Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

NOKIA (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8679
For*:* Refund

Members:
DEL ROSARIO, PJ,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
AUG 09 2016 10:55 a.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review[1] filed by Nokia (Philippines), Inc. as petitioner, against Commissioner of Internal Revenue as respondent for the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[2], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[3], as amended.

[1] Docket, pp. 7-14.
[2] Sec. 7. *Jurisdiction*. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code 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;
x x x x x x

[3] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
x x x x x x

Petitioner seeks the refund or the issuance of a tax credit certificate (TCC) in the amount of FIFTY-FIVE MILLION ONE HUNDRED THIRTY-FOUR THOUSAND SIX HUNDRED NINETY-FOUR PESOS AND THIRTEEN CENTAVOS (₱55,134,694.13), representing its alleged unutilized creditable input value-added tax (VAT) attributable to its zero-rated sales for the first (1st), second (2nd), third (3rd), and fourth (4th) quarters of taxable year 2011.

Petitioner Nokia (Philippines), Inc., is a corporation duly organized under Philippine laws, with principal office at the 40th Floor, Philamlife Tower, 8767 Paseo de Roxas Street, Salcedo Village, Makati City. It is a VAT-registered entity, under Certificate of Registration No. 8RC0000019384.[4]

> (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 Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;
>
> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
>
> x x x x x x

[4] Pars. 1 and 2, Facts, Pre-Trial Order, Docket, pp. 338-339; Exhibit "P-1", Docket, p. 516.

On the other hand, respondent is the then Commissioner of the Bureau of Internal Revenue (BIR), vested by law with authority to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for taxable year 2011 on the following dates:[5]

VAT RETURN	DATE FILED
1st Quarter	July 22, 2011[6]
2nd Quarter	July 22, 2011
3rd Quarter	October 24, 2011
4th Quarter	May 4, 2012

Petitioner allegedly accumulated unutilized creditable input VAT attributable to its zero-rated sales during the four quarters of taxable year 2011 in the total amount of ₱55,134,694.13, broken down as follows:[7]

PERIOD COVERED	AMOUNT
1st Quarter	₱ 15,498,890.60
2nd Quarter	12,601,716.31
3rd Quarter	15,858,783.18
4th Quarter	11,175,304.04
TOTAL	**₱55,134,694.13**

On March 1, 2013, petitioner filed its administrative claim for refund or issuance of tax credit certificate with respondent as regards its alleged unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2011.[8]

[5] Pars. 3 to 7, Facts, Pre-Trial Order, Docket, p. 339; Exhibits "P-2" to "P-6", Docket, pp. 517-526.
[6] Original filed on April 19, 2011.
[7] Par. 8, Facts, Pre-Trial Order, Docket, p. 339.
[8] Exhibits "P-14" and "P-15", Docket, pp. 541-544; Exhibits "R-1" and "R-2", BIR Records, pp. 2-6.

Subsequently, Letter of Authority (LOA) No. 126-2013-00000004 was issued on March 14, 2013, which was received by petitioner on March 20, 2013.[9] On the same date, petitioner received a letter from respondent entitled Checklist of Requirements and First Request for Presentation of Records, requesting petitioner to present or furnish copies of specific documents and records within ten (10) days from receipt thereof.[10] Consequently, petitioner wrote a letter to respondent dated March 21, 2013, requesting an additional period of thirty (30) days, or until April 21, 2013, to submit the required documents.[11]

On April 15, 2013, petitioner submitted some of the documents requested by respondent.[12] Meanwhile, on April 23, 2013 and on May 8, 2013, respondent respectively issued its First[13] and Second[14] Notices for the Presentation of Books of Accounts and Other Accounting Records.

In a letter dated and received by respondent on May 16, 2013, petitioner again requested an additional period of 30 days or until June 17, 2013 to submit the required documents.[15]

Thereafter, petitioner filed the instant Petition for Review before this Court on July 29, 2013[16]; while respondent filed her Answer[17] thereto on September 30, 2013.

The case was set for a pre-trial conference on November 15, 2013.[18] Thus, respondent filed her Pre-Trial Brief[19] on November 11, 2013; while petitioner filed its Pre-Trial Brief[20] on November 12, 2013.

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[9] Exhibits "R-3", BIR Records, p. 8.
[10] Exhibit "R-4", BIR Records, p. 7.
[11] Exhibit "R-5", BIR Records, p. 9.
[12] Exhibit "R-6", BIR Records, pp. 10-11.
[13] Exhibit "R-7", BIR Records, p. 13.
[14] Exhibit "R-8", BIR Records, p. 15.
[15] Exhibit "R-9", BIR Records, p. 16.
[16] Docket, p. 7.
[17] Docket, pp. 97-112.
[18] Resolution dated October 8, 2013, Docket, p. 124.
[19] Docket, pp. 125-128.
[20] Docket, pp. 130-137.

On November 29, 2013, petitioner received another letter from respondent, acknowledging petitioner's submission of invoices, lists, and other documents but stating that some of the other necessary documents have not yet been submitted. She again requested petitioner's submission of the required documents within fifteen (15) days from receipt thereof, and further stated that should it fail to comply within the desired date, respondent shall be constrained to deny petitioner's claim for refund.[21]

Moreover, on November 29, 2013 and on December 19, 2013, the parties filed their Joint Stipulation of Facts and Issues[22] and Supplemental Joint Stipulation of Facts and Issues[23], respectively; which were approved by the Court in its Resolution[24] dated January 2, 2014. Afterwards, the Pre-Trial Order[25] was issued on January 16, 2014.

Meanwhile, on April 7, 2014, respondent wrote to petitioner, denying the latter's claim for refund in the amount of ₱55,134,694.13, for petitioner's purported failure to submit the documents and records necessary to validly substantiate its claim for refund despite the ample time given within which to comply.[26]

During trial, petitioner presented the following witnesses: (1) Mr. Glenn Ian R. Villanueva[27] – Court-commissioned Independent Certified Public Accountant (CPA); (2) Mr. Richard A. Baliola[28] – petitioner's Revenue and Tax Analyst; and (3) Ms. Jocelyn Lapira[29] – petitioner's Financial Shared Services Manager. Petitioner likewise formally offered its documentary evidence on May 22, 2014.[30]

[21] Exhibit "R-10", BIR Records, pp. 231-233.
[22] Docket, pp. 283-285.
[23] Docket, pp. 303-307.
[24] Docket, pp. 309-310.
[25] Docket, pp. 338-345.
[26] Exhibit "R-11", BIR Records, pp. 234-235.
[27] Minutes of the Hearing dated February 20, 2014, Docket, pp. 352-357; Minutes of the Hearing dated April 22, 2014, Docket, pp. 486-489.
[28] *Id.*
[29] Minutes of the Hearing dated February 20, 2014, Docket, p. 457.
[30] Formal Offer of Evidence, Docket, pp. 492-515.

Petitioner's documentary evidence are as follows:

Exhibit	Description
P-1	Nokia BIR Registration as a VAT Taxpayer under Certificate of Registration (COR) No. 8RC0000019384
P-2	E-FILING: Nokia Quarterly VAT Return for the 1st Quarter of taxable year 2011
P-3	E-FILING: Amended Nokia Quarterly VAT Return for the 1st Quarter of taxable year 2011
P-3-A	Summary List of Purchases for the 1st Quarter of taxable year 2011
P-3-B	Schedule of Purchases for the 1st Quarter of taxable year 2011
P-4	E-FILING: Nokia Quarterly VAT Return for the 2nd Quarter of taxable year 2011
P-4-A	Summary List of Purchases for the 2nd Quarter of taxable year 2011
P-4-B	Schedule of Purchases for the 2nd Quarter of taxable year 2011
P-5	E-FILING: Nokia Quarterly VAT Return for the 3rd Quarter of taxable year 2011
P-6	E-FILING: Amended Nokia Quarterly VAT Return for the 3rd Quarter of taxable year 2011
P-6-A	Summary of List of Purchases for the 3rd Quarter of taxable year 2011
P-6-B	Schedule of Purchases for the 3rd Quarter of taxable year 2011
P-7	E-FILING: Nokia Quarterly VAT Return for the 4th Quarter of taxable year 2011
P-8	E-FILING: Amended Nokia Quarterly VAT Return for the 4th Quarter of taxable year 2011

P-8-A	Summary List of Purchases for the 4th Quarter of taxable year 2011
P-8-B	Schedule of Purchases for the 4th Quarter of taxable year 2011
P-9	E-FILING: Nokia Quarter VAT Return for the 1st Quarter of taxable year 2012
P-10	E-FILING: Nokia Quarter VAT Return for the 2nd Quarter of taxable year 2012
P-11	E-FILING: Nokia Quarterly VAT Return for the 3rd Quarter of taxable year 2012
P-12	E-FILING: Nokia Quarterly VAT Return for the 4th Quarter of taxable year 2012
P-13	E-FILING: Amended Nokia Quarterly VAT Return for the 4th Quarter of taxable year 2012
P-14	Administrative claim for refund dated February 25, 2013 filed on March 1, 2013, and transmittal of pertinent documents in support of the claim
P-16	Authenticated Certificate of Fiscal Residence, issued by the Large Taxpayer's Office of Finland
P-17	Notarized and certified extract of Trade Register of Nokia Corp. (Finland), consisting of twenty-two (22) pages
P-18	Certificate of Non-Registration of the Company from the Securities and Exchange Commission (SEC) of Nokia Corp. (Finland) or Nokia OYJ
P-19	Service contract between Petitioner and Nokia Corporation (Finland)
P-20	Judicial Affidavit of Ms. Jocelyn L. Lapira
P-20-A	Signature of Ms. Jocelyn L. Lapira as affixed in her judicial affidavit
P-21	Nokia Articles of Incorporation
P-22	Nokia Audited Financial Statements
P-23	E-FILING: Amended Nokia Quarterly VAT Return for the 1st Quarter of taxable year 2012 c

P-24	Judicial Affidavit of Mr. Glenn Ian D. Villanueva
P-24-A	Signature of Mr. Glenn Ian D. Villanueva
P-25	Final Report of the Independent CPA on the Results of the Procedures Performed for the Claim for Refund/TCC of Unutilized Input VAT for the period January 1, 2011 to December 31, 2011
P-26	Petition for Review
P-27	Bank Certification
P-27-A	First Quarter 2011 Official Receipts and Invoices
P-27-B	Second Quarter 2011 Official Receipts and Invoices
P-27-C	Third Quarter 2011 Official Receipts and Invoices
P-27-D	Fourth Quarter 2011 Official Receipts and Invoices
P-27-E	First Quarter 2011 IERD's, BOC Official Receipts, SADs and SSDT's
P-27-F	Second Quarter 2011 IEIRD's BOC Official Receipts, SADs and SSDT's
P-27-G	Third Quarter 2011 IEIRD's, BOC Official Receipts, SADs and SSDT's
P-27-H	Fourth Quarter 2011 IEIRD's, BOC Official Receipts, SADs and SSDT's
P-28	Netting Statements
P-29	Zero-rated Sales Official Receipts
P-29-A	Zero-rated Sales Invoices
P-30	Bank Statement issued by Bank of America Singapore Branch – US Dollar
P-30-A	Bank Statement issued by Bank of America Manila Branch – Phil. Peso
P-30-B	Bank Statement issued by Bank of America Manila Branch – US Dollar
P-30-C	Certificate of Inward Remittance

P-31	12% VAT Official Receipts
P-31-A	12% VAT Invoices
P-32	BSP Peso-Dollar Exchange Rates for 2011
P-33	Screenshot of Journal Entries for Offsetting
P-34	Judicial Affidavit of Mr. Glenn Ian D. Villanueva, covering his testimony on his report as an Independent CPA dated April 15, 2014
P-34-A	Signature of Mr. Glenn Ian D. Villanueva

The Court issued a Resolution[31] on September 23, 2014, admitting, as petitioner's evidence, Exhibits "P-1", "P-2", "P-3", "P-3-A", "P-3-B", "P-4", "P-4-A", "P-4-B", "P-5", "P-6", "P-6-A", "P-6-B", "P-7", "P-8", "P-8-A", "P-8-B", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-16", "P-17", "P-18", "P-19", "P-20", "P-20-A", "P-21", "P-22", "P-23", "P-24", "P-24-A", "P-25", "P-26", "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-28", "P-29", "P-29-A", "P-30", "P-30-A", "P-30-B", "P-30-C", "P-31", "P-31-A", "P-32", "P-33", "P-34", and "P-34-A". However, the Court denied the admission of Exhibit "P-15" for failure of petitioner to identify the same.

On the other hand, respondent presented Ms. Maureen Gay B. Oligane as her lone witness[32]. Upon submission of respondent's Formal Offer of Documentary Evidence[33] on March 25, 2015, the Court admitted "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", and "R-12-A" as respondent's evidence.[34]

The documentary evidence offered by the respondent and admitted by the Court are as follows:

<u>Exhibit</u> <u>Description</u>

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[31] Docket, pp. 724-725.
[32] Minutes of the Hearing dated March 10, 2015, Docket, pp. 759-760.
[33] Docket, pp. 764-771.
[34] Resolution dated May 5, 2015, Docket, pp. 777-778.

R-1	Letter dated 25 February 2013
R-2	Application for Tax Credits/Refunds (BIR Form 1914)
R-3	Letter of Authority LOA-126-2013-00000004 dated 14 March 2013
R-4	Checklist of Requirements and First Request for Presentation of Records
R-5	Letter dated 21 March 2013
R-6	Letter dated 15 April 2013
R-7	First Notice for the Presentation of Books of Accounts and Other Accounting Records
R-8	Second and Final Notice for the Presentation of Books of Accounts and other Accounting Records
R-9	Letter dated 16 May 2013
R-10	Letter addressed to the President of Nokia; Attention to Margarita D. Prieto
R-11	Letter addressed to the President of Nokia dated 07 April 2014
R-12	Judicial Affidavit of Maureen Gay B. Oligane
R-12-A	Signature of Maureen Gay B. Oligane

As directed by the Court, petitioner filed its Memorandum[35] on June 23, 2015; while respondent filed her Memorandum[36] on August 25, 2015. Accordingly, the case was declared submitted for decision on September 2, 2015.[37]

The parties submitted the following issue for this Court's disposition: *ℓ*

[35] Docket, pp. 788-800.
[36] Docket, pp. 824-847.
[37] Resolution dated September 2, 2015, Docket, p. 850.

> Whether petitioner is entitled to a tax refund or a tax credit certificate for the input VAT payments allocated or attributable to its zero-rated sales for the 1st, 2nd, 3rd and 4th quarters of taxable year 2011 in the amount of ₱55,134,694.13.

Petitioner insists that its claim for tax refund or issuance of a tax credit certificate should be granted. It avers that it has complied with the rules and regulations with regard to recovery of taxes collected or received within the period provided in Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.[38] Petitioner also alleges that it has established rendering services subject to zero-rated VAT and substantiated its claim with relevant supporting documents.[39] Moreover, it maintains that the amounts of creditable input taxes incurred during the subject period are properly allocated.[40] Petitioner adds that its input VAT acquired during the four quarters of taxable year 2011 was not applied against any output VAT in the succeeding periods.[41]

In her Answer[42] filed on September 30, 2013, respondent argues that petitioner's claim for refund should not be given due course for lack of jurisdiction, for failure to exhaust all administrative remedies before elevating the case to this Court, and for having its judicial claim for refund prematurely filed. According to respondent, petitioner failed to comply with the mandatory 120-day period which should be reckoned from the date of submission of complete documents in support of the application. She further avers that petitioner failed to establish its right to refund, which is to be construed strictly against the entity claiming the same.

Moreover, respondent maintains that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted

[38] Memorandum for Petitioner, Docket, p. 791.
[39] *Ibid,* Docket, p. 793.
[40] *Ibid,* Docket, p. 797.
[41] *Ibid,* Docket, p. 799.
[42] Docket, pp. 97-112.

upon filing.[43] She likewise asserts that petitioner failed to establish that the recipient of its services do business outside the Philippines; hence, its claim for refund must be denied.[44]

Section 112(C) and (A) of the NIRC of 1997, as amended, provides for the period when claims for refund or tax credit of input tax may be filed, 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

[43] Memorandum, Docket, p. 827.
[44] Memorandum, Docket, p. 839.

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."

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*,[45] the Supreme Court had the occasion to discuss the application of the 120-day and 30-day periods mentioned in Section 112 of the NIRC of 1997, as amended. It ruled that the 120-day waiting period is mandatory and jurisdictional, and that failure to observe such violates the doctrine of exhaustion of administrative remedies. In the said case, the Supreme Court held:

"Contrary to the specified periods, specifically those that are provided in the second paragraph of Section 112(D), MPC filed its petition for review with the CTA on March 26, 2002, or a mere 15 days after it filed an administrative claim for

[45] G.R. No. 180434, January 20, 2016.

refund with the CIR on March 11, 2002. It then did not wait for the lapse of the 120-day period expressly provided for by law within which the CIR shall grant or deny the application for refund. The Court's pronouncement in *CIR v. San Roque Power Corporation* is instructive on the effect of such failure to comply with the 120-day waiting period, to wit:

> 1. **Application of the 120+30-Day Periods**
>
> x x x x
>
> It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**
>
> **Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition.** Philippine jurisprudence is replete with cases

upholding and reiterating these doctrinal principles.

The charter of the CTA expressly provides that its jurisdiction is to review on appeal '**decisions** of the [CIR] in cases involving x x x refunds of internal revenue taxes.' When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no 'decision' of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within **'a specific period'** required by law, such **'inaction shall be deemed a denial'** of the application for tax refund or credit. It is the Commissioner's decision, or inaction 'deemed a denial,' that the taxpayer can take to the CTA for review. Without a decision or an 'inaction x x x deemed a denial' of the Commissioner, the CTA has no jurisdiction over a petition for review. xxx

The Court explained further:

The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will**

> **always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period.** With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.
>
> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional. xxx

The cited exception to the general rule, which came as a result of the issuance of BIR Ruling No. DA-489-03, does not apply to MPC's case as its administrative and judicial claims were both filed in March 2002.

The doctrine laid down in *San Roque* was reiterated in subsequent cases. In *CIR v. Aichi Forging Company of Asia, Inc.*, the Court cited the general rule that **parties must observe the mandatory 120-day waiting period to give**

> **the CIR an opportunity to act on administrative claims; otherwise, their judicial claims are prematurely filed.** In *Team Energy Corporation (formerly MPC) v. CIR*, the Court again emphasized the rule stating that **'the 120-day period is crucial in filing an appeal with the CTA.' '[T]he 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period.'**
>
> **Clearly, MPC's failure to observe the mandatory 120-day period under the law was fatal to its immediate filing of a judicial claim before the CTA. It rendered the filing of the CTA petition premature, and barred the tax court from acquiring jurisdiction over the same. Thus, the dismissal of the petition is in order.** '[T]ax refunds or tax credits - just like tax exemptions - are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.'" *(Emphasis supplied)*

Moreover, in the recent case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[46] the Supreme Court *En Banc* held that in claims for tax credit or refund filed prior to June 11, 2014, or the issuance of Revenue Memorandum Circular (RMC) No. 54-2014, the reckoning point in counting the 120-day period is the date of submission of complete documents. In that case, the Supreme Court *En Banc* pronounced:

> "Section 112 (C) of the NIRC provides:
>
> **SEC. 112. Refunds or Tax Credits of Input Tax. –** ↳

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

x x x x

> *(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 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.
>
> xxx xxx xxx

From the above, it is apparent that the CIR has 120 days from the date of submission of complete documents to decide a claim for tax credit or refund of creditable input taxes. The taxpayer may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a 'denial due to inaction,' appeal the decision or unacted claim to the CTA.

To be clear, Section 112(C) categorically provides that the 120-day period is counted

'from the date of submission of complete documents in support of the application.' Contrary to this mandate, the CTA *En Banc* counted the running of the period from the date the application for refund was filed or May 15, 2008, and, thus, ruled that the judicial claim was belatedly filed.

This should be corrected.

Indeed, the 120-day period granted to the CIR to decide the administrative claim under Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.

A hypothetical situation illustrates the hazards of granting the CIR the authority to decide when complete documents have been submitted - A taxpayer files its administrative claim for VAT refund/credit with supporting documents. After 121 days, the CIR informs the taxpayer that it must submit additional documents. Considering that the CIR had determined that complete documents have not yet been submitted, the 120-day period to decide the administrative claim has not yet begun to run. In the meantime, more than 120 days have already passed since the application with the supporting documents was filed to the detriment of the taxpayer, who has no opportunity to file a judicial claim until the lapse of the 120+30 day period in Section 112(C). With no limitation to the period for the CIR to determine when complete documents have been submitted, the taxpayer may be left in a limbo and at the mercy of the CIR, with no adequate remedy available to hasten the processing of its administrative claim.

Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under present law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?*

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.

xxx xxx xxx

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. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:

> 'The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach **a statement under oath** attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical

> person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/ claimant.'

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.

On this score, the Court finds that the foregoing issuance **cannot be applied retroactively to the case at bar** since *it imposes new obligations upon taxpayers in order to perfect their administrative claim*, that is, [1] compliance with the mandate to submit the 'supporting documents' enumerated under RMC 54-2014 under its 'Annex A'; and [2] the filing of 'a statement under oath attesting to the completeness of the submitted documents,' referred to in RMC 54-2014 as 'Annex B.' This should not prejudice taxpayers who have every right to pursue their claims in the manner provided by existing regulations at the time it was filed.

As provided under Section 246 of the Tax Code:

> **SEC. 246**. ***Non-Retroactivity of Rulings.*** - Any revocation, modification or reversal *of any of the rules and regulations* promulgated in accordance with the preceding Sections *or any of the rulings or circulars promulgated by the Commissioner* **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. [Emphasis and Italics Supplied]

Applying the foregoing precepts to the case at bench, it is observed that the CIR made no effort to question the inadequacy of the

> documents submitted by Total Gas. It neither gave notice to Total Gas that its documents were inadequate, nor ruled to deny its claim for failure to adequately substantiate its claim. Thus, for purposes of counting the 120-day period, it should be reckoned from August 28, 2008, the date when Total Gas made its 'submission of complete documents to support its application' for refund of excess unutilized input VAT. Consequently, counting from this later date, the BIR had 120 days to decide the claim or until December 26, 2008. With absolutely no action or notice on the part of the BIR for 120 days, Total Gas had 30 days or until January 25, 2009 to file its judicial claim." *(Emphasis supplied)*

In the instant case, petitioner filed its administrative claim on March 1, 2013[47], submitting copies of certain documents but expressly reserving the right to submit additional documents in support of the refund claim as the exigencies arise. Thereafter, on March 20, 2013, it received a letter from respondent stating that it must present or furnish copies of specific documents and records within ten (10) days from receipt thereof.[48]

In a letter dated March 21, 2013 and received by respondent on March 22, 2013, petitioner acknowledged respondent's Checklist of Requirements and First Request for Presentation of Records, and requested an additional period of thirty (30) days from receipt thereof or until April 21, 2013, to submit the required documents.[49]

On April 15, 2013, petitioner submitted some of the documents requested by respondent.[50] Then, on April 23, 2013 and on May 8, 2013, respondent issued its First[51] and

[47] Exhibits "P-14" and "P-15", Docket, pp. 541-544; Exhibits "R-1" and "R-2", BIR Records, pp. 2-6.
[48] Exhibit "R-4", BIR Records, p. 7.
[49] Exhibit "R-5", BIR Records, p. 9.
[50] Exhibit "R-6", BIR Records, p. 11.
[51] Exhibit "R-7", BIR Records, p. 13.

Second[52] Notices for the Presentation of Books of Accounts and Other Accounting Records.

Petitioner again wrote to respondent on May 16, 2013 to request an additional period of thirty (30) days from receipt thereof, or until June 17, 2013, to submit the required documents.[53] Thereafter, petitioner filed its judicial claim before this Court on July 29, 2013.[54]

On November 29, 2013, petitioner received another letter from respondent, acknowledging petitioner's submission of invoices, lists, and other documents but stating that some of the other necessary documents have not yet been submitted. She again requested for petitioner's submission of the required documents within fifteen (15) days from receipt thereof, and further stated that should it fail to comply within the desired date, she shall be constrained to deny petitioner's claim for refund.

From the foregoing, it can be observed that petitioner itself repeatedly requested the granting of an additional period, within which to submit complete supporting documentary requirements, and thus acknowledging that its submission of documents was just partial. In fact, in its May 16, 2013 letter, petitioner specifically requested an extension period of until June 17, 2013, within which to submit the supporting documents.

Based on Section 112(C) of the NIRC of 1997, as amended, and the above-mentioned jurisprudence, the 120-day period must be reckoned from the filing of the complete documents, or expiration of the period given. It is only upon petitioner's submission of complete documents, or upon manifestation of petitioner that it no longer wishes to submit any additional documents, that the 120-day period would begin to run.

[52] Exhibit "R-8", BIR Records, p. 15.
[53] Exhibit "R-9", BIR Records, p. 16.
[54] Docket, p. 7.

In the instant case, considering that petitioner itself asked for an extension period of until June 17, 2013 within which to submit the supporting documents, and that it did not submit such documents within the said period, then the counting of the 120-day period should be reckoned on June 17, 2013. Accordingly, petitioner should have waited for the lapse of 120 days from June 17, 2013, before filing the instant Petition for Review.

Since petitioner filed the Petition for Review on July 29, 2013, which was within the mandatory and jurisdictional 120-day period, the Court finds that the case was filed prematurely. Consequently, this Court has no jurisdiction over the present case.

WHEREFORE, premises considered, the Petition for Review filed by Nokia (Philippines), Inc. is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, 1st Division