REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

LEAD EXPORT AND AGRO-DEVELOPMENT CORPORATION, Petitioner,	**CTA CASE NO. 10161**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA**, *and* **BACORRO-VILLENA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 12 2020 10:05 a.m.

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RESOLUTION

For the Court's resolution is respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court,** filed on 22 January 2020, with petitioner's **Comment/Opposition**, filed on 13 February 2020.

In his Motion, respondent alleges that petitioner filed its administrative claim for refund for the third and fourth quarters of 2008 on 08 October 2009 and 16 December 2009, respectively. He avers that, assuming the administrative claims were filed on time, respondent had until 05 February 2010 and 15 April 2010, respectively, to act on the said claims. Respondent insists that petitioner should have filed its judicial claim before this Court within thirty (30) days from 05 February 2010 and 15 April 2010, or until 07 March 2010 and 15 May 2010, respectively. However, petitioner only filed its Petition for Review before this Court on 05 September 2019, allegedly beyond the mandatory and jurisdictional thirty (30) day period from the expiration of the one hundred twenty (120) day period pursuant to Section 112 [C] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, to wit:

> ...
> **Sec. 112**. *Refunds or Tax Credits of Input Tax. –*
> ...
> (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 (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.
> ...

Respondent correlates the above provision with Revenue Memorandum Circular (**RMC**) No. 54-2014[1], providing the summary of the rules on filing and processing of applications for Value Added Tax (**VAT**) refund/tax credits, *viz*:

> ...
> 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 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.
>
> 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.
> ...

Respondent argues further that the subsequent letter of denial is of no moment and the same has no bearing due to the explicit and clear nature of Section 112 (D) and RMC No. 54-2014, which are also

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[1] Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

supported by jurisprudence. The denial letter has been rendered long after the lapse of the period within which the petitioner could have elevated the matter to this Court. Respondent believes that the denial letter could not confer jurisdiction to this Court that it lost due to petitioner's lapses.

Petitioner, for its part, counters that RMC 54-2014 is not applicable in its case pursuant to Revenue Regulations (**RR**) 1-2017, which inapplicability was mentioned in respondent's denial letter dated 13 February 2019, to wit:

> ...
> Continuance of the processing of the subject administrative claims was effected, in light of the issuance of Revenue Regulation[s] (RR) No. 1-2017, exempting from Revenue Memorandum Circular (RMC) No. 54-2014 the VAT credit/refund applications filed prior to the effectivity of the foregoing RMC, based on the available documents submitted by the taxpayer-claimant within the statutory two-year period.
> ...

According to petitioner, Section 2 of RR 1-2017 provides that claims filed prior to the effectivity of RMC 54-2014 shall continue to be processed administratively, therefore such claims are not "deemed denied". Petitioner apparently filed the two administrative claims before the effectivity of RMC 54-2014.

Petitioner likewise belabors that the "120+30 day period" under RMC 54-2014 does not apply in cases where the CIR issues a decision beyond the 120-day period. Petitioner insists that the Supreme Court decisions cited by respondent in his motion (such as *CIR v. San Roque Power Corporation*, *Mindanao II Geothermal Partnership v. CIR* and *Visayas Geothermal Power Company v. CIR*) all pertain to the premature filing of the judicial claim for refund, which are not the case at bar.

Petitioner maintains that Section 112(C) of the NIRC gives the taxpayers an option to wait for the decision of the CIR beyond the 120-day period and appeal such decision before this Court. It goes on to compare the wordings of Section 112 with Section 228 pertaining to disputed assessments, wherein the latter allows taxpayers to wait for the CIR's decision beyond the 180-day period. The "120+30 day period" under Section 112 (C) is a claim-processing rule which does not restrict the jurisdiction of this Court. 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 03 December 2018[2]. Thus, for petitioner, the "120+30 day period" is not mandatory and jurisdictional. The 120 days, according to petitioner, is directed towards the CIR, and not the taxpayer, and said inaction within the said period does not preclude the taxpayer's right to wait for the decision of the CIR and file its judicial claim from the receipt of the CIR's denial.

In sum, petitioner argues that it has the right to await the CIR's decision in its administrative claim for refund as it so did, and subsequently filed its judicial claim from the said decision.

We resolve.

After a careful review of the records, the Court finds respondent's Motion impressed with merit.

It has long been settled that, in claims for refund or issuance of tax credit certificate, the CIR is only given 120 days within which to decide and his failure to do so would be tantamount to an inaction, which is deemed as a denial of the administrative claim. Section 112 (C) of the NIRC provides:

> ...
> Section 112. *Refunds or Tax Credits of Input Tax.—*
> ...
> (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.
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> ...

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[2] The Letter Denial referred to in the Petition for Review, attached as Annex P-3, is dated 13 February 2019.

RR 16-2005[3], which was already in effect at the time of filing of petitioner's claim for refund, thereby applicable to petitioner's case, is congruent to the above provision, to wit:

> . . .
>
> Section 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax. –*
>
> . . .
>
> (d) *Period within which refund or tax credit certificate/refund of input taxes shall be made*
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.
>
> . . .

From the above, the CIR is mandated to act on the application within 120 days and there is no option for taxpayers to actually wait for the decision beyond the 120-day period.

The non-applicability of RMC 54-2014, as petitioner claims, is of no moment. RMC 54-2014 is merely a clarification of the issues concerning the "120+30 day period" in light of the Supreme Court rulings. Section 112 of the NIRC and RR 16-2005 were explicit that the taxpayer may appeal, within 30 days to the Court of Tax Appeals, the decision of the CIR (rendered within the 120-day period) or the inaction after the lapse of the 120-day period.

It is undisputed that petitioner filed its judicial claim for tax refund almost a decade from the filing of the administrative claim, way beyond the 120-day period prescribed. Petitioner is under the mistaken impression that it can wait for the CIR's decision and appeal such decision before this Court within 30 days.

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[3] Consolidated Value-Added Tax Regulations of 2005.

Interestingly, upon perusal of the Petition for Review and its Comment to respondent's motion, petitioner made conflicting claims as to the timeliness of its judicial claim. In paragraph 7 of Title III-Timeliness of the Petition for Review as well as in its Comment to respondent's motion, petitioner stated that it received the Letter Denial dated 13 February 2019 on 06 August 2019, hence it allegedly has until 05 September 2019 to file the Petition for Review. However, in paragraph 17 of Title IV-Statement of Facts of the Petition for Review, petitioner stated as follows:

> . . .
> 17. In the Denial Letter dated 13 February 2019 and **received by petitioner on 26 March 2019**, the applications for tax credit were denied with finality by the BIR on the ground that the zero-rated sales of the Petitioner are not substantiated with Export Declaration and Bills of Lading/Airway Bills.[4]
> . . .

Hence, even if we lend credence to petitioner's argument that it can actually wait for the decision of the CIR beyond the 120-day period, its judicial claim was belatedly filed because as stated, the Letter Denial was received as early as 26 March 2019 while the Petition for Review was filed only on 05 September 2019.

WHEREFORE, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** is **GRANTED.** Accordingly, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[4] Emphasis supplied.