

SECOND DIVISION

[G.R. No. 244154, July 15, 2020]

**ZUELLIG-PHARMA ASIA PACIFIC LTD. PHILS. ROHQ,
PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE (CIR),
RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] is the Decision^[2] dated January 21, 2019 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA *EB* No. 1656, which upheld the CTA-Second Division's dismissal of petitioner Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ (Zuellig-PH)'s claim for refund or issuance of a tax credit certificate amounting to P39,931,971.21, representing its excess and unutilized input value-added tax (VAT) for calendar year (CY) 2010.

The Facts

Zuellig-PH is a regional operating headquarters (ROHQ) of Zuellig-Pharma Asia Pacific Ltd. (Zuellig-HK), a foreign corporation duly organized and existing under the laws of Hong Kong.^[3]

For CY 2010, Zuellig-PH filed its Quarterly VAT Returns (BIR Form No. 2550-Q) on April 22, 2010,^[4] July 21, 2010,^[5] October 20, 2010,^[6] and January 20, 2011,^[7] respectively. On February 15, 2011, Zuellig-PH filed its amended Quarterly VAT Returns for all four (4) quarters of CY 2010.^[8] On **February 17, 2011**, it filed an **administrative claim for refund**^[9] with attached Application for Tax Credits/Refunds^[10] (BIR Form No. 1914) of its excess and unutilized input VAT for CY 2010 amounting to a total of P39,931,971.21 with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 49.^[11]

Zuellig-PH then received Letter of Authority (LOA) No. eLA201000037096^[12] dated March 3, 2011 from the BIR. In the said LOA, the BIR authorized Revenue Officer (RO) Joaquin Tinio (RO Tinio) and Group Supervisor Socrates Regala to examine Zuellig-PH's book of accounts and other accounting records for VAT for CY 2010.^[13]

In a **letter**^[14] **dated June 29, 2011**, the BIR requested Zuellig-PH to present its records and submit supporting documents in relation to its administrative claim for refund.^[15] In response thereto, Zuellig-PH submitted the requested documents to the BIR on July 5, 2011.^[16]

According to Zuellig-PH, the BIR made further **verbal requests for submission of documents** from 2012 until 2014, to which the former acceded. **Consequently,**

Zuellig-PH made submissions on May 8, 2012,^[17] July 25, 2012,^[18] December 6, 2012,^[19] and September 11, 2013,^[20] all of which were received by RO Tinio. On February 4, 2014, Zuellig-PH's claim was forwarded to the BIR Assessment Service and assigned to RO William P. Manzanares, Jr. (RO Manzanares).^[21]

Due to the inordinate delay in the processing of its refund claim, Zuellig-PH sent a letter^[22] on March 5, 2014 to then Commissioner Kim S. Jacinto-Henares, requesting that its application for refund be resolved at the soonest possible time. Deputy Commissioner Nelson M. Aspe (Deputy Commissioner Aspe) replied to Zuellig-PH in a letter^[23] dated March 12, 2014, stressing that applications for refund were processed by the Assessment Service on a "first-in-first-out" basis. Nevertheless, **Deputy Commissioner Aspe assured Zuellig-PH that "[the BIR] shall exert all the necessary efforts to ensure the timely processing of [its] VAT refund claim within the 120-day period under [Section] 112 (D) of the Tax Code, as amended, provided [that] all the required documents have been submitted."**^[24]

Thereafter, **RO Manzanares requested Zuellig-PH to resubmit certain documents, to which the latter complied as evidenced by a letter^[25] dated April 29, 2014.** The aforesaid letter was **stamped received by the Assessment Service on the same date.**^[26] In the same letter, Zuellig-PH manifested that it had **"already submitted the complete documents in support of [its] application (or refund of excess and unutilized input VAT (or the four (4) quarters of TY 2010 in the amount of Php39,931,971.21."**^[27] Consequently, it averred that the BIR should act on its application for VAT refund "within 120 days from the date of submission x x x in accordance with Section [112 (C)], National Internal Revenue Code of 1997."^[28]

When the BIR failed to act on the administrative claim for refund within 120 days from receipt of Zuellig-PH's last correspondence on April 29, 2014 (the 120th day being August 27, 2014), Zuellig-PH filed a Petition for Review^[29] before the CTA-Second Division on September 25, 2014, docketed as CTA Case No. 8899.^[30]

For its part, the BIR argued that the CTA did not acquire jurisdiction over the case, considering that Zuellig-PH's judicial claim for refund was **belatedly filed**. In particular, the BIR pointed out that since Zuellig-PH filed its administrative claim for refund on February 17, 2011, the RDO had until June 11, 2011^[31] to act on the claim. When the RDO failed to do so, Zuellig-PH should have filed a judicial claim with the CTA within thirty (30) days therefrom, or until July 11, 2011.^[32] Since Zuellig-PH filed its judicial claim only on September 25, 2014, which was clearly long after the lapse of the 30-day period, the claim was already belatedly filed. In any event, it argued that Zuellig-PH was not able to discharge its burden of proving its entitlement to its claim for refund.^[33]

The CTA-Second Division Ruling

In a Decision^[34] dated March 9, 2017, the CTA-Second Division denied Zuellig-PH's

Petition for Review for being **filed out of time**.

It held that the 120-day period within which the BIR should act on the administrative claim for refund must be reckoned from the date when Zuellig-PH **submitted the requested documents on July 5, 2011, which was in response to the BIR's written request for such dated June 29, 2011. In this regard, the CTA-Second Division disregarded the subsequent verbal requests for written documents made by the BIR to Zuellig-PH, considering that, as per the case of *Pilipinas Total Gas, Inc. v. CIR (Pilipinas Total Gas)*,^[35] the notice for additional documents should be in writing**; hence, the 120-day period for the BIR to act on the refund claim was reckoned from June 29, 2011, and upon the lapse thereof, Zuellig-PH had thirty (30) days to file its judicial claim for refund, or on December 2, 2011. However, since Zuellig-PH filed the Petition for Review only on September 25, 2014, the same was filed out of time.^[36]

Aggrieved, Zuellig-PH moved for reconsideration.^[37] It argued that the BIR was estopped from questioning the jurisdiction of the CTA given the subsequent representations of Deputy Commissioner Aspe (albeit verbal) regarding the continued processing of its VAT refund claim which took place even beyond July 5, 2011 (*i.e.*, the date which the CTA-Division construed as the reckoning point of the 120-day period for the BIR to act on Zuellig-PH's administrative claim for refund).^[38]

In a Resolution^[39] dated May 9, 2017, Zuellig-PH's motion for reconsideration was denied. Unperturbed, it then elevated^[40] the matter to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision^[41] dated January 21, 2019, the CTA *En Banc* affirmed the CTA-Second Division. It agreed with the latter's application of the ruling in *Pilipinas Total Gas* to Zuellig-PH's case, and further held that the government cannot be estopped by the mistakes of its agents.^[42]

Hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not Zuellig-PH's judicial claim for refund was filed out of time.

The Court's Ruling

The petition is meritorious.

Section 112 (C) of the National Internal Revenue Code of 1997 (Tax Code)^[43] provides for the period within which to file a claim for refund of creditable input tax:

SEC. 112. Refunds or Tax Credits of Input Tax. -

(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.** (Emphases and underscoring supplied)

As may be gleaned from the above provision, the CIR has a period of 120 days **from the date of submission of complete documents** within which to evaluate an administrative claim for tax credit or refund of creditable input taxes (120-day period). If the CIR denies the administrative claim, or if it remains unacted upon the expiration of the said period - which is essentially considered a "denial due to inaction," **the taxpayer may, within thirty (30) days from such denial or expiration, avail of the further remedy of filing a judicial claim before the CTA.**^[44]

In this relation, the BIR issued RMC No. 49-2003^[45] which provides for the procedure in instances where there are pending administrative claims for refund but with incomplete documents. The circular states that the taxing authority shall require the further submission of the needed supporting documents through a notice-request, which should then be complied with by the taxpayer within thirty (30) days from receipt thereof:

Q- For pending claims with incomplete documents, what is 18:the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?

A- For pending claims which have not been acted upon by the 18: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.

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. (Emphases and underscoring supplied)

The foregoing rules were further refined by the Court in *Pilipinas Total Gas*, which resolved the question of: "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?*"^[46]

Confronted with this question, the Court then ruled that the reckoning point of the 120-day period would depend on the following circumstances:

(a) If the taxing authority does not make any notice requesting for additional documents or if the taxpayer manifests that he no longer wishes to submit any additional documents, the 120-day period begins from the date the administrative claim was made as it would be assumed that at that point, the taxpayer had already submitted complete documents in support of its claim;^[47] or

(b) **If the taxing authority requests for additional documents, the 120-day period begins from the time the taxpayer submits the complete documents sufficient to support his claim.** In this scenario, **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.**

^[48]

Notably, there is no requirement in the Tax Code or in RMC No. 49-2003 that the taxing authority's request for additional documents should be made in a specific form. Stated differently, nowhere in the law does it require that the request for additional documents must always and absolutely be made in written form. While written requests would be preferred because it would be easier for the BIR to keep track of the documents submitted by the taxpayer in response thereto, the law does not explicitly prohibit verbal requests for additional documents as long as they are duly made by authorized BIR officials.

To be sure, while the Court in *Pilipinas Total Gas* did state that "such notice by way of a written request is required by the CIR to be sent to [the taxpayer],"^[49] the said statement was not intended to foist any judicial doctrine anent the request's required form. The seeming requirement that the request for additional documents must be "written" only appears in a singular sentence of the Court's entire Decision. In fact, the word "written" only appears twice in *Pilipinas Total Gas*, the pertinent portion of which is hereby reproduced as follows:

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**