REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

LAPANDAY AGRICULTURAL & DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9965

Members:
UY, *Chairperson,* ***and***
RINGPIS-LIBAN,
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 30 2019
10:50 a.m.

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RESOLUTION

For resolution of the Court is Respondent's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court" filed on May 31, 2019 with Petitioner's "Comment/Opposition" filed on June 20, 2019.

In his Motion, Respondent claims that the issue of jurisdiction will not require trial to be resolved as the question of jurisdiction may easily be resolved from the face of the petition alone. Respondent further claims that the Petition was filed beyond the mandatory and jurisdictional 30-day period from the expiration of the 120-day period decreed by Section 112(D) of the National Internal Revenue Code of 1997, as amended (Tax Code), in relation to Revenue Memorandum Circular (RMC) No. 54-2014.

The Petition was filed on October 30, 2018. Respondent argues that based on the table below, the CTA no longer had jurisdiction over the Petition when it was filed, thus:

Quarter 2008	Filing of Administrative Claim	End of 120-day Period (Deemed Denied)	Deadline to file Appeal with CTA (30-days after denial)	Date of Filing Petition for Review
First	May 9, 2009	September 6, 2009	October 6, 2009	October 30, 2018
Second	July 30, 2008	November 27, 2008	December 27, 2008	
Third	December 28, 2009	April 27, 2010	May 27, 2010	
Fourth	December 28, 2009	April 27, 2010	May 27, 2010	

In its Comment/Opposition, Petitioner refutes Respondent's claims stating that Section 112(c) of the Tax Code provides two options for the taxpayer to appeal the decision of the CIR denying his claim for refund/tax credit, one of which is filing a judicial claim within thirty (30) days from receipt of the decision of the CIR which is what Petitioner did.

Petitioner likewise claims that there is a distinction between "claim processing rules" and rules governing "subject-matter jurisdiction". The 120+30 day period under Section 112(c) is a claim-processing rule which does not restrict the subject-matter jurisdiction of the CTA. The taxpayer's failure to comply with the "120+30 day period" does not deprive the CTA of its jurisdiction to adjudicate on the assailed *Letter Denial* dated April 25, 2018 issued by the BIR denying Petitioner's claim for VAT refund/tax credit.

After considering the arguments of the parties, *We* find Respondent's arguments persuasive.

Under the law, a taxpayer is given the remedy of refund in case of unutilized input VAT. The filing of a claim however, is subject to two (2) time requirements: (a) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT *(i.e.,* administrative claim); and (b) the 30-day period for filing an appeal with this Court *(i.e.,* judicial claim).

For clarity and reference, Sections 112(A) and (C) of the Tax Code, are reproduced below:

"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)(l) 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 of 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 non-zero-rated sales.
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> xxx xxx 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 Subsections (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 ."**[1]

RMC No. 54-2014 also provides for the summary of the rules on filing and processing of applications for VAT refund/tax credits, as follows:

> "Section 112(A) of the Tax Code, as amended, provides that 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 sales were made, apply for the issuance of tax credit certificate or refund of creditable input tax due or attributable to

[1] Emphasis and underscoring supplied.

> such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax. As such, the taxpayer can file his administrative claim for VAT refund or credit at anytime within two-year prescriptive period.
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> The Commissioner shall have one hundred twenty (120) days from the date of submission of complete documents to decide whether or not to grant the claim for refund or issuance of the Tax Credit Certificate (TCC) for creditable input taxes. **If the claim for VAT refund or credit is not acted upon by the Commissioner within 120-day period as required by law, such 'inaction shall be deemed a denial' of the application for tax refund or credit."** *(Emphasis supplied)*

Anent the timeliness of the judicial appeal, the general rule is governed by Section 112(C) of the Tax Code[2]. The taxpayer can file an appeal in one of two (2) ways:

> 1) file the judicial claim within thirty days after the Commissioner denies the claim within the one hundred twenty-day period (120-day period), counted from the date of submission of complete documents, or
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> 2) file the judicial claim within thirty (30) days from the expiration of the 120-day period (120 + 30 days) if the Commissioner does not act within the 120-day period.[3]

In a long line of cases, the rule mandating the taxpayer to file a judicial claim within thirty (30) days from the expiration of the 120-day period from the time of filing an administrative claim which has been unacted upon has been **mandatory and jurisdictional** since the effectivity of the Tax Code.[4]

The only exception to this rule has been when premature filing was allowed and when such filing was done pursuant to BIR Ruling No. DA-489-03. The filing of the judicial claim need not await the expiration of the 120-day

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[2] *CIR v. Mirant Pagbilao Corporation (now Team Energy Corporation)*, G.R. No. 180434, January 20, 2016, *Silicon Philippines Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR*, G.R. No. 173241, March 25, 2015, *Visayos Geothermal Power Company v. CIR*, G.R. No. 197525, June 4, 2014.

[3] *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

[4] *Applied Food Ingredients Company, Inc. v. CIR*, G.R. No. 184266, November 11, 2013; *Nippon Express (Phils.) Corp. v. CIR*, G.R. No. 196907, March 13, 2013; *CIR v. Team Sual Corp.*, G.R. No. 194105, February 5, 2014; consolidated cases of *CIR v. San Roque Power Corporation*, G.R. 187485, 1 961113 & 197156, Decision-February 12, 2013, 690 SCRA 336, Resolution-October 8, 2013.

period, if such was filed from December 10, 2003 (issuance of BIR Ruling No. DA-489-03) to October 6, 2010 (the promulgation of the *Aichi* case[5]). This exception has been allowed on the basis of equitable estoppel and doctrine of operative fact.[6]

However, in any case, exception included, **late filing is absolutely prohibited** even during the time when BIR Ruling DA-489-03 was in force.[7]

As mandated by RMC No. 54-2014, if the claim for VAT refund or credit is not acted upon by the Commissioner within the 120-day period as required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. This has been upheld by the Supreme Court in *ROHM Apollo Semiconductors Philippines v. CIR*[8], thus:

> "[T]he taxpayers are reminded that that when the 120-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 waiting period.**" *(Emphasis supplied)*

In this particular case, the expiration of the 120-day period of the administrative claim filed by Petitioner on May 9, 2009 for refund of the First Quarter of 2008 fell on **September 6, 2009;** administrative claim filed on July 30, 2008 for the Second Quarter of 2008 fell on **November 27, 2008**; and administrative claims filed on December 28, 2009 for the Third and Fourth Quarters of 2008 fell on **April 27, 2010**. Petitioner then had until **October 6, 2009, December 27, 2008, and May 27, 2010**, respectively, to file its judicial claims with this Court. However, the Petition was belatedly filed on **October 30, 2018.**

The Court no longer has jurisdiction over this action.

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[5] *CIR v. Aichi Forging Company of Asia, Inc.*, G.R. No. 183421, October 22, 2014.
[6] *CE Luzon Geothermal Power Company, Inc. v. CIR*, GR 200841-42, August 26, 2015, *Cargill Philippines, Inc. v. CIR*, G.R. No. 203774, March 11, 2015; *Panay Power Corporation v. CIR*, G.R. No. 203351, January 21, 2015; *Mindanao II Geothermal Partnership v. CIR*, G.R. No. 204745, December 8, 2014; *CBK Power Company Limited v. CIR*, G.R. No. 198928, December 3, 2014; *Taganito Mining Corporation v. CIR*, G.R. No. 201195, November 26, 2014; *AT&T Communications Services Phils., Inc. v. CIR*, G.R. No. 185969, November 19, 2014; *Taganito Mining Corporation v. CIR*, G.R. No. 198076, November 19, 2014; *CIR v. Aichi Forging Company of Asia, Inc.*, G.R. No. 183421, October 22, 2014; *CIR v. Sony Ericsson Mobile Communications Int'l. AB*, CTA EB Case No. 1071, Decision – October 14, 2014, Resolution – April 6, 2015; *CBK Power Company Limited v. CIR*, G.R. Nos. 202066 & 205353, September 30, 2014 SC *En Banc*.
[7] *Hedcor, Inc. v. CIR*, G.R. No. 207575, Resolution-July 15, 2015; *ROHM Apollo Semiconductors Philippines v. CIR*, G.R. No. 168950, January 14, 2015; *CIR v. Mindanao II Geothermal Partnership*, G.R. No. 189440, June 18, 2014; *CIR v. Toledo Power Company*, G.R. Nos. 195175, August 10, 2015; *Toledo Power Company v. CIR*, G.R. No. 199645, August 10, 2015; *Silicon Philippines Inc. v. CIR*, G.R. No. 173241, March 25, 2015, citing *CIR v. Mindanao II Geothermal Partnership*, G.R. No. 191498, Jan.15, 2014.
[8] G.R. No. 168950, January 14, 2015.

WHEREFORE, considering the foregoing, Respondent's motion is **GRANTED**. The Petition for Review docketed as CTA Case No. 9965, entitled *Lapanday Foods Corporation v. Commissioner of Internal Revenue* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice