REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NORTHWIND POWER DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9162

Members:

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

Promulgated:

DEC 05 2018

1:50 p.m.

x- x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The case involves the Petition for Review filed by Northwind Power Development Corporation, seeking to set aside the denial of its administrative claims for refund in the aggregate amount of Seven Million Five Hundred Fifty-Two Thousand Three Hundred Thirty-Five Pesos and 15/100 (₱7,552,335.15) allegedly representing unutilized input value-added tax (VAT) attributable to its zero-rated sales for the four quarters of taxable year 2012.

THE FACTS

Petitioner Northwind Power Development Corporation is a corporation duly organized and existing under and by virtue of

Philippine laws, with principal offices at Sitio Suyo, Brgy. Buruyen, Bangui, Ilocos Norte.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed four administrative claims for refund with the BIR for its alleged unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2012, detailed as follows:

PERIOD COVERED (TY 2012)	DATE OF FILING OF ADMINISTRATIVE CLAIM	AMOUNT INVOLVED
First Quarter[2]	March 26, 2014	₱1,702,689.62
Second Quarter[3]	June 20, 2014	₱1,742,287.08
Third Quarter[4]	September 30, 2014	₱2,767,150.35
Fourth Quarter[5]	December 17, 2014	₱1,340,208.10

On September 2, 2015, petitioner received a letter[6] from the BIR denying its claim for refund for the first quarter of 2012.[7] On September 4, 2015, petitioner received another letter[8] dated September 3, 2015 from the BIR denying its refund claim for the third quarter of 2012. On September 4, 2015, petitioner also received two letters[9] dated September 2, 2015 from the BIR, this time, denying petitioner's administrative claims for refund for the second and fourth quarters of 2012.[10]

[1] Par. 1, Petition for Review, docket, p. 11.
[2] Exhibit "P-14", docket, pp. 2013-2016; Par. 1, Proposed Facts for Stipulation, JSFI, docket, p. 784.
[3] Exhibit "P-15", docket, pp. 2017-2020; Par. 2, Proposed Facts for Stipulation, JSFI, docket, p. 784.
[4] Exhibit "P-16", docket. pp. 2021-2024.
[5] Exhibit "P-17", docket, p. 2025; Par. 3, Proposed Facts for Stipulation, JSFI, docket, p. 784.
[6] Exhibit "P-18", docket, p. 2026.
[7] Par. 4, Proposed Facts for Stipulation, JSFI, docket, p. 784.
[8] Exhibit "P-20", docket, p. 2028.
[9] Exhibits "P-19" and "P-21", docket, pp. 2027 and 2029.
[10] Pars. 5 and 6, Proposed Facts for Stipulation, JSFI, docket, p. 784.

On October 2, 2015, petitioner filed the instant Petition for Review[11] before this Court.

In the Answer[12] filed on December 21, 2015, respondent raised the following special and affirmative defenses:

> "4. She reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 5. In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements thereof.
>
> 6. To support its claim, it is imperative for petitioner to prove the following, *viz*:
>
> a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the 1997 NIRC, as amended;
>
> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of 1997 NIRC, as amended;
>
> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the 1997 NIRC, as amended. This

---
[11] Docket, pp. 10-40.
[12] Docket, pp. 692-700.

requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue <u>before the 120-day audit period shall apply</u>;

d. That the input taxes in the aggregate amount of PhP7,552,335 representing petitioner's input VAT payments directly attributable to its zero-rated sales for the First, Second, Third and Fourth Quarters of taxable year 2012;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) were filed within the periods provided under Sections 112 (A) and (D) of the 1997 NIRC, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and /or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the 1997 NIRC, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirement as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits).

h. The requirements as enumerated under Revenue Memorandum Circular 54-2014 (Re: Clarifying Issues Relative to the Application for Value Added Tax Refund/Credit under Section 112 of the 1997 NIRC, as amended) *ge*

7. Petitioner must prove that the aggregate amount of PhP7,552,335.15 allegedly representing excess and unutilized input VAT for taxable year 2012 are properly documented.

8. In Revenue Memorandum Circular 54-2014, the administrative claim for VAT refund or TCC must be filed within two (2) years from the close of the taxable quarter when the zero-rated sales and/or effectively zero-rated sales were made. The application for VAT refund must be accompanied by complete supporting documents as specifically enumerated in Annex 'A' of the RMC. In addition, the taxpayer should attach a sworn statement/affidavit (i) attesting to the completeness of the submitted documents; (ii) stating that the attached supporting documents are the only documents which the taxpayer will present to support the claim; and (iii) in the case of corporations or other juridical persons, there should be a sworn statement that the officer signing the affidavit (which should at the very least be the Chief Finance Officer) has been authorized by the company's Board of Directors.

9. Corollary thereto, Section 112 (C) provides as follows, to wit:

> **'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: x x x

X X X

> **(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.
>
> 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.**' (Emphasis supplied)

10. Pursuant to the aforequoted provision of law, the application for tax refund must be filed within two (2) years after the close of the taxable quarter when the sales were made and the CIR has a 120-day period within which to decide whether to grant the claim. It logically follows that a taxpayer must first submit the complete supporting documents before the 120-day period should commence. <u>If the claim is not acted upon by the respondent, within the 120-day period, such inaction shall be deemed a denial of the claim</u>.

11. In the present case, petitioner failed to elevate the claim for refund within the period prescribed by law. Petitioner admitted that it filed its administrative claims for refund on the following dates:

Taxable Period	Filing of Administrative Claim
1st Quarter of 2012	26 March 2014
2nd Quarter of 2012	20 June 2014
3rd Quarter of 2012	30 September 2014
4th Quarter of 2012	17 December 2014

gc

12. Likewise, petitioner admitted that upon filing the administrative claim for refund, it submitted the necessary supporting documents, to wit:

> To be sure, when Petitioner filed its administrative claims for VAT refund, petitioner took special care to attach to the applications the necessary supporting documents, such as the Vat Returns, Summary List of Sales, summary List of Purchases, official receipts issued by petitioner, official Receipts and invoices issued by Petitioner's suppliers of goods and services, as well as other documents to prove the VAT zero-rating of petitioner's sales of electricity generated through renewable sources to PMEC. Xxx

13. Counting one hundred twenty (120) days from the filing of administrative claim for refund, petitioner has thirty (30) days from even date to file its judicial claim for refund due to the alleged inaction of the BIR, viz:

Taxable Period	**Filing of Administrative Claim**	**120th day**	**Valid Filing of Judicial Claim**	**Actual Filing of Judicial Claim**
1st Quarter of 2012	26 March 2014	24 July 2014	23 August 2014	02 October 2015
2nd Quarter of 2012	20 June 2014	18 October 2014	17 November 2014	02 October 2015
3rd Quarter of 2012	30 September 2014	28 January 2015	27 February 2015	02 October 2015
4th Quarter of 2012	17 December 2014	16 April 2015	16 May 2015	02 October 2015

14. Nonetheless, petitioner only filed its judicial claim for refund on 02 October 2015, way past due from the valid filing pursuant to Section 112 of the 1997 NIRC.

Taxable Period	Filing of Administrative Claim	120th day	Valid Filing of Judicial Claim	Actual Filing of Judicial Claim	Days Past Due
1st Quarter of 2012	26 March 2014	24 July 2014	23 August 2014	02 October 2015	**405 days**
2nd Quarter of 2012	20 June 2014	18 October 2014	17 November 2014	02 October 2015	**319 days**
3rd Quarter of 2012	30 September 2014	28 January 2015	27 February 2015	02 October 2015	**217 days**
4th Quarter of 2012	17 December 2014	16 April 2015	16 May 2015	02 October 2015	**139 days**

15. It bears emphasis that even without the issuance of Revenue Memorandum Circular No. 54-2014, the law is clear that in case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the respondent to act on the application within the period prescribed, **the taxpayer affected may, within thirty (30) days** from 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**. Accordingly, petitioner failed to do so.

16. The Honorable Supreme Court in the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia enunciated:

> Section 112(D) of the NIRC clearly 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 before the CTA within 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 CTA within 30 days**. (Emphasis supplied) *gr*

17. The essence of RMC No. 54-2014 is to interpret, clarify or explain the law, particularly Section 112 of the 1997 NIRC and the jurisprudence that were promulgated in accordance with the said law. RMC No. 54-2014 was issued pursuant to the quasi-legislative or rule-making power of the respondent. It is worthy to note that the application of Section 112 of the 1997 NIRC must be reckoned from the time of the effectivity of the 1997 NIRC or as early as January 1, 1997.

18. All in all, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a taxpayer is charged with the heavy burden of proving that he complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

11. It can never be emphasized enough that in this jurisdiction tax refunds/ credits are in the nature of tax exemptions, hence, laws relating to them call for strict application against the claimant. As held by the Honorable Supreme Court:

> 'Tax refunds are in the nature of tax exemptions, and are to be construed **strictissimi juris** against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.'

12. Taxes collected are presumed to be in accordance with laws and regulations.

13. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the

> sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.
>
> 19. Based on the foregoing, petitioner's claim for refund has no basis in fact and law. Thus, the instant petition should be dismissed for lack of jurisdiction and/or lack of merit."

A Notice of Pre-Trial Conference[13] was issued by the Court, setting the case for pre-trial conference on February 18, 2016. Accordingly, respondent's Pre-Trial Brief[14] was filed on February 9, 2016, while petitioner's Pre-Trial Brief[15] was filed on February 16, 2016.

The pre-trial conference ensued.[16] Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[17] on March 21, 2016. Accordingly, the Court issued a Pre-Trial Order[18] on April 5, 2016 and the pre-trial was deemed terminated.

During trial, petitioner presented Ms. Nerissa N. Posadas[19] as its witness.

Petitioner's Formal Offer of Evidence[20] was filed through registered mail on August 1, 2016 and received by the Court on August 3, 2016.

During the hearing[21] on September 5, 2016, respondent's counsel manifested to the Court that she has no witness to present and upon her motion, respondent was granted thirty (30) days to file a memorandum.

---

[13] Docket, pp. 702-703.
[14] Docket, pp. 721-724.
[15] Docket, pp. 744-753.
[16] Minutes of the Hearing dated February 18, 2016, docket, p. 755.
[17] Docket, pp. 784-790.
[18] Docket, pp. 797-801.
[19] Minutes of the Hearing, dated May 11, 2016, docket, p. 816 and June 6, 2016, docket, p. 1271; Judicial Affidavit (JA) of Nerissa N. Posadas dated February 12, 2016, docket, pp. 726-742; Supplemental JA of Nerissa N. Posadas dated June 2, 2016, docket, pp. 817-827.
[20] Docket, pp. 1318-1382.
[21] Minutes of the Hearing, September 5, 2016, docket, p. 1557.

On September 5, 2016, the Court issued a Resolution[22] admitting some of the exhibits offered by petitioner, specifically: Exhibits "P-14", "P-15", "P-18", "P-19", "P-21", "P-22", "P-22-a", "P-27", "P-27-a", "P-27-b", "P-27-c", "P-27-d", "P-27-e", "P-27-f", "P-27-g", "P-27-h", "P-27-i", "P-27-j", "P-27-l", "P-27-m", "P-27-n", "P-27-o", "P-27-p", "P-28", "P-28-a", "P-28-e", "P-28-f", "P-28-h", "P-28-i", "P-28-j", "P-28-k", "P-28-l", "P-28-m", "P-28-n", "P-28-o", "P-28-p", "P-28-q", "P-28-r", "P-28-s", "P-28-t", "P-28-u", "P-28-v", "P-29", "P-29-a", "P-29-b", "P-29-c", "P-29-d", "P-29-f", "P-29-g", "P-29-h", "P-29-i", "P-29-j", "P-29-k", "P-29-l", "P-29-m", "P-29-n", "P-34", "P-34-a", "P-34-b", "P-34-c", "P-34-d", "P-34-e", "P-34-f", "P-34-g", "P-34-h", "P-34-k", "P-34-l", "P-34-m", "P-34-n", "P-35", "P-35-a", "P-35-b", "P-35-c", "P-35-d", "P-35-e", "P-35-f", "P-35-g", "P-35-i", "P-35-j", "P-35-k", "P-35-l", "P-35-m", "P-35-n", "P-35-o", "P-35-p", "P-35-q", "P-35-r", "P-35-s", "P-35-t", "P-35-u", "P-35-v", "P-35-w", "P-35-x", "P-36", "P-36-a", "P-36-c", "P-36-d", "P-36-e", "P-36-f", "P-36-h", "P-36-i", "P-36-j", "P-42", "P-42-a", "P-42-c", "P-42-d", "P-42-e", "P-42-f", "P-42-g", "P-42-i", "P-42-j", "P-42-k", "P-42-m", "P-42-n", "P-42-o", "P-42-p", "P-42-q", "P-42-r", "P-43", "P-43-a", "P-43-b", "P-43-c", "P-43-d", "P-43-e", "P-43-f", "P-43-h", "P-44", "P-44-a", "P-44-b", "P-44-e", "P-44-f", "P-44-g", "P-44-h", "P-44-i", "P-44-j", "P-44-k", "P-44-l", "P-44-m", "P-44-n", "P-44-o", "P-50", "P-50-a", "P-50-b", "P-50-d", "P-50-e", "P-50-f", "P-50-g", "P-50-h", "P-50-i", "P-50-j", "P-50-k", "P-50-l", "P-50-n", "P-50-o", "P-50-p", "P-50-q", "P-50-r", "P-50-x", "P-51-a", "P-51-b", "P-51-c", "P-51-d", "P-51-e", "P-51-f", "P-51-j", "P-51-k", "P-51-l", "P-51-m", "P-51-n", "P-51-o", "P-51-p", "P-52", "P-52-a", "P-52-b", "P-52-c", "P-52-f", "P-52-g", "P-52-h", "P-52-j", "P-52-k", "P-52-l", "P-52-m", "P-52-n", "P-52-o", "P-55", "P-56", "P-57", and "P-57-a".

Petitioner filed, through registered mail on September 21, 2016 and received by the Court on September 23, 2016, its Motion for Reconsideration[23] dated September 20, 2016, seeking reconsideration on the denied exhibits and permission to amend its formal offer to correct the offer and purpose of some of the exhibits.

On October 7, 2016, respondent filed a Motion to Allow Respondent to Present Evidence[24], which petitioner did not oppose.[25]

---

[22] Docket, pp. 1550-1556.
[23] Docket, pp. 1561-1575.
[24] Docket, pp. 1839-1842.
[25] Comment (To Respondent's Motion to Allow Respondent to Present Evidence dated October 7, 2016), docket, pp. 1846-1847.

On February 2, 2017, the Court issued a Resolution[26] allowing petitioner to file its Amended Formal Offer of Evidence[27], which petitioner submitted on April 3, 2017. In the same Resolution, the Court also allowed respondent to present evidence after the resolution of petitioner's Amended Formal Offer of Evidence.

On October 13, 2017, the Court issued a Resolution[28] partially granting petitioner's Motion for Reconsideration, admitting Exhibits "P-1", "P-1-a", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-16", "P-17", "P-20", "P-23", "P-23-a", "P-23-b", "P-23-c", "P-23-d", "P-23-e", "P-23-f", "P-23-g", "P-23-h", "P-23-i", "P-24", "P-24-a", "P-24-b", "P-24-c", "P-24-d", "P-24-e", "P-24-f", "P-24-g", "P-25", "P-25-a", "P-25-b", "P-25-c", "P-25-d", "P-25-e", "P-25-f", "P-25-g", "P-26", "P-26-a", "P-27-k", "P-28-b", "P-28-c", "P-28-d", "P-28-g", "P-29-e", "P-30", "P-30-a", "P-30-b", "P-30-c", "P-30-d", "P-30-e", "P-30-f", "P-30-g", "P-31", "P-31-a", "P-31-b", "P-31-c", "P-31-d", "P-31-e", "P-31-f", "P-32", "P-32-a", "P-32-b", "P-32-c", "P-32-d", "P-32-e", "P-33", "P-33-a", "P-33-b", "P-34-i", "P-34-j", "P-35-h", "P-36-b", "P-36-g", "P-37", "P-37-a", "P-37-a-3", "P-37-a-4", "P-37-a-7", "P-37-b", "P-38", "P-38-a", "P-38-b", "P-38-c", "P-38-d", "P-38-e", "P-38-f", "P-38-g", "P-38-h", "P-38-i", "P-39", "P-39-a", "P-39-b", "P-39-c", "P-39-d", "P-39-e", "P-39-f", "P-39-g", "P-39-h", "P-39-i", "P-39-j", "P-39-k", "P-40", "P-40-a", "P-40-b", "P-40-c", "P-40-d", "P-40-e", "P-40-f", "P-40-g", "P-40-h", "P-40-i", "P-40-j", "P-40-k", "P-41", "P-41-a", "P-41-b", "P-42-h", "P-42-s", "P-43-g", "P-43-i", "P-44-c", "P-44-d", "P-44-v", "P-46", "P-46-a", "P-46-b", "P-46-c", "P-46-d", "P-46-e", "P-46-f", "P-46-g", "P-46-h", "P-46-i", "P-46-j", "P-47", "P-47-a", "P-47-b", "P-47-c", "P-47-d", "P-47-e", "P-47-f", "P-48", "P-48-a", "P-48-b", "P-48-c", "P-48-d", "P-48-e", "P-48-f", "P-48-g", "P-49", "P-50-c", "P-50-m", "P-50-s", "P-50-t", "P-50-u", "P-50-v", "P-50-w", "P-51", "P-51-g", "P-51-h", "P-51-i", P-52-d", "P-52-e", "P-52-i", and "P-53".

During the hearing[29] on November 27, 2017, respondent's counsel manifested that she has no witness to present in this case.

On December 27, 2017, petitioner filed a Tender of Excluded Evidence[30] dated December 22, 2017, which was noted by the Court in the Resolution[31] dated January 5, 2018.

---

[26] Docket, pp. 1859-1861.
[27] Docket, pp. 1885-1953.
[28] Docket, pp. 2181-2183.
[29] Docket, p. 2184.
[30] Docket, pp. 2190-2192.
[31] Docket, p. 2239.

The Court declared the case submitted for decision on January 31, 2018[32], considering petitioner's Memorandum[33] filed on December 27, 2017 and respondent's Memorandum[34] filed on January 26, 2018.

THE ISSUES

The parties submitted the following issues[35] for the Court's resolution:

I. Whether or not the BIR was correct in denying petitioner's administrative claims for refund of input VAT paid or incurred arising from its VAT zero-rated sales renewable energy for the four (4) quarters of 2012 for alleged failure to (A) comply with RMC No. 54-2014 and (B) submit the required documents.

II. Whether or not petitioner is entitled to the refund of the input VAT paid on purchases of goods and services which are attributable to its VAT zero-rated sales of renewable energy for the four (4) quarters of the taxable year 2012.

Petitioner's Arguments[36]

Petitioner avers that respondent's letters denying petitioner's claim for refund of 2012 input VAT paid or incurred in relation and attributable to its 2012 VAT zero-rated sales of renewable energy should be set aside for being grossly vague and without factual basis.[37]

Petitioner asserts that based on the denial letters issued by respondent, the claim for VAT refund has been denied for failure to comply with certain provisions of Revenue Memorandum Circular (RMC) No. 54-2014[38] and for failure to submit documentary requirements within the prescribed reglementary period.[39] Petitioner argues that in the denial letters, respondent did not even care to identify what particular documentary requirements petitioner failed to

---

[32] Docket, p. 2253.
[33] Docket, pp. 2194-2227.
[34] Docket, pp. 2241-2251.
[35] Issues to be Resolved, JSFI, docket, p. 785.
[36] Docket, pp. 2194-2225.
[37] Docket, p. 2207.
[38] Clarifying Issues Relative to the Application for Value-Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended, dated June 11, 2014.
[39] Docket, pp. 2207-2209.

submit[40] and/or cite which particular provisions of RMC No. 54-2014 were not complied with by petitioner.[41]

Petitioner insists that it is entitled to the claimed refund, citing the Supreme Court's ruling in the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[42].

With regard to the thirty (30)-day period to file a judicial claim, petitioner argues that the applicable prescriptive period is not the 30 days to appeal to the Court in case of inaction by the BIR. Rather, the applicable period is the 30 days from the receipt of respondent's decision on the administrative claims for refund, under Section 112(C) of the NIRC of 1997, as amended.[43] When petitioner received the BIR's Letters denying petitioner's administrative claims for input VAT refund on September 2, 2015 (for the First Quarter of 2012) and on September 4, 2015 (for the Second, Third, and Fourth Quarters of 2012), it has, under Section 112(C) of the NIRC of 1997, as amended, a period of 30 days from receipt of the letters of denial or until October 2, 2015 and October 4, 2015 to file the instant claims for refund before this Court.[44]

Respondent's Counter-Arguments

On the other hand, respondent counters that petitioner failed to elevate the claim for refund within the period prescribed by law pursuant to Section 112(C) of the NIRC of 1997, as amended. Respondent contends that even without the issuance of RMC No. 54-2014, the law is clear that in case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of respondent to act on the application within the period prescribed, the taxpayer affected may, within 30 days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty (120)-day period, appeal the decision or the unacted claim with the Court of Tax Appeals, which petitioner failed to do.[45]

---

[40] Docket, pp. 2210-2211.
[41] Docket, p. 2211.
[42] G.R. No. 166732, April 27, 2007.
[43] Docket, p. 2224.
[44] Docket, p. 2225.
[45] Docket, pp. 2245-2246.

THE COURT'S RULING

The Court will determine first whether it has jurisdiction to entertain the instant case.

Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, provides that the Court of Tax Appeals has exclusive appellate jurisdiction to review by appeal the decisions or inaction by the BIR Commissioner on claims for refund, *viz.*:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes,** fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

In relation thereto, Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, provides for the period when to file an administrative claim for refund with the BIR and a judicial claim for refund with the CTA, to wit:

> "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 of 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 non-zero-rated sales.
>
> xxx xxx xxx
>
> (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**." *(Emphasis supplied)*

Pursuant to the afore-quoted provision, a VAT-registered taxpayer whose sale is 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 a refund or the issuance of tax credit certificate of its creditable input tax due or paid attributable to such sales.

The provision further states that upon filing of the administrative claim for refund, the BIR has 120 days from the date of submission of the complete documents in support of the application to either grant or deny the claim. However, should the BIR deny fully or partially the claim, the taxpayer has 30 days from the receipt of the decision denying the claim or in case of inaction by the BIR, from the expiration of the 120 days, to file an appeal with the Court.

In *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[46] ("*Aichi Forging* case" for brevity), the Supreme Court clarified the two scenarios contemplated under Section 112(D)[47] of the NIRC that are appealable to the CTA within the 30-day period, to wit:

> "In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: **(1) when a decision is issued by the CIR <u>before</u> the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA.**" (*Emphasis and underscoring supplied*)

[46] G.R. No. 184823, October 6, 2010.
[47] Now Section 112(C) of the NIRC of 1997.

From the above-quoted Supreme Court ruling, in order for the Court to acquire jurisdiction over an appeal on claims for refund, compliance with the 120-day plus 30-day periods is mandatory.

Based on the facts and evidence presented, the Court finds that it has no jurisdiction to entertain the instant petition.

Petitioner filed its administrative claims for refund for taxable year 2012 with the BIR on the following dates:

TAXABLE PERIOD (TY 2012)	DATE OF FILING OF ADMINISTRATIVE CLAIM
1st Quarter	March 26, 2014
2nd Quarter	June 20, 2014
3rd Quarter	September 30, 2014
4th Quarter	December 17, 2014

The counting of the 120-day period should be from the time petitioner submitted the complete documents to support its refund applications. Records indicate that petitioner submitted its complete supporting documents[48] when it filed its administrative claims for refund with the BIR; thus, the required 120-day period ended on the following dates:

TAXABLE PERIOD (TY 2012)	DATE OF FILING OF ADMINISTRATIVE CLAIM	END OF THE 120-DAY PERIOD
1st Quarter	March 26, 2014	July 24, 2014
2nd Quarter	June 20, 2014	October 18, 2014
3rd Quarter	September 30, 2014	January 28, 2015
4th Quarter	December 17, 2014	April 16, 2015

Based on records, respondent failed to act on the said administrative claims within the 120-day period. Therefore, petitioner should have filed its judicial claim before this Court within 30 days from the lapse of the 120-day period or on the following dates:

[48] Pars. 25-28, Petition for Review, docket, p. 17; Exhibits "P-14", "P-15", "P-16", and "P-17", docket, pp. 2013, 2017, 2021, and 2025, respectively.

TAXABLE PERIOD (TY 2012)	END OF THE 120-DAY PERIOD	END OF THE 30-DAY PERIOD TO FILE JUDICIAL CLAIM
1st Quarter	July 24, 2014	August 23, 2014
2nd Quarter	October 18, 2014	November 17, 2014
3rd Quarter	January 28, 2015	February 27, 2015
4th Quarter	April 16, 2015	May 16, 2015

The Petition for Review was only filed by petitioner before this Court on October 2, 2015, which is clearly beyond the 30-day period to appeal its refund claim with the CTA.

Anent petitioner's argument that the 30-day period should be counted from the time the denial of the claim for refund issued by respondent was received by petitioner even though it was received beyond the 120-day period, the ruling of the Supreme Court in the *Aichi Forging* case is clear in stating that the 30-day period to file an appeal should commence (1) when a decision is issued by the BIR Commissioner **before the lapse of the 120-day period** and (2) **when no decision is made after the 120-day period**. Since the expiration of the 120-day period came earlier than the receipt of the denial letters, petitioner should have filed its appeal within the 30-day period from the expiration of the 120 days and not from the receipt of the denial.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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