REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1582 (CTA Case No. 8721)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
DOHLE SHIPMANAGEMENT PHILS., CORP., Respondent.	Promulgated: NOV 13 2018 3:36 p.m.

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AMENDED DECISION

Fabon-Victorino, J.:

Before the Court is petitioner's *Motion for Reconsideration* dated June 20, 2018, impugning the Decision of June 1, 2018, the *fallo* of which reads:

> **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.**[1]

In support of his plea for reconsideration, petitioner argues that respondent's judicial claim for refund/tax credit

[1] *Rollo*, pp. 191-192.

was filed out of time. Citing *Pilipinas Total Gas*[2] case as his authority, he points out that since respondent's administrative claim for refund was filed on March 22, 2013, or during the efficacy of Revenue Memorandum Circular (RMC) No. 49-2003, the 120-day period for him to decide respondent's administrative claim commenced on April 21, 2013, or from the lapse of the thirty (30)-day period[3] from filing of its administrative claim. Counting 120-days from then with no action on his part, the thirty (30)-day period to institute a judicial claim started to run on August 19, 2013. Thus, respondent had until September 18, 2013 to seek judicial review with the Court in Division. Therefore, its judicial claim was belatedly filed on October 25, 2013, thereby depriving the CTA of competence to determine the same.

On the other hand, respondent is of the view[4] that under Section 112(C) of the NIRC, as amended, petitioner had 120 days from date of submission of complete supporting documents on its administrative claim for refund. And from the receipt of petitioner's adverse decision, or the lapse of the allowable 120-day period to decide, it had another 30 days within which to lodge its judicial claim for refund/tax credit with the Court in Division. Thus, when it submitted its complete supporting documents on May 30, 2013, petitioner had until September 27, 2013[5] to act on his level. Counting another 30 days from September 27, 2013, respondent had until October 27, 2013 to elevate the matter to the Court in Division. In fine, its Petition for Review was seasonably instituted with the Court in Division on October 25, 2013.

Even granting that the doctrine in *Pilipinas Total Gas* case applies in the given controversy, the same conclusion will be reached for in the said case, the Supreme Court reckoned the 120-day period from the date of submission of complete supporting documents by the claimant-taxpayer to wit August 28, 2018, despite having been submitted more than thirty (30) days from institution of the administrative

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[2] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.
[3] March 22, 2013.
[4] Comment (on petitioner's Motion for Reconsideration) dated August 31, 2018, *rollo,* pp. 215-226.
[5] 120 days from May 30, 2013.

claim on May 15, 2008. In other words, the Court committed no reversible error in taking cognizance of respondent's judicial claim for refund.

THE RULING OF THE COURT

The core issue in the instant case is the start or the beginning of the 120-day period for petitioner to decide an administrative claim for refund/tax credit of input value-added tax (VAT). For petitioner, it is counted from the lapse of the thirty (30)-day period from respondent's filing of its administrative claim pursuant to RMC No. 49-2003 and *Pilipinas Total Gas* case. On the other hand, respondent reckoned it from the date of submission of complete supporting documents in support of its claim per Section 112(C) of the NIRC, as amended.

Section 112 (A)[6] and (C)[7] of the NIRC, as amended mandates *inter alia* that a taxpayer must file its administrative claim for input VAT refund within two (2) years from the close of the taxable quarter where the

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[6] **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-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 output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.

[7] (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.

pertinent sales were made. Petitioner is then granted a period of 120-days from receipt of complete supporting documents within which to act on the administrative claim. Upon receipt of the adverse decision, or the lapse of the 120-day period, the taxpayer has 30 days to appeal to the CTA.[8] Failure to observe the 120+30 mandatory and jurisdictional periods will deprive the Court of jurisdiction to hear such claim.[9]

Significantly, for claims filed prior to June 11, 2014, as in the instant case, the Supreme Court *En Banc* clarified in the *Pilipinas Total Gas* case that the period to submit supporting documents is subject to the following limitations set forth in RMC No. 49-2003, thus:

> 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 other additional documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.

Thus, 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 the 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 *complete* documents, if made within 30 days from the date of filing of the taxpayer's administrative claim; or

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[8] *Commissioner of Internal Revenue vs. Toledo Power Company,* G.R. Nos. 196415 and 196451, December 2, 2015.

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

3. **Date of completion** of supporting documents, if supporting documents was *partially* submitted within the said 30-day period **and** completed the same at a later date *without* any notice of its insufficiency/deficiency emanating from the CIR;[10] or

4. **Date of expiration of the 30-day period** from filing of the administrative claim when it was instituted *without* any attached supporting documents.

The record reveals that on March 22, 2013,[11] respondent filed its administrative claim without attached supporting documents. It was granted thirty (30) days from March 22, 2013, or until April 21, 2013 to submit the same but failed. *A fortiori,* the 120-day period begun to run on the latter date. Such 120-day period may not be reckoned from May 30, 2013, or the date of alleged submission of complete documents for it was already beyond the 30-day period mandated under RMC No. 49-2003. Thus, petitioner had until August 19, 2013[12] to decide on respondent's claim for refund/tax credit. There being no action taken on the part of petitioner, respondent had another thirty (30) days, or until September 18, 2013 to seek judicial intervention via a petition for review filed with the Court in Division. Clearly, respondent's judicial claim for refund/tax credit was belatedly filed on October 25, 2013, divesting this Court of the required competence to hear and determine the present case.

One may argue that in the *Pilipinas Total Gas* case, the Final Arbiter counted the 120-day period from the date claimant[13] therein completed its supporting documents on August 28, 2008 although it was made more than 30 days from the filing of the latter's administrative claim on May 15 of even year. However, the factual milieu obtaining between

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[10] In the *Pilipinas Total Gas* case, *op. cit.,* claimant Pilipinas Total Gas, Inc. (PTG) filed its administrative claim for refund together with supporting documents on May 15, 2008. It thereafter submitted additional documents pertinent to its administrative claim on August 28, 2008, or 106 days after the filing of such claim. The Supreme Court held that the subject 120-day period begun to run from August 28, 2008, or the date when claimant-PTG completed its submission of supporting documents since the BIR neither informed claimant-PTG of the inadequacy of its supporting documents, nor did he rule on the administrative claim for insufficiency of evidence.

[11] Exhibits P-9 to P-12 corresponds to respondent's administrative claim for refund for the 1st to 4th quarters of TY 2011 respectively.

[12] 120 days from April 21, 2013.

[13] Pilipinas Total Gas, Inc. (PTG)

this case and that of *Pilipinas Total Gas* is plainly disparate. In the *Pilipinas Total Gas* case, partial submission of supporting documents was made by therein claimant-taxpayer[14] within the 30-day period granted under RMC No. 49-2003, and subsequently completed the same on a later date without any notification from the CIR that the documents previously submitted were deficient or incomplete. In this case however, **respondent did not submit any supporting documents, whether full or partial, within the said 30-day period.** Given the stark contrast between the facts of this case and that of *Pilipinas Total Gas*, it is safe to conclude that both cases cannot be treated, much more, be ruled alike.

To repeat, the 120+30 periods in claims for refund/tax credit of input taxes are mandatory and jurisdictional. Non-observance thereof deprives the Court of jurisdiction to review the case.[15]

On a final note, 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 judicial claims would result in the denial of the claim.[16] The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered.[17] For respondent's failure to sternly adhere to the 120+30 days mandatory and jurisdictional periods, as well as the *Pilipinas Total Gas* case, the Court is left with no other option but to dismiss its refund claim.[18]

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[14] PTG was able to submit supporting documents, albeit partially at the time of filing of its administrative claim for refund on May 20, 2008. It thereafter completed its supporting documents on August 28, 2008. See p. 2 of the *Pilipinas Total Gas,* op. cit.

[15] See *Commissioner of Internal Revenue vs. Dash Engineering Philippines, Inc.,* G.R. No. 184145, December 11, 2013.

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

[17] *Herarc Realty Corporation vs. The Provincial Treasurer of Batangas*, G.R. No. 210736, September 25, 2018.

[18] When a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void, and without any binding legal effects. See *Bilag vs. Ay-Ay,* G.R. No. 189950, April 24, 2017; and *Mitsubishi Motors Philippines Corporation vs. Commissioner of Customs,* G.R. No. 209830, June 17, 2015.

WHEREFORE, petitioner's *Motion for Reconsideration* dated June 20, 2018 is **GRANTED**. The impugned Decision dated June 1, 2018 is **REVERSED** and **SET ASIDE**.

Accordingly, respondent Dohle Shipmanagement Phils., Corp.'s judicial claim for refund of excess and unutilized input taxes for taxable year (TY) 2011 in the aggregate amount of ₱25,922,574.79 is **DENIED**. This case is **DISMISSED**, on jurisdictional ground.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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 Amended 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