

EN BANC

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

Promulgated:

December 8, 2015

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[Signature]-----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 period¹ 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

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 exemptions³ 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

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].