REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ, Petitioner,	**CTA Case No. 9055**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** OCT 03 2017 1:58 pm

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DECISION

UY, J.:

This is a *Petition for Review*[1] filed on May 22, 2015 by Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ against the Commissioner of Internal Revenue to seek the refund of, or the issuance of tax credit certificate (TCC) in, the amount of ₱38,697,566.07, allegedly representing its excess and unutilized input value-added tax (VAT) on its domestic purchases of goods and services attributable to zero-rated sales for the first quarter of calendar year (CY) 2012.

THE FACTS

Petitioner is the regional operating headquarters (ROHQ) of Zuellig Pharma Asia Pacific Ltd., a foreign corporation organized and existing under the laws of Hongkong. It is located at 27th Floor, Philippine AXA Life Centre, Sen. Gil Puyat Avenue corner Tindalo Street, Makati City.[2] It is a duly registered VAT taxpayer with

[1] Docket, pp. 10 to 23.
[2] Exhibits "P-1" and "P-2", Docket, pp. 371 to 390; Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket, pp. 257 to 263.

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Certificate of Registration issued on January 3, 2002 and Tax Identification No. (TIN) 215-025-090-000[3] issued by the Bureau of Internal Revenue (BIR).

Petitioner is licensed by the Securities and Exchange Commission to do business as an ROHQ in the Philippines on December 4, 2001, pursuant to the Omnibus Investments Code of 1987, as amended by Republic Act (RA) No. 8756, and its implementing rules and regulations, to engage in the business development, general administration and planning, sourcing of IT components and services, marketing control, sales promotion, training, technical support and maintenance.[4]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with authority to carry out all the functions, duties, and responsibilities of said office, including *inter alia,* the power to decide, approve, and grant claims for refund of or issuance of TCC for overpaid or erroneously paid or collected internal revenue taxes including excess and unutilized VAT.[5] He may be served summons, notices, and court processes through his legal counsel from the Legal Division of BIR, Revenue Region No. 8 with office address at the 2nd Floor BIR Building, 313 Gil Puyat Avenue, Makati City.[6]

On the following dates, petitioner filed its Quarterly VAT Returns for the first quarter of CY 2012 with the BIR, through Electronic Filing and Payment System, to wit:

Return	**Date of Filing**
Original[7]	April 19, 2012
First Amendment[8]	January 22, 2013
Second Amendment[9]	January 25, 2013
Third Amendment[10]	January 27, 2014

Petitioner filed its administrative claim for refund of excess and unutilized input VAT for the four (4) quarters of CY 2012 with the BIR,

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[3] Exhibit "P-3", Docket, p. 391.
[4] Exhibit "P-1", Docket, pp. 371 to 380.
[5] Par. 3, JSFI, Docket, p. 258.
[6] Par. 4, JSFI, Docket, p. 258.
[7] Exhibit "P-4", Docket, pp. 392 to 394.
[8] Exhibit "P-5", Docket, pp. 395 to 397.
[9] Exhibit "P-6", Docket, pp. 398 to 400.
[10] Exhibit "P-7", Docket, pp. 401 to 403.

Revenue District Office (RDO) No. 49 – North Makati, on January 28, 2014.[11]

On February 12, 2014, BIR RDO No. 49 - North Makati issued a Letter of Authority (LOA) No. eLA201100052396, authorizing Revenue Officer Roberto Delos Santos and Group Supervisor Joriz Saldajeno to examine petitioner's books and other accounting records in connection with its VAT refund claim for the period January 1, 2012 to December 31, 2012.[12] Petitioner submitted the requested documents on March 18, 2014[13] and June 24, 2014.[14]

In the letter dated April 21, 2015 addressed to respondent, petitioner informed respondent that it has decided to reduce its administrative claim for refund and that it has submitted the complete documents in support of its claim.[15]

On April 23, 2015, petitioner received respondent's decision which denied its claim for refund.[16] Petitioner then filed the present *Petition for Review* before this Court on May 22, 2015.

Respondent filed his *Answer* on August 20, 2015,[17] interposing the following Special and Affirmative Defenses:

> "<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>
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> 7. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
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> 8. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
> 9. It is incumbent upon the petitioner to show it has complied with the provisions under Section 204 (c) in

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[11] Exhibits "P-12" and "P-12-A", Docket, pp. 453 to 456; Par. 6, JSFI, Docket, p. 258.
[12] Exhibit "P-13", Docket, pp. 457 to 461; Par. 5, JSFI, Docket, p. 258.
[13] Exhibit "P-14", Docket, p. 462.
[14] Exhibit "P-14", Docket, p. 464.
[15] Exhibit "P-17", Docket, pp. 483 to 486.
[16] Exhibit "P-18", Docket, p. 492.
[17] Docket, pp. 84 to 87.

relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

10. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue , 124 SCRA 1211*).

11. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another.- <u>Non videtur quisquam id capere quod ei necesse est alii restitutere</u>."

After the Pre-Trial Conference on October 15, 2015,[18] the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on October 21, 2015.[19] The JSFI was approved by the Court in its Resolution dated November 2, 2015[20] and the Court thereafter issued the Pre-trial Order dated November 12, 2015.[21]

During trial, petitioner presented the following witnesses : (1) Carolina Zenaida A. Magat,[22] and (2) the Court Commissioned Independent Certified Public Accountant (ICPA) Katherine O. Constantino.[23]

On May 6, 2016, petitioner filed its *Formal Offer of Evidence (With Motion to Mark Exhibit " P-12-A ")*[24] offering Exhibits " P-1 " to P-330" and submarkings, as its documentary evidence. Respondent, however, failed to file his comment to the same.[25] The

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[18] Minutes of the Pre-Trial Conference, Docket, pp. 246 to 249.
[19] Docket, pp. 257 to 263.
[20] Docket, p. 265.
[21] Docket, pp. 284 to 291.
[22] Minutes of the hearing held on February 9, 2016, Docket, pp. 312 to 313.
[23] Minutes of the hearing held on March 29, 2016, Docket, pp. 336 to 337.
[24] Docket, pp. 350 to 370.
[25] Records Verification dated May 31, 2016, Docket, p. 496.

Court granted petitioner's *Motion to Mark Exhibit "P-12-A"* in its Resolution dated June 27, 2016.[26]

On August 10, 2016, respondent filed a *Very Urgent Manifestation*[27] stating that the respondent will no longer be presenting any evidence since no final report has been prepared/submitted by the revenue examiner on petitioner's application for refund. The said Manifestation was noted by the Court in the Order dated August 11, 2016[28].

Thereafter, in the Resolution August 22, 2016[29], the Court admitted petitioner's evidence and deemed petitioner to have rested his case. Thus, the parties were given a period of thirty (30) days to file their respective memoranda.

Petitioner filed its *Memorandum* on October 13, 2016.[30] Respondent, however, failed to file his memorandum.[31] In the Resolution dated November 8, 2016, the case was submitted for decision.[32]

Hence, this Decision.

THE ISSUES

The parties stipulated the following issue for this Court's resolution, to wit:

> "Whether or not petitioner is entitled to its claim for refund of or issuance of TCC for its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the 1st quarter of CY 2012 in the total amount of ₱38,697,566.07."[33]

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[26] Docket, pp. 500 to 501.
[27] Docket, pp. 505 to 506.
[28] Docket, p. 508
[29] Docket, pp. 510-511
[30] Docket, pp. 517 to 547.
[31] Records Verification dated October 20, 2016, Docket, p. 548.
[32] Docket, p. 551.
[33] JSFI, Docket, p. 258.

Petitioner's arguments:

Petitioner argues that its sales of services to Zuellig Pharma Holdings Ltd. qualify as zero-rated sales of services under Section 108(B)(2) of the NIRC of 1997.

According to petitioner, its input VAT for the 1st quarter of CY 2012, amounting to ₱38,697,566.07, are duly supported by VAT invoices and official receipts; that its excess and unutilized input VAT for the 1st quarter of CY 2012 are attributable to its zero-rated sales; and that the same input VAT were not applied against any output VAT liability during the succeeding taxable quarters.

Lastly, petitioner points out that its administrative and judicial claims for refund of excess and unutilized input VAT for the 1st quarter of CY 2012 were filed within the reglementary periods provided under Section 112(A) & (C) of the National Internal Revenue Code (NIRC) of 1997.

Respondent's counter-arguments:

Respondent counter-argues that petitioner's alleged claim for refund/issuance of TCC is still subject to administrative routinary investigation/examination by the BIR.

Allegedly, it is incumbent upon the petitioner to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code; otherwise, its failure to prove the same is fatal to its claim for refund.

According to respondent, claims for refund are construed strictly against petitioner since the same partakes the nature of exemption from exemption from tax taxation, and as such, they are looked upon with disfavor. Further, respondent contends that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance.

THE COURT'S RULING

For an orderly disposition of the instant case, the Court shall first determine whether it has jurisdiction to entertain the present

Petition for Review. This is so because to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[34]

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[35] 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.[36] 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.[37] 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.[38]

It must be emphasized that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[39]

Pertinent to the resolution of whether this Court has jurisdiction is Section 112(A) and (C) of the NIRC of 1997[40], as amended by Republic Act (RA) No. 9337[41], which provides:

"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-**

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[34] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.

[35] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, citing *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals*, G.R. No. L-23988, January 2, 1968.

[36] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

[37] *Id.*, citing *Justino Laresma vs. Antonio P. Abellana*, G.R. No. 140973, November 11, 2004.

[38] *Id.*

[39] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, Supra.*

[40] As embodied in Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997".

[41] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> **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 the output tax**; xxx.
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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.**" *(Emphases supplied)*

Based on the above-stated Section 112(A), the administrative claim of a VAT-registered person for the issuance by respondent of a TCC or the refund of unutilized 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.

The present claim involves the first quarter of CY 2012 which closed on March 31, 2012. Counting two (2) years from the said date, petitioner had until March 31, 2014 within which to file its administrative claim for the said quarter. Thus, petitioner's administrative claim filed on January 28, 2014 is well within the two (2)-year prescriptive period.

As for the judicial claim, the above-quoted Section 112(C) of the NIRC of 1997, as amended, prescribes the period for the filing thereof. Such provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for respondent to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with this Court.

In the landmark case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*,[42] the Supreme Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty (30) days after respondent denies the claim within the 120-day waiting period, or (2) file the judicial claim within thirty (30) days from the expiration of the 120-day period if respondent does not act within that period.[43]

It must be noted that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim.[44] As to when should the submission of supporting documents be deemed "completed" for purposes of determining the running of the 120-day period, the Supreme Court's ruling in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[45] is instructive. The relevant portion of which reads as follows:

> "From the above, it is apparent that the CIR has 120 days from the date of submission of complete documents to decide a claim for tax credit or refund of creditable input taxes. The taxpayer may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a 'denial due to inaction,' appeal the decision or unacted claim to the CTA.
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> To be clear, Section 112(C) categorically provides that the 120-day period is counted '**from the date of submission of complete documents** in support of the application.' xxx.
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[42] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

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

[44] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

[45] G.R. No. 207112, December 8, 2015.

Indeed, the 120-day period granted to the CIR to decide the administrative claim under the Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.

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

Ideally, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, ideally, the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.

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Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:

> Q-18: *For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/ processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?*
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> 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.**
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> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be officially received only upon submission of complete documents.
>
> For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents **within thirty (30) days from request of the investigating/processing office, which shall be construed as within the one hundred twenty (120)-day period.**
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> [Emphases Supplied]

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Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/ processing office. Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential. It is only upon the submission of these documents that the 120-day period would begin to run.

Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112 (B) of the NIRC, Section 112 (D) was amended and renamed 112 (C). Thus:

> (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.

With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003

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should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining ***when*** the supporting documents have been completed – *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.

The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guaranteed 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.**

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 the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.

<u>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.</u> Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition[al] 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.

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> 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." *(Underscoring supplied)*

To be sure, 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. Nevertheless, the Supreme Court also emphasized that the foregoing benefit given to taxpayer is not unbridled and, as such, is subject to limitations.

Hence, based on the pertinent portion of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, for claims filed before June 11, 2014, or prior to the effectivity of Revenue Memorandum Circular (RMC) No. 54-14, the rules under RMC No. 49-03, in relation to Section 112 of the NIRC of 1997, as amended by RA No. 9337, shall apply.

In the instant case, petitioner filed its administrative claim on January 28, 2014. Consequently, petitioner had thirty (30) days from the time of filing of its administrative claim for tax credit or refund within which it should submit all the required supporting documents.

Under Section 112(A) of the NIRC of 1997, as amended by RA No. 9337, if in the course of the investigation, additional documents are required, the BIR must inform the petitioner of the need to submit additional documents through a notice, and petitioner shall have thirty (30) days to comply thereto. Upon completion of all required documents, the 120-day period shall commence; but in all cases, all filings and submissions, including the judicial claim, must be completed within the two (2)-year period.

Records reveal that upon petitioner's receipt of the LOA No. eLA201100052396 dated February 12, 2014 from Revenue Region No. 008 – Makati City on March 4, 2014,[46] it was required to submit all required documents, books and records to the assigned Revenue Officer. Thus, petitioner had thirty (30) days to submit all pertinent

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[46] Exhibit "P-13", Docket, pp. 457 to 461.

supporting documents to expedite the examination. On March 18, 2014, which is well within the thirty (30)-day period and also within the two (2)-year period under Section 112(A) of the NIRC of 1997, as amended by RA No. 9337, petitioner submitted the required supporting documents.[47]

On June 24, 2014, petitioner submitted a second set of supporting documents for the same claim for refund.[48] However, on the said date, the 30-day period pursuant to RMC No. 49-2003 has already expired and already way beyond the said two (2)-year period under Section 112(A) of the NIRC of 1997, as amended by RA No. 9337. Moreover, there is evidently no record of any notice from the BIR requesting petitioner to provide additional documents to aid in the examination of its refund claim.

Thus, the 120-day period shall be reckoned from March 18, 2014, the date that petitioner submitted all the required documents, books and records to the assigned Revenue Officer, and it shall run until July 16, 2014. Considering that respondent failed to act on the subject claim, petitioner had thirty (30) days after the lapse of the 120-day period on July 16, 2014, or until August 15, 2014 within which to file a judicial appeal before this Court. However, the present *Petition for Review* was filed only on May 22, 2015. Hence, it is clear that petitioner's judicial claim was belatedly filed.

For its part, petitioner, argues the Section 112(C) of the NIRC of 1997, as amended, provides that a taxpayer has a period of thirty (30) days from receipt of respondent's denial of its administrative claim for refund of excess and unutilized input VAT within which to appeal such decision to this Court. In this connection it is allegedly well to note that petitioner received respondent's decision denying its administrative claim for refund on April 23, 2015,[49] and therefore, petitioner submits that it had a period of thirty (30) days from April 23, 2015, or until May 25, 2015[50] within which to appeal before this Court, respondent's decision denying petitioner's claim.

The Court disagrees with petitioner.

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[47] Transmittal Letter, Exhibit "P-14", Docket, p. 462.
[48] Transmittal Letter, Exhibit "P-16", Docket, p. 464.
[49] Exhibit "P-18", Docket, p. 492.
[50] May 23, 2015 fell on a Saturday.

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[51] the Supreme Court reminded all taxpayers as follows:

> "**A final note, the taxpayers are reminded that that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period.**" *(Emphasis and underscoring supplied)*

Moreover, in *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[52] the Supreme Court clarified:

> "**Whether respondent rules in favor of or against the taxpayer – or does not act at all on the administrative claim – within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**
>
> xxx xxx xxx
>
> **The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law,[53] **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.**" *(Emphases and underscoring supplied)*

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[51] G.R. No. 168950, January 14, 2015.
[52] G.R. No. 182737, March 2, 2016.
[53] In *CIR v. San Roque Power Corporation* (G.R. Nos. 187485, 196113 and 197156, 12 February 2013), the Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 up to its reversal in *CIR v. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823) on 6 October 2010 need not wait for the lapse of the 120+30 days period.

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Lastly, it must be emphasized that a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30-day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper.[54]

Correspondingly, petitioner's belated filing of its judicial claim for failure to observe the mandatory 120+30-day periods is fatal to its claim and has rendered the Court devoid of jurisdiction over petitioner's claim. Thus, the dismissal of the present *Petition for Review* is in order.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

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[54] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.