

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MITSUBA PHILIPPINES
TECHNICAL CENTER
CORPORATION,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

CTA EB NO. 2631
(CTA Case No. 10025)

Present:

DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

Promulgated:

MAY 26 2023

11:40am

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DECISION

RINGPIS-LIBAN, J.:

The Case

Before the Court is a Petition for Review seeking the reversal of the Decision¹ (“Assailed Decision”) dated October 06, 2021 and Resolution² (“Assailed Resolution”) dated May 19, 2022 of the Court of Tax Appeals Second Division (“Second Division”), denying for lack of jurisdiction Petitioner’s claim for issuance of a Tax Credit Certificate (“TCC”) of its alleged excess and unutilized input value-added tax (“VAT”) on its local purchases of goods and services attributable to zero-rated sales for the period from July 01, 2016 to

¹ Penned by Associate Justice Jean Marie A. Bacorro-Villena and with Associate Justice Juanito C. Castañeda, Jr. concurring. Docket, pp. 791-809.

² Penned by Associate Justice Jean Marie A. Bacorro-Villena and with Associate Justices Juanito C. Castañeda, Jr. and Lane S. Cui-David concurring. *Id.*, pp. 831-837.

December 31, 2016 or the 3rd and 4th quarters of taxable year (“TY”) 2016 in the aggregate amount of Php3,265,900.00.

The Parties

Petitioner is a domestic corporation registered with the Securities and Exchange Commission (SEC) with Company Registration No. A200006072 and office address at 3rd Floor, Dusit Thani Manila, EDSA corner Arnaiz Avenue, Ayala Center, Makati City. It is also registered with the Bureau of Internal Revenue (“BIR”) as a VAT taxpayer with Taxpayer’s Identification No. (TIN) 206-234-187-000, as evidenced by BIR Certificate of Registration No. OCN 9RC0000613432. Its primary purpose is to provide technical design, trial drawings and production drawings for autoparts, such as but not limited to electrical body parts, wiper system, sunroof motors, power seat, electrical chassis parts, electrical engine parts and its components.³

Respondent is the Commissioner of Internal Revenue (CIR), who was duly appointed and is empowered to perform the duties of his office, including the power to grant or deny a refund for creditable input taxes pursuant to Section 112(C) of the National Internal Revenue Code (“NIRC”) of 1997, as amended, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.⁴

The Facts

The facts as found by the Second Division are as follows:

“Petitioner duly filed its Quarterly VAT Returns for the 3rd and 4th quarters of TY 2016 on 21 October 2016 and 25 January 2017, respectively.

On 27 September 2018, petitioner filed with the BIR Revenue District Office (RDO) No. 47-East Makati its Application for Tax Credits/Refunds (BIR Form No. 1914), covering the period from 01 July 2016 to 31 December 2016 (or the 3rd and 4th quarters of TY 2016), in the aggregate amount of [Php]3,265,900.00. On even date, Revenue Officer (RO) Ragelyn Dicta (Dicta) executed the Revised Checklist of Mandatory Requirements for Claims for VAT Refund, noting the filing of the supporting documents to petitioner’s administrative claim.

On 22 October 2018, petitioner, through a letter addressed to RO John Paul L. Virtudes (Virtudes), submitted the original

³ *Id.*, Decision, Parties of the Case, p. 792.

⁴ *Id.*, pp. 792-793.

copies of sales invoices, billing invoices and official receipts (ORs) for purchases of goods and services for the 3rd and 4th quarters of TY 2016.

Thereafter, the BIR issued Tax Verification Notice (TVN) dated 03 October 2018, informing petitioner that RO Virtudes of RDO 47-East Makati was authorized to verify the supporting documents and/or pertinent records relative to petitioner's claim for VAT refund covering the period 01 July 2016 to 31 December 2016. Revenue District Officer Mahinardo G. Mailig (RDO Mailig) signed the said TVN.

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On 19 February 2019...petitioner filed the instant Petition for Review before the Court in Division to appeal the deemed denial due to inaction on its administrative claim. The same was raffled to the Second Division and docketed as CTA Case No. 10025.”⁵

The Ruling of the Second Division

On October 06, 2021, the Second Division promulgated the Assailed Decision denying the Petition for Review, the dispositive portion of which reads:

“**WHEREFORE**, premises considered, the instant Petition for Review filed on 19 February 2019 by petitioner Mitsuba Philippines Technical Center Corporation is hereby **DENIED** [*sic*]for lack of jurisdiction.

SO ORDERED.”⁶

Aggrieved, Petitioner filed a “Motion for Reconsideration”⁷ on November 22, 2021, which the Second Division denied in the Assailed Resolution on May 19, 2022, to wit:

“**WHEREFORE**, premises considered, the present Motion for Reconsideration, filed by petitioner Mitsuba Philippines Technical Center Corporation on 22 November 2021, is hereby **DENIED** for lack of merit.

⁵ *Id.*, Decision, Facts of the Case, pp. 793-794.

⁶ *Id.*, p. 808.

⁷ *Id.*, pp. 810-817.

SO ORDERED.⁸

The Proceedings in the Court of Tax Appeals En Banc

On June 07, 2022, Petitioner filed the present “Petition for Review”⁹.

On June 23, 2022, the Court issued a Resolution¹⁰ directing Respondent to comment on the Petition for Review within ten (10) days from receipt.

On July 08, 2022, Respondent filed his “Comment/Manifestation”¹¹.

Thus, on August 17, 2022, a Resolution¹² was issued submitting the instant case for decision.

Assignment of Error

Petitioner raises a single ground in support of his petition – the Honorable Court’s Second Division erred in ruling that Petitioner’s judicial claim for refund or tax credit filed on February 19, 2019 was filed out of time.¹³

The Arguments of Parties

Petitioner asserts that the reckoning of the running of the 90-day period starts from the time of the submission of official receipts, sales invoices and other documents with the BIR, pursuant to Section 112(C) of the NIRC of 1997, as amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (“TRAIN”) Law. In the same way, Petitioner avers that Revenue Regulation No. 26-2018 is clear in stating that the application for refund shall be considered to have been filed only upon submission of the official receipts or invoices and other supporting documents in support of the application filed. Impliedly, this means that the claimant may still submit supporting documents after the filing of his or her application for refund.

Moreover, Petitioner claims that with the deletion of the phrase “complete documents” under the TRAIN Law, the taxpayer is not required under the law to submit complete documents upon the filing of an administrative claim for VAT refund or tax credit.

⁸ *Id.*, p. 837.

⁹ Rollo, pp. 1-13. Record shows that Petitioner received the Assailed Resolution on May 24, 2022; Docket, p. 830.

¹⁰ *Id.*, pp. 47-48.

¹¹ *Id.*, pp. 49-52.

¹² *Id.*, pp. 56-57.

¹³ *Id.*, Petition for Review, Statement of the Issue, p. 5.

On the other hand, Respondent in his Comment/Manifestation, manifests that the arguments raised by Petitioner in its “Petition for Review” are a complete rehash of its arguments in its “Motion for Reconsideration” with the court *a quo*, and as such Respondent shall adopt the defenses he raised in his “Answer” and “Comment *Ad Cautelam*” also both filed with the Second Division as his comment and opposition to the instant petition.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner’s “Motion for Reconsideration”, on May 19, 2022. Petitioner received said Resolution on May 24, 2022.¹⁴ Pursuant to Rule 4, Section 2(a)(1)¹⁵ in relation to Rule 8, Section 3(b)¹⁶ of the Revised Rules of the Court of Tax Appeals¹⁷ (“RRCTA”), Petitioner had fifteen (15) days from date of receipt of the resolution or until June 08, 2022 within which to file its petition for review.

On June 07, 2022, Petitioner timely filed the present “Petition for Review”. Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the instant Petition for Review is a reproduction of the

¹⁴ Docket, p. 830.

¹⁵ **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

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(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

¹⁶ **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

¹⁷ A.M. No. 05-11-07-CTA, November 22, 2005.

“Motion for Reconsideration”¹⁸ filed by Petitioner on November 22, 2021 before the Second Division, the arguments of which had been fully and exhaustively resolved by the Court in Division. Nevertheless, for purposes of emphasis, the Court *En Banc* will discuss them anew.

The Second Division did not err in dismissing Petitioner’s claim for issuance of a TCC in the amount of Php3,265,900.00 for lack of jurisdiction

Section 112 of the NIRC of 1997, as amended by TRAIN Law, provides as follows:

“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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(C) Period within which Refund of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund for creditable input taxes **within ninety (90) days from the date**

¹⁸ Docket, pp. 810-817.

of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.”¹⁹

Pursuant to the above provision, certain requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. One of these is the timeliness of the filing of the administrative and judicial claims, which is composed of two (2) parts:

- 1) the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made; and
- 2) that in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision.

According to the Second Division, Petitioner belatedly filed its “Petition for Review” on February 19, 2019.

We analyze.

For the *first* requisite, it is without doubt that Petitioner was able to file its administrative claim within the two-year period. The present claim covers the 3rd and 4th quarters of TY 2016. Counting two (2) years from the close of each taxable quarters, the respective last days for filing the administrative claim are as follows:

Period	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of the Administrative Claim
3rd Quarter	September 30, 2016	September 30, 2018	September 27, 2018 ²⁰
4th Quarter	December 31, 2016	December 31, 2018	

¹⁹ *Emphasis supplied.*

²⁰ Docket, Application for Tax Credits/Refund (BIR Form No. 1914), Exhibit “P-29”, p. 702.

Petitioner's administrative claim with the BIR was filed on September 27, 2018 or before the end of the two-year period for each quarter. Thus, Petitioner complied with the first requirement.

As for the second requirement, the NIRC of 1997, as amended by TRAIN Law provides that the BIR is given ninety (90) days to act on the claim. During this period, the BIR can grant or deny (whether fully or partially) or not act on the VAT refund claim.

If the BIR does not act on the claim within the 90-day period, the same is considered deemed denied. Jurisprudence is clear on this point.²¹ Particularly, the Supreme Court in *Aichi Forging Company of Asia, Inc. v. Court of Tax Appeals - En Banc, Et. Al.*²² held, to wit:

“From the submission of the complete documents to support the claim, the CIR has a period of one hundred twenty (120) days [now ninety (90) days] to decide on the claim. If the CIR decides within the 120-day [now 90-day] period, the taxpayer may initiate a judicial claim by filing within 30 days an appeal before the CTA. **If there is no decision within the 120-day [now 90-day] period, the CIR's inaction shall be deemed a denial of the application.** In the latter case, the taxpayer may institute the judicial claim, also by an appeal, within 30 days before the CTA.”²³

Now the issue before Us is the reckoning date of the 90-day period. Section 112 of the NIRC of 1997, as amended by TRAIN Law, states that it should be “from the date of submission of the official receipts or invoices and other documents in support of the application”. In the Assailed Decision and Assailed Resolution, the Court *a quo* equated this with Petitioner's filing of its administrative claim on September 27, 2018. Petitioner on the contrary believes that it should be counted from October 22, 2018, the day the BIR received the original copies of the official receipts or invoices and other documents in support of Petitioner's administrative claim.

To be sure, before the amendment of the TRAIN Law, the period within which the BIR should act on the taxpayer's claim for refund or tax credit is counted “from the date of submission of complete documents”. Previously, Section 112(D) of the NIRC of 1997 was stated in this wise:

²¹ Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113 and 197156, February 12, 2013; Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014; Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015; Silicon Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182737, March 02, 2016.

²² G.R. No. 193625, August 30, 2017.

²³ *Emphasis and underscoring supplied.*

“(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.”²⁴

The Supreme Court then interpreted this provision in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*²⁵ to mean that it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. The taxpayer may have already completed the necessary documents the moment the administrative claim was filed, in which case, the 120-day period is reckoned from the date of filing. Conversely, the taxpayer may have also filed the complete documents on the thirtieth day from filing of the application or on the thirtieth day from request of the investigating/processing office, pursuant to Revenue Memorandum Circular (“RMC”) No. 49-2003²⁶.

Jurisprudence²⁷ however clarified that the rules above only applies to claims for tax credit or refund filed prior to June 11, 2014. Under RMC No. 54-2014²⁸ which was issued on June 11, 2014, the taxpayer is required to submit complete documents upon the filing of an administrative claim for VAT refund or tax credit, as no other documents shall be accepted thereafter. Moreover, the taxpayer is required to attach the following to the claim upon filing thereof: (a) complete supporting documents, as enumerated in the issuance, and (b) a statement under oath attesting that the documents submitted are in fact

²⁴ *Emphasis supplied.*

²⁵ G.R. No. 207112, December 08, 2015.

²⁶ Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters, August 15, 2003.

²⁷ *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 08, 2015; *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue*, G.R. No. 244154, July 15, 2020; *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

²⁸ Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended.

complete. Simply put, the regulation ensures that the date of completion of supporting documents coincides with the date of filing of the refund claim.

Upon the amendment by TRAIN Law of Section 112(C), the period within which the BIR should act on the taxpayer's claim for refund or tax credit is now worded as "from the date of submission of the official receipts or invoices and other documents in support of the application". Because of this, Petitioner asserts that RMC No. 54-2014 no longer applies and the prescriptive period for the BIR's action shall not run until the taxpayer submits the supporting documents.

Petitioner is mistaken. Indeed, the TRAIN Law deleted the phrase "from the date of submission of complete documents" and substituted it with the phrase "from the date of submission of the official receipts or invoices and other documents in support of the application". Yet the rule laid down under RMC No. 54-2014 continues in force.

RMC No. 017-18²⁹ was issued in order to bring up to date the provisions of RMC No. 54-2014 in relation to the amendments made by the TRAIN Law. Under such regulation, the following remains unchanged – *first*, the reckoning date of the prescriptive period is still from the actual date of filing of the application for refund or tax credit, and *second*, the taxpayer is still required to make a statement under oath attesting that the documents submitted are complete, *viz.*:

“III. Time frame to process claims for VAT claims under Sections 112 (A) and (B) of the Tax Code, as amended further by R.A. No. 10963

1. **The 90-day period** prescribed under Section 112 (C) of the Tax Code, as amended, **shall start from the actual date of filing of the application with complete documents duly received by the processing office.**

2. The 90-day period shall be applied prospectively, *i.e.*, for claims filed upon the effectivity of R.A. No. 10963.

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²⁹ Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN), February 27, 2018.

IV. Documents to be submitted by the taxpayer/claimant upon filing of the application for VAT refund:

1. The application must be accompanied by complete supporting documents enumerated in the Revised Checklist of 'Mandatory Requirements (Annex 'A.1')' for claims filed pursuant to Sec. 112 (A) of the Tax Code, as amended, or Checklist of Documentary Requirements (Annex 'A.2') for claims filed under Sec. 112 (B) of the same Tax Code.

2. **The taxpayer-claimant shall also attach a notarized sworn certification (Annex 'B') attesting to the completeness and veracity of the documents submitted.** Accordingly, the claim shall be processed based on the documents submitted, as well as the books of accounts and accounting records, presented by the taxpayer-claimant.

3. Failure on the part of the taxpayer-claimant to submit the relevant vital document/s in support of his/its claim upon filing of the application shall result to non-acceptance of the application, and failure to present the books of accounts and accounting records relevant to the claim is a ground for its denial.³⁰

Accordingly, the rule is that for administrative claims filed during the effectivity of the TRAIN Law, the taxpayer is still required to submit all supporting documents together with the administrative claim. Otherwise stated, the reckoning of the 90-day period still coincides with the date of filing of the administrative claim.

Applying the foregoing in the instant case, the administrative claim was filed on September 27, 2018. Respondent had ninety (90) days from the filing of the administrative claim, or until December 26, 2018 within which to render his decision. However, since Respondent was not able to render a decision within the 90-day period, Petitioner had thirty (30) days from December 26, 2018, or until January 25, 2019 within which to file its Petition for Review, determined as follows:

Period	Date of Filing of the	End of 90 days for BIR	End of 30 days from	Date of Filing of the
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³⁰ *Emphasis and underscoring supplied.*

	Administrative Claim	to decide on the claim	the expiration of the 90 days	Petition for Review
3rd and 4th quarters of TY 2016	September 27, 2018	December 26, 2018	January 25, 2019	February 19, 2019 ³¹


As shown above, the “Petition for Review” was filed with the Second Division only on February 19, 2019 or beyond the mandatory and jurisdictional 90+30-day periods prescribed under the NIRC of 1997, as amended, rendering the filing thereof out of time. Hence, We see no cogent reason to disturb or modify the findings and conclusions embodied in the Assailed Decision and Assailed Resolution.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated October 06, 2021 and the Resolution dated May 19, 2022 of the Second Division in the case docketed as CTA Case No. 10025 are **AFFIRMED**.

SO ORDERED.

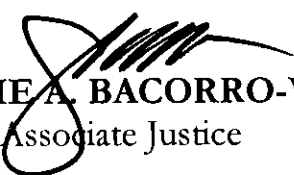

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

³¹ Docket, Petition for Review, pp. 10-26.

(On Official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


Marion Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(On Leave)
LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
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.


ROMAN G. DEL ROSARIO
Presiding Justice