REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHIL. GOLD PROCESSING & REFINING CORP., Petitioner,	CTA CASE NO. 8856
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 06 2017 11:22 a.m.

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DECISION

FABON-VICTORINO, J.:

Petitioner Phil. Gold Processing & Refining Corporation filed the instant Petition for Review[1] for the refund of the amount of ₱106,217,979.09, allegedly representing its unutilized input Value-Added Tax (VAT) for the quarter April 1, 2008 to June 30, 2008.

Petitioner is a domestic corporation with principal business address at the 3rd Floor Corinthian Plaza Building, 121 Paseo de Roxas, Legaspi Village, Makati City. It is engaged in the processing, milling, crushing, refining, smelting and concentrating of mineral resources.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. (TIN) 004-498-686-000[3], as well as, with the Board of Investments (BOI) as a new producer of gold and silver with a non-pioneer status[4].

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[1] Docket, pp. 7-14.
[2] Exhibit P-13.
[3] Exhibit P-15.
[4] Exhibit P-14.

On the other hand, respondent is the Commissioner of the BIR, with authority to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner alleges that it exports 100% of its processed gold and silver dore which are paid for in acceptable foreign currency in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.[5] Thus, its export sales are subject to zero percent (0%) VAT under Section 106 of the National Internal Revenue Code (NIRC).

During the period covering April 1, 2008 to June 30, 2008, it exported its processed gold and silver dore which were paid in acceptable foreign currency, duly accounted for based on the rules and regulations of the Bangko Sentral ng Pilipinas. Pursuant to Section 106 of the NIRC, the said export sales were subject to zero percent (0%) VAT.

During the same quarter, petitioner purchased various goods and services locally and abroad in the total amount of ₱885,149,825.79, which resulted in total input VAT payments of ₱106,217,979.09.[6]

On June 22, 2010, petitioner filed with the BIR – Revenue District Office (RDO) No. 47 – Makati City a claim for refund of unutilized input VAT for the subject period of April 1, 2008 to June 30, 2008, amounting to ₱106,217,979.09.[7]

On July 4, 2014, petitioner received from respondent a letter dated June 25, 2014[8], denying its claim for refund.

On August 4, 2014, petitioner filed the instant Petition for Review before the Court assailing the denial of its claim for refund by respondent.

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[5] Exhibit P-22.
[6] Exhibits P-3, P-4 to P-4-c, P-5 to P-5-b.
[7] Exhibits P-1 and P-2.
[8] Exhibit P-25-a.

On September 9, 2014, respondent filed his Answer[9] basically arguing that it is upon petitioner to substantiate its claim for refund with sufficient evidence and to comply with all the legal requisites or conditions for its alleged entitlement. Failure to discharge such burden is fatal to its claim. In the instant case, petitioner was unable to submit complete documents in support of its administrative claim for refund as provided under RMO No. 53-98, rendering its administrative action pro-forma. Without a validly and duly filed administrative claim for refund, the Court is without jurisdiction to entertain the instant Petition for Review. Finally, claims for refund are construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.

On November 3, 2014, the Pre-Trial Order[10] was issued after the parties filed their Joint Stipulation of Facts[11] on October 14, 2014.

On December 4, 2014, the case was dismissed for failure to prosecute, at the instance of respondent's counsel, for failure of petitioner's counsel to appear, despite due notice, for the initial presentation of evidence.[12]

In the Resolution[13] dated February 4, 2015, the Court, finding merit, granted petitioner's Motion for Reconsideration[14] and reinstated the case.

In support of its case, petitioner presented its Treasurer, Atty. Juanita Lilet A. Dato-Abuel, and the Court-commissioned Independent Certified Public Accountant (ICPA) Noel Peter F. Cañete, as witnesses.

Atty. Juanita Lilet A. Dato-Abuel testified[15] that as petitioner's Treasurer, she supervises and oversees petitioner's application for tax refund with the BIR, specially claims for refund of unutilized input VAT.

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[9] Docket, pp. 94-101.
[10] Docket, pp. 126-131.
[11] Docket, pp. 120-121.
[12] Minutes of the Hearing dated December 4, 2014, docket, p. 148.
[13] Docket, pp. 786-787.
[14] Motion for Reconsideration, docket, pp. 774-776.
[15] Exhibits P-32 and P-32-a.

She confirmed that petitioner is engaged in the processing, milling, crushing, refining, smelting and concentrating of mineral resources.[16] Petitioner is a 100% exporter of gold bullion, gold dore and other mineral products[17]. Considering the foregoing and given that its customer Metalor Technologies SA is a non-resident foreign corporation, its sales to the latter is zero-rated. Hence, its input VAT remains unutilized.

On June 22, 2010, petitioner filed with the BIR RDO No. 47-East Makati a claim for refund of its unutilized input VAT for taxable quarter April 1, 2008 to June 30, 2008 in the amount of ₱106,217,979.09.[18] But prior to such filing of administrative claim for refund, petitioner received a confirmation from the BIR through BIR Ruling No. DA-VAT-0723 435-2009, that it can claim as tax refund or credit its input VAT paid on its purchases of goods and services and importations of capital equipment.[19]

On July 4, 2014, notwithstanding BIR Ruling No. DA-VAT-0723 435-2009, petitioner received from the BIR a letter denying its administrative claim for refund amounting to ₱106,217,979.09[20], prompting it to file this Petition for Review on August 4, 2014.

The witness corrected herself saying that petitioner was issued by the BOI a Certification that it is a 100% exporter for year 2009 on January 27, 2010 and not in 2009, as she earlier claimed. She also explained that the BOI Certification was based on documents annually submitted by petitioner and that the Mines and Geoscience Bureau regularly visits the site and checks on their production.

The Court-commissioned ICPA, **Noel Peter F. Cañete**, testified[21] that he examined and audited petitioner's documents in support of its claim for tax refund or credit of its unutilized input VAT for the period April 1 to June 30, 2008. Per his audit and as appearing in his Amended

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[16] Exhibit P-13.
[17] Exhibit P-22.
[18] Exhibits P-1 to P-2.
[19] Exhibit P-17.
[20] Exhibit P-25-a.
[21] Exhibits P-33 to P-33-a.

Report[22], petitioner is entitled to a tax refund or credit in the amount of ₱106,131,308.89. He, however, disallowed the amount of ₱86,670.20 due to various reasons all indicated in Annex 1A of the said Amended Report.

The delay in the submission of his Amended Report was due to petitioner's belated submission of additional documents which were previously stored in its main office in Pororoy, Masbate, showing its export sales for 2009.

After petitioner rested its case[23], respondent's counsel manifested that he had no witness to present.[24]

As directed, respondent filed her Memorandum[25] on December 21, 2015, while petitioner, on January 11, 2016[26].

STATEMENT OF THE ISSUES

The lone issue submitted by the parties for the Court's consideration is as follows[27]:

> Whether or not petitioner is entitled to refund in the amount of Php106,217,979.09 allegedly representing its unutilized input VAT for the quarter April 1 to 30 June 2008.

Petitioner's arguments:

Petitioner claims that it is entitled to a tax refund or credit of its unutilized input VAT for it is a 100% exporter of gold bullion and other mineral products. Besides, its VAT zero-rating status had been confirmed by respondent in BIR Ruling DA-VAT-073 435-2009. Moreover, the BOI already determined its entitlement to zero-rating of its export sales pursuant to RMO No. 9-2000.

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[22] Exhibit P-25.
[23] Resolution dated September 17, 2015, docket, pp. 3018-3020; Resolution dated November 24, 2015, docket, pp. 3040-3041.
[24] Minutes of the hearing on October 5, 2015, docket, p. 3021.
[25] Docket, pp. 3042-3052.
[26] Docket, pp. 3059-3069.
[27] Pre-Trial Order, docket, p. 127.

Respondent's arguments:

Respondent believes otherwise since petitioner failed to prove that its purchases of goods and services were made in the course of its trade and business. Further, it also failed to show that said purchases were properly supported by VAT invoices and/or official receipts and other documents such as entries made in its subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the NIRC of 1997, as amended, and pursuant to Section 4.104-5(a) and (b) of RR No. 7-95.

In addition, petitioner failed to comply with the prescribed checklist of requirements to be submitted in relation to its claims for VAT refund pursuant to RMO No. 53-98. Hence, there was no sufficient compliance with the filing of an administrative claim for refund, a condition *sine qua non prior* to the filing of a judicial claim in accordance with Section 112 of the NIRC of 1997, as amended. Lastly, the claim for refund is strictly construed against petitioner.

THE COURT'S RULING

Under Section 112(A) and (C) of the NIRC of 1997, as amended, A VAT-registered taxpayer whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of taxable quarter when the relevant sales were made, apply for refund or tax credit of its creditable input tax due or paid attributable to such sales, thus:

> "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.
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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 Subsection (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."

The present claim covers the fourth quarter of fiscal year ending June 30, 2008. Counting two years from the said date, petitioner had until June 30, 2010, within which to file its administrative claim for tax credit or refund. Thus, petitioner's administrative claim was seasonably filed with BIR-RDO No. 47-Makati City on June 22, 2010, in accordance with Section 112 (A) of the NIRC of 1997, as amended.

It is however not true with regard to petitioner's judicial claim for tax refund/credit.

Section 112 (C) of the same Tax Code provides that respondent has one hundred twenty (120) days from the date of submission of complete documents by petitioner in support of its refund claim to act on the claim for refund or tax credit by either granting or denying the same. In case of an adverse ruling, the aggrieved taxpayer may, within thirty (30) days from receipt of the decision or after the expiration of the 120-day period without any action thereon, seek judicial intervention via a Petition for Review to be filed with the Court of Tax Appeals.

The Supreme Court elucidated on the application of the prescriptive periods under Section 112 (A) and (C) of the NIRC of 1997, as amended, in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, Philex Mining Corporation v. Commissioner of Internal Revenue,*[28] in this wise:

> "This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period."

Very instructive on the matter is the summary of rules on prescriptive periods involving claims for the refund of input VAT laid down in the case of *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue and Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*[29], to wit:

> "Summary of Rules on Prescriptive Periods Involving VAT We summarize the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, as follows:
>
> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter

[28] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[29] G.R. Nos. 193301 and 194637, March 11, 2013, 693 SCRA 49.

when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on BIR Ruling No. DA- 489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods."

Pursuant to Section 112 (C) of the NIRC, as amended, respondent had 120 days from the time petitioner filed its administrative claim for refund together with its supporting documents on June 22, 2010, to grant or deny petitioner's administrative claim. Since the 120-day period lapsed on October 20, 2010, without any action on the part of respondent, petitioner had 30 days or until November 19, 2010 to seek judicial remedy through a Petition for Review with the CTA. However, petitioner waited until July 4, 2014 when it received the denial of its claim before it filed the instant Petition for Review on August 4, 2014. Unarguably, the belated filing of petitioner's judicial claim on August 4, 2014, or way beyond the 30-day period to appeal, is fatal to its claim for tax refund/credit for failure to observe the mandatory and jurisdictional 120+30 day periods and rendered the Court devoid of jurisdiction over the instant Petition for Review.

In Philex Mining Corporation v. Commissioner of Internal Revenue, one of the cases consolidated in the *San Roque* case, the Supreme Court rejected Philex Mining

Corporation's judicial claim because of late filing and ruled, thus:

> "Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. **Philex filed its judicial claim long after the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
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> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, 'deemed a denial' of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the 'deemed a denial' decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or 'deemed a denial' decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.**" *(Emphasis supplied)*

To recapitulate, the mandatory and jurisdictional rule is that a judicial claim must be filed with the CTA within thirty (30) days from the receipt of the Commissioner's decision denying the administrative claim or from the expiration of the 120-day period without any action from the Commissioner. Otherwise, said judicial claim shall be considered as filed out of time.

Parenthetically, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[30] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[31] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[32]

WHEREFORE, the instant Petition for Review filed by petitioner Phil. Gold Processing & Refining Corporation on August 4, 2014, is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[30] Commissioner of Internal Revenue v. Villa, et al., G.R. No. L-23988, January 2, 1968.
[31] Laresma v. Abellana, G.R. No. 140973, 11 November 2004.
[32] Please refer to De Guzman, et al. v. Escalona, et al., G.R. No. L-51773, 16 May 1980.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice