Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

HEDCOR, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8967

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

Promulgated:
JUN 07 2017
9:00 a.m.

x---x

DECISION

CASANOVA, J.:

This is a Petition for Review[1] filed on January 9, 2015 by petitioner Hedcor, Inc. against respondent Commissioner of Internal Revenue (CIR) to seek the refund or issuance of tax credit certificate (TCC) in the aggregate amount of ₱50,655,171.58, allegedly representing its excess and unutilized input Value-Added Tax (VAT), arising from its purchases of goods and/or services attributable to its zero-rated sales for the four (4) quarters of calendar year (CY) 2011.

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at 214 Ambuclao Road, Obulan, Beckel, La Trinidad, Benguet.[2] It is registered with the Bureau of Internal Revenue (BIR) as VAT taxpayer with Taxpayer Identification Number (TIN) 001-946-873[3] and was issued BIR Certificate of Registration[4] OCN 4RC0000670842 dated May 2, 1990 by the BIR Revenue District Office (RDO) No. 9.

---

[1] Docket (Vol. I), pp. 14-26.
[2] Exhibit "P-15".
[3] Par. 2, III. Summary of Stipulated Facts, Joint Stipulation of facts and Issues (JSFI), Docket (Vol. I), p. 338.
[4] *Supra* Note 2.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.

Petitioner filed its amended quarterly VAT returns for CY 2011 on the following dates:

Quarterly VAT Returns	**Filing Date**
1st Quarter 2011[5]	July 17, 2012
2nd Quarter 2011[6]	July 17, 2012
3rd Quarter 2011[7]	September 26, 2013
4th Quarter 2011[8]	September 26, 2013

Petitioner filed its administrative claims for the refund or issuance of TCC of its excess and unutilized input VAT for CY 2011 with the BIR RDO No. 9 on the following dates and amounts:

CY 2011	**Filing of Administrative Claim**	**Amount of claim**
1st Quarter[9]	December 27, 2012	₱ 14,100,940.65
2nd Quarter[10]	April 1, 2013	₱ 12,030,989.42
3rd Quarter[11]	September 30, 2013	₱ 16,326,429.84
4th Quarter[12]	October 30, 2013	₱ 9,482,188.51
	Total	₱ 51,940,548.42

and submitted supporting documents thereof on various dates with transmittal letters, as follows:

[5] Exhibit "P-16".
[6] Exhibit "P-17".
[7] Exhibit "P-18".
[8] Exhibit "P-19".
[9] Exhibits "P-24" and "P-25".
[10] Exhibits "P-26" and "P-27".
[11] Exhibits "P-28" and "P-29".
[12] Exhibits "P-30" and "P-31".

First Quarter Claim		Exhibit
	Transmittal Letter dated December 27, 2012	"P-32"
	Transmittal Letter dated January 15, 2013	"P-33"
	Transmittal Letter dated January 31, 2013	"P-34"
Second Quarter Claim		
	Transmittal Letter dated April 2, 2013	"P-35"
	Transmittal Letter dated November 4, 2013	"P-36"
Third Quarter Claim		
	Transmittal Letter dated September 30, 2013	"P-37"
	Transmittal Letter dated October 2, 2013	"P-38"
	Transmittal Letter dated November 4, 2013	"P-39"
	Transmittal Letter dated November 6, 2013	"P-40"
Fourth Quarter Claim		
	Transmittal Letter dated October 30, 2013	"P-41"
	Transmittal Letter dated November 8, 2013	"P-42"

The following Letters of Authority issued by Revenue Region No. 002 authorizing the audit and investigation of the subject claims for refund/TCC were received by petitioner:[13]

Letter of Authority No.	Period Covered	Date issued
009-2013-00000016	January to March 2011	April 1, 2013
009-2013-00000030	April to June 2011	August 13, 2013
009-2013-00000066	July to September 2011	December 6, 2013
009-2013-00000067	October to December 2011	December 9, 2013

On December 1, 2014, the BIR issued a Letter[14], which was received by petitioner on December 11, 2014, stating that the processing of petitioner's claims could not be pursued in line with the issuance of Revenue Memorandum Circular (RMC) No. 54-2014.

Petitioner filed the present Petition for Review on January 9, 2015. Respondent filed his Answer[15] through registered mail on March 26, 2015, and received by the Court on April 8, 2015, interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

[13] Par. 1, Answer, Docket (Vol. I), p. 136.
[14] Exhibit "P-43".
[15] Docket (Vol. I), pp. 136-146.

4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

5. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered.

6. Since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority.

7. Tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State such that he who claims a refund or exemption must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

8. Thus, the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

9. Further, taxes paid and collected are presumed to have been made in accordance with the laws and regulations.

10. To support petitioner's claim, it is imperative for it to prove the following, *viz*:

> a. The registration requirements of a value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95 and Section 236 of the Tax Code, as amended;
>
> b. The invoicing and accounting requirements for VAT-registered persons, as

well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim** in accordance with Section 112 of the Tax Code, as amended. This requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of the judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner's petition for review;

d. That the input taxes in the aggregate amount of Php50,655171.58 *(sic)* allegedly paid by petitioner on its purchases of goods and services for the 1st, 2nd, 3rd and 4th quarters of calendar year 2011 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) were filed within the periods provided in Sections 112(A) and (D) of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits).

11. Petitioner must prove that the aggregate amount of *Php50,655171.58 (sic)* allegedly representing excess and unutilized input VAT for the 1st to 4th quarters of calendar year 2011 is properly documented.

12. It has been uniformly and consistently ruled by the Honorable Supreme Court that the taxpayer bears the burden of established the factual and legal basis of its claim to tax refund or credit. In the case at hand, petitioner failed to present clear and convincing evidence to merit a tax refund or credit.

13. Corollary thereto, Section 112 (D) [now Section 112(c) of the Tax Code of 1997] provides as follows, *to wit:*

'SEC. 112. Refunds or Tax Credits of Input Tax.-

x x x

(D) Period Within Which Refund or Tax Credit of Input Taxes Shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim** or after the expiration of the one hundred twenty day-period, **appeal the decision or the unacted claim with the Court of Tax Appeals**.' (Emphasis supplied)

14. The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

VALUE-ADDED TAX

(For audit involving Claim for Refund/ TCC)

A.) Requirements from Taxpayer

I. Requirements mention in Annex B

II. Additional General Requirements

1) 3 copies of 'Application for VAT Credit/Refund'

2) Summary List of Local Purchases specifying the following:

xxx

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

4) Summary of importations made during the period with the following details:

xxx xxx xxx

5) Photocopies of invoices, import entry documents, official receipts or confirmation

receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)

6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation – for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statements, if applicable.

17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1 -c (export sales)

15. As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A) Requirements from Taxpayers

1) Proof of claimed tax credits

2) Proof of Tax Compliance Certificates applied

3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable

4) Proof of payment of deficiency tax, if any
   a) current year/period
   b) previous year/period

5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable

6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable

7) Proof of exemption under special law, if applicable

8) Certification of the appropriate regulatory agency as to the exempt xero-rated sales of the taxpayer under its regulatory supervision, if applicable

9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable

10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable

11) Sample invoice/s for 'Export/Exempt Sales', if applicable

12) Proof that the acceptable foreign currency exchange proceeds on

> export sales/ foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

16. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.

17. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund.

18. It can never be emphasized enough that in this jurisdiction tax refunds/ credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> *'Tax refunds are in the nature of tax exemptions, and are to be construed strictissimi juris against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.'*

19. Following the premise above, petitioner has the burden of proving that the right to such tax credit indubitably exist and a well-founded doubt is fatal to its claim.

20. As here, the amount being claimed by petitioner for allegedly unutilized Input VAT for the first, second, third, and fourth quarter of taxable year 2011 was not properly documented.

21. Accordingly, without proper documentation showing full compliance with all the requirements for claiming unutilized input VAT by generation companies selling electricity from renewable sources of energy, then the instant claim for refund or credit must fail."

The case was scheduled for Pre-Trial Conference[16] on May 28, 2015 but was reset[17] on July 9, 2015. Petitioner filed its Pre-Trial Brief[18] on May 25, 2015, while Respondent's Pre-Trial Brief[19] was filed on July 2, 2015. The parties filed their Joint Stipulation of Facts and Issues[20] on July 29, 2015 which was approved by the Court in the Pre-Trial Order[21] dated August 11, 2015.

During trial, petitioner presented documentary and testimonial evidence to support its claims. Petitioner presented the following witnesses: (1) Arazeli Malapad[22] and (2) Independent Certified Public Accountant (ICPA), Emmanuel Y. Mendoza.[23]

Thereafter, petitioner filed its Formal Offer of Evidence[24] on January 6, 2016. Respondent filed his Comment To Petitioner's Formal Offer of Evidence (Dated 28 December 2015)[25] on January 7, 2016.

In the Resolution[26] dated February 9, 2016, the Court admitted petitioner's Exhibits, except Exhibits "P-1" and "P-2" for failure of the exhibits formally offered to correspond with the document actually marked.

Considering the manifestation of respondent's counsel that he has no evidence to present, the Court, therefore, granted respondent a period of thirty (30) days and a period of twenty (20) days for petitioner, within which to file their respective memoranda.[27]

---

[16] Notice of Pre-Trial Conference, Docket (Vol. I), pp. 161-162.
[17] Notice of Resetting, Docket (Vol. I), p. 163.
[18] Docket (Vol. I), pp. 164-170.
[19] Docket (Vol. I), pp. 318-322.
[20] Docket (Vol. I), pp. 337-340.
[21] Docket (Vol. I), pp. 342-346.
[22] Minutes of the hearing dated September 16, 2015, Docket (Vol. I), p. 355.
[23] Minutes of the hearing dated December 2, 2015, Docket (Vol. II), p. 383.
[24] Docket (Vol. II), pp. 389-408.
[25] Docket (Vol. II), pp. 486-489.
[26] Docket (Vol. II), pp. 491-492.
[27] Minutes of the hearing dated April 20, 2016, Docket (Vol. II), p. 503.

On May 20, 2016, respondent filed a Manifestation[28] stating that he is adopting the arguments raised in the Answer dated March 26, 2015 as his Memorandum. On the other hand, petitioner filed its Memorandum[29], through registered mail on June 17, 2016, and received by the Court on June 23, 2016. Hence, the case was submitted for decision.[30]

The parties submitted[31] this sole issue for the Court's resolution:

> Whether or not petitioner can substantiate with competent evidence its claims that it is entitled to be refunded of the input VAT it paid in the 1st, 2nd, 3rd and 4th Quarters of 2011.

Relevant to the resolution of the present case is Section 112(A) and (C) of the NIRC of 1997, as amended, as follows:

> "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: Provided, finally, That for a person making sales that are

---

[28] Docket (Vol. II), pp. 508-511.
[29] Docket (Vol. II), pp. 560-588.
[30] Resolution dated June 28, 2016, Docket (Vol. II), p. 591.
[31] IV. Issue to Tried, JSFI, Docket (Vol. I), p. 338.

> zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales."
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Thus, in order to be entitled to refund or issuance of TCC of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. the taxpayer-claimant must be VAT-registered;
2. there must be zero-rated or effectively zero-rated sales;
3. input taxes were incurred or paid;
4. such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. said input taxes were not applied against any output VAT liability; and
6. the claim was filed within the prescriptive period both in the administrative and judicial levels.

The Court shall first address the timeliness of petitioner's compliance with the sixth requisite pertaining to the timeliness of its administrative and judicial claims in order to determine the jurisdiction of this Court to entertain the present petition.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the application for refund or issuance of TCC of unutilized excess input

VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Petitioner's subject claims cover the four (4) taxable quarters of CY 2011, which, respectively, closed on March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011. Counting two (2) years from said dates, petitioner had until March 31, 2013, June 30, 2013, September 30, 2013 and December 31, 2013, respectively, within which to file its administrative claims for refund or issuance of TCC. Thus, petitioner's administrative claims were timely filed on December 27, 2012, April 1, 2013, September 30, 2013 and October 30, 2013, as follows:

CY 2011	**Close of Taxable Quarter**	**Last Day to File Administrative Claim**	**Filing of Administrative Claim**	**Amount of claim**
1st Quarter	Mar. 31, 2011	Mar. 31, 2013	December 27, 2012	₱ 14,100,940.65
2nd Quarter	June 30, 2011	June 30, 2013	April 1, 2013	₱ 12,030,989.42
3rd Quarter	Sept. 30, 2011	Sept. 30, 2013	September 30, 2013	₱ 16,326,429.84
4th Quarter	Dec. 31, 2011	Dec. 31, 2013	October 30, 2013	₱ 9,482,188.51
			Total	₱ 51,940,548.42

As to the timeliness of petitioner's judicial appeal, Section 112(D) (now Section 112 ([C]) of the NIRC of 1997, as amended, states the time requirements for filing a judicial claim for the refund or issuance of TCC of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the period of 30 days, which refers to the period for filing a judicial claim with the CTA.[32]

It must be noted that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[33], the Supreme Court held that it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. However, the SC also ruled that the

[32] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[33] G.R. No. 207112, December 8, 2015.

benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled, as follows:

> "xxx for purposes of determining ***when*** the supporting documents have been completed - *it is the taxpayer who ultimately determines when complete documents have been submitted for purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. xxx
>
> 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 the 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, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

xxx xxx xxx

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

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

It bears mentioning at this point that the foregoing summation of the rules *should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014*, such as the claim at bench. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:

> The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents

> (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/ claimant.

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim."

To reiterate, RMC 49-03 applies in claims filed before June 11, 2014. In this regard, a taxpayer has thirty (30) days from the date an administrative claim for excess unutilized input VAT is filed, within which to submit supporting documents, unless granted further extension by the BIR. If in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from the request of the investigating/processing office. It must be stressed, however, that notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is necessary. It is only upon the submission of these documents that the

120-day period would begin to run. It must be emphasized that whatever documents a taxpayer intends to file to support his claim must be completed within the two (2)-year period under Section 112 (A) of the NIRC of 1997, as amended.

It is worthy to note that starting June 11, 2014 when RMC No. 054-14 took effect, the 120-day period should be counted from the date that the administrative claim was filed. Under the said circular, the taxpayer is required to present complete supporting documents at the time of filing the claim. The application must be accompanied by supporting documents as enumerated in the circular and a statement under oath attesting to its completeness. The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. Thus, the taxpayer is barred from submitting additional documents after filing the administrative claim. Hence, the 120-day period would start upon the filing of the administrative claim for refund.

Inasmuch as the present claims were filed prior to June 11, 2014, the rules under RMC 49-03 shall apply. After its applications, petitioner submitted supporting documents on the following dates, viz:

First Quarter Claim		**Reference**
	Transmittal Letter dated December 27, 2012	*Exhibit "P-32"*
	Transmittal Letter dated January 15, 2013	*Exhibit "P-33"*
	Transmittal Letter dated January 31, 2013	*Exhibit "P-34"*
Second Quarter Claim		
	Transmittal Letter dated April 2, 2013	*Exhibit "P-35"*
	Transmittal Letter dated November 4, 2013	*Exhibit "P-36"*
Third Quarter Claim		
	Transmittal Letter dated September 30, 2013	*Exhibit "P-37"*
	Transmittal Letter dated October 2, 2013	*Exhibit "P-38"*
	Transmittal Letter dated November 4, 2013	*Exhibit "P-39"*
	Transmittal Letter dated November 6, 2013	*Exhibit "P-40"*
Fourth Quarter Claim		
	Transmittal Letter dated October 30, 2013	*Exhibit "P-41"*
	Transmittal Letter dated November 8, 2013	*Exhibit "P-42"*

Petitioner received the following Letters of Authority issued by Revenue Region No. 002 authorizing the audit and investigation of the subject claims for refund or issuance of TCC:

Letter of Authority No.	**Period Covered**	**Date issued**
009-2013-00000016	January to March 2011	April 1, 2013

009-2013-00000030	April to June 2011	August 13, 2013
009-2013-00000066	July to September 2011	December 6, 2013
009-2013-00000067	October 2011 to December 2011	December 9, 2013

The records, however, do not show of any written notice from the BIR requiring petitioner to submit certain documents in support of its claims. Neither does it show that petitioner was given further extension in the submission of its supporting documents. Thus, the 120-day period shall be reckoned from the last date of petitioner's submission of which must be within the thirty (30)-day period after the filing of the administrative claim and within the two (2)-year period prescribed under Section 112(A) of the NIRC of 1997, as amended.

Therefore, the 120-day period in the present claims started to run on January 15, 2013, April 2, 2013, October 2, 2013 and November 8, 2013 for petitioner's claims covering the first, second, third and fourth quarters of CY 2011, respectively, as shown below:

CY 2011	End of Taxable Quarter	Two-year Prescriptive Period	Date of Filing of Adm. Claim	Dates of Submission of Documents	End of 30 days from Filing of Adm. Claim	Start of 120-day Period
1st Quarter	March 31, 2011	March 31, 2013	Dec. 27, 2012	Dec. 27, 2012, Jan. 15, 2013, Jan. 31, 2013	Jan. 28, 2013[34]	Jan. 15, 2013
2nd Quarter	June 30, 2011	June 30, 2013	April 1, 2013	April 2, 2013, Nov. 4, 2013	May 2, 2013[35]	April 2, 2013
3rd Quarter	Sept. 30, 2011	Sept. 30, 2013	Sept. 30, 2013	Sept. 30, 2013, Oct. 2, 2013, Nov. 4, 2013, Nov. 6, 2013	Oct. 30, 2013	Oct. 2, 2013
4th Quarter	Dec. 31, 2011	Dec. 31, 2013	Oct. 30, 2013	Oct. 30, 2013, Nov. 8, 2013	Nov. 29, 2013	Nov. 8, 2013

It has been held that when the 120-day period lapses and there is inaction on the part of the CIR, the taxpayer may no longer wait for the CIR to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already deemed a denial of the refund claim. The taxpayer must, therefore, file an appeal within thirty (30) days from the lapse of the 120-day waiting period.[36]

[34] January 26, 2013 fell on a Saturday.
[35] May 1, 2013 was a regular holiday.
[36] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

petitioner's claims covering the first, second, third and fourth quarters of 2011, petitioner had thirty (30) days or until June 14, 2013, August 30, 2013, March 1, 2014 and April 7, 2014, respectively, to appeal its claims for refund/TCC before this Court, as shown below:

CY 2011	End of Taxable Quarter	Start of 120-day Period for CIR to Act on the Claim	End of 120-day Period for CIR to Act on the Claim	End of 30-day Period to Appeal before the CTA
1st Quarter	Mar. 31, 2011	Jan. 15, 2013	May 15, 2013	June, 14,2013
2nd Quarter	June 30, 2011	April 2, 2013	July 31, 2013	Aug. 30, 2013
3rd Quarter	Sept. 30, 2011	Oct. 2, 2013	Jan. 30, 2014	March 1,2014
4th Quarter	Dec. 31, 2011	Nov. 8, 2013	March 8, 2014	April 7, 2014

It must be recalled that petitioner filed its Petition for Review only on January 9, 2015, which was way beyond the thirty (30)-day reglementary period.

In the consolidated case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue,*[37] the Supreme Court *En Banc* held that the 120+30-day periods must be strictly observed except from the date of issuance of BIR Ruling No. DA-489-03 on December 10, 2003, which allowed taxpayers to file a judicial claim without waiting for the end of the 120-day period, up to the date of promulgation of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[38] on October 6, 2010, where the Supreme Court declared that compliance with the 120+30-day period is mandatory and jurisdictional.

Considering that the present judicial claim was filed only on January 9, 2015, the same does not fall within the period when BIR Ruling No. DA-489-03 was in force, *i.e.,* from December 10, 2003 to October 6, 2010. Moreover, the BIR ruling, as an exception to the mandatory and jurisdictional nature of the 120+30 day periods, is limited to premature filing and does not extend to late filing of a judicial claim.[39]

---

[37] G.R. Nos. 187485, 196113, and 197156, February 12, 2013 and October 8, 2013.
[38] G.R. No. 184823, October 6, 2010.
[39] *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014.

Accordingly, petitioner's belated filing of its judicial claim or failure to observe the mandatory 120+30 day periods is fatal to its claim and rendered the Court devoid of jurisdiction over the judicial claim. Thus, the dismissal of the instant petition is in order.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
(with Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

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
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Second Division

HEDCOR, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA No. 8967

Member:

CASTANEDA, JR.
CASANOVA,
MANAHAN, JJ.

Promulgated:
JUN 07 2017
9:00 a.m.

x- x

CONCURRING OPINION

MANAHAN, *J.:*

I concur with the conclusion reached by my erudite colleagues and sustain the dismissal of the petition for lack of jurisdiction.

The existing jurisprudence relative to the lapse of the 120 day period in claims for refund under Section 112 (C) of the Tax Code moves us to rule that failure on the part of the taxpayer to elevate an appeal to this Court within the 30 days after the lapse of the 120 day period is fatal to its claim for refund because the Court loses its jurisdiction to take cognizance of the same. [1]

The only two options available to the taxpayer upon the lapse of the 120 day period and within the following 30 day period is to file an appeal to the Court of Tax Appeals (CTA) or not to file an appeal at all. The alternative of awaiting the decision of the Commissioner of Internal Revenue (CIR) and

[1] Philex Mining vs. CIR, G.R. No. 197156, February 12, 2013; Pilipinas Total Gas, Inc. vs. CIR, G.R. No. 207112, December 6, 2015.

am

appealing said decision to the CTA is viable only within the 120 + 30 days provided in Section 112 (D) of the Tax Code as in the case of *Vestas Services Philippines, Inc. vs. CIR*[2] where the decision of the CIR on the refund claim was issued within and before the expiry of the 30 day period. Hence, the claimant in said case appealed the written denial to the CTA from its receipt thereof. However, this is not an available remedy if the decision of the CIR is issued after the 120 + 30 day period. The ruling of the Supreme Court in the case of *Lascona Land Co., Inc. vs. CIR*[3] refers only to assessment cases and not to claims for refund, however persuasive the argument of the petitioner may be in this regard.

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

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

> **"Section 112. Refunds or tax credits of input tax.-**
>
> (A) Zero-rated or effectively zero rated sales – Any VAT registered person, whose sales are zero rated or effectively zero rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales xxx xxx xxx

[2] CTA Case No. 8888, May 26, 2017.
[3] G.R. No. 171251, March 5, 2012.

> (C) Period within which refund or tax credit of input taxes shall be made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents *in support of the application* filed in accordance with Subsection (A) hereof.

RMC 49-03

> A-18. xxx xxx xxx
>
> "For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty days from receipt of the complete documents. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer claimants shall submit such documents within thirty days from request of the investigating/processing office, which shall be construed as within the one hundred twenty day period."

The majority opinion interprets the above provisions in this wise:

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

The undersigned agrees with the above contention that the submission of documents for purposes of counting the 120 day period under the milieu of RMC 49-03 may be extended if the investigating revenue officers make a request for additional documents in the course of their investigation. Certainly, the taxpayer is at the mercy of the revenue officers who have the prerogative to grant or deny the claim for refund. I do however believe that the request or requests for additional documents by

am

the investigating revenue officers need not be written, contrary to the view of my colleagues when they wrote, thus :

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

There is nothing in RMC 49-03 which requires the request for additional documents to be written for the extension to apply. In the processing of administrative claims for refund with the BIR, the claimants would naturally follow up their claims on a regular basis and request for meetings with the assigned examiners in order to facilitate and hopefully expedite a successful outcome. Sometimes it would be the revenue examiners who would invite the claimants to discuss their findings. During said meetings, the revenue examiners may request for additional documents which, more often than not, are relayed verbally without any written note to produce said documents. It is this reality that I described in my Dissenting Opinion in the case of Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ vs. Commissioner of Internal Revenue[4], viz:

> "It is clear that the taxpayer, at the time of filing his application for refund, is guided by the law and its implementing revenue issuances as to the documents that must be submitted to the BIR in support of the claim for refund. At this stage, taxpayer has no idea on how the assigned revenue examiner will appreciate the sufficiency of the documentation submitted. This is the first stage. Upon assignment of the refund claim to an examiner, the latter will now study the application and thereby communicate his or her findings to the taxpayer. The assigned examiner may or may not ask for additional documents or may not even communicate with the taxpayer at all. This is the second stage."

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

---

[4] CTA Case No. 8899, March 9, 2017.

cm

By virtue of the foregoing, I wish to share this different perspective with regard to the majority's appreciation of the counting of the 120 day period as it relates to the submission of the relevant supporting documents under RMC 49-03.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice