Republic of the Philippines
Supreme Court
Manila

EN BANC

PILIPINAS TOTAL GAS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 207112

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA,** *JJ.*

Promulgated:
December 8, 2015

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DECISION

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the October 11, 2012 Decision[2] and the May 8, 2013 Resolution[3] of the Court of Tax Appeals *(CTA) En Banc*, in CTA

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* On Leave.
** No Part.
[1] *Rollo*, pp. 11-394.
[2] Id. at 39-60; penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justice Ernesto D. Acosta, Associate Justice Juanito C. Castaneda, Jr., Associate Justice Caesar A. Casanova, Associate Justice Olga Palanca-Enriquez, and Associate Justice Cielito N. Mindaro-Grulla, concurring; Associate Justice Lovell R. Bautista, dissenting; and Associate Justice Erlinda P. Uy and Associate Justice Amelia R. Cotangco-Manalastas, on leave.
[3] Id. at 62-65.

EB Case No. 776, which affirmed the January 13, 2011 Decision[4] of the CTA Third Division *(CTA Division)* in CTA Case No. 7863.

The Facts

Petitioner Pilipinas Total Gas, Inc. *(Total Gas)* is engaged in the business of selling, transporting and distributing industrial gas. It is also engaged in the sale of gas equipment and other related businesses. For this purpose, Total Gas registered itself with the Bureau of Internal Revenue *(BIR)* as a Value Added Tax *(VAT)* taxpayer.

On April 20, 2007 and July 20, 2007, Total Gas filed its Original Quarterly VAT Returns for the First and Second quarters of 2007, respectively with the BIR.

On May 20, 2008, it filed its Amended Quarterly VAT Returns for the first two quarters of 2007 reflecting its sales subject to VAT, zero-rated sales, and domestic purchases of non-capital goods and services.

For the First and Second quarters of 2007, Total Gas claimed it incurred unutilized input VAT credits from its domestic purchases of non-capital goods and services in the total amount of ₱8,124,400.35. Of this total accumulated input VAT, Total Gas claimed that it had ₱7,898,433.98 excess unutilized input VAT.

On **May 15, 2008**, Total Gas filed an administrative claim for refund of unutilized input VAT for the first two quarters of taxable year 2007, inclusive of supporting documents.

On **August 28, 2008**, Total Gas submitted additional supporting documents to the BIR.

On January 23, 2009, Total Gas elevated the matter to the CTA in view of the inaction of the Commissioner of Internal Revenue (*CIR*).

During the hearing, Total Gas presented, as witnesses, Rosalia T. Yu and Richard Go, who identified documentary evidence marked as Exhibits "A" to "ZZ-1," all of which were admitted. Respondent CIR, on the other hand, did not adduce any evidence and had the case submitted for decision.

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[4] Id. at 93-108.

Ruling of the CTA Division

In its January 13, 2011 Decision,[5] the CTA Division dismissed the petition for being prematurely filed. It explained that Total Gas failed to complete the necessary documents to substantiate a claim for refund of unutilized input VAT on purchases of goods and services enumerated under Revenue Memorandum Order *(RMO)* No. 53-98. Of note were the lack of Summary List of Local Purchases and the certifications from the Office of the Board of Investment *(BOD),* the Bureau of Customs *(BOC),* and the Philippine Economic Zone Authority *(PEZA)* that the taxpayer had not filed any similar claim for refund covering the same period.[6]

Believing that Total Gas failed to complete the necessary documents to substantiate its claim for refund, the CTA Division was of the view that the 120-day period allowed to the CIR to decide its claim under Section 112 (C) of the National Internal Revenue Code of 1997 *(NIRC)*, had not even started to run. With this, the CTA Division opined that the petition for review was prematurely filed because Total Gas failed to exhauist the appropriate administrative remedies. The CTA Division stressed that tax refunds partake of the nature of an exemption, putting into operation the rule of strict interpretation, with the taxpayer being charged with the burden of proving that he had satisfied all the statutory and administrative requirements.[7]

Total Gas sought for reconsideration[8] from the CTA Division, but its motion was denied for lack of merit in a Resolution, dated April 19, 2011.[9] In the same resolution, it reiterated that "that the complete supporting documents should be submitted to the BIR before the 120-day period for the Commissioner to decide the claim for refund shall commence to run. It is only upon the lapse of the 120-day period that the taxpayer can appeal the inaction [to the CTA.]"[10] It noted that RMO No. 53-98, which provides a checklist of documents for the BIR to consider in granting claims for refund, also serves as a guideline for the courts to determine if the taxpayer had submitted complete supporting documents.[11] It also stated that Total Gas could not invoke Revenue Memorandum Circular *(RMC)* No. 29-09 because it was issued after the administrative claim was filed and could not be applied retroactively.[12] Thus, the CTA Division disposed:

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[5] Id.
[6] Id. at 102-105
[7] Id. at 106-107.
[8] Id. at 114-126.
[9] Id. at 128-133.
[10] Id. at 130.
[11] Id.
[12] Id.

> WHEREFORE, premises considered, the present Petition for Review is hereby DENIED DUE COURSE, and, accordingly DISMISSED for having been prematurely filed.
>
> SO ORDERED.[13]

Ruling of the CTA En Banc

In its assailed decision, the CTA *En Banc* likewise denied the petition for review of Total Gas for lack of merit. It condensed its arguments into two core issues, to wit: (1) whether Total Gas seasonably filed its judicial claim for refund; and (2) whether it was unable to substantiate its administrative claim for refund by failing to submit the required documents that would allow respondent to act on it.[14]

As to the first issue, the CTA *En Banc* ruled that the CTA Division had no jurisdiction over the case because Total Gas failed to seasonably file its petition. Counting from the date it filed its administrative claim on May 15, 2008, the CTA *En Banc* explained that the CIR had 120 days to act on the claim (until September 12, 2008), and Total Gas had 30 days from then, or until October 12, 2008, to question the inaction before the CTA. Considering that Total Gas only filed its petition on January 23, 2009, the CTA *En Banc* concluded that the petition for review was belatedly filed. For the tax court, the 120-day period could not commence on the day Total Gas filed its last supporting document on August 28, 2008, because to allow such would give the taxpayer unlimited discretion to indefinitely extend the 120-day period by simply filing the required documents piecemeal.[15]

As to the second issue, the CTA *En Banc* affirmed the CTA Division that Total Gas failed to submit the complete supporting documents to warrant the grant of its application for refund. Quoting the pertinent portion of the decision of its division, the CTA *En Banc* likewise concurred in its finding that the judicial claim of Total Gas was prematurely filed because the 120-day period for the CIR to decide the claim had yet to commence to run due to the lack of essential documents. [16]

Total Gas filed a motion for reconsideration,[17]but it was denied in the assailed resolution of the CTA *En Banc*.[18]

Hence, the present petition.

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[13] Id. at 107.
[14] Id. at 52.
[15] Id. at 56-57.
[16] Id. at 57-58.
[17] Id. at 157-169.
[18] Id. at 62-65.

ISSUES

(a) whether the judicial claim for refund was belatedly filed on 23 January 2009, or way beyond the 30-day period to appeal as provided in Section 112(c) of the Tax Code, as amended; and

(b) whether the submission of incomplete documents at the adminstrative level (BIR) renders the judicial claim premature and dismissible for lack of jurisdiction. [19]

In its petition, Total Gas argues that its judicial claim was filed within the prescriptive period for claiming excess unutilized input VAT refund as provided under Section 112 of the NIRC and expounded in the Court's ruling in *CIR v. Aichi Forging Company of Asia*[20] *(Aichi)* and in compliance with Section 112 of the NIRC. In addition to citing Section 112 (C) of the Tax Code, Total Gas points out that in one of its previous claims for refund of excess unutilized input VAT, the CTA *En Banc* in CTA *En Banc* Case No. 674,[21] faulted the BIR in not considering that the reckoning period for the 120-period should be counted from the date of submission of complete documents.[22] It then adds that the previous ruling of the CTA *En Banc* was in accordance with law because Section 112 (C) of the Tax Code is clear in providing that the 120-day period should be counted from the date of its submission of the complete documents or from August 28, 2008 and not from the date it filed its administrative claim on May 15, 2008.[23] Total Gas argues that, since its claim was filed within the period of exception provided in *CIR v. San Roque Power Corporation*[24] *(San Roque)*, it did not have to strictly comply with 120+30 day period before it could seek judicial relief.[25]

Moreover, Total Gas questions the logic of the CTA *En Banc* which stated that the petition was filed both belatedly and prematurely. Total Gas points out that on the one hand, the CTA *En Banc* ruled that it filed the judicial claim belatedly as it was way beyond the 120+30 day period. Yet, it also affirmed the findings of its division that its petition for review was prematurely filed since the 120-day period did not even commence to run for lack of complete supporting documents.[26]

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[19] Id. at 18.
[20] 646 Phil. 710 (2010).
[21] Affirmed by the Third Division of this Court in G.R. No. 201920 via Resolutions dated October 14, 2013 and February 10, 2014; see *rollo*, G.R. No. 201920, p. 302 and p. 320.
[22] Id. at 20-21.
[23] Id. at 21.
[24] G.R. No. 187485, February 12, 2013, 690 SCRA 336.
[25] *Rollo*, pp. 21-22.
[26] Id. at 23.

For Total Gas, the CTA *En Banc* violated the doctrine of *stare decisis* because the tax tribunal had, on numerous occassions, held that the submission of incomplete supporting documents should not make the judicial appeal premature and dismissible for lack of jurisdiction. In these decisions, the CTA *En Banc* had previously held that non-compliance with RMO No. 53-98 should not be fatal since the requirements listed therein refer to requirements for refund or tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim; and that in the judicial level, it is the Rules of Court that govern and, thus, whether or not the evidence submitted by the party to the court is sufficient lies within the sound discretion of the court. Total Gas emphasizes that RMO No. 53-98 does not state that non-submission of supporting documents will nullify the judicial claim. It posits that once a judicial claim is filed, what should be examined are the evidence formally offered in the judicial proceedings.[27]

Even assuming that the supporting documents submitted to the BIR were incomplete, Total Gas argues that there was no legal basis to hold that the CIR could not decide or act on the claim for refund without the complete supporting documents. It argues that under RMC No. 29-09, the BIR is tasked with the duty to notify the taxpayer of the incompleteness of its supporting documents and, if the taxpayer fails to complete the supporting supporting documents despite such notice, the same shall be denied. The same regulation provides that for purposes of computing the 120-day period, it should be considered tolled when the taxpayer is notified. Total Gas, however, insists that it was never notified and, therefore, was justified in seeking judicial relief.[28]

Although Total Gas admits that RMC No. 29-09 was not yet issued at the time it filed its administrative claim, the BIR still erred for not notifying them of their lack of supporting documents. According to Total Gas, the power to notify a taxpayer of lacking documents and to deny its claim if the latter would not comply is inherent in the CIR's power to decide refund cases pursuant to Section 4 of the NIRC. It adds "[s]ound policy also dictates that it should be the taxpayer who should determine whether he has already submitted all documents pertinent to his claim. To rule otherwise would result into a never-ending conflict/issue as to the completeness of documents which, in turn, would delay the taxpayer's claim, and would put to naught the protection afforded by Section 112 (C) of the Tax Code."[29]

In her Comment,[30] the CIR echoed the ruling of the CTA *En Banc*, that Total Gas filed its petition out of time. She countered that the 120-day

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[27] Id. at 23-25.
[28] Id. at 25-26.
[29] Id. at 28.
[30] Id. at 426-433.

period could not be counted from the time Total Gas submitted its additional documents on August 28, 2008 because such an interpretation of Section 112(D) would indefinitely extend the prescriptive period as provided in favor of the taxpayer.

In its Reply,[31] Total Gas insisted that Section 112(C) stated that the 120-day period should be reckoned from the date of submission of complete documents, and not from the date of the filing of the administrative claim.

Ruling of the Court

The petition has merit.

Judicial claim timely filed

Section 112 (C) of the NIRC provides:

> **SEC. 112. Refunds or Tax Credits of Input Tax. -**
>
> 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.-
>
> x x x x
>
> [Emphasis and Underscoring Supplied]

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

[31] Id. at 436-440.

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 the 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.

Thus, when the VAT was first introduced through Executive Order No. 273,[32] the pertinent rule was that:

> (e) Period within which refund of input taxes may be made by the Commissioner. The Commissioner shall refund input taxes within 60 days **from the date the application for refund was filed** with him or his duly authorized representative. No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.
>
> [Emphasis Supplied]

Here, the CIR was not only given 60 days within which to decide an administrative claim for refund of input taxes, but the beginning of the period was reckoned "from the date the application for refund was filed."

When Republic Act *(R.A.)* No. 7716[33] was, however, enacted on May 5, 1994, the law was **amended** to read:

> (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 for creditable input taxes within sixty (60) days **from the date of submission of complete documents in support of the application** filed in accordance with sub-paragraphs (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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.
>
> [Emphasis Supplied]

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[32] Titled "Adopting A Value-Added Tax, Amending For This Purpose Certain Provisions of the National Internal Revenue Code, and For Other Purposes."

[33] Titled "An Act Restructing the Value Added Tax (Vat) System, Widening its Tax Base and Enhancing its Administration, and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as amended, and For Other Purposes."

Again, while the CIR was given only 60 days within which to act upon an administrative claim for refund or tax credit, the period came to be reckoned **"from the date of submission of complete documents in support of the application."** With this amendment, the date when a taxpayer made its submission of complete documents became relevant. In order to ensure that such date was at least determinable, RMO No. 4-94 provides:

> REVENUE MEMORANDUM ORDER NO. 40-94
>
> SUBJECT : *Prescribing the Modified Procedures on the Processing of Claims for Value-Added Tax Credit/Refund*
>
> III. Procedures
> REGIONAL OFFICE
> A. Revenue District Office
> In General:
>
> 1. Ascertain the completeness of the supporting documents prior to the receipt of the application for VAT credit/refund from the taxpayer.
>
> 2. Receive application for VAT Credit/Refund (BIR Form No. 2552) in three (3) copies in the following manner:
>
> a. stamp the word "RECEIVED" on the appropriate space provided in all copies of application;
>
> b. indicate the claim number;
>
> **c. indicate the date of receipt**; and
>
> d. initial by receiving officer.
>
> The application shall be received only if the required attachments prescribed in RAMO 1-91 have been fully complied with. x x x

Then, when the NIRC[34] was enacted on January 1, 1998, the rule was once more amended to read:

> (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 compete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof.

[34] Otherwise known as R.A. No. 8424.

> 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]

This time, the period granted to the CIR to act upon an administrative claim for refund was extended to 120 days. The reckoning point however, remained **"from the date of submission of complete documents."**

Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:

> 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?*
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> A-18: **For pending claims** which have not been acted upon by the investigating/processing office due to incomplete documentation, **the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.**
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> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be **officially received** only upon submission of complete documents.
>
> 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.**
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> [Emphases Supplied]

Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. 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. Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential. It is only upon the submission of these documents that the 120-day period would begin to run.

Then, when R.A. No. 9337[35] was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112(B) of the NIRC, Section 112 (D) was amended and renamed 112(C). Thus:

> (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.

With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining ***when*** the supporting documents have been completed – *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.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.

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[35] Titled "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 And 288 of the National Internal Revenue Code of 1997, as Amended, and For Other Purposes.

The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund – it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are *actually* complete as required by law – is for the CIR and the courts to determine. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

Moreover, under Section 112(A) of the NIRC,[36] as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the adminstrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, "officially received" as provided under RMC No. 49-2003.

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:

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[36] (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.

> 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 rectroactively 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.

Total Gas, thus, timely filed its judicial claim on January 23, 2009.

Anent RMO No. 53-98, the CTA Division found that the said order provided a checklist of documents for the BIR to consider in granting claims for refund, and served as a guide for the courts in determining whether the taxpayer had submitted complete supporting documents.

This should also be corrected.

To quote RMO No. 53-98:

> REVENUE MEMORANDUM ORDER NO. 53-98
>
> SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.
>
> TO: All Internal Revenue Officers, Employees and Others Concerned
>
> I. *BACKGROUND*
>
> It has been observed that for the same kind of tax audit case, Revenue Officers differ in their request for requirements from

> taxpayers as well as in the attachments to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.
>
> For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax, as well as of the internally prepared reporting requirements, all of which comprise a complete tax docket.
>
> II. *OBJECTIVE*
>
> This order is issued to:
> a. Identify the documents to be required from a taxpayer during audit, according to particular kind of tax; and
>
> b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.
>
> III. *LIST OF REQUIREMENTS PER TAX TYPE*
>
> Income Tax/ Withholding Tax
> – Annex A (3 pages)
>
> Value Added Tax
> – Annex B (2 pages)
> – Annex B-1 (5 pages)
> x x x x

As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present **upon audit of their tax liabilities**. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerely Mirant Sual Corporation)*:[37]

> The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities x x x." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."

[37] G.R. No. 205055, July 18, 2014, 730 SCRA 242.

> Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.
>
> [Emphasis included. Underlining Ours.]

As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.

At this point, it is worth emphasizing that the reckoning of the 120-day period from August 28, 2008 cannot be doubted. *First*, a review of the records of the case undubitably show that Total Gas filed its supporting documents on August 28, 2008, together with a transmittal letter bearing the same date. These documents were then *stamped* and *signed* as received by the appropriate officer of the BIR. *Second,* contrary to RMO No. 40-94, which mandates officials of the BIR to indicate the date of receipt of documents received by their office in every claim for refund or credit of VAT, the receiving officer failed to indicate the precise date and time when he received these documents. Clearly, the error is attributable to the BIR officials and should not prejudice Total Gas.

Third, it is observed that whether before the CTA or this Court, the BIR had never questioned the date it received the supporting documents

filed by Total Gas, or the propriety of the filing thereof. In contrast to the contiuous efforts of Total Gas to complete the necessary documents needed to support its application, all that was insisted by the CIR was that the reckoning period should be counted from the date Total Gas filed its application for refund of excess unutilized input VAT. There being no question as to whether these documents were actually received on August 28, 2008, this Court shall not, by way of conjecture, cast doubt on the truthfullness on such submission. *Finally*, in consonance with the presumption that a person acts in accordance with the ordinary course of business, it is presumed that such documents were received on the date stated therein.

Verily, should there be any doubt on whether Total Gas filed its supporting documents on August 28, 2008, it is incumbent upon the CIR to allege and prove such assertion. As the saying goes, *contra preferentum.*

If only to settle any doubt, this Court is by no means setting a precedent by leaving it to the mercy of the taxpayer to determine when the 120-day reckoning period should begin to run by providing absolute discretion as to when he must comply with the mandate submitting complete documents in support of his claim. In addition to the limitations thoroughly discussed above, the peculiar circumstance applicable herein, as to relieve Total Gas from the application of the rule, **is the obvious failure of the BIR to comply with the specific directive, under RMO 40-94, to stamp the date it received the supporting documents** which Total Gas had submitted to the BIR for its consideration in the processing of its claim. The utter failure of the tax administrative agency to comply with this simple mandate to stamp the date it receive the documents submitted by Total Gas – should not in any manner prejudice the taxpayer by casting doubt as to *when* it was able to submit its complete documents for purposes of determing the 120-day period.

While it is still true a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process[38] – it also true that when the law or rule mandates that a party or authority must comply with a specific obligation to perform an act for the benefit of another, the non-compliance therof by the former should not operate to prejudice the latter, lest it render the nugatory the objective of the rule. Such is the situation in case at bar.

Judicial claim not prematurely filed

The CTA *En Banc* curiously ruled in the assailed decision that the judicial claim of Total Gas was not only belatedly filed, but prematurely

[38] *CIR v. Aichi Forging Company of Asia*, supra note 17, at 714.

filed as well, for failure of Total Gas to prove that it had submitted the complete supporting documents to warrant the grant of the tax refund and to reckon the commencement of the 120-day period. It asserted that Total Gas had failed to submit all the required documents to the CIR and, thus, the 120-day period for the CIR to decide the claim had not yet begun to run, resulting in the premature filing of the judicial claim. It wrote that the taxpayer must first submit the complete supporting documents before the 120-day period could commence, and that the CIR could not decide the claim for refund without the complete supporting documents.

The Court disagrees.

The alleged failure of Total Gas to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction. *First*, the 120-day period had commenced to run and the 120+30 day period was, in fact, complied with. As already discussed, it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period. It must again be pointed out that *this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying the claim if the taxpayer fails to submit the additional documents requested.*

Second, the CIR sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents. As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents.

Finally, it should be mentioned that the appeal made by Total Gas to the CTA cannot be said to be premature on the ground that it did not observe the otherwise mandatory and juridictional 120+30 day period. When Total Gas filed its appeal with the CTA on January 23, 2009, it simply relied on BIR Ruling No. DA-489-03, **which, at that time, was not yet struck down** by the Court's ruling in *Aichi.* As explained in *San Roque*, this Court recognized a period in time wherein the 120-day period need not be strictly observed. Thus:

> 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.**
>
> x x x x
>
> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. **Thus, all taxpayers 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, where this Court held that the 120+30 day periods are mandatory and jurisdictional.**

At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*, it was ruled –

> x x x First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.[39]
>
> [Underscoring Supplied]

A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an

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[39] *Atlas Consolidated Mining and Development Corporation v. CIR*, 547 Phil. 332, 339 (2007).

unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.[40]

The Court cannot, however, make a ruling on the issue of whether Total Gas is entitled to a refund or tax credit certificate in the amount of ₱7,898,433.98. Considering that the judicial claim was denied due course and dismissed by the CTA Division on the ground of premature and/ or belated filing, no ruling on the issue of Total Gas entitlement to the refund was made. The Court is not a trier of facts, especially when such facts have not been ruled upon by the lower courts. The case shall, thus, be remanded to the CTA Division for trial *de novo*.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The October 11, 2012 Decision and the May 8, 2013 Resolution of the Court of Tax Appeals *En Banc,* in CTA EB No. 776 are **REVERSED** and **SET ASIDE**.

The case is **REMANDED** to the CTA Third Division for trial *de novo*.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[40] Id.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On Leave)
ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

(No Part)
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice

EN BANC

G.R. No. 207112 – PILIPINAS TOTAL GAS, INC., Petitioner **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent.

Promulgated:

December 8, 2015

x----------x

CONCURRING OPINION

LEONEN, *J.*:

I concur with the ponencia in the result. I agree that it is the taxpayer's burden to determine whether complete documents have been submitted for purposes of computing the 120-day period[1] for the Commissioner to decide administrative claims.

Between the taxpayer and the Commissioner, it is the former that has the greater incentive to (a) have its case decided expeditiously by the Bureau of Internal Revenue, and (b) in cases where it prefers to have the Court of Tax Appeals rule on its case, have the administrative period lapse.

Besides, the sooner the taxpayer is able to get a refund, the sooner its resources can be further reinvested into our economy, thus translating to greater efficiencies, productivities, and an increase in overall welfare.

Furthermore, in view of the nature of a judicial action explained in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[2] and deftly emphasized again in this case, it is the taxpayer that has the greater incentive to present as complete a set of evidence as possible to have the Commissioner rule and, should the ruling be adverse, as basis for an appeal.

On the other hand, it is not to the government's interest to allow the Bureau of Internal Revenue to determine whether the documents are complete. Otherwise, we would sanction bias on its part with the corresponding opportunities for illicit rent-seeking that deters honest investors and prudent entrepreneurship. Should the documents, in the

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1 TAX CODE, sec. 112(D) provides, in part, that "[i]n 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[.]

2 646 Phil. 710 (2010) [Per J. Del Castillo, First Division].

opinion of the Commissioner, be incomplete, then the Commissioner should simply proceed to decide on the administrative claim. The sooner it is resolved, the better its effect on our economy. After all, it is truly the taxpayer that has the burden of proving its basis for a claim for tax exemptions[3] and VAT refunds.[4]

Any attempt on the part of the taxpayer to amend or add to the documents it initially submitted after an administrative finding by the Commissioner would, therefore, be unacceptable. This way, the prerogative of the taxpayer and the interest of the state, in not making the regulatory period of 120 days in Section 112(D) flexible, could be met. Therefore, I do not agree that the effect of Revenue Memorandum Circular No. 54-2014 and its validity should be decided in this case to arrive at the required result.

The ambient facts in *Hedcor v. Commissioner of Internal Revenue*[5] are different from this case. In *Hedcor,* before the filing of a Petition for Review before the Court of Tax Appeals, there was a letter of authority to the officials of the Bureau of Internal Revenue to inspect the documents of the taxpayer. In this case, there was none. It was the taxpayer, on its own initiative, that sought to complete its submissions. Parenthetically, the belated issuance of a letter of authority for administrative claims for VAT refunds in *Hedcor* seems to me, at best, strange. At worse, it is irregular.

MARVIC M.V.F. LEONEN
Associate Justice

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3 *See, for example, Smart Communications, Inc. v. City of Davao*, 587 Phil. 20, 31 (2008) [Per J. Nachura, Third Division]; *Digital Telecom v. City Government of Batangas*, 594 Phil. 269, 299 (2008) [Per J. Carpio, En Banc].

4 *See, for example, Republic v. GST Philippines, Inc.,* G.R. No. 190872, October 17, 2013, 707 SCRA 695, 712 [Per J. Perlas-Bernabe, En Banc]; *Microsoft Phils., Inc. v. Commissioner of Internal Revenue,* 662 Phil. 762, 767 (2011) [Per J. Carpio, Second Division]; *Bonifacio Water Corporation v. Commissioner of Internal Revenue,* G.R. No. 175142, July 22, 2013, 701 SCRA 574, 584 [Per J. Peralta, Third Division], *citing Western Mindanao Power v. Commissioner of Internal Revenue,* 687 Phil. 328 (2012) [Per J. Sereno (now Chief Justice), Second Division]. *See also Commissioner of Internal Revenue v. San Roque,* G.R. No. 187485, February 12, 2013, 690 SCRA 336, 383 [Per J. Carpio, En Banc].

5 G.R. No. 207575, July 15, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/207575.pdf> [Per C.J. Sereno, First Division].