REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

RIOFIL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9326

Members:

FABON-VICTORINO, *Acting Chairperson, and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 27 2019 10:50 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

Before this Court is Petitioner's **"Motion for Reconsideration (of the Decision dated May 17, 2019)"** filed on June 6, 2019, without Respondent's comment thereto despite due notice,[1] praying for the modification of this Court's Decision dated May 17, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for being filed out of time.
>
> **SO ORDERED**."

Petitioner further prays that this Court direct Respondent to continue the processing of its claim for refund for the period covering January 1, 2011 to December 31, 2011; or in the alternative, grant the said claim in the aggregate amount of ₱79,010,310.41, allegedly representing its unutilized and/or unapplied excess input tax for the same period.

In its *Motion for Reconsideration*, Petitioner argues that the Bureau of Internal Revenue retains jurisdiction over its administrative claim for refund;

[1] Records Verification dated August 29, 2019 issued by the Judicial Records Division of this Court.

that the revenue issuances applicable at the time Petitioner filed its administrative claim for refund allow the BIR to continue processing the same; and that assuming without admitting that the BIR no longer has jurisdiction, Petitioner has the "option to wait" for the actual decision of the Commissioner based on this Court's ruling in *Emerson Electric (Asia) Limited – ROHQ vs. Commissioner of Internal Revenue.*[2]

THE COURT'S RULING

We deny the instant *Motion for Reconsideration.*

At the outset, it must be noted that the arguments raised by Petitioner in the said *Motion* have been comprehensively addressed in the assailed decision. The Court has thoroughly discussed the applicability of Revenue Memorandum Circular No. 49-2003 in relation to Petitioner's case, as emphasized in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue.*[3]

Accordingly, when the 120-day period lapses and there is inaction on the part of Respondent, the taxpayer must no longer wait for him to come up with a decision. This is because the inaction is already deemed a denial of the refund claim; hence, the taxpayer must file an appeal within thirty (30) days from the lapse of the said 120-day waiting period.[4] Such being the case, contrary to its stance, Petitioner has no "option to wait" for the actual decision of Respondent.

Section 7(a)(2) of Republic Act No. 1125, as amended, states in no uncertain terms that where the National Internal Revenue Code provides a specific period of action, the inaction of Respondent within such period shall already be deemed a denial, which is already subject to the exclusive appellate jurisdiction of this Court, *viz*:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of 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

[2] CTA Case No. 8470, October 1, 2014.
[3] G.R. No. 207112, December 8, 2015.
[4] *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internol Revenue*, G.R. No. 168950, January 14, 2015.

matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(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**;" *(Emphasis ours)*

xxx xxx xxx"

As emphasized by the Supreme Court in the case of *Aichi Forging Company of Asia, Inc. vs. Court of Tax Appeals – En Banc and Commissioner of Internal Revenue*,[5] the filing of judicial claim shall be made within thirty (30) days from the receipt of the decision of Respondent, or if there is no decision rendered within the 120-day period, Respondent's inaction shall be deemed a denial of the application. Furthermore, it has already been settled that the judicial claim shall be filed within a period of thirty (30) days after the receipt of Respondent's decision or ruling or after the expiration of the 120-day period, **whichever is sooner**.[6]

In the instant case, no decision was rendered by Respondent within the said 120-day period both for Petitioner's administrative claims filed on December 6, 2011 and May 21, 2012, respectively. Thus, after the lapse of the said period, it behooves upon Petitioner to file a judicial claim before this Court within thirty (30) days thereafter. In view of Petitioner's failure to do so, not only is the *Petition for Review* filed out of time, but also this Court did not acquire jurisdiction over the same.

WHEREFORE, finding no compelling reasons to reverse or modify the ruling of this Court in the assailed Decision dated May 17, 2019, Petitioner's **"Motion for Reconsideration (of the Decision dated May 17, 2019)"** is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[5] G.R. No. 193625, August 30, 2017.
[6] *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice