REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VESTAS SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8877

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution are the following:

1. the **Supplemental Formal Offer of Evidence (of Vestas Services Philippines, Inc.)**, filed through registered mail on June 4, 2018 and received by the Court on June 8, 2018, without respondent's comment as per Records Verification dated July 5, 2018; and

2. petitioner's **Motion for Reconsideration (Re: Decision dated 03 August 2017)**, filed on August 22, 2017, with respondent's **Comment/Opposition (To Petitioner's Motion for Reconsideration)**, filed through registered mail on September 11, 2017 and received by the Court on September 22, 2017.

To recall, the instant Petition for Review involves petitioner's claim for refund or issuance of tax credit certificate (TCC) in the aggregate amount of ₱65,650,037.39, allegedly representing its excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales of services for the second and third taxable quarters of calendar year (CY) 2013. However, in the Decision dated August 3, 2017, this Court dismissed the instant petition for lack of jurisdiction. The Court held that petitioner's judicial claim for refund was belatedly filed. Considering that compliance with the 120+30 day period prescribed under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, is mandatory and jurisdictional, then the Court is devoid of jurisdiction over petitioner's claim.

Consequently, on August 22, 2017, petitioner filed a Motion for Reconsideration with Motion with Leave of Court for the Issuance of a Subpoena Duces Tecum and to Reopen the Case for Presentation of Additional Evidence (Re: Decision dated 03 August 2017).

In the said motion, petitioner alleges, among others, that its administrative claim for refund was filed on October 9, 2013 and December 11, 2013 for the second and third quarters of 2013, respectively. Petitioner further alleges that it submitted supporting documents to the Bureau of Internal Revenue (BIR) on February 18, 2014 and March 25, 2014, and copies of the transmittal letters were attached to the motion. Given that respondent failed to act on its administrative claim after the lapse of the 120-day period from complete submission of documents, petitioner claims that it elected and pursued the institution of a judicial claim before this Court.

Respondent files its comment thereto, and claims that the Court was correct in dismissing the Petition for Review which was filed by petitioner only on August 22, 2014, after the lapse of the 120+30 day period to file a judicial claim for the second and third quarters of CY 2013, and in violation of the requirements under Section 112(C) of the NIRC of 1997. Thus, respondent avers that the Court has no jurisdiction over the case.

In the Resolution dated October 11, 2017, the Court granted petitioner's Motion with Leave of Court to Reopen the Case for Presentation of Additional Evidence. Accordingly, the case was set for hearing for the presentation of the documents cited and attached to the instant motion for reconsideration. Meanwhile, the resolution of petitioner's Motion for Reconsideration (Re: Decision dated 03 August 2017) was held in abeyance.

During the hearing held on May 30, 2018, petitioner presented Ms. Faye Angela M. Pascua, who testified by way of Judicial Affidavit. Thereafter, on June 4, 2018, petitioner filed by registered mail its Supplemental Formal Offer of Evidence which was alter on received by the Court on June 8, 2018.

Now, acting on the **Supplemental Formal Offer of Evidence (of Vestas Services Philippines, Inc.)**, Exhibits **"P-149"**, **"P149-a"** and **"P-150"** are **ADMITTED**, subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

The Court noted that petitioner only presented in evidence the Transmittal Letter stamped received on March 25, 2014 (Exhibit "P-150"), which shows the submission of documents in relation to petitioner's administrative claim for refund for the third quarter of CY 2013. In view of the admission of Exhibit "P-150", and considering that petitioner did not present the Transmittal Letter allegedly stamped received on February 18, 2014 showing submission of documents in relation to petitioner's administrative claim for refund for the second quarter of CY 2013, the Court shall limit the determination of the timeliness of the filing of petitioner's judicial claim for refund to the third quarter of CY 2013.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the application for refund or tax credit of unutilized excess 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.

As found in the assailed Decision, the administrative claim for refund was timely filed. The third quarter of CY 2013 closed on September 30, 2013. Counting two years from the said date, petitioner had until September 30, 2015, within which to file its administrative claim for the third quarter of CY 2013. Thus, the filing of petitioner's administrative claim on December 11, 2013[1] for the third quarter of CY 2013 was well within the reglementary period. *Jr*

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[1] Exhibit "P-9".

On the other hand, Section 112(C) of the NIRC of 1997, as amended, states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the period of 30 days, which refers to the period for filing a judicial claim with the Court of Tax Appeals.

Note that the 120-day period begins to run from the date of submission of *complete documents* supporting the administrative claim.[2]

Petitioner alleges that it submitted supporting documents to the BIR on March 25, 2014, hence, the 120-day period should be reckoned from said date.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[3] (*Pilipinas Total Gas* case), the Supreme Court explained in detail, "when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period", to wit:

> *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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> Then, when the NIRC was enacted on January 1, 1998, the rule was once more amended to read:

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

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

> (D) *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) and (B) hereof.
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> xxx xxx xxx

This time, the period granted to the CIR to act upon an administrative claim for refund was extended to 120 days. The reckoning point however, remained **"from the date of submission of complete documents."**

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.** *je*

> 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 compete 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 **<u>within thirty (30) days from request</u> of the investigating/processing office, which shall be construed as within the one hundred twenty (120)-day period.**
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> **[Emphases Supplied]**

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:

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.

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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.

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 addition 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. xxx

Considering that petitioner's administrative claim for refund was filed on December 11, 2013[4], or prior to June 11, 2014, then the above pronouncement is applicable.

A perusal of the Transmittal Letter stamped received by the BIR on March 25, 2014 shows that the transmittal of the supporting documents was made in connection with the BIR 's Letter of Authority (LOA) VAT Credit Certificate for the third quarter of 2013.[5] *ge*

[4] Exhibit "P-9".
[5] The Transmittal Letter dated March 25, 2014 (Exhibit "P-150"), stated that "We are pleased to transmit the the [sic] following documents in relation to your **LOA** VAT Credit Certificate for Q3 of 2013".

Notably, in the *Pilipinas Total Gas* case, which is based on Revenue Memorandum Circular (RMC) No. 49-2003, the Supreme Court held that petitioner has **thirty (30) days** from **request of the BIR** within which to submit the additional documents. From the evidence presented, petitioner appears to have been notified of the BIR's request for additional documents upon receipt of the LOA, thus, the counting of the 30-day period should be made therefrom. However, the LOA referred to in the Transmittal Letter was not presented in evidence, thus, petitioner failed to establish that the submission of supporting documents was made within the abovementioned 30-day period.

Also, even if the Court considers the LOA found in the BIR Records, a perusal thereof reveals that the additional documents referred to in the Transmittal Letter was filed beyond the 30-day period.

Records show that the BIR issued Letter of Authority[6] (LOA) No. SN: eLA201100055007 / LOA-050-2014-00000001 on January 22, 2014 for examination of petitioner's books of accounts and other accounting records for VAT for the period from July 1, 2013 to September 30, 2013 with attached Checklist of Requirements[7] dated January 22, 2014. The said checklist enumerated the additional documents required to be submitted by petitioner to the BIR. Records further reveal that the LOA was received by Ms. Lea N. Alfaro on **January 24, 2014**, which is the same signatory in petitioner's administrative claim[8] filed on December 11, 2013 for the third quarter of CY 2013.

Accordingly, counting from the receipt of the LOA, which was on January 24, 2014, petitioner had 30 days or until **February 23, 2014** within which to submit the additional documents. Clearly, petitioner filed the additional documents on March 25, 2014, or beyond the 30-day period allowed by RMC No. 49-2003.

In this regard, it must be pointed out that it is not from the date when the alleged additional documents were belatedly filed that the counting of the 120 day period should commence, but from the expiration of the 30-day period to submit supporting document. Thus, counting 120 days from February 23, 2014, respondent had until June 23, 2014 to act on petitioner's administrative claim for

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[6] BIR Records, p. 10.
[7] BIR Records, p. 9.
[8] Exhibit "P-9".

refund. From June 23, 2014, petitioner had 30 days, or until July 23, 2014, to file its judicial claim for refund. Unfortunately, the instant Petition for Review was belatedly filed on August 22, 2014[9] as provided under Section 112(C) of the NIRC of 1997, as amended.

To reiterate, compliance with the 120+30 day period prescribed under Section 112(C) of the NIRC of 1997, as amended, is **mandatory** and **jurisdictional** as held in *Commissioner of Internal Revenue vs. San Roque Power Corporation*[10].

WHEREFORE, in view of the foregoing, petitioner's **Motion for Reconsideration (Re: Decision dated 03 August 2017)** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[9] Docket, vol. I, p. 6.
[10] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.