REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DÖHLE SHIPMANAGEMENT PHILS. CORP., *Petitioner,*	**CTA *EB* NO. 1715** (CTA Case No. 8702)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	
	Promulgated:
	SEP 13 2019 3:45 p.m.

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RESOLUTION

MANAHAN, J.:

For resolution is petitioner's *Motion for Reconsideration (of the Decision dated March 14, 2019)* filed on April 3, 2019 without respondent's Comment.

Petitioner's motion assails the Decision promulgated on March 14, 2019 (assailed Decision) which dismissed the Petition for Review for lack of merit, the dispositive portion thereof states:

> "**WHEREFORE,** in view of the foregoing, the instant Petition for Review filed by petitioner Dohle Shipmanagement Phils. Corp. on October 18, 2017 is hereby **DISMISSED** for lack

of merit. Accordingly, the judicial claim for refund of excess input VAT for taxable year 2010 is **DENIED** on jurisdictional ground.

SO ORDERED."

In a Resolution dated May 28, 2019, the Court *En Banc* ordered respondent to file a comment to petitioner's *Motion for Reconsideration (of the Decision dated March 14, 2019).*

On June 13, 2019, respondent posted a *Motion for Extension of Time to File Comment* which the Court granted in a Resolution dated July 2, 2019.

Instead of filing his Comment, respondent posted a *Manifestation and Motion* on June 25, 2019 informing the Court that he is adopting the findings and legal conclusions made by the Court in the Decision dated March 14, 2019 as part of his comment/opposition to petitioner's motion for reconsideration.

In its *Motion for Reconsideration,* petitioner contends that the Court erred in its conclusion that the complete supporting documents in claims for refund under Section 112 (a) of the 1997 National Internal Revenue Code (1997 NIRC), must be submitted within the two-year period. According to petitioner, this is tantamount to imposing an additional condition that does not find any basis under the law.

Petitioner further argues, that assuming that supporting documents should be submitted within the two-year period, it submits that the instant case falls under the exception, i.e., that the submission of additional documents by petitioner to the One Stop Shop-Department of Finance (OSS-DOF) was made in response to ongoing requests for documents in the course of the latter's evaluation of the application for tax refund.

As mentioned earlier, respondent filed a *Manifestation and Motion,* in lieu of a comment adopting the findings and legal conclusions made by the Court in the Decision dated March 14, 2019. Respondent further declared that petitioner's motion is a *pro forma* motion because the arguments raised therein are mere reiterations of those which have already been passed and ruled upon in the assailed Decision, hence must outrightly be denied.

THE COURT *EN BANC'S* RULING

Petitioner's *Motion for Reconsideration* lacks merit.

Contrary to petitioner's contention, we reiterate our position that the complete supporting documents relative to claims for refund of excess/unutilized input VAT under Section 112 (A) of the 1997 NIRC must be submitted within the two-year period provided therein.

A second look at the provisions of Section 112 (A) and (C) of the 1997 NIRC is in order, thus:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
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> (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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> xxx xxx xxx
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> 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."

It is plain from the aforequoted provisions that the claim for refund of excess and unutilized input VAT must be made within the two-year period accompanied by complete documents to support said claim. To interpret it differently would render nugatory the two-year prescriptive period to file a claim granted by law, because after all, it is only when the supporting documents are submitted that the claim for refund is deemed "officially received" and this is explained in detail by the Supreme Court in the case of *Pilipinas Total Gas, Inc. vs. CIR*[1], in this manner:

> "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 administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of his 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.
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> xxx xxx xxx
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> **In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the NIRC."** xxx xxx xxx

It is a condition inherent in the nature of the claim and the time limit prescribed by law to submit the complete supporting documents within the two-year period, thus it is erroneous on the part of petitioner to assert that such is an additional condition that does not find any basis in law. It must be noted that it is within the two-year period that the law gives the taxpayer the right to determine when the documents are complete to support his application.

The exception to this rule is when the revenue officers find the supporting documents submitted by taxpayer (within the two-year period) to be insufficient to complete their evaluation.

[1] G.R. No. 207112, December 9, 2015.

The assailed Decision explained this exceptional circumstance in detail, thus :

> "This Court finds the ruling of the Supreme Court in the *Pilipinas Total* case appropriate in this particular situation as regards the submission of documents within the two-year period. It would have been different if the submission of additional documents was a result of a series of requests made by the respondent or his representatives to which a taxpayer is made to comply *even outside* the two-year period. It is a reality that revenue examiners oftentimes take time to evaluate and examine the claims for refund pending in their office and that in the course of such evaluation may require taxpayer to further support the claim for refund with additional documents. The constant requests for documents may even go beyond the two-year period from the filing of the administrative claim and this, to our minds, constitutes an exception to the submission of documents within the two- year period.[2]
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> **While it is well-settled that it is the taxpayer who should determine when the documents (in support of the claim) are already complete, there are instances where the respondent, in the course of studying the sufficiency of the claim, will continue to request for more documents from the taxpayer even after the two-year period mentioned in the *Pilipinas Total Gas* case.** In such instances, the taxpayer should not be faulted for complying with these continuous requests from the respondent, whether verbal or written, in the hope of settling the claim in the administrative level, thereby avoiding a long protracted and expensive process if it appeals its claim to the courts. Having said this, we do want to note that the allowable extended period of submission of documents and the consequent extension of the 120-day period applies only if the respondent continues to make requests for documents (whether verbal or written) within the 120- day period." (emphasis supplied)

In its motion, petitioner avers that the instant case falls under the exception cited in the assailed Decision, i.e., that the submission of additional documents to the OSS-DOF was made in response to the ongoing requests of the latter and that its submission of more documents was impelled by its desire to settle its claim for refund in the administrative level without resorting to costly and protracted judicial action.

The records of the case belie the claim of petitioner.

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[2] See Dissenting Opinion, Zuellig Pharma Asia Pacific Ltd., Phils. ROHQ vs. CIR, CTA Case No. 8899, March 9, 2017.

Records show that petitioner's submission of documents on April 12, 2013 was in response to the OSS-DOF's letter dated March 13, 2013 partially denying its applications for tax refund.

In its letter request for reconsideration on the partial denial of its applications for refund, petitioner attached several documents in support thereof, leading the Court to conclude that the submission of these additional documents was not in support of petitioner's original administrative claims for refund but was in response to the partial denial of the refund by the OSS-DOF after the latter's review and evaluation. We quote the factual observation of the Court in the assailed Decision, thus:

> "In petitioner's *Reply* to the *Answer* filed on December 16, 2013[3], the submission of the documents on April 12, 2013 was in response to the OSS-DOF's letter dated March 13,2013 partially denying its applications for tax refund. This partial denial prompted petitioner to file a letter to the OSS-DOF requesting for reconsideration of the partial denial of its claim where it attached several documents in *support of the letter request for reconsideration.* We quote relevant portions of petitioner's *Reply* as follows:
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> " 8. On March 14, 2013, Petitioner received the OSS-DOF's letter dated March 13, 2013 (the OSS-DOF Letter") and the attached Claimant's Agreement Form as well as various schedules, which indicated that based on their audit of the total claim of Php38,515,004.35, only the amount of Php2,130,630.72 was being recommended for immediate issuance of tax credit certificate. Among other findings, the OSS-DOF disallowed a portion of the petitioner's claim for lack of supporting documents.
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> 9. Consequently, in its letter dated April 12, 2013 (the "Response Letter"), the Petitioner requested the OSS-DOF to **reconsider its findings and submitted additional documents in support of its application for tax refund or credit.** In said letter, the petitioner noted that "(it had) now submitted complete documents that would enable the Honorable Office to act on our VAT Claim and to determine the correct amount to be refunded or credited to the Company." (emphasis supplied)
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> In said *Reply*, petitioner attached a photocopy of the actual letter response dated April 12, 2013 addressed to the OSS-DOF[4] and we quote relevant portions, thus :

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[3] Court Docket, Volume I, pp. 174 to 184.
[4] Court Docket, Volume I, pp. 189-196.

"B. Submission of Additional Documents

"With this letter, the Company submits additional documents in response to the finding of the Honorable Office that certain items of VAT Claim had no supporting documents. A detailed schedule of these input VAT claims, together with the supporting documents, is attached as Annex D."

From the statements of petitioner in the aforequoted letter, the submission of the additional documents by petitioner was *not* in support of the original administrative claims for refund filed collectively on August 12, 2011 but was in response to the partial denial of its claim for refund after review and evaluation by the OSS-DOF embodied in a letter dated March 13, 2013.[5] From the date of filing of the applications for refund on August 12, 2011[6], petitioner submitted the additional documents only on March 13, 2013 which is outside the two year period for all the four taxable quarters of 2010 and only in response to the partial denial of the claim for refund which was incidentally contained in a letter signed by the Head of the Tax and Revenue Group, OSS-DOF, Ms. Nelia A. Castillo dated March 13, 2013.[7] Note that Section 112 (C) requires the submission of the documents in support of the original claim or applications for refund mentioned in Section 112 (A) and not as a response to subsequent events, e.g., a denial of the claim in the administrative level." (emphasis supplied)

As a final note, we reiterate that the exception to the rule that the complete supporting documents must be filed within the two-year period is when there are ongoing requests for additional documents extending beyond the two-year period. This was not existent in this case. We quote the findings of the Court *En Banc* on this matter, thus:

"The records do not show that the OSS-DOF made constant and ongoing requests for additional documents extending beyond the two-year period. It is only the petitioner who on its own volition decided to submit additional documents to support its letter request for reconsideration. We cannot then subscribe to the contention of petitioner that the counting of the 120-day period shall be reckoned or counted from April 12, 2013, the date when it filed a letter request for reconsideration with documents attached.

With no evidence showing that documents were submitted by petitioner subsequent to the filing of the applications for refund covered by the two year period, we hold that the 120-day period

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[5] Exhibit "P-16", Court Docket, Volume I, page 450.
[6] Exhibits "P-10", "P-11", "P-12" and "P-13".
[7] Ibid.

should be counted from the filing of the claims for refund or more specifically the Applications for Tax Credits/Refund (BIR Form No. 1914) on August 12, 2011 and from this date determine whether the Petition for Review was timely filed pursuant to the provisions of Section 112 (A) and (C) of the 1997 NIRC. Based on this conclusion, we further hold that the 120-day period expired on December 10, 2011 and the thirty-day period likewise lapsed on January 9, 2012, making the Petition for Review filed by petitioner with this Court on August 30, 2013, filed out of time."

WHEREFORE, petitioner's *Motion for Reconsideration (of the Decision dated March 14, 2019)* filed on April 3, 2019, is **DENIED,** for lack of merit. The assailed Decision of March 14, 2019 is **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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