.
>
> ...

Applying the above rulings, since the subject administrative claim for refund was filed *after* 11 June 2014 (*i.e.*, the date that RMC No. 54-2014 was issued), the 90-day (previously 120-day) period shall be reckoned from **27 September 2018** (*i.e.*, the date of filing of the subject

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[72] G.R. No. 244154, 15 July 2020; Citations omitted; Emphasis, italics and underscoring in the original text.

administrative claim) on which date petitioner was already obligated to submit complete supporting documents.

A perusal of the records, however, shows that petitioner only submitted the complete supporting documents on 22 October 2018, when the BIR received the original copies of the sales invoices, billing invoices and ORs for purchases of goods and services for the 3rd and 4th quarters of TY 2016.[73]

Taking into account the rules laid down by the Supreme Court in *Total Gas* and *Zuellig-Pharma*, this Court nevertheless holds that the 90-day (previously 120-day) within which the CIR should act on the administrative claim shall be reckoned from 27 September 2018, the date of filing of its administrative claim. It is on such date that petitioner could be deemed to have already submitted complete supporting documents together with its application for refund, and thus, barred from submitting additional documents thereafter.

Contrary to petitioner's contention, its submission of supporting documents on 22 October 2018 cannot be considered for purposes of counting the 90-day (previously 120-day) because it was made beyond the date of filing of the administrative claim on which date the submission of complete supporting documents must coincide. Indeed, the taxpayer is now required to submit complete documents upon the filing of an administrative claim for VAT refund or tax credit.

Accordingly, respondent had 90 days from 27 September 2018, or until **26 December 2018** to decide on petitioner's claim. However, the said 90-day period lapsed without any action from respondent. Given the prevailing rule that inaction on the part of the CIR is deemed a denial[74], petitioner's claim is considered "deemed denied" as early as 26 December 2018 or the expiration of the 90-day (previously 120-day) waiting period. Thus, petitioner had 30 days or until **25 January 2019**, to appeal such inaction to the Court. Consequently, petitioner's judicial claim for refund or tax credit filed before this Court on **19 February 2019** was filed out of time.

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[73] Transmittal Letter dated 22 October 2018, Exhibit "P-31", Supra at note 12.

[74] See *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013.

It must be emphasized that a claim for tax credit or refund, like a claim for tax exemption, is construed strictly against the taxpayer. Thus, strict compliance with the 90+30-day (previously 120+30-day) period is necessary for such a claim to prosper.[75]

In sum, petitioner's belated filing of its Petition for Review on 19 February 2019 is fatal to its claim for refund or tax credit for its failure to observe the mandatory 90+30-day (previously 120+30-day) period, and has therefore rendered this Court devoid of jurisdiction over the Petition for Review.

WHEREFORE, premises considered, the instant Petition for Review filed on 19 February 2019 by petitioner Mitsuba Philippines Technical Center Corporation is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

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

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice