REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

NEW YORK BAY PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9450

Members:

FABON-VICTORINO, *Acting Chairperson*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 26 2020
3:54 p.m.

x- -x

RESOLUTION

***Fabon-Victorino, J.*:**

Unconvinced with the ruling of the Court, respondent Commissioner of Internal Revenue (CIR) seeks reconsideration of the Decision[1] promulgated on July 31, 2019, the dispositive portion of which reads:

> **WHEREFORE**, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱37,344,343.15**, representing its excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the four quarters of calendar year 2014.
>
> **SO ORDERED**.

[1] Docket, pp. 608-629.

Respondent anchors his *motion*[2] on the sole ground of lack of jurisdiction on the part of the Court to entertain the instant *Petition for Review* filed by petitioner New York Bay Philippines, Inc.

According to respondent, the instant *Petition for Review* should not have been given due course for petitioner's failure to submit complete supporting documents when it filed its administrative claim for VAT refund, specifically, (1) the verification of delinquent accounts from the concerned Revenue District Office (RDO), (2) certified true copy of approved application for zero-rating issued by the appropriate BIR office for effectively zero-rated transactions, (3) reconciliation of export sales and dollar remittances, and (4) compliance on big ticket items, per Revenue Memorandum Order (RMO) No. 16-2007 and RMC No. 29-2009. In view thereof and considering that eighty (80) days had lapsed from the date of filing of the application/submission of documents, the application for tax credit or refund should be denied.

In rejecting respondent's *motion*, petitioner counters that the arguments relied upon by respondent for the reversal of the Court's Decision dated July 31, 2019 is devoid of any factual and legal bases.

According to petitioner, the record belies respondent's proposition for it reveals that it filed with the BIR-RDO No. 43A its administrative claim for refund of excess and unutilized input VAT for the four (4) quarters of calendar year (CY) 2014 on March 31, 2016 with the complete supporting documents as mandated under RMC No. 54-2014. Even assuming that it failed to submit complete supporting documents, it was incumbent upon respondent to act on his administrative claim for refund, i.e., deny it, pursuant to RMC No. 54-2014, on ground of deficiency in supporting documents. Respondent, however, failed to act on its administrative claim for refund within the reglementary 120-day period under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. Hence,

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[2] Docket, pp. 636-641.

petitioner was constrained to file the instant *Petition for Review* on August 26, 2016.

Lastly, petitioner contends that the taxpayer's failure to submit all the requirements listed under RMO No. 53-98 [which is the basis for RMO No. 16-2007], is not fatal to its claim for tax credit or refund of excess unutilized VAT[3].

Respondent's *Motion for Reconsideration* is bereft of merit, hence, should be denied.

Section 112(C) of the NIRC of 1997, as amended, provides that the CIR has 120 days from the date of the submission of the complete documents in support of the application for tax refund/credit within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal with this Court within thirty (30) days from receipt of the decision of the CIR. However, if after the 120-day period, the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days.

It was established that petitioner filed its administrative claim for refund of unutilized input VAT for the four (4) quarters of calendar year 2014 on March 31, 2016, with attached supporting documents. Also accompanying petitioner's administrative claim was a *Sworn Certification* stating that it submitted complete documents for purposes of processing its claim for refund. Thus, from the filing of petitioner's administrative claim on March 31, 2016, respondent had 120-days or until July 29, 2016 to decide on the claim. Since respondent failed to act on petitioner's claim after the lapse of the 120-day period, petitioner had 30 days from July 29, 2016 or until August 28, 2016, within which to elevate its case to the Court *via* a Petition for Review. Thus, the Court acquired jurisdiction over the instant *Petition for Review* seasonably filed on August 26, 2016.

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[3] *CIR vs. Semirara Mining Corporation*, G.R. No. 202922, June 19, 2017 citing *PilipinasTotal Gas, Inc. vs. CIR*, G.R. No. 207112, December 8, 2015.

Let it be emphasized that the issue of non-submission of complete supporting documents in the administrative level is not fatal to the claimant's judicial recourse. Whether the documents presented during the trial were submitted to the BIR level shall have no bearing in resolving the present controversy as the basis of the Court's decision is only the pieces of evidence presented during the trial and formally offered by the parties and admitted by the Court. As a court of record[4] the Court of Tax Appeals (CTA) conducts a formal trial or trial *de novo* of the claim filed. Thus, the pieces of evidence submitted in the administrative proceeding at the BIR have no evidentiary value unless presented and formally offered before the Court.

WHEREFORE, respondent's *Motion for Reconsideration (Decision dated 31 July 2019)* is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[4] Section 8, Republic Act No. 1125, as amended.