**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

**KEP (PHILIPPINES) REALTY CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 8983**

Members:

**CASTAÑEDA, JR.,** *Chairperson,*
**CASANOVA,** *and*
**COTANGCO-MANALASTAS,** *JJ.*

Promulgated:

AUG 1 1 2016 9:14 am

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# RESOLUTION

**CASTAÑEDA, JR., *J.*:**

This addresses respondent's **Motion for Reconsideration (Re: Decision dated 20 April 2016)**, filed on May 6, 2016, with petitioner's **Comment (to Respondent's Motion for Reconsideration)**, filed on June 9, 2016.

Respondent seeks to reverse and set aside the Court's Decision promulgated on April 20, 2016 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱38,736,174.00**,

[1] Docket, pp. 993-1018.

representing petitioner's unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of CY 2012.

**SO ORDERED.**"[2]

Respondent maintains that petitioner failed to substantiate its claim for refund when it did not comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the National Internal Revenue Code of 1997 (NIRC), as amended; and that petitioner was not able to establish the submission of all supporting documents provided under Revenue Memorandum Order (RMO) No. 53-98.

Respondent further claims that since the input tax for taxable year 2012, the subject of the instant case, was carried forward to the succeeding taxable quarters of taxable year 2012, the same should no longer be allowed as a proper subject of refund. According to respondent, a taxpayer is given an option either to carry over to succeeding quarters any unutilized input tax or file a claim for refund under Section 112 of the NIRC of 1997, as amended; and the choice of one option necessarily precludes petitioner from choosing the other. Respondent avers that the information contained in petitioner's Value-Added Tax (VAT) Return for the taxable year 2012 were mere self-serving declarations; that the VAT returns standing alone may not be used as basis in concluding that the subject input VAT being claimed remained unutilized for the succeeding taxable quarters.

Meanwhile, petitioner contends that it was able to submit complete documents in support of its administrative claim for refund; that it simultaneously submitted the supporting documents at the time of the filing of the administrative claim. Petitioner further contends that it was able to sufficiently establish that the input VAT subject of the claim for refund remains unutilized for the succeeding taxable quarters through its presentation of all its monthly VAT declarations and quarterly VAT returns from October 2012 to the 1st quarter of calendar year 2105.

The Motion for Reconsideration is bereft of merit.

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[2] Docket, p. 1017.

There is no cogent reason to reverse the Court's findings and conclusions in the assailed Decision. Petitioner was able to sufficiently prove its entitlement to a refund or issuance of a tax credit certificate in the amount of ₱38,736,174.00, representing its unutilized excess input VAT attributable to its zero-rated sales for the 3rd quarter of taxable year 2012. Petitioner submitted and offered testimonial and documentary evidence in order to prove compliance with the requirements set forth under the law and implementing rules.

There is no merit on respondent's argument that the petition is dismissible for failure of petitioner to submit complete supporting documents at the administrative level. The determination of completeness of supporting documents submitted at the administrative level rests upon the petitioner. The ruling of the Supreme Court in the recent case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[3] reiterates that it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing the running of the 120-day period, thus:

> 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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> xxx xxx xxx
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> xxx the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, <u>for purposes of determining ***when*** the supporting documents</u>

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

> 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." (underlining ours)

Here, the reckoning of the 120-day period started on September 30, 2014, the date petitioner submitted its complete supporting documents at the administrative level. The 120-day period ended on January 28, 2015. Considering the inaction on the part of respondent, petitioner has thirty (30) days from January 28, 2015, or up to February 27, 2015, within which to appeal. Thus, the Petition for Review was timely filed on February 6, 2015.[4]

Finally, on the second argument, respondent claims that the refund in the amount of ₱38,736,174.00 should not be granted once an option to carry-over has been chosen, as the law precludes the petitioner from claiming a refund or tax credit. Respondent anchors the argument on Section 110(B) of the NIRC of 1997, as amended.

We reproduced herein Section 110(B) of the NIRC of 1997, as amended, to wit:

> "**(B) Excess Output or Input Tax.** - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

As can be gleaned from the above provision, there is no irrevocability clause. The only rule is that if there are excess input taxes, the same shall be carried-over to the succeeding quarter/s, however, a VAT-registered person with zero-rated sales is given an option to either refund or credit the excess input taxes, subject to

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[4] Assailed Decision, docket, p. 1014.

Section 112 of the NIRC, as amended. When the law is clear, plain, and unequivocal, it should be applied exactly as worded.[5]

Thus, even though the claimed input VAT of ₱38,736,174.00 was carried over by petitioner in its succeeding Quarterly VAT Returns, the same can still be refunded as it was proven to be unutilized when it was deducted as "VAT Refund/TCC Claimed" in the amended Quarterly VAT Return for the 3rd Quarter of 2014.[6]

**WHEREFORE**, in view of the foregoing, respondent's **Motion for Reconsideration (Re: Decision dated 20 April 2016)** is hereby **DENIED** for lack of merit.

**SO ORDERED.**

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

WE CONCUR:

**CAESAR A. CASANOVA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

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5 *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013.

6 Exhibit P-39-a, line 23D, docket, p. 837.