



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL  
REVENUE,

Petitioner,

- versus -

TEAM SUAL CORPORATION  
(formerly MIRANT SUAL  
CORPORATION),

Respondent.

G.R. No. 205055

Present:

CARPIO, J., Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ, and  
PERLAS-BERNABE, JJ.

Promulgated:

JUL 18 2014 *M. Cabelog Perjepto*

X-----X

DECISION

CARPIO, J.:

The Case

This is a petition for review<sup>1</sup> assailing the Decision<sup>2</sup> promulgated on 27 July 2012 as well as the Resolution<sup>3</sup> promulgated on 6 December 2012 by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 768. The CTA EB affirmed the 5 April 2011 Amended Decision<sup>4</sup> of the Special First Division of the Court of Tax Appeals (CTA Special First Division) in CTA Case No. 7470. The CTA Special First Division granted the claim for refund or issuance of tax credit certificate filed by respondent Team Sual Corporation (TSC).<sup>5</sup>

<sup>1</sup> Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo*, pp. 9-32.

<sup>2</sup> Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring. *Id.* at 39-51.

<sup>3</sup> *Id.* at 176-178.

<sup>4</sup> Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, concurring. *Id.* at 97-115.

<sup>5</sup> Petitioner was originally registered with the Securities and Exchange Commission (SEC) under the name "Pangasinan Electric Corporation." Over the years, petitioner changed its name to

*W*

### **The Facts**

TSC is a value-added tax (VAT) payer duly registered with the Bureau of Internal Revenue (BIR). It is principally engaged in the business of electric power generation and the sale of electric power to National Power Corporation (NPC) under a Build-Operate-Transfer (BOT) Scheme.

On 19 December 2003, TSC applied for the VAT zero-rating of its sale of electric power to NPC for the taxable year 2004. TSC's application was subsequently approved by the BIR.

On 26 April 2004, 26 July 2004, 25 October 2004 and 25 January 2005, TSC filed its quarterly VAT returns for the four quarters of 2004 with the BIR, through the Electronic Filing and Payment Scheme (EFPS). On 26 July 2004 and on 3 August 2005, TSC filed its amended quarterly VAT returns for the first and fourth quarters of 2004, respectively.

The quarterly VAT returns for the four quarters of 2004 provide:

Exh.	Zero-Rated Sales/ Receipts	Taxable Sales	Output VAT	Input VAT	Excess Input VAT
D	₱ 3,698,654,169.48	₱ 0.00	₱ 0.00	₱ 13,134,435.00	₱ 13,134,435.00
E	3,653,185,715.68	202,558.14	20,255.81	31,973,996.35	31,953,740.54
F	3,744,693,428.11	465,744.07	46,574.41	19,967,007.14	19,920,432.73
H	3,819,303,147.15	1,044,107.15	104,410.71	38,227,189.38	38,122,778.67
Total	₱ 14,915,836,460.42	₱ 1,712,409.36	₱ 171,240.93	₱ 103,302,627.87	₱ 103,131,386.94

On 21 December 2005, TSC filed an administrative claim for refund of its input VAT, which it incurred for the four quarters of 2004.

On 24 April 2006, due to the BIR's inaction, TSC filed a petition for review with the Court of Tax Appeals (CTA). TSC prayed for the refund or issuance of tax credit certificate for its alleged unutilized input VAT for year 2004.

### **The Court of Tax Appeals' Ruling: Division**

In its 4 March 2010 Decision,<sup>6</sup> the CTA Special First Division ruled that TSC's sale of electric power to NPC was effectively zero-rated. The CTA Special First Division found that TSC complied with the five requirements to be entitled to a refund or issuance of tax credit certificate on its input VAT, to wit:

"Southern Energy Pangasinan, Inc." on 17 August 1999; "Mirant Sual Corporation" on 28 June 2001; and Team Sual Corporation on 23 July 2007. Id. at 78.

<sup>6</sup> Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, concurring. Id. at 77-96.

1. That there must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That such input taxes are attributable to zero-rated sales or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability; and
5. That the claim for refund was filed within the two-year prescriptive period.<sup>7</sup>

The CTA Special First Division found that TSC is entitled to a refund or issuance of tax credit certificate in the amount of ₱78,009,891.56<sup>8</sup> input VAT, upon disallowance of the amounts of: (1) ₱568,628,238.98 for being sales of electric power to Mirant Philippines Energy Corporation, Mirant Philippines Industrial Power Corporation, and Mirant Philippines Industrial Power II Corporation; (2) ₱2,430,229,567.30 zero-rated sales to NPC for not being properly supported by VAT official receipts; and (3) ₱5,490,632.64 input VAT for failure to meet the substantiation requirement. The CTA Special First Division likewise ruled that both the administrative and the judicial claims of TSC were filed within the two-year prescriptive period.

The dispositive portion of the CTA Special First Division's 4 March 2010 Decision reads:

WHEREFORE, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in the amount of SEVENTY EIGHT MILLION NINE THOUSAND EIGHT HUNDRED NINETY ONE PESOS AND 56/100 (₱78,009,891.56) to petitioner, representing unutilized excess input VAT attributable to its effectively zero-rated sales to NPC for the four quarters of taxable year 2004.

SO ORDERED.<sup>9</sup>

<sup>7</sup> Id. at 82.

<sup>8</sup> Id. at 94. Computed as follows:

Declared Zero-Rated Sales/Receipts	₱14,915,836,460.42
Less: Sales to entities other than NPC	568,628,238.98
Less: Zero-Rated Sales covered by OR dated outside the period of claim	2,430,229,567.30
<b>Adjusted Valid Zero-Rated Sales</b>	<b>₱11,916,978,654.14</b>
Total Input VAT Claim	₱103,302,627.88
Less: Disallowances (Per ICPA)	1,092,317.62
(Per this Court's further verification)	4,398,315.03
<b>Adjusted Valid Input VAT:</b>	<b>₱ 97,811,995.23</b>
Less: Output VAT:	171,240.93
<b>Valid Excess Input VAT</b>	<b>₱ 97,640,754.30</b>
Valid Zero-Rated Sales/Receipts	₱ 11,916,978,654.14
Divided by Total Reported Zero-Rated Sales/ Receipts	÷ ₱14,915,836,460.42
Multiplied by Valid Excess Input VAT	x ₱ 97,640,754.30
<b>Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts</b>	<b>₱ 78,009,891.56</b>

<sup>9</sup> Id. at 95-96.

On 19 May 2010, the CTA Special First Division granted the motion for partial new trial filed by TSC and allowed it to present in evidence the correct official receipts supporting the ₱2,430,229,567.30 zero-rated sales made to NPC. The CTA Special First Division likewise held in abeyance the resolution of the motion for reconsideration filed by both parties.

In an Amended Decision dated 5 April 2011, the CTA Special First Division found that TSC is entitled to a modified amount of ₱96,846,234.31 input VAT,<sup>10</sup> upon: (1) allowing the amount of ₱2,430,229,567.30 zero-rated sales made to NPC; (2) disallowing the amount of ₱7,232,794.92 zero-rated sales because its official receipt was dated outside the period of claim; and (3) allowing the amount of ₱3,094,606.10 input VAT for being properly substantiated.

The dispositive portion of the CTA Special First Division's 5 April 2011 Amended Decision reads:

WHEREFORE, premises considered, respondent's "Motion for Partial Reconsideration" is hereby DENIED for lack of merit while petitioner's "Motion for Partial Reconsideration" is hereby PARTIALLY GRANTED.

Accordingly, petitioner's claim for refund or issuance of tax credit certificate representing unutilized input VAT for taxable year 2004 is GRANTED in the total adjusted amount of NINETY SIX MILLION EIGHT HUNDRED FORTY SIX THOUSAND AND TWO HUNDRED THIRTY FOUR PESOS AND 31/100 (₱96,846,234.31) or an additional EIGHTEEN MILLION EIGHT HUNDRED THIRTY SIX THOUSAND AND THREE HUNDRED FORTY TWO PESOS AND 75/100 (₱18,836,342.75) on its previously granted claim of SEVENTY EIGHT MILLION NINE THOUSAND EIGHT HUNDRED NINETY ONE PESOS AND 56/100 (₱78,009,891.56).

SO ORDERED.<sup>11</sup>

<sup>10</sup> Id. at 113. Computed as follows:

Declared Zero-Rated Sales/ Receipts	₱14,915,836,460.42
Less: Sales to entities other than NPC	568,628,238.98
Less: Zero-Rated Sales covered by OR dated outside the period of claim	7,232,794.92
<b>Adjusted Valid Zero-Rated Sales</b>	<b>₱14,339,975,426.52</b>
Total Input VAT Claim	₱103,302,627.88
Less: Disallowances (Per ICPA) (Per this Court's further verification)	1,092,317.62 4,398,315.03
Add: Substantiated input VAT	3,094,606.10
<b>Adjusted Valid input VAT</b>	<b>₱ 100,906,601.33</b>
Less: Output VAT	171,240.93
<b>Adjusted Excess Valid Input VAT</b>	<b>₱ 100,735,360.40</b>
Adjusted Valid Zero-Rated [S]ales	₱14,339,975,426.52
Divided by total declared zero-rated sales	÷ ₱14,915,836,460.42
Multiplied by adjusted excess valid input VAT	x ₱ 100,735,360.40
<b>Adjusted excess input VAT attributable to zero-rated sales</b>	<b>₱ 96,846,234.31</b>

<sup>11</sup> Id. at 114.

Thus, the Commissioner of Internal Revenue (CIR) filed a petition for review with the CTA EB.

### **The Court of Tax Appeals' Ruling: En Banc**

In a Decision dated 27 July 2012, the CTA EB found that TSC submitted the relevant documents applicable to its claim. According to the CTA EB, the submitted documents constituted compliance with the requirements of Revenue Memorandum Order No. (RMO) 53-98. Thus, the CTA EB ruled that the judicial claim was not prematurely filed.

The dispositive portion of the CTA EB's 27 July 2012 Decision reads:

WHEREFORE, premises considered, the present Petition for Review is hereby DENIED DUE COURSE, and, accordingly DISMISSED for lack of merit. The Amended Decision dated April 5, 2011 is hereby AFFIRMED.

SO ORDERED.<sup>12</sup>

In a Resolution dated 6 December 2012, the CTA EB denied the motion for reconsideration filed by the CIR for lack of merit. Hence, this petition.

### **The Issue**

The CIR raises this sole issue for resolution:

THE [CTA EB] GRAVELY ERRED IN DENYING DUE COURSE TO [CIR]'S PETITION FOR REVIEW IN [CTA] EB NO. 768 AND IN AFFIRMING THE DECISION OF ITS SPECIAL FIRST DIVISION THAT [TSC] IS ENTITLED TO A REFUND OR TAX CREDIT CERTIFICATE IN THE AMOUNT OF ₱96,846,234.31 BECAUSE IT WAS ABLE TO SUBMIT THE LEGALLY REQUIRED DOCUMENTS IN ITS APPLICATION FOR REFUND.<sup>13</sup>

### **The Ruling of the Court**

The petition lacks merit.

The relevant portions of Section 112 of the National Internal Revenue Code (NIRC), which provide the requirements to enable the taxpayer to claim a refund or credit of its input tax, state:

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<sup>12</sup> Id. at 50.

<sup>13</sup> Id. at 16.

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 or 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

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 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.<sup>14</sup>

Under Section 112(C) of the NIRC, the CIR has 120 days to decide the taxpayer's claim from the date of submission of complete documents in support of the application filed in accordance with Section 112(A) of the NIRC. In *Intel Technology v. Commissioner of Internal Revenue*,<sup>15</sup> we ruled that once the taxpayer has established by sufficient evidence that it is entitled to a refund or issuance of a tax credit certificate, in accordance with the requirements of Section 112(A) of the NIRC, its claim should be granted.

<sup>14</sup> National Internal Revenue Code of 1997, as amended by Republic Act No. 9337, Section 112.

<sup>15</sup> *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, 550 Phil. 751 (2007).

In *Atlas Consolidated Mining v. Commissioner of Internal Revenue*,<sup>16</sup> we held that applications for refund or credit of input tax with the BIR must comply with the appropriate revenue regulations. Thus, applications must be in accordance with Section 2 of Revenue Regulations No. 3-88 (RR 3-88), amending Section 16 of Revenue Regulations No. 5-87, to wit:

SECTION 2. Section 16 of Revenue Regulations 5-87 is hereby amended to read as follows:

SECTION 16. Refunds or tax credits of input tax. –

x x x x

(c) Claims for tax credits/refunds. – Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

x x x x

3. Effectively zero-rated sale of goods and services.

- i) photocopy of approved application for zero-rate if filing for the first time.
- ii) sales invoice or receipt showing name of the person or entity to whom the sale of goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered.
- iii) evidence of actual receipt of goods or services.

x x x x

5. In applicable cases, where the applicant's zero-rated transactions are regulated by certain government agencies, a statement therefrom showing the amount and description of sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold, and date of transaction shall also be submitted.

In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

<sup>16</sup> *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159471, 26 January 2011, 640 SCRA 504; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 560 Phil. 322 (2007); *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 551 Phil. 519 (2007); *Commissioner of Internal Revenue v. Manila Mining Corp.*, 505 Phil. 650 (2005).

Where the applicant is engaged in zero-rated and other taxable and exempt sales of goods and services, and the VAT paid (inputs) on purchases of goods and services cannot be directly attributed to any of the aforementioned transactions, the following formula shall be used to determine the creditable or refundable input tax for zero-rated sale:

$$\begin{array}{r}
 \text{Amount of Zero-rated Sale} \\
 \text{Total Sales} \\
 \times \\
 \text{Total Amount of Input Taxes} \\
 = \\
 \text{Amount Creditable/Refundable} \\
 \text{x x x x}
 \end{array}$$

We likewise applied RR 3-88 in *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*,<sup>17</sup> and held that only preponderance of evidence as applied in ordinary civil cases is needed to substantiate a claim for tax refund.

In the present case, the CTA Special First Division found that TSC complied with the requirements of Section 112(A) of the NIRC and granted its claim for refund or credit of ₱78,009,891.56 input VAT. Upon a partial new trial, the CTA Special First Division increased the amount to ₱96,846,234.31. Upon appeal, the CTA EB concluded that TSC submitted the relevant documents to substantiate its claim for refund or credit of input tax, to wit:

1. BIR Certificate of Registration (Annex "A", Petition for Review, CTA Case No. 7470, vol. 1, p. 13);
2. Quarterly VAT returns for the first, second, third and fourth quarters of 2004 (Exhibits "D", "E", "F", "G", & "H");
3. Summary of Input Tax Payments for the first, second, third and fourth quarters of 2004 showing details of purchases of goods and service as well as the corresponding input tax paid (Exhibits "D" to "D-3", "E" to "E-5-b", "F" to "F-4-b", "H-3" to "H-4-c");
4. VAT official receipts and invoices for the first, second, third and fourth quarters of 2004 (Exhibits "QQ"-7" to "QQ-21-d", "RR-17", "SS-1" to "SS-19" & "TT-1" to TT-18");
5. Approved Certificate for Zero-Rate (Exhibit "A"); and
6. Application for Tax Credit/Refund (BIR Form 1914) (Exhibit "B-3")<sup>18</sup>

We adopt the above-mentioned findings of fact of the CTA Special First Division, as affirmed by the CTA EB. Whether TSC complied with the substantiation requirements of Section 112 of the NIRC and RR 3-88 is a

<sup>17</sup> G.R. No. 182364, 3 August 2010, 626 SCRA 567.

<sup>18</sup> *Rollo*, p. 49.



question of fact,<sup>19</sup> which could only be answered after reviewing, examining, evaluating, or weighing all over again the probative value of the evidence before the CTA, which this Court does not have reason to do in the present petition for review on certiorari. The findings of fact of the CTA are not to be disturbed unless clearly shown to be unsupported by substantial evidence.<sup>20</sup> Since by the very nature of its functions, the CTA has developed an expertise on this subject, the Court will not set aside lightly the conclusions reached by them, unless there has been an abuse or improvident exercise of authority.<sup>21</sup>

The CIR, however, insists that TSC failed to submit the complete documents enumerated in RMO 53-98. Thus, the 120-day period given for it to decide allegedly did not commence.

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."<sup>22</sup>

<sup>19</sup> *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. No. 193301, 11 March 2013, 693 SCRA 49.

<sup>20</sup> *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 168856, 29 August 2012, 679 SCRA 305; *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 180173, 6 April 2011, 647 SCRA 398.

<sup>21</sup> *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, G.R. No. 178090, 8 February 2010, 612 SCRA 28.

<sup>22</sup> Annex B of RMO 53-98 provides:

x x x x

A) Requirements from Taxpayers

1) Proof of claimed tax credits; 2) Proof of Tax Compliance Certificates applied; 3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, **if applicable**; 4) Proof of payment of deficiency tax, **if any**: a) current year/period; b) previous year/period; 5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, **if applicable**; 6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable; 7) Proof of exemption under special law, **if applicable**; 8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, **if applicable**; 9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable; 10) Proof of "Approval for Effective Zero-Rating of Sales", **if applicable**; 11) Sample invoice/s for "Export/Exempt Sales", **if applicable**; 12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), **if applicable**. (Emphasis supplied)

ANNEX B-1 of the RMO 53-98 provides:

VALUE-ADDED TAX (For audit involving Claim for Refund/TCC)

A.) Requirements from Taxpayer

- I. Requirements mentioned in Annex B
- II. Additional General Requirements

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.<sup>23</sup> 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.**

Under Section 112(C) of the NIRC, in case of failure on the part of the CIR to act on the application, the taxpayer affected may, within 30 days after the expiration of the 120-day period, appeal the unacted claim with the CTA. The charter of the CTA<sup>24</sup> also expressly provides that if the

1) 3 copies of "Application for VAT Credit/Refund"; 2) Summary List of Local Purchases specifying the following: x x x; 3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list); 4) Summary of importations made during the period with the following details: x x x; 5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. x x x; 6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter; 7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales; 8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency; 9) Articles of Incorporation — for first time filers; 10) Sales Contract/Agreement; 11) BOI Certificate of Registration; 12) BIR Certificate of Registration; 13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period; 14) Sworn statement that ending inventory as of the close of the period covered by the claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter; 15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter; 16) Copy of the ITR and Certified Financial Statements, if applicable; 17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials x x x.

<sup>23</sup> RMC 42-03 provides:

Subject: Clarifying Certain Issues Raised 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) by Direct Exporters.

x x x x

Q-16: Can the TCC processing office accept supporting documents of claimant companies which were issued denial letters, or letters of denial of claim due to absence of certain documents?

A-16: Taxpayers whose claims were denied due to failure to submit supporting documents are given a period of thirty (30) days from receipt of the letter of denial to file a request for reconsideration and to submit the required documents to the Tax and Revenue Group, OSS-DOF or to other concerned BIR offices which issued the denial letter. x x x.

<sup>24</sup> The charter of the CTA, RA 1125, as amended, provides:

Section 7. Jurisdiction. — The CTA shall exercise:

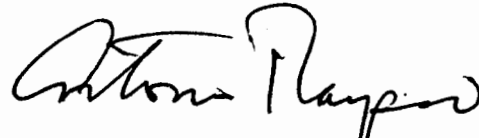
(1) x x x x

(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 provides a specific period of action, in which case the inaction shall be deemed a denial;** x x x x (Emphasis supplied)

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. In *Commissioner of Internal Revenue v. San Roque Power Corporation*,<sup>25</sup> we emphasized that compliance with the 120-day waiting period is mandatory and **jurisdictional**. In this case, when TSC filed its administrative claim on 21 December 2005, the CIR had a period of 120 days, or until 20 April 2006, to act on the claim. However, the CIR failed to act on TSC’s claim within this 120-day period. Thus, TSC filed its petition for review with the CTA on 24 April 2006 or within 30 days after the expiration of the 120-day period. Accordingly, we do not find merit in the CIR’s argument that the judicial claim was prematurely filed.

**WHEREFORE**, we **DENY** the petition for lack of merit. The Decision and Resolution of the Court of Tax Appeals, dated 27 July 2012 and 6 December 2012, respectively, are **AFFIRMED**.

**SO ORDERED.**



**ANTONIO T. CARPIO**  
Associate Justice

**WE CONCUR:**




**ARTURO D. BRION**  
Associate Justice

<sup>25</sup> *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013, 690 SCRA 336.

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**ESTELA M. BERLAS-BERNABE**  
Associate Justice

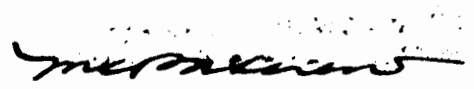
**ATTESTATION**

I attest 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's Division.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I 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's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice