REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

ORICA PHILIPPINES INC.,
Petitioner,

CTA Case No. 10036

Members:

-versus-

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 19 2023 2:30 p

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DECISION

MANAHAN, J.:

This *Petition for Review* filed through registered mail on February 15, 2019 by petitioner Orica Philippines, Inc. praying that judgment be rendered ordering respondent Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate (TCC) in favor of petitioner the aggregate amount of ₱25,780,077.47, representing unutilized input value-added tax (VAT) attributable to its export sales for the fourth (4th) quarter of fiscal year (FY) ended September 30, 2016, or the period from July 1, 2016 to September 30, 2016.[1]

THE PARTIES

Petitioner Orica Philippines, Inc. is a corporation registered with the Philippine Securities and Exchange Commission (SEC).[2] It is registered with the Bureau of

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[1] Statement of the Case, Pre-Trial Order dated October 28, 2019, Docket – Vol. I, p. 453.

[2] Par. 1.a, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 381; Exhibits "P-1" and "P-2", Docket – Vol. I, pp. 540 to 552.

Internal Revenue (BIR) and assigned with Taxpayer's Identification Number (TIN) 000-059-661-000.[3]

Respondent CIR is the duly appointed head of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City

THE FACTS

Petitioner filed an application with the BIR requesting the refund of its excess input VAT on September 25, 2018,[4] amounting to ₱38,189,958.33 for the period covering July 1, 2016 to September 30, 2016.

On January 16, 2019, petitioner received the letter dated December 7, 2018 from the Assessment Service, partly denying petitioner's request for refund. The said letter reads as follows:

"REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Office of the Assistant Commissioner, Assessment Service

December 07, 2018

MR. ALFREDO LOTIVO
Business Partner - Finance
ORICA PHILIPPINES, INC.
11/F Rockwell Business Center,
Tower 2 Ortigas Avenue, Ugong,
Pasig City 1604

Dear Mr. Lotivo:

This has reference to your claim for Value Added Tax (VAT) refund covering the period from July 01, 2016 to September 30, 2016 in the

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[3] Par. 1.c, Stipulation of Facts, JSFI, Docket – Vol. I, p. 381; Exhibit "P-3", Docket – Vol. I, pp. 553 to 554.
[4] Refer to par. 1.d, Stipulation of Facts, JSFI, Docket – Vol. I, p. 382; Exhibits "P-16" to "P-17", Docket – Vol. I, pp. 582 to 586.

amount of Php38,189,958-33 pursuant to Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Please be informed that, upon processing of the aforementioned claim under Tax Verification Notice No. TVN201800024334 dated September 25, 2018, the total amount of input tax approved for VAT refund on local purchases and importations is **Php12,409,880.86**, net of disallowances. Details are shown on the attached sheet marked as Annex 'A' and summarized as follows:

A. Local Purchases	
	Php
VAT Refund Claimed	9,363,571.55
Less: Disallowances	9,363,571.55
	Php
Net Approved VAT Refund	**0.00**
B. Importations	
	Php
VAT Refund Claimed	28,826,386.78
Less: Disallowances	16,416,505.92
Net Approved VAT Refund	**PhP12,409,880.86**
Total Amount Approved for VAT Refund	**PhP12,409,880.86**

The amount of **Php12,409,880.86** representing the approved VAT refund on importation is subject for further verification of actual receipts of VAT payments by the Bureau of Customs (BOC), in compliance with the requirements of the Commission on Audit.

The approved report on the said claim may be subjected to audit/investigation and should there be material findings, the amount allowable may be adjusted and/or an assessment notice may be issued for the collection of any deficiency tax or excess tax refund.

Very truly yours,

(Signed)

ERLINDA A. SIMPLE
Assistant Commissioner of
Internal Revenue
Assessment Service

Annex 'A'

ORICA PHILIPPINES, INC.

Claim for VAT Refund

Period Covered July 1 to September 30, 2016

Tax Verification Notice No. TVN201800024334 dated September 25, 2018

COMPUTATION OF THE AMOUNT APPROVED FOR VAT REFUND

A. **Local Purchases**

VAT Refund Claimed		**P 9,363,571.55**
LESS: Disallowances after VCAD verification		
Violation of Invoicing requirements	P 2,699,777.86	
Suppliers not VAT-registered per ITS verification	136,631.59	
Deferred input VAT on capital asset purchases exceeding 1 million	134,072.46	
Difference between application against schedule	829,451.67	
Input VAT allocable to export sales without foreign remittance	332,453.57	4,132,387.15
LESS: Disallowance after Review		
Disallowed ripened input VAT (unsupported)	P 211,392.04	
Additional input VAT for deferment	268,392.82	
Output VAT on interest income from persons/entities other than banks	10,240.96	
output VAT on management fee income	293,462.40	
Output VAT on discrepancy between SAWT vs. schedule of sales	5,547.60	
Input VAT attributable to remittances with remitter other than customer	4,442,148.58	5,231,184.40

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NET ALLOWABLE VAT REFUND		P -

B. **Importations**

VAT Refund Claimed		**P 28,826,386.78**
LESS: Disallowance after VCAD verification:		
No supporting documents	P274,890.00	
Input VAT allocable to exempt sales		274,890.00
LESS: Disallowance after Review:		
Importation without supporting documents	P16,141,615.92	
Input VAT attributable to exempt sales		16,141,615.92
NET ALLOWABLE VAT REFUND		**P12,409,880.86**"[5]

Petitioner posted the present *Petition for Review* on February 15, 2019,[6] assailing the disallowed portion in the aggregate amount of ₱25,780,077.47.

On May 22, 2019, respondent filed his Answer to the Petition for Review.[7]

The Pre-Trial Conference was set and held on July 4, 2019.[8] Prior thereto, respondent's Pre-Trial Brief was submitted on June 27, 2019,[9] while Pre-Trial Brief (of Petitioner Orica Philippines, Inc.) was filed on June 28, 2019.[10]

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[5] Refer to par. 1.e, Stipulation of Facts, JSFI, Docket – Vol. I, pp. 382 to 383; Exhibits "P-19" to 'P-19-1", Docket – Vol. I, pp. 589 to 590.
[6] Docket – Vol. I, pp. 13 to 26. Refer also to par. 1.f, Stipulation of Facts, JSFI, Docket – Vol. I, p. 383.
[7] Docket – Vol. I, pp. 86 to 97.
[8] Notice of Pre-Trial Conference dated May 24, 2019, Docket – Vol. I, pp. 99 to 100; Minutes of the hearing held on, and Order dated, July 4, 2019, Docket – Vol. I, pp. 232-A to 232-D, and 233 to 235, respectively.
[9] Docket – Vol. I, pp. 112 to 115.
[10] Docket – Vol. I, pp. 142 to 151. am

Respondent submitted the BIR Records for the present case on July 4, 2019.[11]

On August 5, 2019, the parties filed their Joint Stipulation of Facts and Issues,[12] which was approved in the Resolution dated August 15, 2019,[13] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on October 28, 2019.[14]

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following witnesses, namely: (1) Ms. Teresa S. Gonzales,[15] petitioner's Tax Specialist; and (2) Ms. Krista V. Bambao,[16] the Court-commissioned Independent Certified Public Accountant Report (ICPA).[17] The latter submitted her Report on August 5, 2019.[18]

On November 18, 2020, petitioner filed its Formal Offer of Evidence.[19] Respondent then submitted his Comment (on Petitioner's Formal Offer of Evidence dated 18 November 2020) on November 24, 2020.[20] In the Resolution dated January 21, 2021,[21] the Court admitted petitioner's Exhibits, except for the following:

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[11] Respondent's *Ex-Parte Compliance* dated July 4, 2019, Docket – Vol. I, pp. 230 to 231.
[12] Docket – Vol. I, pp. 381 to 390.
[13] Docket – Vol. I, p. 393.
[14] Docket – Vol. I, pp. 453 to 464.
[15] Exhibit "P-24", Docket – Vol. I, pp. 154 to 166; Minutes of the hearing held on, and Order dated, October 29, 2019, Docket – Vol. I, pp. 465 to 471. Exhibit "P-24-2", Docket – Vol. I, pp. 505 to 511; Minutes of the hearing held on, and Order dated, October 29, 2020, Docket – Vol. I, pp. 520 to 522.
[16] Exhibit "P-26", Docket – Vol. I, pp. 132 to 137; Minutes of the hearing held on, and Order dated, July 4, 2019, Docket – Vol. I, pp. 232-A to 232-D, and 233 to 235, respectively; Exhibit "P-25", Docket – Vol. I, pp. 417 to 450. Minutes of the hearing held on, and Order dated, October 29, 2019, Docket – Vol. I, pp. 465 to 471.
[17] *Oath of Commission* dated July 4, 2019 Docket – Vol. I, p. 232-F; Minutes of the hearing held on, and Order dated, July 4, 2019, Docket – Vol. I, pp. 232-A to 232-D, and 233 to 235, respectively.
[18] Exhibit "P-27", Docket – Vol. I, pp. 244 to 260.
[19] Docket – Vol. I, pp. 527 to 539.
[20] Docket – Vol. I, pp. 603 to 605.
[21] Docket – Vol. I, pp. 609 to 612. *cm*

1. Exhibits "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-38", "P-39 to P-42", "P-44 to P-62", "P-43", "P-97", "P-98 to P-125", "P-126 to P-290", "P-291 to P-302", "P-303 to P-311", "P-312 to P-463", "P-464 to P-516", "P-517 to P-558", "P-559 to P-582", "P-583", "P-584 to P-670", "P-758 to P-846", "P-1406 to P- 1632", "P-1633 to P-1720", "P-1721 to P-1850", "P-1851" and "P-1852", for not being found in the records; and

2. Exhibits "P-36", "P-37", "P-63 to P-79", "P-80 to P-96", "P-671 to P-757", "P-847" to "P-1263", "P-1264 to P-1275", "P-1276 to P-1284", "P-1285 to P-1286", "P-1287 to P-1328", "P-1329 to P-1330", "P-1331 to P-1336", "P-1337 to P-1393" and "P-1394 to P-1405", for not being found in the records and for being ascertained as photocopies by the ICPA.

On February 16, 2021, petitioner filed a Motion for Reconsideration (RE: Resolution on the Formal Offer of Evidence dated 18 November 2020),[22] praying that this Court render judgment:

1. Giving due course to the instant Motion for Reconsideration (RE: Resolution on the Formal Offer of Evidence dated 18 November 2020);

2. Admitting as evidence Exhibits "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-38", "P-39 to P-42", "P-44 to P-62", "P-43", "P-97", "P-98 to P-125", "P-126 to P-290", "P-291 to P-302", "P-303 to P-311", "P-312 to P-463", "P-464 to P-516", "P-517 to P-558", "P-559 to P-582", "P-583", "P-584 to P-670", "P-758 to P-

[22] Docket – Vol. II, pp. 619 to 624. ᴳᴍᴋ

846", "P-1406 to P-1632", "P-1633 to P-1720", "P-1721 to P-1850", "P-1851" and "P-1852", as part of the voluminous documents examined, marked, and identified by the ICPA;

3. Correcting the records as regards Exhibits "P-16" and "P-27-4" as noted by the Court.

Respondent, however, failed to file his comment thereon.[23]

In the Resolution dated June 17, 2021,[24] the Court granted petitioner's Motion for Reconsideration; and admitted the exhibits mentioned therein.

On February 15, 2022, petitioner filed a Motion with Leave of Court to Reopen the Case for Presentation of Additional Evidence with Motion for Leave to Allow Conditional Recall of Independent CPA (of Orica Philippines, Inc.).[25] Respondent submitted his Opposition (Re: Motion with Leave of Court to Reopen the Case for the Presentation of Additional Evidence with Motion for Leave to Allow Conditional Recall of Independent CPA) on March 14, 2022.[26] In the Resolution dated March 29, 2022,[27] the Court: (1) granted petitioner's Motion with Leave of Court to Reopen the Case; (2) set the recall of the ICPA to testify on the certified true copies of the export declarations and apostilled bills of lading on April 28, 2022.

Thereafter, petitioner filed its Supplemental Independent Certified Public Accountant Report and its Supplemental Judicial Affidavit of Krista V. Bambao on April

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[23] Records Verification Report dated March 18, 2021 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 631.
[24] Docket – Vol. II, pp. 637 to 640.
[25] Docket – Vol. II, pp. 652 to 656.
[26] Docket – Vol. II, pp. 795 to 797.
[27] Docket – Vol. II, pp. 800 to 802.

21, 2022[28] and April 22, 2022[29], respectively. Said witness was recalled to the witness stand on April 28, 2022.[30]

Subsequently, the Supplemental Formal Offer of Evidence (of Petitioner Orica Philippines, Inc.) was filed on May 4, 2022.[31] No comment was filed thereon by respondent.[32] In the Resolution dated July 1, 2022,[33] the Court resolved to admit petitioner's exhibits.

For his part, respondent offered the testimony of Revenue Officer Daniel Carlo C. Perez.[34]

On August 17, 2022, respondent filed his Formal Offer of Evidence.[35] Respondent submitted his Comment on the Respondent's Formal Offer of Exhibits on August 25, 2022.[36] In the Resolution dated October 6, 2022,[37] the Court admitted respondent's exhibits.

Respondent filed his Memorandum on November 10, 2022,[38] while petitioner submitted its Memorandum on November 11, 2022.[39]

The present case was submitted for decision on December 15, 2022.[40]

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[28] Exhibit "P-1856", Docket – Vol. II, pp. 803 to 821.
[29] Exhibit "P-1857", Docket – Vol. II, pp. 904 to 912.
[30] Minutes of the hearing held on, and Order dated, April 28, 2022, Docket – Vol. II, pp. 969 to 970-A.
[31] Docket – Vol. II, pp. 971 to 975.
[32] Records Verification Report dated May 18, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 976.
[33] Docket – Vol. II, pp. 982 to 983.
[34] Exhibit "R-8", Docket – Vol. I, pp. 121 to 127; Minutes of the hearing held on, and Order dated, August 9, 2022, Docket – Vol. II, pp. 984 to 986, and 987 to 988, respectively.
[35] Docket – Vol. II, pp. 989 to 993.
[36] Docket – Vol. II, pp. 995 to 997.
[37] Docket – Vol. II, pp. 1002 to 1003.
[38] Docket – Vol. II, pp. 1004 to 1020.
[39] Docket – Vol. II, pp. 1022 to 1066.
[40] Minute Resolution dated December 15, 2022, Docket – Vol. II, p. 1001.

THE ISSUES

The parties stipulated the following issues for this Court's resolution, to wit:

> "1. Whether Petitioner is entitled to its claim for cash refund representing its excess and/or unutilized input VAT attributable to its zero-rated sales for the fourth quarter of fiscal year ended 30 September 2016 ('Q4 of FY 2016') (or the period 1 July 2016 to 30 September 2016) in the amount of Pesos: Twenty-Five Million Seven Hundred Eighty Thousand Seventy-Seven & 47/100 (₱25,780,077.47).
>
> 2. Whether the documents submitted at the administrative level by Petitioner were sufficient to justify Petitioner's claim for refund."[41]

Petitioner's arguments:

Petitioner primarily contends that it has sufficiently complied with all the requirements to be entitled to the entire amount claimed for refund in accordance with Section 112(A) and (C) of the 1997 NIRC, as amended, detailed with the following allegations:

1. It is a VAT-registered entity;

2. That it filed its administrative and judicial claims for refund within the prescriptive period provided under the pertinent provisions of the 1997 NIRC, as amended, and its implementing rules and regulations;

3. That it is engaged in zero-rated or effectively zero-rated transactions and that the sales were paid for in acceptable foreign currency exchange and the proceeds have been duly accounted for in

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[41] Stipulation of Issues, JSFI, Docket – Vol. I, p. 384.

accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

4. That the input taxes due from the purchases of goods and services directly attributable to zero-rated sales of petitioner were duly supported by VAT invoices or official receipts (ORs); and

5. That the claimed input VAT payments were not applied against any output tax in the succeeding periods.

Petitioner claims that for the 4th quarter of FY ended September 30, 2016, it generated a total sales of Php838,240,071.01 and out of the said sales generated for the covered period, sixty nine percent (69%) or Php581,891,127.55 were treated as sales subject to VAT zero-rate since these represented revenues earned from goods sold either to non-resident foreign corporations or manufacturers /producers registered with the Board of Investments (BOI) whose products are 100% exported.

Petitioner assails respondent's denial of a substantial portion of its claim for refund and alleges that the BIR's reclassification of its sales to BOI registered entities from "zero-rated sales" to "exempt transactions" for the sole reason that it failed to present a zero-rating certificate, is without any legal basis because an approved application for zero-rating or effectively zero-rated transactions is not a requirement for input VAT refund under the 1997 NIRC, as amended.

Petitioner likewise asserts that the other disallowances amounting to Php5,196,312.97 due to other reasons provided in the denial letter, are without legal and factual bases.

Respondent's counter-arguments:

Respondent maintains that petitioner is not allowed to submit documents (to the Court) that it did not present to the BIR when it filed the administrative claim for refund. He argues that in these type of cases, judicial review is confined to the same documents submitted at the administrative level, citing the ruling of the Supreme Court in the case of *Pilipinas Total Gas, Inc. vs Commissioner of Internal Revenue.*[42] Since the BIR already rendered a decision on the administrative claim for refund, respondent avers that the jurisdiction of the Court shifts from a trial court to an appellate tribunal, hence, the latter should confine itself to whether the findings of respondent are consistent with law.

On the substantive merits of the instant claim for refund, respondent alleges that petitioner, is not entitled to refund in the amount of Php25,780,077.47 based on a thorough examination of the documents it submitted in support of the claim for refund.

Respondent cites the results of the initial investigation by the VAT Credit and Audit Division (VCAD) of the BIR showing that the claim amounting to Php4,407,277.15) should be disallowed based on the following grounds:

1. Verification of the proof of total export sales reveal that some invoices are under remitted, which resulted to input tax allocation on unremitted export sales amounting to Php332,453.47;

2. Verification of the sources of VAT input taxes against the certified true copy of the VAT invoices in the case of local purchases of goods; against the certified true copy of official receipts in the case of local purchase of services; and, against the Single Administrative Document (SAD) and Statement of Settlement of Duties and Taxes (SSDT) for importations, disclosed that some of the source documents for said claim are not in accordance with the invoicing and accounting requirements for VAT registered persons, pursuant to Section 113 in relation to Section 110 of the 1997 NIRC, as amended. This resulted to a total disallowance on local purchases of Php 2,974,667.96;

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[42] G.R. No. 2017112, December 8, 2015.

3. Verification of the BIR registration status of petitioner's various suppliers reveal that some of the said suppliers are not VAT registered, thus resulting to an additional disallowance of Php 136,631.59;

4. There were additions of capital goods during the period of claim, purchases made on September exceeded the threshold of One Million Pesos (Php 1,000,000.00), resulting to an unripened portion of deferred input tax amounting to Php 134,072.46; and

5. Comparison between the Input Tax claimed per BIR Form No. 1914 versus per schedule resulted to a difference due to lower amount of Php 829,451.67.

Moreover, respondent agrees with the results of the examination conducted by the Tax Audit Review Division (TARD) of the BIR showing that the claim should be further reduced by Php16,141,615.92) based on various grounds.

THE COURT'S RULING

We shall first address the timeliness of the judicial appeal filed by petitioner as it is well settled that any claim filed in a period less than or beyond the period provided by the 1997 NIRC, as amended, falls outside the jurisdiction of the Court.[43]

Records of the case as well as the admissions made by the parties in their JSFI[44] and statements made by petitioner in its Memorandum[45] show that the latter filed an application/request for refund of its excess input VAT on September 25, 2018 in the amount of P38,189,958.33 for the period covering July 1, 2016 to September 30, 2016.[46] The respondent issued a letter dated December 7, 2018 partially

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[43] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 182737, March 2, 2016.
[44] Docket, Vol. I, pp.381-390.
[45] Docket, Vol. II, pp. 1022-1066.
[46] Exhibit "P-16", Docket, pp. 209-212. *ссм*

denying petitioner's request for refund.[47] This letter was then received by petitioner on January 16, 2019 which prompted it to file a Petition for Review (via registered mail) with the Court on February 15, 2019.

Given the foregoing facts, this Court finds that the judicial appeal was filed out of time, hence, it has no jurisdiction over the Petition for Review filed by petitioner.

We explain.

The period for filing the administrative and judicial claims for refund of excess input VAT is governed by Section 112 (C) of the 1997 NIRC, as amended, quoted as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

In the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing Inc.) vs. Commissioner of Internal Revenue,*[48] (*Silicon* case), the Supreme Court emphasized the mandatory and jurisdictional nature of the 120 (now 90)[49] + 30 days to elevate an appeal with the Court and we quote:

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[47] Exhibit "P-19", Docket, Vol. I, pp.216-217.
[48] G.R. No. 182737, March 2, 2016.
[49] Under the TRAIN Law.

> "The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, **whichever is sooner**.
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, **any claim filed in a period less than or beyond the 120 + 30 days provided by the NIRC is outside the jurisdiction of the CTA."** (emphases supplied)

The ruling in the *Silicon* case is in accord with the provisions of Section 7 (a) (1) and (2) of Republic Act (RA) 1125 as amended by RA 9282, where the jurisdiction of the Court over the inaction of the respondent is clear and categorical, and we quote:

> "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 matters arising under the National Internal Revenue Code 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 for action, in which case the inaction shall be deemed a denial**;" (Emphases supplied)

It bears stressing that the "inaction" provided in the CTA Charter occurs when respondent fails to decide within a "specific period" required by law which in the case of claims for refund of input VAT is upon the lapse of the ninety (90)-day period provided in Section 112 (C) of the 1997 NIRC, as amended. Such inaction is deemed a denial appealable to the Court. *cm*

Given this jurisprudential pronouncement, the respondent had until December 24, 2018 or 90 days from petitioner's filing of its administrative claim for refund on September 25, 2018, to decide on the claim for refund. Petitioner should have elevated an appeal within thirty (30) days from the lapse of the 90-day period or on or before January 24, 2019. The filing of the instant Petition for Review on February 15, 2019 was then beyond the period prescribed by law, hence, outside the jurisdiction of the Court.

This same doctrine is consistent with the recent Decision of the Court in the case of *Ceamsa Asia, Inc. vs. Commissioner of Internal Revenue* (CTA Case No. 10148)[50] which disposed of a similar issue, thus:

> "In *Silicon Philippines, Inc. {formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* the Supreme Court summarized the rules regarding the prescriptive periods for filing of the administrative and judicial claims for refund or tax credit of input VAT. The pertinent rules for the judicial claim are quoted below:
>
> "**B. 120 [now 90] + 30-Day Period**
>
> 1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day [now 90-day] period, or (2) file the judicial claim within thirty days from the expiration of the 120-day [now 90-day] period if the Commissioner does not act within the 120-day [now 90-day] period.
>
> 2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
>
> 3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (Aichi and San Roque).
>
> 4. As an exemption to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*).
>
> 5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (San Roque).

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[50] CTA Case No. 10148 dated February 3, 2023.

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* the Supreme Court stated:

> "A final note, the taxpayers are reminded that when the 120-day [now 90-day] period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day [now 90-day] waiting period."

The Supreme Court has also stated that "any claim filed in a period less than or beyond the 120+30 [now 90+30] days provided by the NIRC is outside the jurisdiction of the CTA."

Thus, from the filing of petitioner's administrative claim on March 28, 2019, respondent had ninety (90) days or until June 26, 2019, to act on the said claim. In case of inaction within the said 90-day period, petitioner has thirty (30) days from such expiration to file its judicial claim, or until July 26, 2019.

In the present case, the BIR issued the letter denying petitioner's entire claim for refund on June 6, 2019, which while dated within the 90-day period, was received by petitioner only on July 2, 2019, which is already beyond the 90-day period.

Petitioner then posted its judicial claim, via the present Petition for Review, on August 1, 2019, which was beyond the 90+30-day period for respondent to resolve the administrative claim and for petitioner to file its judicial claim, which ended on July 26, 2019.

It is reiterated that the "judicial claim should be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day [now 90-day] period, <u>whichever is sooner</u>. Petitioner's receipt of the June 6, 2019 letter on July 2, 2019 does not alter the jurisdictional period within which to appeal due to inaction. Here, the 30-day period to appeal to the CTA due to inaction commenced on June 27, 2019, after the lapse of the 90-day period on June 26, 2019, and ended on July 26, 2019.

Clearly, the instant Petition for Review, posted only on August 1, 2019, was filed out of time. Thus, this Court has no jurisdiction." *cm*

To sum up, we quote the Supreme Court ruling in the same *Silicon* case[51] as to the mandatory and jurisdictional nature of the 120 +30 (now 90 + 30) day period to file judicial claims for refund, to wit:

> xxx xxx xxx "Nonetheless, the 120/30 day prescriptive periods are mandatory and jurisdictional, and the matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them. In addition, when a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case. More importantly, courts have the power to *motu proprio* dismiss an action that already prescribed. xxx xxx xxx.":

Having no jurisdiction over the instant Petition for Review, the Court has no authority to rule upon the substantive issues of the instant claim for refund filed by petitioner.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(on leave)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[51] Ibid.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Catherine T. Manahan

CATHERINE T. MANAHAN
Acting Presiding Justice