REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SMCC PHILIPPINES, INC., *Petitioner,*	CTA EB No. 1360 (CTA CASE No. 8356)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 13 2017 3:32 p.m.

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R E S O L U T I O N

MINDARO-GRULLA, J.:

Submitted for resolution is a Motion for Reconsideration filed by petitioner SMCC Philippines, Inc., seeking the reversal of the Decision[1] dated 21 March 2017, which denied the Petition for Review for lack of merit. As per Records Verification dated June 14, 2017, respondent Commissioner of Internal Revenue (CIR) failed to file his comment despite notice.

At the outset, a review of the records of the case would reveal that herein petitioner belatedly filed its Petition for Review before the Court in Division, thereby making the decision of the CIR final and executory. Such decision having

[1] En Banc Docket, pp. 98-118.

become final, the Petition for Review should have been dismissed for it is beyond the jurisdiction of the Court of Tax Appeals.

Section 112(C) of the NIRC, as amended, provides judicial remedy relative to taxpayers' claim for refund of input VAT attributable to zero-rated sales, to wit:

> "SEC. 112. Refunds or Tax Credits of Input Tax.-
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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."** (Emphasis supplied)

Applying the foregoing provision in the case at bar, it seems that there is nothing on record which clearly established the date when petitioner submitted supporting documents that would entitle it to its claim for refund. While there is an allegation that petitioner SMCC submitted documents in support of its claim, there is also nothing on record which would prove if it fell within the prescribed period under the law that will allow the BIR to decide on the validity of the claim pursuant to Revenue Memorandum Circular No. 42-2003[2]. To illustrate;

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[2] II.) Additional paragraphs are hereto added to the last paragraph of RMC No. 42-2003 to read as follows:

March 5, 2010	Administrative Claim filed
April 20, 2010	Checklist requirements for submission of additional documents were served on petitioner SMCC.
May 20, 2010	Last day for submission of additional supporting documents to the BIR.
May 20, 2010 to **September 17, 2010**	120-day period given to BIR to act upon SMCC's administrative claim for refund.
September 17, 2010 to October 17, 2010	30-day period within which to file an appeal before the Court of Tax Appeals via Petition for Review.
September 20, 2011	Letter-denial of BIR served on petitioner SMCC.
October 19, 2011	Petition for Review filed before the CTA Court in Division.

Under the premises, when SMCC was served of the checklist requirements, it should have been considered as a request from the BIR to submit additional documents to support its claim for refund. Thus, within the period from April 20, 2010 through May 20, 2010, SMCC should have submitted the supporting documents requested from it. Thereafter, after the lapse of the 120-day period given to the BIR to act upon the claim, it had 30-days within which to appeal to the CTA Court in Division the decision of the CIR.

While it may seem that the letter-denial was only received by petitioner on September 20, 2011, the letter-denial is already moot as there had already been an ***"implied denial"*** of the claim when the 120-day period from September 17, 2010 through October 17, 2010 had already lapsed.

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?

A-18: x x x

For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete 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 within thirty (30) days from request of the investigating/processing office, which shall be construed as within the one hundred twenty (120) day period.** (Emphasis supplied)

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As correctly pointed out in Presiding Justice Del Rosario's Concurring Opinion[3] in the assailed decision, respondent's ***"deemed denial decision"*** became final and unappealable in view of SMCC's failure to make a timely appeal to the CTA within thirty (30) days from the lapse of the 120-day period from September 17, 2010 or until October 10, 2010[4], to wit:

xxx xxx xxx

> "In *CIR vs. Aichi Forging Company of Asia, Inc[5].,* the Supreme Court clarified the two scenarios contemplated under Section 112(D) of the NIRC [*now Sec. 112(C)*] which are appealable to the CTA within the 30-day period, viz;
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> > '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 before the lapse of the 120-day period; and (2) when no decision is made after the 120-dav period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA**. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.' (*Boldfacing and underscoring supplied*)

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In other words, a decision made by the BIR after the 120 + 30 day period like in the appealed case, is therefore inconsequential as the **inaction of the CIR during the 120-day period is "deemed a denial" of a claim for refund**, and without a timely appeal filed by the taxpayer, the

[3] En Banc Docket, pp. 119-127.
[4] *Ibid.*, p. 122.
[5] CIR vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.

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"deemed a denial" decision of the CIR becomes final and unappealable."

Nevertheless, even granting for the sake of argument that this Court has the power to hear and decide this case, We still find that the Court in Division did not commit any error in ruling that there is no unutilized excess input tax in this case that may be subject of a claim for refund.

In the case at bar, petitioner asserts that the Court in Division erred in interpreting Section 110 (B) of the NIRC, as amended, and insists that the taxpayer has two options in the treatment of input VAT.

The assertion is misplaced and there is no compelling reason to reverse or modify the assailed Decision. The issue raised herein has been exhaustively addressed.

Generally, VAT involves a system of crediting (input) and offsetting (output) taxes accumulated by a VAT-registered taxpayer in a series of transactions in the course of his trade or business. In view of this, the VAT law provides that if at the end of any taxable quarter, the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person, while, on the other hand, if the input tax exceeds the output tax, then the excess shall be carried over to the succeeding quarter or quarters or may be claimed as tax credits.

Apparently, petitioner assumes that pursuant to Section 110 (B) in relation to Section 112 (A) of the NIRC, as amended, a taxpayer has two options in the treatment of its input tax, it identifies the first as the "carry-over option" and the other as the "refund/tax credit option". It also argues that these options are mutually exclusive, and are entirely dependent on the taxpayer's discretion. Thus, it came to a conclusion that the ***"mere presence"*** of input tax attributable to its zero-rated sales makes it eligible to claim for refund[6], provided it has complied with the procedural requirements.

Section 110 (B) of the Tax Code, as amended, clearly states:

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[6] Par. 9, Motion for Reconsideration, En Banc Docket, p. 144.

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> "(B) Excess Output or Input Tax- If at the end of the taxable quarter x x x **the input tax exceeds the output tax, <u>the excess shall be carried over to the succeeding quarter or quarters</u>**: x x x Provided, however, That **<u>any input tax attributable to zero-rated sales by a VAT registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112</u>**." (Emphasis suppied)

Corollarily, Section 112 of the Tax Code provides:

> "(A) Zero-Rated or Effectively Zero-rated Sales - **<u>Any VAT registered person, whose sales are zero-rated or effectively zero-rated</u>** may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, **<u>to the extent that such input tax has not been applied against output tax.</u>** x x x (Emphasis supplied.)

While it is true that the law gives a taxpayer the option to apply for issuance of a tax credit/refund, there is nothing under the said provisions which grants them absolute discretion to choose the refund option by the ***<u>"mere presence"</u>*** of the input VAT.

What the law expressly provides is that any VAT registered person, whose sales are **<u>zero-rated or effectively zero-rated may apply for the issuance of tax credit certificate or refund</u>** of creditable input tax due or paid attributable to such sales, **<u>to the extent that such input tax has not been applied against output tax.</u>** As already discussed in the assailed Decision, the existence of the input VAT and output VAT cannot be considered in isolation.

To summarize, the following conclusions may be derived from the afore-mentioned provisions:

1. Treatment of the input tax refers to the "excess";

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2. The refund option is only available to VAT registered persons whose sales are zero-rated or effectively zero-rated; and

3. The eligibility to avail refund of excess input tax is only to the extent that such input tax has not been applied against output tax.

By citing the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[7], petitioner tries to persuade this Court of a different interpretation of Section 110 (B) with regard to carrying over the excess input VAT over the succeeding quarter/s and claiming it as tax credits. Regrettably, it only highlighted petitioner's error in interpreting the law and misapplying the case.

A careful scrutiny of the case would reveal that the Court explained how excess input VAT may be treated by taking into consideration whether the sales of the VAT registered person are zero-rated or non zero-rated. To wit:

> "Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The **<u>only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated"</u>** under the law, like companies generating power through renewable sources of energy. Thus, a **<u>non zero-rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his 'excess' input VAT under the VAT System. He can only carry-over and apply his 'excess' input VAT against his future output VAT</u>**." (Emphases supplied)

Based on the foregoing, the general rule is that excess input taxes may not be the subject of refund, and the only recourse for a person with excess input taxes is to carry it over to the succeeding quarter/s. The exception is when the input tax results from zero-rated or effectively zero-rated

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[7] Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014.

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transactions where the excess input taxes over the output taxes may be refunded to the taxpayer or credited against other internal revenue taxes.

In the case at bar, the Court in Division has extensively illustrated that there is no unutilized excess input VAT which may be the proper subject of a claim for refund/tax credit certificate under Section 112(A) of the NIRC of 1997, as amended. To reiterate;

"Petitioner summarized its output and input VAT transactions for the year 2008 as follows:

Excess Input VAT - 2007	P 56,110,469.42
Less: TCC Applied for 2007	28,963,994.33
Balance: Excess Input VAT 2007	P 27,146,475.09
Input VAT-2008	
PEZA Transactions	P 16,981,349.73
Non-PEZA Transactions	50,290,987.09
Total Input VAT-2008	P 67,272,336.82
Excess Input VAT 2007	P 27,146,475.09
2008 Input VAT from Non PEZA Transactions	P 50,290,987.09
Total Available Tax Credits	P 77,437,462.18
Less: 2008 Output VAT	P 49,444,183.99
Excess 2008 Input VAT from Non PEZA Transactions	P (27,993,278.19)

The above summary indicates that the claimed amount of P16,981,349.73 remained unutilized because the P27,146,475.09 input VAT carry-over from 2007 and P50,290,987.09 input VAT from 2008 Non-PEZA transactions in the sum of P77,437,462.18 were more than sufficient to cover petitioner's 2008 output VAT liability in the amount of P49,444,183.99. After offsetting the output VAT of P49,444,183.99 from the accumulated input VAT of P77,437,462.18, there still remains an amount of P27,993,278.19 input VAT credits that can be applied to the succeeding period.

However, this Court noted that petitioner was not able to substantiate the input VAT carry-over of P27,146,475.09 and input VAT from 2008 Non PEZA transactions of P50,290,987.09. Without the corresponding VAT invoices or official receipts, the said input taxes cannot be applied against petitioner's 2008 output VAT liability of

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P49,444,183.99 pursuant to Section 110(A)(1) in relation to Section 110(B) of the NIRC of 1997, as amended, which states:

> 'SEC. 110. Tax Credits.-
>
> A. Creditable Input Tax. - xxx
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx xxx
>
> (B) Excess Output or Input Tax. - If at the end of any taxable quarter, the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. xxx'

Considering that the substantiated input VAT claim of P12,801,707.74 is lower than the output VAT liability of P49,444,183.99 as shown below, there is no unutilized excess input VAT which may be the proper subject of a claim for refund/tax credit certificate under Section 112(A) of the NIRC of 1997, as amended:

Output Tax Due	P49,444,183.99
Valid Input VAT	P12,801,707.74
Output Tax Still Due	P36,642,476.25

xxx xxx xxx"

For emphasis, it is settled that tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The basic principle in the construction of laws granting tax exemptions has been very stable. He who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by

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words too plain to be beyond doubt or mistake.[8] Petitioner has the burden of proof to establish the factual basis of its claim for tax refund, which it failed to satisfy.

WHEREFORE, finding no cogent reason to reverse the Decision dated March 21, 2017, the Motion for Reconsideration is hereby **DENIED.**

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[8] City of Iloilo, et.al. vs. Smart Communications, Inc. G.R. No. 167260, February 27, 2009.