CTA Form No. 8

17-000143-0082

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 9581

PILIPINAS KYOHRITSU INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legaspi Village,
Makati City

ATTY. MARVEEN B. DELA PAZ
Bureau of Internal Revenue
Room 703. Litigation Division, BIR National Office Building
BIR Road, Diliman, Quezon City

BELLO VALDEZ & FERNANDEZ JGLaw
17th Floor, Robinsons Equitable Tower
4 ADB Avenue corner P. Poveda Drive
Ortigas Center, 1605 Pasig City, Philippines

GREETINGS:

You are notified by these presents that on **April 5, 2023,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 13, 2023.**

Atty. Margarette Y. Guzman
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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PILIPINAS KYOHRITSU INC., *Petitioner,*

-versus-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

CTA Case No. 9581

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

APR 05 2023 ; 8:45AM

x - x

R E S O L U T I O N

MANAHAN, J.:

This resolves petitioner's **Motion for Reconsideration (Re: Decision dated November 08, 2022)**[1] filed on December 2, 2022, without respondent's comment[2] despite due notice,[3] praying for the reversal and setting aside of the Court's *Decision* dated November 8, 2022 (Assailed Decision), and that a new decision be issued granting said motion.

Petitioner argues that the applicable rule governing its application for value-added tax (VAT) refund was Revenue Memorandum Circular (RMC) No. 49-2003 and Revenue Regulations (RR) No. 01-17 and not RMC No. 54-2014 when the application was denied.

Petitioner insists that its petition against respondent's denial of its claim for refund was timely filed and in accordance with Section 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended.

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[1] Docket, CTA Case No. 9581, Vol. IV, pp. 1719-1729.
[2] *Id.*, Records Verification dated January 23, 2023.
[3] *Id.*, Resolution dated January 6, 2023.

This Court shall first determine whether the instant motion was filed on time. Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> "SECTION 1. *Who may and when to file motion.* — **Any aggrieved party may seek a reconsideration** or new trial **of any decision**, resolution or order **of the Court** by filing a motion for reconsideration or new trial **within fifteen days from the date of receipt of notice of the decision**, resolution or order of the Court in question." (*Emphasis supplied*)

In the instant motion, petitioner avers that it received the Assailed Decision on November 18, 2022. In accordance with the abovementioned provision of the RRCTA, petitioner had fifteen (15) days from receipt of notice on November 18, 2022 or until December 3, 2022 within which to file its motion for reconsideration. Hence, petitioner's *Motion for Reconsideration (Re: Decision dated November 08, 2022)* was timely filed on December 2, 2022.

Going now to the merits of the motion, we find it bereft of merit.

The arguments raised by petitioner in the instant motion were already exhaustively discussed and explained in the Assailed Decision. For emphasis, this Court will reiterate the particular part of the Assailed Decision wherein petitioner's arguments were exhaustively discussed.

Nowhere in the Assailed Decision does it state that RMC No. 54-2014 was the basis for the dismissal of the judicial claim for refund. In fact, the Assailed Decision categorically stated that the ruling was based on the rules and regulations **prior** to the effectivity of RMC No. 54-2014 citing the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[4] to wit:

> "In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, the Supreme Court ruled that the reckoning point in the counting of the 120+30-day period prior to the promulgation of Revenue Memorandum Circular No. 54-2014 was at the time the taxpayer had submitted its complete supporting documents, to wit:
>
> > "To summarize, for the just disposition of the subject controversy, the rule is that from the date an

[4] G.R. No. 207112, December 08, 2015.

> 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. ..." (Emphasis supplied)
>
> xxx xxx xxx"

Hence, petitioner is totally mistaken in concluding that the Court based its ruling in the Assailed Decision on RMC No. 54-2014.

Petitioner, in arguing that its petition was timely filed, claims that it submitted several documentary requirements after the filing of its administrative claim for refund on December 13, 2013.

A review of the records of the instant case reveals that respondent required petitioner to submit supporting documents through a Checklist of Presentation of Requirements for Audit dated March 25, 2014, which it received on March 31, 2014 and through a verbal request on August 19, 2014.[5] Petitioner submitted the documentary requirements to respondent as evidenced by the former's transmittal letters dated April 26, 2014[6], May 8, 2014[7], May 28, 2014[8], August 4, 2014[9], and August 25, 2014[10].

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[5] BIR Records, Memorandum dated February 23, 2017, p. 837; BIR Records, Memorandum dated May 27, 2015, p. 371; BIR Records, petitioner's Minutes of the Meeting dated August 19, 2014, pp. 349-350.
[6] Docket, CTA Case No. 9581, Vol. III, Exhibit P-11, p. 1005.
[7] *Id.*, Vol. III, Exhibit P-11.1, p. 1006.
[8] *Id.*, Vol. III, Exhibit P-11.2, p. 1007.
[9] *Id.*, Vol. III, Exhibit P-11.3, p. 1008.
[10] *Id.*, Vol. III, Exhibit P-11.4, p. 1009. am

In *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue*,[11] the Supreme Court ruled that:

> "Section 112 (C) of the National Internal Revenue Code of 1997 (Tax Code) provides for the period within which to file a claim for refund of creditable input tax:
>
> **SEC. 112. Refunds or Tax Credits of Input Tax. -**
>
> (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 <u>from the date of submission of complete documents</u> 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**. (Emphases and underscoring supplied)
>
> As may be gleaned from the above provision, <u>the CIR has a period of 120 days ***from the date of submission of complete documents*** within which to evaluate an administrative claim for tax credit or refund of creditable input taxes (**120-day period**)</u>. If the CIR denies the administrative claim, or if it remains unacted upon the expiration of the said period - which is essentially considered a "denial due to inaction," **the taxpayer may, within thirty (30) days from such denial or expiration, avail of the further remedy of filing a judicial claim before the CTA**.
>
> In this relation, the BIR issued RMC No. 49-2003 which provides for the procedure in instances where there are pending administrative claims for refund but with incomplete documents. The circular states that the taxing authority shall require the further submission of the needed supporting documents through a notice-request, which should then be complied with by the taxpayer within thirty (30) days from receipt thereof:
>
> **Q-18: For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office**

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[11] G.R. No. 244154. July 15, 2020. *am*

> **officially receive claims for tax credit/refund and what is the period required to process such claims?**
>
> A-18: For pending claims which have not been acted upon by the investigating/processing office due to incomplete documentation, the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.
>
> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be officially received only upon submission of complete documents.
>
> For current and future claims for tax credit/refund, **the same shall be processed within one hundred twenty (120) days from receipt of the complete documents**. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents **within thirty (30) days from <u>request</u> of the investigating/processing office**, which shall be construed as within the one hundred twenty [(120)-day] period. (Emphases and underscoring supplied)

The foregoing rules were further refined by the Court in *Pilipinas Total Gas*, which resolved the question of: "In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under present law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?*"

Confronted with this question, the Court then ruled that the reckoning point of the 120-day period would depend on the following circumstances:

(a) If the taxing authority does not make any notice requesting for additional documents or if the taxpayer manifests that he no longer wishes to submit any additional documents, the 120-day period begins from the date the administrative claim was made as it would be assumed that at that point, the taxpayer had already submitted complete documents in support of its claim; or

> (b) **<u>If the taxing authority requests for additional documents, the 120-day period begins from the time the taxpayer submits the complete documents sufficient to support his claim</u>. In this scenario, 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.**
>
> **Notably, there is no requirement in the Tax Code or in RMC No. 49-2003 that the taxing authority's request for additional documents should be made in a specific form. Stated differently, nowhere in the law does it require that the request for additional documents must always and absolutely be made in written form**. While written requests would be preferred because it would be easier for the BIR to keep track of the documents submitted by the taxpayer in response thereto, the law does not explicitly prohibit verbal requests for additional documents as long as they are duly made by authorized BIR officials." (*Emphasis supplied*)

As to the transmittal letter dated October 9, 2014,[12] it was filed beyond the thirty (30)-day period to comply with the request of respondent on August 19, 2014.

Considering that petitioner is deemed to have completed the submission of its supporting documents on September 17, 2014,[13] the 120-day period for the particular quarters had lapsed on the following dates, to wit:

Quarter 2012	Last Day of Filing of supporting documents in Administrative Claim	Last day of the 120-day period
1st	September 17, 2014	January 15, 2015
2nd	September 17, 2014	January 15, 2015
3rd	September 17, 2014	January 15, 2015
4th	September 17, 2014	January 15, 2015

Since respondent did not act on petitioner's claim for refund or credit within the 120-day period abovementioned, the latter had thirty (30) days from the lapse of the 120-day period without action on the part of the former to appeal its claim before the CTA, to wit:

Quarter 2012	Last day of the 120-day period	Last day of the 30-day period
1st	January 15, 2015	February 14, 2015

[12] Docket, Vol. III, Exhibit P-11.5, p. 1010.
[13] The BIR's date of receipt of petitioner's transmittal letter dated August 25, 2014.

2nd	January 15, 2015	February 14, 2015
3rd	January 15, 2015	February 14, 2015
4th	January 15, 2015	February 14, 2015

Petitioner had until February 14, 2015 to file his judicial claim for refund before this Court. However, the instant petition was only filed on April 21, 2017 which was way beyond the last day of the prescriptive period. Thus, the instant petition, as petitioner's judicial claim for refund, was not timely filed.

There being no new and substantial arguments propounded by respondent in his motion, the Court finds no compelling reason to reverse the Assailed Decision.

WHEREFORE, petitioner's *Motion for Reconsideration (Re: Decision dated November 08, 2022)* is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice