REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

B.W. SHIPPING PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9115

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

OCT 19 2018 ; 2:00pm

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RESOLUTION

MINDARO-GRULLA, J.:

For resolution is petitioner's **Motion for Reconsideration**, filed on May 28, 2018, without respondent's comment despite notice as per Records Verification dated August 1, 2018, pursuant to the Court's Resolution dated August 7, 2018.

Petitioner seeks reconsideration of the Court's Decision dated May 7, 2018 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED**."

In the assailed Decision, the Court ruled that petitioner's judicial claim for refund or tax credit was filed out of time.

In its motion, petitioner avers that it filed its administrative claim for tax credits or refund for its unapplied input value-added tax (VAT) for taxable year 2013 on February 27, 2015, or well within the 2-year period. According to petitioner, on March 25, 2015, respondent's representative, Ms. Nayan Tumbagahan, disallowed certain official receipts and invoices due to discrepancies and allowed petitioner to submit additional documents and information until April 8, 2015. However, petitioner alleges that it was unable to supply the additional documents and information requested by respondent, which was why respondent gave multiple dates to submit the additional documents. Petitioner further avers that on July 7, 2015, it received a denial letter from respondent which prompted it to start counting the 30-day period to seek judicial relief and filed its Petition for Review on August 6, 2015.

Petitioner asserts that the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* was promulgated on December 8, 2015, four (4) months after it filed its petition on August 6, 2015. As such, the pronouncements and rulings therein are inapplicable as far as petitioner is concerned.

Moreover, petitioner admits that its only fault was that it relied on the directives of Ms. Tumbagahan to provide respondent with additional documents in order for the latter to completely process petitioner's claim. Thus, petitioner argues that the reckoning point of the 120-day period should commence on April 8, 2015, the period set by the Bureau of Internal Revenue (BIR) to submit the additional documents. Consequently, petitioner avers that respondent had until September 8, 2015 to decide on its administrative claim. Considering that the denial letter dated June 25, 2015 was received by petitioner on July 7, 2015, petitioner allegedly had until August 6, 2015 within which to file its judicial claim before this Court, which it timely did.

After a careful perusal of petitioner's arguments, the Court finds that the same have already been passed upon extensively in the assailed Decision.

Revenue Memorandum Circular (RMC) No. 54-2014, which was issued by the BIR on June 11, 2014, provides that the application for VAT refund must be accompanied by complete supporting documents. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents. The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation.

In the instant case, petitioner filed its administrative claim for refund or tax credits for its unapplied input VAT for the taxable year 2013 on February 27, 2015. Thus, it is RMC No. 54-2014 which should govern its claim for refund/tax credit. Records show that, upon filing its application, petitioner also submitted an affidavit under oath attesting to the completeness of the documents submitted in compliance with the mandate of RMC No. 54-2014.[1]

Despite the fact that the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* was promulgated by the Supreme Court only on December 8, 2015, RMC No. 54-2014 was already in effect at the time of the filing petitioner's administrative claim. As held in the said case, taxpayers have every right to pursue their claims in the manner provided by existing regulations at the time it was filed. Hence, RMC No. 54-2014, which took effect on June 11, 2014, is applicable to petitioner's claim, filed on February 27, 2015.

Accordingly, any subsequent submission of supporting documents made by petitioner, despite request from the revenue officer assigned to evaluate its claim for refund/tax credit, will not move the commencement of the 120-day period. The 120-day period is reckoned from the date of filing of the application, which is also the date of submission of complete documents.

Section 112 of the National Internal Revenue Code of 1997, as amended, provides that the Commissioner has 120 days from the date of submission of complete documents to decide on the claim for refund/tax credit. In case of full or partial denial of the claim for tax refund or tax credit, or the failure of the Commissioner to act on the application within the prescribed period, the taxpayer affected may, within 30 days from the receipt of the decision denying the claim or after the expiration the 120-day period, appeal the decision or the unacted claim with the Court of Tax Appeals (CTA).

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[1] Item 2.12, Checklist of Mandatory Requirements for Claims for VAT Credit/Refund, received by the BIR on February 27, 2015, docket, vol. I, p. 402.

Further, the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[2], provided a summary of rules on prescriptive periods for claiming refund or credit of input VAT:

"B. 120+30 Day Period

1. The taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner **denies the claim within the 120-day period**, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. xxx" (*Emphasis supplied*)

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[3], the Supreme Court held that:

> 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, 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.

Moreover, in the later case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[4], the Supreme Court clarified that:

> 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.

[2] G.R. No. 191498, January 15, 2014.
[3] G.R. No. 168950, January 14, 2015.
[4] G.R. No. 182737, March 2, 2016.

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As such, a denial made by the Commissioner beyond the 120-day period, cannot be the reckoning point of the 30 days within which the taxpayer can appeal the decision with the CTA. Failure on the part of respondent to act on the application for tax refund or credit within the 120-day period shall be deemed a denial pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended.

In this case, the Commissioner denied petitioner's claim. However, the decision was received by petitioner on July 7, 2015, after the 120-day period, which ended on June 27, 2015. Hence, July 7, 2015 could not be the reckoning date of the 30-day period within which to file an appeal with the CTA. Instead, it should be counted from the expiration of the 120-day period on June 27, 2015, which came earlier, since the Commissioner's inaction is the decision itself; it is already "deemed a denial" of the claim.

The right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise. For failure to comply with the statutory conditions, petitioner must therefore bear the consequences. It has lost its right to claim a refund or credit by virtue of its own failure to observe the prescriptive period.[5]

Clearly, there is no cogent reason to disturb the assailed Decision.

WHEREFORE, premises, considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[5] *Hedcor, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207575, July 15, 2015.