REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ADVANCED WORLD SYSTEMS, INC., Petitioner,	**CTA EB NO. 2246 (CTA Case No. 9984)**
	Present:
- versus -	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, and, CUI-DAVID, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 12 2022 4:25 pm

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RESOLUTION

DEL ROSARIO, P.J.:

Before the Court *En Banc* is petitioner's **Motion for Reconsideration [Re: Decision dated 1 July 2021]**[1] filed on July 26, 2021,[2] praying that the Court *En Banc* vacate and set aside the Decision dated July 1, 2021, and, after due consideration, give due course to its judicial claim for tax credit for the period April 1, 2012 to March 31, 2013 in the amount of ₱4,144,388.14.

The dispositive portion of the assailed Decision states:

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[1] CTA EB No. 2246 Docket, pp. 270-302.

[2] The Motion was submitted for resolution in the Resolution dated March 14, 2022. CTA EB No. 2246 Docket.

"**WHEREFORE**, premises considered, the Petition for Review filed on June 30, 2020 by Advance World Systems, Inc. is hereby DENIED for lack of merit. The Court in Division's assailed Resolutions dated August 14, 2019 and February 10, 2020 are hereby AFFIRMED.

Meanwhile, petitioner's Motion for Leave to File Reply filed on September 25, 2020 is **NOTED WITHOUT ACTION**.

SO ORDERED."[3]

In support of its motion, petitioner submits that the Court has jurisdiction over its judicial claim for the following reasons:

"I. Petitioner's claim was not processed according to the applicable rules at the time it was filed;

A. [Revenue Memorandum Circular (RMC) No. 29-2009] is applicable in the processing of petitioner's claim;

(i) RMC No. 29-2009 defines the 'proper cases' that should be refunded/credited within the 120-days period;

(ii) RMC No. 29-2009 imposes positive obligations on the RO and processing/investigating office;

(iii) RMC No. 29-2009 defines the proper course of action to be taken after each step;

(iv) To determine 'proper cases', RMC No. 29-2009 allows for the pendency of the claim beyond 120 days from the date of filing;

B. Petitioner's claim was still pending pursuant to RMC No. 29-2009;

C. Under RMC No. 29-2009, not giving notice to submit written reconciliation/explanation is equivalent to an admission that the claim is proper;

D. If the [Commissioner of Internal Revenue (CIR)] does not grant the claim, it shall be deemed pending within the statutory 120-day period;

II. The CIR processed petitioner's claim pursuant to [Revenue Regulations No. (RR) No. 1-2017] to remedy the retroactive application of RMC No. 54-2014 in processing the same;

A. The 120-day period to decide petitioner's claim has not yet expired when RMC No. 54-2014 was issued;

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[3] CTA EB No. 2246 Docket, pp. 244-245.

B. The CIR recognized in RR No. 1-2017 that RMC No. 54-2014 was retroactively applied;

C. The CIR directed the processing of claims pending prior to 11 June 2014 to remedy the retroactive application of RMC No. 54-2014;

D. Petitioner's claim was 'deemed denied' because RMC No, 54-2014 was retroactively applied;

E. The processing of petitioner's claim beyond the 120+30 day mandatory and jurisdictional [period] can be traced to the retroactive application of RMC No. 54-2014;

III. RR No. 1-2017 and the Denial Letter constitute an exception to the 120+30-day mandatory and jurisdictional period;

A. The CIR is vested with authority to interpret how RMC No. 54-2014 was implemented;

B. The CIR waived the application of the 120+30-day mandatory and jurisdictional period and revived/reinstated petitioner's claim;

C. Factual representations of the CIR may be given in evidence against him;

D. The CIR's position in RR No. 1-2017 may be relied upon by petitioner;

IV. Petitioner is shielded by the doctrine of operative fact in case the CIR erred in interpreting Section 112 (c) of the Tax Code and RMC No. 29-2009 and/or RR No. 1-2017 are invalidated;

A. Petitioner relied in good faith on RMC No. 29-2009 when it filed and awaited the CIR's action on its claim. Petitioner relied on RR No. 1-2017 when it appealed the Denial Letter;

(i) Petitioner should not be made to suffer for the BIR's failure to follow the procedure under RMC No. 29-2009;

B. Doctrine of operative fact is applicable in case the issuances relied upon by petitioner are invalidated by the Honorable Court;

V. The resolution of the issue of jurisdiction in the present appeal requires the reception of evidence."[4]

THE COURT'S RULING

Review of petitioner's arguments show that apart from its invocation of RMC No. 29-2009, its remaining arguments are mere

[4] CTA EB No. 2246 Docket, pp. 271-273.

reiteration and amplification of the matters already considered, weighed and resolved in the assailed Decision of the Court *En Banc* as well as in the Resolutions dated August 14, 2019 and February 10, 2020 of the Court in Division.

Petitioner claims, for the first time, that it relied in good faith on RMC No. 29-2009 in awaiting the CIR's decision on its refund claim. It submits that respondent's failure to give it a second notice to heed the request to submit documents in the Letter of Authority (LOA) suspended the 120-day period to decide its administrative claim. Thus, it posits that respondent's failure to adhere to the procedures laid down in RMC No. 29-2009, resulted to its refund claim to remain pending, until the issuance of the Denial Letter dated October 18, 2018 denying its refund claim. Moreover, allegedly under RMC No. 29-2009, not giving notice to submit written reconciliation/explanation is equivalent to an admission that its refund claim is proper.

Petitioner's proposition is without merit.

The Court *En Banc* cannot subscribe to petitioner's assertion that its refund claim remained pending for respondent's failure to comply with the notification requirement under RMC No. 29-2009. To do so would sanction the indefinite extension of the 120-day period for the CIR to decide VAT refund claims. The 120-day period granted to the CIR to decide the administrative claim under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, is primarily intended to benefit the taxpayer, to ensure that its claim is decided judiciously and expeditiously, and, the sooner the taxpayer successfully processes its 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.[5]

As found in the assailed Decision, petitioner's refund claim was "deemed denied" by the CIR since respondent failed to act on it within the 120-day period. Consequently, petitioner could not have expected to receive notifications to submit additional documents from the BIR when its refund claim was unacted.

More importantly, RMC No. 29-2009 must be read together with relevant rules and jurisprudence. After all, it does not exist in a vacuum.

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[5] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

As early as 2010 in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[6] the Supreme Court has declared that the taxpayer must appeal to the CTA within 30 days from receipt of the CIR's decision on its refund claim rendered within 120 days or from the lapse of the 120 days when the CIR fails to decide on its refund claim, *viz.*:

> "xxx The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) **when a decision is issued by the CIR before the lapse of the 120-day period**; and (2) **when no decision is made after the 120-day period.** **<u>In both instances, the taxpayer has 30 days within which to file an appeal with the CTA</u>**. As we see it then, the 120-day period is crucial in filing an appeal with the CTA." (*Boldfacing and underscoring added*)

This was further elucidated in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue,*[7] when the Supreme Court declared that the CIR's "inaction shall be deemed a denial" of the refund claim.

RMC No. 49-2003, on the other hand, grants taxpayers 30 days from filing of their administrative claim for refund to submit documents in support of their claim unless given further extension by the BIR.

Evidently, at the time petitioner filed its administrative claim for refund on March 13, 2014, the rule on administrative claim for refund, as summarized in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[8] has already been settled, *viz.*:

> "xxx 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

[6] G.R. No. 184823, October 6, 2010.
[7] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[8] G.R. No. 207112, December 8, 2015.

> 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."

To repeat, RR No. 1-2017 did not create an exception to the 120+30-day mandatory and jurisdictional period.

There is nothing in RR No. 1-2017 that states, directly or impliedly, that the taxpayer may disregard the 120+30-day mandatory and jurisdictional period. It merely authorizes the BIR to continue processing the administrative claims for refund even beyond the 120-day period. In truth, even after the expiration of the 120-day period, the internal administrative evaluation of the taxpayer's claim must necessarily continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings.[9]

Similarly, there is nothing in RMC No. 54-2014 which prohibited petitioner from availing the remedy of appeal. In fact, it reiterated the long-standing rule of the mandatory 120+30-period in the filing of appeals.

The Court *En Banc* also rejects petitioner's contention that under RMC No. 29-2009, the lack of notice to submit written reconciliation/explanation is equivalent to an admission that its refund claim is proper. It must be emphasized that an applicant for a claim for tax refund or tax credit, in proving entitlement thereto must prove compliance with all documentary and evidentiary requirements.[10]

In fine, the Court *En Banc* finds no cogent reason to deviate from its findings and conclusions in the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration [Re: Decision dated 1 July 2021] is **DENIED** for lack of merit.

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[9] *Id.*
[10] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice