REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR, INC., Petitioner,	CTA EB No. 1733 (CTA Case No. 8967)
	Present:
-versus-	DEL ROSARIO, PJ; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 10 2019 2:25 p.m.

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RESOLUTION

Fabon-Victorino, J.:

On February 11, 2019, the Court *En* Banc rendered a Decision,[1] the decretal portion of which reads:

> **WHEREFORE**, the Petition for Review dated November 20, 2017 filed by petitioner Hedcor, Inc. is **DENIED**, for lack of merit.
>
> Consequently, the assailed Decision dated June 7, 2017 and Resolution dated October 12, 2017, both rendered by the Court in Division are **AFFIRMED**.
>
> **SO ORDERED**.

[1] *Rollo*, pp. 298-313.

In its *Motion for Reconsideration* dated March 8, 2019,[2] petitioner ascribes error on the Court *En Banc's* ruling that respondent's decision in its administrative claim for VAT refund must be issued within 120-day period pursuant to Section 112(C) of the National Internal Revenue Code (NIRC), as amended for purposes of appeal with the Court in Division. For petitioner, such condition would render a taxpayer's administrative claim *pro forma*. Further, such interpretation effectively penalizes taxpayers rather than affording them affirmative relief from respondent's action or inaction, rendering it repugnant to the purpose for which the pertinent provision was enacted. In addition, Revenue Regulations (RR) No. 1-2017 confirms its theory that respondent does not lose his legal competence to act on an administrative claim even *after* the 120-day period had lapsed. Petitioner believes that the Court in Division may take cognizance of an appeal challenging respondent's adverse decision irrespective of whether it was rendered within or beyond the prescribed 120-day period.

Given that petitioner received respondent's Denial Letter on December 11, 2014 which was rendered beyond the prescribed 120-day period, it had until January 10, 2015 to seek judicial review by Court in Division, hence, its Petition for Review was seasonably instituted with the Court in Division on December 29, 2014.

Taking the opposite view[3], respondent argues that the Court in Division lacks the legal competence to entertain petitioner's claim for VAT Refund following the finding of the Court *En Banc.* He asserts that since he failed to act on petitioner's administrative claim within the 120-day period, petitioner had 30 days, or at most until June 1, 2013 for the 1st Quarter, August 30, 2013 for the 2nd Quarter, March 1, 2014 for the 3rd Quarter, and April 7, 2014 for the 4th Quarter, all relating to year 2011, to appeal with the Court in Division. Clearly, its Petition for Review before the Court in Division was belatedly filed on January 9, 2015.

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[2] Ibid. at pp. 324-337.
[3] Respondent's Opposition (Motion for Reconsideration) dated April 16, 2019, id.at pp. 343-347.

THE RULING OF THE COURT

The instant Motion is denied.

Section 112(C) of the NIRC, as amended outlines the procedure to be observed for the Court in Division to attain the requisite legal competence to adjudicate claims involving refund of input taxes. It states:

> **SEC. 112.*Refunds or Tax Credits of Input Tax.-***
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> xxx xxx xxx
>
> (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.
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> 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.

Per the foregoing provision, respondent has a period of 120 days from date of submission of complete documents to act on the taxpayer's application for input tax refund. When respondent renders an adverse Decision within the 120-day period; <u>or</u> failed to act on the said administrative claim within the 120-day period, only then will the taxpayer may seek judicial intervention with the CTA within 30 days either, from receipt of such adverse Decision; or from lapse of the said 120-day period. The 120-day period is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether respondent renders a decision (which must be made within 120 days) or there was inaction on his part, the 120-day period is material.[4]

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[4] See *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 184266, November 11, 2013.

In *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership,*[5] the Supreme Court ruled the taxpayer was granted twin options to elevate its judicial claim for VAT refund: *first,* is to appeal respondent's adverse decision rendered within the 120-day period, within 30 days from receipt thereof; or *second,* elevate respondent's inaction within 30 days from the lapse of such 120-day period. This has been the consistent rule as elucidated in the subsequent cases of *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,*[6] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,*[7] and more recently in *San Roque Power Corporation vs. Commissioner of Internal Revenue.*[8]

Such jurisprudential teaching assumes a two-fold purpose: *first,* is to compel respondent to act promptly by delimiting his period to decide administrative claim for VAT refund to 120-days, counted from taxpayer's submission of complete documents; and *second,* is to afford the taxpayer an immediate recourse in the event that respondent neglected to act within the 120-day period decreed by Section 112(C) of the NIRC, as amended.

As applied in this case, petitioner erroneously appealed respondent's Letter of December 1, 2014, denying its administrative claim simply because the same was rendered beyond the 120-day period to decide such claim. Neither did petitioner elevate respondent's inaction during the 120-day period, within 30 days from the lapse thereof. Its failure to properly avail the *twin* options conferred to it by Section 112 of the NIRC, as amended deprived the Court in Division of jurisdiction to hear the present case.

A claim for unutilized input value-added tax is in the nature of a tax exemption. Thus, strict adherence to the conditions prescribed by the law is required of the taxpayer. Refunds need to be proven and their application raised in the right manner as required by law. Here, noncompliance

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[5] G.R. No. 191498, January 15, 2014.
[6] G.R. No. 168950, January 14, 2015.
[7] G.R. No. 182737, March 2, 2016.
[8] G.R. No. 203249, July 23, 2018.

with the 120+30-day periods is fatal to petitioner's judicial claim for refund.[9]

WHEREFORE, petitioner's *Motion for Reconsideration* dated March 8, 2019 is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[9] *STEAG State Power, Inc. (formerly State Power Development Corporation) vs. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019 (Resolution on Motion for Reconsideration).