REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LAPANDAY FOODS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9966

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:

OCT 12 2020 2:32 pm

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RESOLUTION

Before this Court is petitioner's **Motion for Reconsideration (Of the Resolution dated 30 June 2020)**, filed on July 23, 2020, with respondent's **Comment** filed by registered mail on August 18, 2020 and received by the Court on September 1, 2020.

In the Resolution dated June 30, 2020, the Court granted the respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court, and upon finding that petitioner's judicial claim for refund was filed out of time, the Court dismissed the Petition for Review under Case No. 9966.

In its motion for reconsideration, petitioner prays that the Resolution dated June 30, 2020 be reversed and set aside and that the Court give due course to its Petition for Review. In support of its motion, petitioner claims that the mandatory and jurisdictional nature of the 120+30 day period does not apply in cases where the Commissioner of Internal Revenue (CIR) issues a decision on the VAT refund after the 120-day period. Petitioner also claims that the cases of *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*[1] and *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[2] do not apply in this case, as those cases resulted from the inaction of the CIR. Petitioner posits that when the CIR issued the Letter of Denial on August 23, 2018, such act removed petitioner's case from the scope of the mandatory and jurisdictional 120+30-day rule.

Petitioner also reiterates that the doctrine in the *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*[3] should apply and that the taxpayer can wait for a decision of the CIR before filing its judicial claim. Petitioner insists that it was erroneous on the part of the Court to disregard the similarity in the factual circumstances and the doctrine found in Lascona merely because it was based on a different provision of the National Internal Revenue Code of 1997, as amended (Tax Code).

Petitioner posits that the 120+30 day period under Section 112 (C) is a claim-processing rule which does not restrict the subject-matter jurisdiction of the Court. According to the petitioner, its failure to comply with the 120+30 day period does not deprive the Court of its jurisdiction to adjudicate based on the assailed Letter of Denial, dated August 23, 2018, issued by the BIR denying petitioner's claim for VAT refund/tax credit.

Moreover, petitioner theorizes that according to the legislative history of the 120+30 day provision in Section 112 of the Tax Code is non-jurisdictional, and that the same is not mandatory and jurisdictional but was only meant to allow the CIR more time within which to rule upon the claim of the taxpayer concerned. Petitioner maintains that the directive is addressed to the Commissioner and not to the taxpayer. According to the petitioner, when Congress decided to allow taxpayers to file a claim for refund of input taxes with the CTA within thirty (30) days from the receipt of the decision denying the claim or after expiration of the sixty-day period given to the CIR to grant the refund, it merely intended to grant the taxpayers the option to appeal to the CTA despite the pendency of their administrative claims with the CIR.

Petitioner also submits that in the Tax Code, as amended, there was no intention to limit the period within which the taxpayer is

[1] G.R. No. 182737, March 2, 2016.
[2] G.R. No. 168950, January 14, 2015.
[3] G.R. No. 171251, March 5, 2012.

made to receive the CIR's decision on the claim for refund, such that the 120 days is directed to the CIR, and not to the taxpayer. Petitioner states that otherwise, it can be said that the failure by the CIR to decide within 120 days is faulted against the taxpayer.

Finally, petitioner claims that the CIR is estopped from claiming prescription considering that the BIR still acted on petitioner's claim despite the lapse of the 120-day period.

On the other hand, respondent, in his comment, maintains that the Court is correct in ruling that it has no jurisdiction over the case. According to respondent, the last day for filing a judicial claim with the CTA is on August 4, 2013, counting the 120+30 days from the filing of the administrative claim for refund on March 7, 2013. Since there was no decision rendered within the 120-day period and that the instant petition was filed only on October 30, 2018, the Court can no longer exercise jurisdiction on the instant case as the petition was already filed out of time. Thus, respondent prays that the motion be denied for utter lack of merit and that the Resolution dated June 30, 2020 which dismissed the petition for review due to lack of jurisdiction be upheld and made permanent.

After a careful review of the arguments raised by both parties, the Court finds no merit in petitioner's motion for reconsideration.

At the outset, it should be noted that it is undisputed that petitioner filed its judicial claim for tax refund over five (5) years from the filing of the administrative claim, way beyond the 120-day period prescribed by law. Petitioner argues that its failure to comply with the 120+30 day period does not deprive the Court of jurisdiction over the instant petition.

Petitioner's interpretation of Section 112 (C) of the Tax Code is misplaced. It has long been settled that the 120+30-day period is mandatory and jurisdictional, such that failure to comply with the same deprives the CTA of jurisdiction.[4] The CIR is only given 120 days within which to decide, and his failure to do so or his inaction would be deemed a denial of the administrative claim. Moreover, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance

[4] *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper.[5]

In its Resolution promulgated on June 30, 2020, the Court already thoroughly discussed the basis for the dismissal of the instant petition. Contrary to petitioner's assertions, it is of no moment that the respondent belatedly issued a decision on the application for tax refund/credit. There is no option for the taxpayer to wait for the decision beyond the 120-day period.

In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[6], the Supreme Court, quoting the decision of the CTA En Banc, found:

> "**Evidently, the Petition for Review in C.T.A. Case No. 7687 was filed 426 days late**. Thus, the Petition for Review in C.T.A. Case No. 7687 should have been dismissed on the ground that the Petition for Review was filed way beyond the 30-day prescribed period; thus, no jurisdiction was acquired by the CTA Division; x x x (Emphasis supplied)
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> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.

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[5] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[6] *Ibid.*

> 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.*" (*Underscoring ours*)

In the instant case, petitioner filed its administrative claims on March 14, 2013, and waited for respondent's decision on October 2, 2018 before filing its Petition for Review. Petitioner only had 30 days to file its judicial claim after the expiration of the Commissioner's 120-day period to act on the application for refund/tax credit. Its failure to do so rendered the "deemed denial" decision of the CIR final and unappealable.

Petitioner is also mistaken in its belief that the cases of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[7] and *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[8] do not apply in this case. In those cases, the Supreme Court clarified the rules regarding the filing of the judicial claim for refund following the decision or inaction of the CIR. To reiterate, the 30-day period provided by law should be reckoned after the receipt of respondent's decision/ruling or after the expiration of the 120-day period, **whichever is sooner**, any judicial claim filed in a period less than or beyond the said 120+30-day period is outside the jurisdiction of this Court. Moreover, when the 120-day period lapses and there is inaction on the part of the respondent, the taxpayer must no longer wait for respondent to come up with a decision.

Petitioner's insistence on the applicability of the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*[9] is also

[7] G.R. No. 182737, March 2, 2016.
[8] G.R. No. 168950, January 14, 2015.
[9] G.R. No. 171251, March 5, 2012.

misplaced. Again, the ruling in that case was based on Section 228 of the NIRC of 1997, as amended, and Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (CTA), and the issue pertains to a tax assessment and not an input VAT refund or credit claim. Unlike such provision wherein the taxpayer can wait for the decision of the respondent on the disputed assessment, no equivalent provision was present in the Revised Rules of the CTA with regard to claims for refund.

Finally, we emphasize the point made by the Supreme Court held in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[10], that the 120-day period is for the benefit of petitioner and it should take advantage of such benefit by using the 120+30 day periods within which to file its appeal with this Court and no longer wait for the untimely decision of respondent:

> "**Indeed, the 120-day period granted to the CIR to decide the administrative claim under the Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.**
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> xxx xxx xxx
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> *Ideally*, upon filing his administrative claim, a taxpayer should complete the necessary document 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**

[10] G.R. No. 207112, December 8, 2015.

> **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." (*Emphasis ours*)

Hence, the instant Petition for Review filed on October 30, 2018 was filed beyond the 30-day period under Section 112(C) of the NIRC of 1997, as amended, and as previously held, the Court has no jurisdiction over the instant case.

WHEREFORE, petitioner's **Motion for Reconsideration (of the Resolution dated 30 June 2020)** is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice