REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* *- versus -* **DÖHLE SHIPMANAGEMENT PHILS. CORP.,** *Respondent.*	**CTA *EB* NO. 1582** (CTA Case No. 8721) Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.* Promulgated: JUN 01 2018 11:56 a.m.

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DECISION

BAUTISTA, J.:

This is a Petition for Review[1] filed by petitioner pursuant to *Section 3(b)*[2], *Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")* praying for the setting aside of the Decision promulgated

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[1] *Rollo, CTA EB No. 1582, Petition for Review ("PFR"),* pp. 1-52, with annexes.

[2] SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

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on August 2, 2016 (the "Assailed Decision")[3] by the Second Division of the Court of Tax Appeals ("Court in Division"), insofar as respondent's claim for refund therein for unapplied excess input value-added tax ("VAT") attributable to zero-rated sales for calendar year ("CY") 2011 was partially granted in the amount of Php20,980,559.39; and for a new decision to be rendered denying respondent's claim for refund for lack of merit.[4]

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is the head of the Bureau of Internal Revenue ("BIR") vested with the power and authority, among others, to grant a refund of or to issue a tax credit certificate ("TCC") for unutilized input VAT attributable to zero-rated sales. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

On the other hand, respondent Döhle Shipmanagement Phils. Corp. is a corporation duly organized and existing under the laws of the Philippines. It is a duly-registered VAT taxpayer, with Taxpayer Identification Number 004-500-132-000. As stated in its Articles of Incorporation, its primary purpose is:

> To carry on the business of a shipmanager and to act as agents, brokers, ship chandler or representatives of any foreign shipping corporation and individual for the purpose of managing, operating, supervising, administering and developing the operation of vessels belonging to or which are or may be leased or operated by said foreign shipping corporation and individual and, for such purpose, to act as principal in and hire the services of a local manning agent for the overseas employment for seamen and to equip any and all kinds of ships, barges and vessels of every class and description owned by any foreign shipping corporation.[6]

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[3] *Records, CTA Case No. 8721, Vol. 3, Decision*, pp. 878-906; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova concurring.
[4] *Rollo, PFR, Prayer*, p. 4.
[5] *Records, Vol. 3, Decision, Facts*, p. 879.
[6] *Id.* at 878-879.

The Facts

On January 1, 2009, respondent and Döhle (IOM) Ltd. ("DIOM") entered into a Service Agreement wherein the former would act as the Philippine representative of DIOM and all the latter's subsidiaries, and carry out tasks which DIOM will be requesting from time to time. An Addendum to the Service Agreement was entered into subsequently stating the additional services respondent would render in favor of DIOM.[7]

Respondent also entered into transactions with Peter Döhle Schiffarhts KG (GmbH & Co.) ("PDSK") and Neptune Shipmanagement Services (Pte.) Ltd. ("NSSPL") during CY 2011.[8]

For CY 2011, respondent filed its Quarterly VAT Returns on the following dates:[9]

PERIOD COVERED	VAT RETURN	DATE FILED
First Quarter	Original	April 25, 2011
	Amended	May 20, 2011
Second Quarter	Original	July 25, 2011
Third Quarter	Original	October 12, 2011
Fourth Quarter	Original	January 25, 2012
	Amended	April 17, 2012
	Amended	April 19, 2012

On March 22, 2013, respondent filed with the Department of Finance an administrative claim for refund or for issuance of a TCC for the four quarters of CY 2011.[10]

Thereafter, on October 25, 2013, respondent filed the Petition for Review[11] before the Court in Division.

On August 2, 2016, the Court in Division promulgated the Assailed Decision, which partially granted respondent's claim for refund. The dispositive portion of the Assailed Decision reads:

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[7] *Records, Vol. 3, Decision, Facts*, pp. 879-880.
[8] *Id.* at 880.
[9] *Id.*
[10] *Id.*
[11] *Id., Vol. 1, PFR*, pp. 6-71, with annexes.

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A [TCC]** in favor of petitioner the amount of [Php]20,980,559.39, representing its unapplied excess input VAT attributable to zero-rated sales for taxable year 2011.
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> **SO ORDERED.**[12]

Aggrieved, petitioner filed a Motion for Reconsideration (of the Decision dated 2 August 2016)[13] on August 5, 2016 by registered mail.

On December 15, 2016, the Court in Division promulgated a Resolution[14] denying petitioner's Motion for Reconsideration. The dispositive portion of the Resolution reads:

> **WHEREFORE**, premises considered, respondent Commissioner of Internal Revenue's **Motion for Reconsideration (of the Decision dated 2 August 2016)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**[15]

Consequently, on January 11, 2017, petitioner filed the present Petition for Review[16] by registered mail.

On March 23, 2017, respondent filed its Comment (on the Petition for Review dated January 11, 2017)[17].

In a Resolution[18] dated April 5, 2017, the Court *En Banc* resolved to give due course to the Petition for Review and directed the parties to file their respective memoranda within thirty (30) days from receipt thereof.

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[12] *Records, Vol. 3, Decision, Dispositive Portion*, p. 905; emphases retained.
[13] *Id., Motion for Reconsideration (of the Decision dated 2 August 2016)*, pp. 907-910.
[14] *Id., Resolution*, pp. 927-932; penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova concurring.
[15] *Id., Resolution, Dispositive Portion*, pp. 931-932; emphases retained.
[16] *Rollo, PFR*, pp. 1-52, with annexes
[17] *Id., Comment (on the Petition for Review dated January 11, 2017)*, pp. 62-72.
[18] *Id., Resolution*, pp. 74-75.

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Respondent filed its Memorandum[19] on June 1, 2017, while petitioner failed to file his memorandum despite due notice.[20]

Accordingly, on July 18, 2017, the Court *En Banc* resolved to submit the case for decision; hence, this Decision.[21]

The Issue[22]

WHETHER THE COURT IN DIVISION ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.

Petitioner's Arguments[23]

On one hand, petitioner argues that respondent's transactions cannot qualify for zero-rating as the latter failed to prove that the recipient of its services are non-resident foreign clients. According to petitioner, respondent failed to prove that its services were directly rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed. Petitioner then claims that under the Service Agreement, respondent does not directly render services to its non-resident foreign clients, but directly to the crews being trained by it; and that, accordingly, respondent's services cannot qualify for zero-rating as it failed to show that the direct recipient of its services are non-resident foreign clients doing business outside the Philippines.

Respondent's Counter-Arguments[24]

On the other hand, respondent counters that it complied with all the requisites for its sales to qualify for VAT zero-rating, particularly the requirement that the recipient of the services should be doing business outside the Philippines with regard to the services rendered by respondent under the Service Agreement. According to

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[19] *Id., Respondent's Memorandum*, pp. 81-179, with annexes.
[20] *Rollo, Records Verification Report*, p. 181.
[21] *Id., Resolution*, pp. 183-184.
[22] *Id., PFR, Issue*, p. 2.
[23] *Id., PFR, Discussion*, pp. 3-4.
[24] *Id., Respondent's Memorandum, Discussion*, pp. 86-91.

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respondent, it rendered support services mainly in the areas of shipmanagement and related shipping and non-shipping services to DIOM, PDSK, and NSSPL pursuant to respondent's respective agreements with them. Respondent continues that crew training services did not make the crew, the party to whom the services were rendered, a party to the contract with DIOM - the obligee under the Service Agreement; and that neither could the other services it rendered be considered as having been rendered to the crew. Consequently, respondent posits that the recipient of its services under the Service Agreement is DIOM, a non-resident foreign corporation engaged in business outside, and not doing business in, the Philippines.

The Ruling of the Court En Banc

Petitioner's arguments deserve scant consideration. As correctly found by the Court in Division, respondent was able to substantiate - at least partially - its zero-rated or effectively zero-rated sales.

Insofar as respondent's service agreements with DIOM, PDSK, and NSSPL are concerned, respondent correctly argues that the parties to the contract involve the relevant non-resident foreign corporation, and not the crew whom respondent trains pursuant to the provision of the applicable service agreement. Respondent's service of training the crew member of the non-resident foreign corporation does not make such crew member a party to the service agreement between respondent and the non-resident foreign corporation. Consequently, respondent's service is not subject to VAT as the service is rendered in favor of the non-resident foreign corporation, and not the crew member. The parties to the relevant service agreement, the services under which is presumably zero-rated, remain to be respondent and either DIOM, PDSK, or NSSPL. Having rendered the service of training the crew in favor of such non-resident foreign corporation, respondent's services may be subject to VAT zero-rating provided it is able to properly substantiate the same - which it did as found by the Court in Division. Accordingly, the Court *En Banc* finds no reason to reverse or modify the Assailed Decision as petitioner's arguments have no basis in law or in fact.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Court in Division's Decision promulgated on August 2, 2016 is hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

(I join PJ Del Rosario's Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(I join PJ Del Rosario's Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

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Court of Tax Appeals
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1582** (CTA Case No. 8721)
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
DÖHLE SHIPMANAGEMENT, PHILS. INC., *Respondent.*	Promulgated: JUN 01 2018 11:56 a.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia*, denying for lack of merit, the Petition for Review filed by the Commissioner of Internal Revenue (CIR). I humbly submit that the Petition for Review filed by respondent before the Court in Division was belatedly filed, thus, depriving the Court in Division of jurisdiction to take cognizance of the same.

In refund cases, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of the claim.[1]

[1] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,* G.R. No. 184823, October 6, 2010.

The procedure for value-added tax (VAT) refund claims is outlined in Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended. Section 112 relevantly provides:

> **"SEC. 112. Refunds or Tax Credits of Input Tax. -**
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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 Subsections (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." (Boldfacing supplied)

Pursuant to the afore-quoted provision, the CIR has 120 days from the submission of supporting documents to decide the claim for refund. In case of full or partial denial, or inaction of the CIR, the taxpayer may file an appeal with the Court of Tax Appeals (CTA) within 30 days from receipt of the decision or from the lapse of the 120-day period. Compliance with both periods is jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal.[2]

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[3] the Supreme Court *En Banc* summarized the procedure for VAT refund claims filed **prior to June 11, 2014**, as in this case, *viz.*:

> "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**

[2] *Hedcor, Inc. vs. Commissioner of Internal Revenue,* G. R. No. 207575, July 15, 2015.
[3] G.R. No. 207112, December 8, 2015.

> **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.
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> 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." (Boldfacing supplied)

Elsewise stated, the 120-day period may be reckoned from any of the following dates, whichever may be applicable:

1. Date of filing of the administrative claim in cases where submission of complete documents was made upon such filing, or when the taxpayer plainly manifests that he no longer wishes to submit any other additional documents to complete his administrative claim; or

2. Date of submission of documents, which may be made within 30 days from the date of filing of the taxpayer's administrative claim, unless given further extension by the CIR; or

3. Date of expiration of 30 days from filing of the administrative claim, when complete documents did not accompany the administrative claim.

Interestingly, the following are the relevant dates which led to the eventual filing of respondent's Petition for Review before the Court in Division:

- March 22, 2013[4] - Respondent filed its Application for Refund with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance without manifesting that it no longer wishes to present additional documents

[4] Joint Stipulation of Facts and Issues, CTA Case No. 8721 Docket, Volume II, p. 382.

to support its administrative claim.

- April 21, 2013 - Last day for respondent to submit documents

- May 30, 2013[5] - Respondent submitted documents in support of its application for refund.

- October 25, 2013[6] - Respondent filed its Petition for Review with the Court in Division.

Applying *Pilipinas Total Gas*, respondent should have filed the supporting documents of its application for refund within 30 days from **March 22, 2013** (date of filing of the administrative claim) or until **April 21, 2013.**

Respondent, however, submitted its supporting documents only on **May 30, 2013** or 39 days after the last day for respondent to submit documents. Incidentally, Letter of Authority No. LOA-311-2013-00000080 dated April 19, 2013, even if admitted in evidence, may not be treated as the request for additional document since the same was received by respondent only on November 29, 2013, which was after respondent already filed a Petition for Review with the Court in Division and was 252 days after respondent filed its administrative claim.

Considering that as of April 21, 2013 respondent did not submit supporting documents, the 120-day period for the CIR to act on the claim should be reckoned from such date, giving the CIR until **August 19, 2013** to decide the same. Since the CIR did not act on respondent's refund claim within the 120-day period, respondent had 30 days from August 19, 2013 or until **September 18, 2013** to appeal the CIR's inaction on its claim. Thus, when respondent filed its Petition for Review before the Court in Division on **October 25, 2013**, the 120+30 day period has already expired, depriving the CTA jurisdiction to entertain its Petition for Review.

To reiterate, the right to appeal is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*,[7] so emphasizes:

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[5] Exhibit P-13.
[6] CTA Case No. 8721 Docket, Volume I, p.7.
[7] G.R. No.167606, August 11, 2010.

"The right to appeal is not a natural right. It is not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.

The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional. xxx

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It has been ruled that **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law." (Boldfacing supplied)

As respondent's Petition for Review before the Court in Division was filed beyond the 120+30 day period, the CTA did not acquire jurisdiction over its judicial claim for VAT refund.

All told, I vote to (1) GRANT the Petition for Review filed by the Commissioner of Internal Revenue for lack of jurisdiction; and (2) REVERSE and SET ASIDE the August 2, 2016 Decision and December 15, 2016 Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice