REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PETNET, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9113

Members:

BAUTISTA, *Chairperson*
FABON- VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 02 2016
1:40 p.m.

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RESOLUTION

For resolution is respondent's Motion to Dismiss filed on October 9, 2015 by registered mail, with petitioner's Comment/Opposition (Re: Respondent's Motion to Dismiss dated October 9, 2015) filed on November 12, 2015.

The material dates relevant to the resolution of the matter are as follows.

On December 19, 2013, petitioner filed with the Bureau of Internal Revenue (BIR) its administrative claim[1] for refund and/or issuance of tax credit certificate in the aggregate amount of ₱7,008,836.55, representing its alleged unutilized input value-added tax (VAT) for the period covering April 1, 2012 to December 31, 2012.

On July 13, 2015, petitioner received a letter dated June 18, 2015 from Revenue District Officer Isabel A. Paulino denying its administrative claim for refund. Petitioner filed its Petition for Review before the Court on August 12, 2015.

[1] Par. 3, Petition for Review, docket, p. 13; Annexes "A" to "A-8", Petition for Review, docket, pp. 32-40.

In her Motion to Dismiss, respondent argues that the Court has no jurisdiction over the case since the judicial claim for refund or tax credit was belatedly filed by petitioner. According to respondent, the prescribed period of "120+30 days" provided under Section 112(C) of the National Internal Revenue Code of 1997, as amended (NIRC) is mandatory and jurisdictional. Following the *verba legis* doctrine, since said legal provision is clear, plain, and unequivocal, it must be applied exactly as worded.

Respondent claims that petitioner violated the prescribed period of "120+30 days" since it filed the instant petition before the Court only on August 12, 2015 or more than one (1) year after filing its claim for refund with the BIR on December 19, 2013. According to respondent, the alleged decision[2] was issued beyond the prescribed period and has no force and effect. Section 112(C) of the NIRC clearly provides that the Commissioner of Internal Revenue (CIR) is only given a 120-day period to act on (either by granting or denying) the claim for refund. Since there was already a denial of its claim on April 18, 2014 due to the lapse of the 120-day period, counted from the filing of the administrative claim for refund, petitioner should have filed its judicial claim within thirty (30) days therefrom, or not later than May 18, 2014.

On the other hand, petitioner insists that its judicial claim was filed within the period prescribed by law pursuant to Section 112(A) and (C) of the NIRC and the Supreme Court's decision in the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[3]. Petitioner contends that it may appeal the denial of its administrative claim within thirty (30) days from receipt of the notice of denial, regardless of whether or not it was issued beyond the 120-day period.

Petitioner's appreciation of Section 112(C) of the NIRC and of the ruling in *CIR v. Mindanao II Geothermal Partnership*[4] is incorrect.

Section 112(C) of the NIRC provides:

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

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[2] The letter dated June 18, 2015 from Revenue District Officer Isabel A. Paulino.
[3] G.R. No. 191498, January 15, 2014.
[4] Id.

> **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. (Emphasis supplied)

In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[5], the Supreme Court held that if the CIR fails to decide within the prescribed period, such inaction shall be deemed a denial of the application for refund or tax credit, thus:

> Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner , thus:
>
> > xxx 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.
>
> This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or **if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.**[6] (Emphasis supplied)

The same portion of the *San Roque* ruling was directly quoted in *CIR v. Mindanao II Geothermal Partnership.*[7] The Supreme Court there summarized the rules on the 120+30 day period for claiming refund or credit of input VAT:

> **B. 120+30 Day Period**

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[5] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

[6] Id.

[7] Supra, note 3.

1. The taxpayer can file an 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 in if the Commissioner does not act within the 120-day period.

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

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional (*Aichi* and *San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque*)[8]

In the present case, the 120-day period for the CIR to act on petitioner's claim ended on April 18, 2014. Hence, the 30-day period to appeal ended on May 18, 2014. Petitioner filed its Petition for Review only on August 12, 2015, which is clearly beyond the prescribed 30-day period. Petitioner's failure to comply with this mandatory and jurisdictional requirement warrants the dismissal of its petition.

WHEREFORE, premises considered, respondent's Motion to Dismiss is **GRANTED**. Accordingly, the instant Petition for Review filed by PETNET, Inc. on August 12, 2015 is hereby **DISMISSED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[8] Id.

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice