REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CHEMREZ, INC., Petitioner,	**CTA EB NO. 1448** *(CTA Case No. 9247)*
	Members:
- *versus* -	Del Rosario, *PJ,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalasta, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 30 2016 3:20 p.m.

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RESOLUTION

DEL ROSARIO, PJ:

For resolution is the **Petition for Review** filed by petitioner Chemrez, Inc. on April 15, 2016 praying that the Resolutions issued by the Third Division Court *(Court in Division)* on February 10, 2016 and March 22, 2016 in CTA Case No. 9247 entitled *"Chemrez, Inc. vs. Commissioner of Internal Revenue"* be set aside; and that respondent be ordered to refund or issue a tax credit certificate (TCC) in its favor the amount of P54,635,211.22 representing the alleged unutilized input Value-Added Tax (VAT) for the period covering January 1, 2006 to December 30, 2006.

Records disclose that on February 10, 2016, the Court in Division promulgated a Resolution[1] dismissing the Petition for Review

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[1] CTA En Banc Rollo, pp. 24-27.

filed by petitioner due to lack of jurisdiction over the subject matter. The Court in Division found that the judicial claim on January 21, 2016 was belatedly filed holding that petitioner had only until May 26, 2008 from the lapse of the 120-day period *(which period is reckoned from the date of filing of administrative claim on December 26, 2007)* within which to file its judicial claim.

Petitioner's Motion for Reconsideration (of the Resolution dated February 10, 2016) filed on March 1, 2016 was denied by the Court in Division in the Resolution dated March 22, 2016,[2] copy of which was received by petitioner on March 30, 2016.[3]

Dissatisfied, petitioner appealed to the Court *En Banc* by way of its Petition for Review[4] on April 15, 2016 pursuant to Section 2(a), Rule 4 in relation to Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) faulting the Court in Division in dismissing its Petition for Review, in applying the 120+30 day period, and in reckoning the 120-day period from the date of filing of its administrative claim, not from the date of its submission of complete documents.

In support of the reliefs sought in the present Petition for Review, petitioner argues that the Court in Division has jurisdiction over the case since it is an appeal over the decision of the Commissioner of Internal Revenue (CIR) under Section 112(C) of the National Internal Revenue Code (NIRC), as amended, in relation to Section 3(a)(1), Rule 4 of the RRCTA. Petitioner alleges that it received a denial letter from the Bureau of Internal Revenue (BIR) dated December 7, 2015 involving its claim for VAT refund or TCC on December 22, 2015; thus, its Petition for Review before the Court in Division on January 21, 2016 was timely filed since it has 30 days from receipt of such denial letter, or until January 21, 2016, within which to file its petition.

Petitioner also asserts that the Court in Division misapplied the *"120+30 day period rule"* and the cases of *CIR vs. San Roque Power Corporation (San Roque)*,[5] *Rohm Apollo Semiconductor Philippines vs. CIR*,[6] and *Nippon Express (Philippines) Corporation vs. CIR*[7]

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[2] CTA En Banc Rollo, pp. 29-34.
[3] CTA En Banc Rollo, p. 28.
[4] CTA En Banc Rollo, pp. 1-117.
[5] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[6] G.R. No. 168950, January 14, 2015.

since the appealed case does not involve *"inaction"* but rather an *"actual denial"* by the CIR.

Petitioner further contends that the "120-day period" should be reckoned from the date of submission of complete documents and not from the date of filing of the administrative claim pursuant to Section 112(C) of the NIRC and the case of *Pilipinas Total Gas, Inc. vs. CIR (Pilipinas Total Gas)*;[8] and that the "30-day period" within which to appeal the concerned claim for refund is from the date of receipt of the letter from the BIR denying its claim.

The Petition for Review must fail for being time-barred.

Republic Act (RA) No. 1125,[9] as amended by RA No. 9282[10] allows a party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration to file a petition for review with the CTA *En Banc*.[11] Section 2(a)(1), Rule 4 of the Revised Rules of the CTA expressly provides the Court *En Banc's* exclusive appellate jurisdiction to review by appeal decisions or resolutions on motions for reconsideration of the Court in Division in the exercise of the latter's exclusive appellate jurisdiction over cases arising from administrative agencies like the BIR, *viz:*

"RULE 4
JURISDICTION OF THE COURT

SECTION 1. Jurisdiction of the Court. - xxx

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[7] G.R. No. 185666, February 4, 2015.
[8] G.R. No. 207112, December 8, 2015.
[9] An Act Creating the Court of Tax Appeals.
[10] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court With Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.
[11] Section 18 of RA 1125, as amended by RA 9282, which provides:
"SEC. 18. Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc." *(Boldfacing supplied)*

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SEC. 2. Cases within the jurisdiction of the Court en banc. - The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;"

Relatedly, Section 3(b), Rule 8 of the RRCTA allows appeal by way of a Petition for Review to the Court *En Banc* within fifteen (15) days from receipt of a copy of the questioned decision or resolution of the Court in Division, *viz:*

"RULE 8
PROCEDURE IN CIVIL CASES

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SEC. 3. Who may appeal; period to file petition. –

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(b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review." *(Boldfacing supplied)*

In the case at bar, petitioner received the assailed Resolution of the Court in Division dated March 22, 2016 on **March 30, 2016**. Pursuant to Sec. 3(b), Rule 8 of the RRCTA, petitioner has 15 days from March 30, 2016, or until **April 14, 2016**, within which to appeal to the Court *En Banc*. Inasmuch as the Petition for Review was filed only on **April 15, 2016**, the same was clearly filed out of time which makes the assailed Resolution of the Court in Division final and executory.

Settled in this jurisdiction that the right to appeal is merely statutory and one who seeks to avail of it must comply with the statute or rules.[12] The perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory[13] depriving the appellate body of any jurisdiction to alter the final judgment.[14]

Even assuming that the Court *En Banc* may overlook the timeliness of the Petition for Review, the outright dismissal is still an indubitable conclusion.

Rule 43 of the Rules of Court *(which Rule is suppletory to the RRCTA pursuant to Sec. 3, Rule 1 in relation to Sec. 1, Rule 7 of the RRCTA)*,[15] under Section 8 thereof, allows dismissal of a petition if the Court finds the same to be patently without merit.[16]

Judicious evaluation of the arguments presented by petitioner warrant an immediate dismissal of the case for the same is patently without merit. The Court in Division aptly concluded that it has no jurisdiction over the case as the judicial claim was belatedly filed by petitioner.

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[12] Apex Mining Co., Inc. vs. Commissioner of Internal Revenue, G.R. No. 122472, October 20, 2005.
[13] Id.
[14] Gesmundo vs. Salome Sahagun Vda. De Gesmundo, G.R. No. 147881, June 27, 2006.
[15] RULE 1 - TITLE AND CONSTRUCTION
SEC. 3. Applicability of the Rules of Court. - The Rules of Court in the Philippines shall apply suppletorily to these Rules.
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RULE 7 – PROCEDURE IN THE COURT OF TAX APPEALS
SECTION 1. Applicability of the Rules of Court on procedure in the Court of Appeals, exception. – The procedure in the Court en banc or in Division in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules.
[16] Sec. 8. Action on the petition. – The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, within ten (10) days from notice, or dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

Section 112(C)[17] of the NIRC, as amended[18] provides judicial remedy relative to taxpayers' claim for refund of input VAT attributable to zero-rated sales, viz:

> "SEC. 112. Refunds or Tax Credits of Input Tax. – xxx
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> (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**." *(Boldfacing supplied)*

In *CIR vs. Aichi Forging Company of Asia, Inc.*,[19] the Supreme Court clarified the two scenarios contemplated under Section 112(D) of the NIRC *[now Sec. 112(C)]* which are appealable to the CTA within the 30-day period, viz:

> "In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a <u>decision</u> is issued by the CIR <u>before the lapse of the 120-day period</u>; and (2) when <u>no decision</u> is made <u>after the 120-day period</u>. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA**. As we see it then, the 120-day period is crucial in filing an appeal with the CTA." *(Boldfacing and underscoring supplied)*

Petitioner obviously fails to consider the concept of a *"deemed a denial decision"* of a claim for VAT refund after the lapse of the 120-day period under Section 112 (C) of the 1997 NIRC, as amended, which if not timely appealed with the CTA becomes final and unappealable as elucidated in *San Roque, supra,*[20] *viz.:*

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[17] Formerly Section 112(D) of the NIRC (Republic Act No. 8424).
[18] Republic Act No. 9337.
[19] G.R. No. 184823, October 6, 2010.
[20] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

> "The Atlas doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner** on Philex's claim **during the 120-day period is, by express provision of law, 'deemed a denial' of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the 'deemed a denial' decision of the Commissioner final and inappealable.** The right to appeal to the CTA from a decision or 'deemed a denial' decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences." *(Boldfacing supplied)*

In other words, a decision made by the BIR after the 120+30 day period like in the appealed case, is therefore inconsequential as the inaction of the CIR during the 120-day period is "deemed a denial" of a claim for refund, and without a timely appeal filed by the taxpayer, the "deemed a denial" decision of the CIR becomes final and unappealable.

The 120-day period is said to be crucial in filing an appeal with the CTA.[21] In order for the Court to conclude that there is "deemed a denial decision" due to inaction during the 120-day period, a correct reckoning point of the 120-day period is imperative. In this regard, the pronouncement in *Pilipinas Total Gas* is instructive:

> "Thus, the question must be asked: 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?**
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> Ideally, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, ideally, **the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.**

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[21] Note 19, *supra*.

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With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, **for purposes of determining when the supporting documents have been completed - 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**. After all, **he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application**.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, **in terms what additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund**. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are actually complete as required by law - is for the CIR and the courts to determine. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper

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determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.

Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the adminstrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, "officially received" as provided under RMC No. 49-2003.

To summarize, for the just disposition of the subject controversy, **the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing**.

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected. *(Boldfacing & underscoring supplied)*

Elsewise stated, the 120-day period may be reckoned from either of the following dates, whichever may be applicable:

1. Date of filing of the administrative claim if necessary documents were already completed the moment the taxpayer filed the administrative claim, or the taxpayer plainly manifests that he no longer wishes to submit any other additional documents to complete his administrative claim; or

2. Date of submission of documents, which may be made within 30 days from the date of filing of administrative claim, unless given further extension by the CIR.

Based from the foregoing discussion, the Court in Division correctly counted the 120-day period from the date of filing of petitioner's administrative claim for refund on **December 26, 2007** as the Petition for Review does not disclose any allegation and supporting proof that petitioner submitted additional documents within 30 days from the date of filing of its administrative claim; or that petitioner was given further extension by the CIR to submit documents in support of its administrative claim for refund; or that the BIR made a request for petitioner to produce documents in the course of the investigation and processing of petitioner's claim.

Counting the 120-day period from December 26, 2007, the CIR, therefore, had until **April 24, 2008** to act on petitioner's administrative claim for refund. As there was "inaction" on the part of the CIR during the 120-day period, such inaction is "deemed a denial decision" of the CIR which is ripe for appeal with the Court within 30 days from the lapse of such period. Petitioner's failure to appeal the "inaction" or "deemed a denial decision" of the CIR with the Court within 30 days from the lapse of the 120-day period or until **May 24, 2008**, the CIR's "deemed a denial decision" became final and unappealable following *San Roque*.[22]

WHEREFORE, the Petition for Review is **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

[22] Note 20, *supra*.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Official Business)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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