REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MTI ADVANCED TEST DEVELOPMENT CORPORATION,	**CTA Case No. 10112**
Petitioner,	Members:
	CASTAÑEDA, JR., *Chairperson,* and **BACORRO-VILLENA,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	OCT 13 2021 10:51 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

The *Petition for Review* filed on July 12, 2019, prays for the refund and/or issuance of tax credit certificate in the amount of ₱4,228,776.05, allegedly representing petitioner's value-added tax (VAT) input taxes attributable to its zero-rated sales, covering the period from April 1, 2011 to March 31, 2012.[1]

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[1] Summary of the Case, Pre-Trial Order dated November 7, 2019, Docket, p. 232.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) as a VAT entity, with address at 3/F BPI-Philam Life, Alabang-Zapote Rd. cor. Acacia Ave., MBP, Alabang, Muntinlupa City.[3] It is also registered with the Board of Investments (BOI) as a *New IT Export Service Firm in the Field of Software Development (Test Programs for Semiconductor Industry),* under BOI Certificate of Registration No. 2007-109 dated June 28, 2007.[4]

Respondent Commissioner of Internal Revenue is vested with authority to exercise the function of said office, including *inter alia,* the power to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, or of VAT input taxes attributable to zero-rated revenue, and holding office at the BIR National Office Building, Diliman, Quezon City.[5]

THE FACTS

On March 20, 2013, petitioner filed a claim for refund,[6] in the amount of ₱4,228,776.05, covering the period from April 1, 2011 to March 31, 2012, with the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center.[7]

The letter dated February 18, 2019 from the Office of OIC-Assistant Commissioner – Assessment Service of the BIR, informing petitioner of the denial of its administrative claim, was sent and received by petitioner,[8] on June 13, 2019.[9]

On July 12, 2019, the present *Petition for Review* was filed.[10] ƒ

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[2] Exhibit "ICPA P-102.1" to "ICPA P-102.10".
[3] Exhibit "P-19", Docket, p. 367.
[4] Exhibit "P-18", Docket, p. 366.
[5] Par. 1, *Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues* (JSFSI), Docket, p. 227.
[6] Par. 2, JSFSI, Docket, p. 227.
[7] Exhibits "P-6" to "P-13", Docket, pp. 350 to 357.
[8] Par. 3, JSFSI, Docket, p. 228.
[9] Exhibit "P-20", Docket, pp. 368 to 369.
[10] Docket, pp. 10 to 19.

Respondent filed his *Answer* on September 12, 2019,[11] interposing the following special and affirmative defenses, to wit: (1) the present petition is filed out of time and thus, the Court has no jurisdiction; and (2) besides lack of jurisdiction, the petition must also be dismissed for failure to comply with documentary requirements for VAT refund.

Respondent submitted the *BIR Records* for the case on September 17, 2019.[12]

The Pre-Trial Conference was set, and held, on October 10, 2019.[13] On October 3, 2019, the *Pre-Trial Brief (for the petitioner)* was filed;[14] while respondent's *Pre-Trial Brief Ad Cautelam* was submitted on October 7, 2019.[15]

On October 23, 2019, the parties submitted their *Joint Stipulation of Facts and Simplification of Issues* (JSFSI).[16] Thereafter, the Pre-Trial Order dated November 7, 2019 was issued,[17] approving and adopting the said JSFSI, and deeming the termination of the pre-trial.

As the proceedings ensued, petitioner set forth its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Beverly Viray,[18] petitioner's Accounting Manager and Treasurer; (2) Ms. Maria Eugene Ibanez,[19] petitioner's Senior Accountant; and (3) Mr. Enrico T. Pizarro,[20] the duly-commissioned Independent Certified Public Accountant (ICPA).[21]

The *Report* of the ICPA was submitted on December 18, 2019.[22] *fr*

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[11] Docket, pp. 93 to 101.
[12] *Compliance* dated September 18, 2019, Docket, p. 103 to 105.
[13] *Notice of Pre-Trial Conference* dated September 18, 2019, Docket, pp. 107 to 108; Minutes of the hearing held on, and Order dated, October 10, 2019, Docket, pp. 208 to 209.
[14] Docket, pp. 112 to 119.
[15] Docket, pp. 203 to 205.
[16] Docket, pp. 227 to 230.
[17] Docket, pp. 232 to 236.
[18] Exhibits "P-21", Docket, pp. 120 to 130; Minutes of the hearing held on, and Order dated, November 18, 2019, Docket, pp. 238 to 239.
[19] Exhibit "P-22", Docket, pp. 184 to 190; Minutes of the hearing held on, and Order dated, November 18, 2019, Docket, pp. 238 to 239.
[20] Exhibit "P-25", Docket, pp. 270 to 291; Minutes of the hearing held on, and Order dated, February 26, 2020, Docket, pp. 292 to 293.
[21] *Oath of Commission* dated November 18, 2019, Docket, p. 237; Minutes of the hearing held on, and Order dated, November 18, 2019, Docket, pp. 238 to 239.
[22] Exhibit "P-23", Docket, pp. 240 to 256.

On March 2, 2020, the *Formal Offer of Evidence (for the petitioner)* was filed.[23] Respondent, however, failed to comment thereon.[24] In the Resolution dated June 22, 2020,[25] the Court admitted petitioner's exhibits, *except* for: (1) Exhibit "P-5", for failure to present the original for comparison; (2) Exhibits "ICPA P-121.35.1" and "ICPA P-130.4", for being unreadable; and (3) Exhibits "ICPA P-122.80", and "ICPA P-131.12" to "ICPA P-131.13", for not being found in the records of the case.

Respondent likewise presented his documentary and testimonial evidence. He proffered the testimony of his lone witness, Revenue Officer Dexter Bustillos.[26]

On July 24, 2020, respondent filed his *Formal Offer of Evidence Ad Cautelam*.[27] Petitioner posted its *Comment* thereon on July 30, 2020.[28]

In the meantime, petitioner filed its *Motion for Partial Reconsideration (of the Resolution dated June 22, 2020)* on July 27, 2020.[29]

In the Resolution dated September 28, 2020,[30] the Court resolved to admit all of respondent's exhibits; and granted petitioner's *Motion for Partial Reconsideration (of the Resolution dated June 22, 2020)*, thereby admitting Exhibits "ICPA P-121.35.1", "ICPA P-130.4", "ICPA P-122.80", and "ICPA P-131.12" to "ICPA P-131.13".

Respondent filed his *Memorandum* on October 30, 2020;[31] whereas petitioner submitted its *Memorandum* on November 16, 2020.[32]

On November 24, 2020, the present case was considered submitted for decision.[33]

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[23] Docket, pp. 294 to 323.
[24] Records Verification dated June 2, 2020 issued by the Judicial Records Division of this Court, Docket, p. 371.
[25] Resolution, Docket, pp. 373 to 376.
[26] Exhibit "R-4", Docket, pp. 381 to 384; Minutes of the hearing held on, and Order dated, July 22, 2020, Docket, pp. 385 to 386.
[27] Docket, pp. 387 to 389.
[28] Docket, pp. 411 to 412.
[29] Docket, pp. 390 to 394.
[30] Docket, pp. 417 to 419.
[31] Docket, pp. 420 to 429.
[32] Docket, pp. 431 to 439.
[33] Resolution dated November 24, 2020, Docket, p. 440.

THE ISSUES

Petitioner and respondent submit that the issues to be resolved in this case are:

> "4. Whether petitioner is entitled for unutilized input VAT refund in the amount of Four Million Two Hundred Twenty-Eight Thousand Seven Hundred Seventy-Six and 5/100 pesos (Php4,228,776.05) covering the period of April 1, 2011 to March 31, 2012.
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> 5. Whether the administrative decision dated February 18, 2019 served and duly received by petitioner denying the claim for refund based on the evidence presented was correct."[34]

Petitioner's arguments:

Petitioner contends that it's claim for refund was timely filed; that its sales of service were zero-rated or effectively zero-rated; and that it incurred input VAT attributable to its sales of services and the excess were unutilized.

Respondent's counter-arguments:

Respondent counters that the present petition was filed out of time and thus, this Court has no jurisdiction; and that besides lack of jurisdiction, the petition must also be dismissed for failure to comply with documentary requirements for VAT refund.

THE COURT'S RULING

The present *Petition for Review* must be dismissed.

Section 112 of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[35] reads:

[34] Issues, JSFSI, Docket, p. 228.
[35] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.

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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.

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."

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit or refund of input VAT. Said requisites are classified into certain categories, to wit:

As to the timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[36]
2. in case of full or partial denial of the refund claim, or the failure on the part of respondent to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[37]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[38]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[39]
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[40]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[41]
7. the input taxes are due or paid;[42]
8. the input taxes claimed are attributable to zero-rated

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[36] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

[37] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[38] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc., supra.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[43] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[44]

The *first* requisite pertains to the filing of the claim for tax refund/credit of input VAT before the BIR, which is within two (2) years from the close of the quarter when the sales were made.

The present claim covers the four (4) quarters of petitioner's fiscal year (FY) ending March 31, 2012. Counting two (2) years from the respective close of the said quarters, the following table indicates the pertinent last days for the filing of an administrative claim therefor, to wit:

FY ending March 31, 2012	Close of the Taxable Quarter	Last Day to File Administrative Claim
1st Quarter	June 30, 2011	**June 30, 2013**
2nd Quarter	September 30, 2011	**September 30, 2013**
3rd Quarter	December 31, 2011	**December 31, 2013**
4th Quarter	March 31, 2012	**March 31, 2014**

Considering that petitioner's administrative claim for refund, covering the above-stated quarters, were filed with the BIR on **March 20, 2013,**[45] the same were timely made within the respective 2-year prescriptive period.

The judicial claim, however, was belatedly filed before this Court.

To reiterate, the *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision **or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended.** pc

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[43] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

[44] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[45] Par. 2, JSFSI, Docket, p. 227; Exhibits "P-6" to "P-13", Docket, pp. 350 to 357.

Relative thereto, in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,*[46] the Supreme Court said:

> "**The error of the taxpayer lies in the fact that it had mistakenly believed that a judicial claim need not be filed within 30 days from the lapse of the 120-day period. It had believed that the only requirement is that the judicial claim must be filed within the two-year under Sections 112(A) and (B) of the 1997 Tax Code.** In other words, Rohm Apollo erroneously thought that the 30-day period does not apply to cases of the CIR's inaction after the lapse of the 120-day waiting period, and that a judicial claim is seasonably filed so long as it is done within the two year-period. xxx.
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> These mistaken notions have already been dispelled by *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi)* [47] and *San Roque* [48]. *Aichi* clarified that it is only the administrative claim that must be filed within the two-year prescriptive period. ***San Roque*, on the other hand, has ruled that the 30-day period always applies, whether there is a denial or inaction on the part of the CIR.**
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> xxx xxx xxx
>
> **A final note, the taxpayers are reminded that that when the 120-day period lapses and there is inaction on the part of the CIR, <u>they must no longer wait for it to come up with a decision thereafter</u>. The CIR's inaction is the decision itself. <u>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 period</u>.**" *(Emphases and underscoring added)*

Moreover, in *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue,*[49] the High Court enunciated:

[46] G.R. No. 168950, January 14, 2015.
[47] G.R. No. 184823, October 6, 2010.
[48] That is, *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[49] G.R. No. 182737, March 2, 2016.

"Whether respondent rules in favor of or against the taxpayer – or does not act all on the administrative claim – within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.

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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, <u>whichever is sooner</u>.

Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law,[50] **<u>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.</u>**"

Based on the foregoing jurisprudential pronouncements, after the expiration of the said 120-day period and respondent or the BIR has not acted on the refund claim, the concerned taxpayer must already file an appeal before this Court within thirty (30) days; otherwise, the appeal is not cognizable by this Court. The said taxpayer need not wait for respondent or the BIR to come up with a decision after the said 120-day period.

Apparently, in this case, petitioner still waited for respondent or the BIR to come up with a decision, despite the lapse of the subject 120-day period.

The determination of the 120+30-day periods is shown as follows:

Date of Filing of Administrative Claim	End of the 120 days for the BIR to decide the claim	End of the 30 days from expiration of the 120 days
March 20, 2013[51]	July 18, 2013	**August 17, 2013**

[50] In *CIR v. San Roque Power Corporation* (G.R. Nos. 187485, 196113 & 197156, 12 February 2013, 690 SCRA 336), the Supreme Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 up to its reversal in *CIR v. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823, 646 SCRA 710) on 6 October 2010 need not wait for the lapse of the 120+30 day period.
[51] Par. 2, JSFSI, Docket, p. 227; Exhibits "P-6" to "P-13", Docket, pp. 350 to 357.

Since the present *Petition for Review* was filed only on **July 12, 2019**,[52] it is apparent that the same was belatedly filed, since the 30-day period after the expiration 120-period, ended on **August 17, 2013**. In other words, the present judicial claim is already outside the jurisdiction of this Court, and must perforce be dismissed.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[53]

Finding that this Court has no jurisdiction to entertain the present judicial claim, it could not decide the case on the merits thereof, and its only jurisdiction is to dismiss the same.

WHEREFORE, premises considered, the present *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[52] Docket, pp. 10 to 19.
[53] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014.

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice