REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PULP SPECIALTIES PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2575
(CTA Case No. 9936)

Present:

DEL ROSARIO, *PJ*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
AUG 31 2022 11:23am

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Pulp Specialties Philippines, Inc. on March 10, 2022, assailing the Decision[2] dated July 8, 2021 (assailed Decision), and the Resolution[3] dated February 8, 2022 (assailed Resolution), promulgated by the Court's Third Division (Court in Division) in CTA Case No. 9936, entitled *Pulp Specialties Philippines, Inc. vs. Commissioner of Internal Revenue.* The dispositive portions of the assailed Decision and Resolution read:

[1] *En Banc* docket, pp. 1-38.
[2] *Id.*, pp. 56-69.
[3] *Id.*, pp. 45-54.

Assailed Decision of July 8, 2021:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**

Assailed Resolution of February 8, 2022:

> **WHEREFORE**, in light of the foregoing considerations, the instant ***MOTION FOR RECONSIDERATION*** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

Petitioner prays that the assailed Decision and Resolution be reversed and set aside; and that a new one be rendered ordering respondent Commissioner of Internal Revenue (CIR) to refund or, in the alternative, to issue a tax credit certificate in favor of petitioner in the amount of ₱2,515,094.62, representing petitioner's alleged excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the period August 1, 2003 to December 31, 2004.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 7F Citibank Center, 8741 Paseo de Roxas, Makati City. It was registered with the Securities and Exchange Commission on June 14, 2002, with Company Reg. No. A200209626;[4] the Board of Investments with Certificate of Registration No. EP 2002-139;[5] and with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with TIN 219-637-370-000.[6]

Petitioner's primary purpose is "to engage in the manufacture and sale of rope, twine, pulp and other by-products of abaca, coconut and other fibrous, woody, or pulpy growth, whether cultured or natural; to own and operate

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[4] Exhibit "P-2," Docket — Vol. 1, p. 33.
[5] Exhibit "P-5," Docket — Vol. 1, p. 62; and Joint Stipulation of Facts and Issues (JSFI), Docket — Vol. 1, par. 8, p. 286.
[6] Exhibit "P-6," Docket — Vol. 1, p. 63; and JSFI, Docket — Vol. 1, par. 9, p. 287.

factories of every kind and description for the making of rope, twine, pulp, or other by-products of abaca, coconut and of the other natural plan growths aforementioned." Its secondary purpose is "to engage in agriculture and to acquire and exploit forest concessions; and generally, to do and perform every act and thing necessary for the growing culture, gathering, buying, selling, importing and exporting of all agricultural or forest products whether in raw, semi-processed or processed form in the Philippines and anywhere else."[7]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. He may be served with summons, notice, pleadings and processes of this Honorable Court at the address of its counsel on record at Legal Division, Revenue Region No. 8A, No. 313 Sen. Gil Puyat Avenue, Makati City.[8]

THE FACTS

The facts of the case, as narrated by the Court in Division in the assailed Decision, and as culled from the records, are as follows:

On August 30, 2005, petitioner filed with the BIR Revenue District Office (RDO) No. 50, an administrative claim for the refund of unutilized input VAT for the period from August 1, 2003 to December 31, 2004.[9]

Consequently, respondent issued a Letter of Authority with Reference No. LOA 200100027223[10] dated May 29, 2006, authorizing Revenue Officer (RO) Joel Evangelista and Group Supervisor (GS) Josephine Elarmo to conduct a verification of the factual basis of petitioner's VAT refund and the same was duly received by petitioner.[11]

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[7] JSFI, Docket — Vol. 1, par. 7, p. 286.
[8] *En Banc* docket, Petition for Review, par. 4, p. 2.
[9] JSFI, Docket — Vol. 1, par. 4, p. 286; Exhibit "P-8," Docket — Vol. 1, p. 65; Exhibit "P-7," Docket — Vol. 1, p. 64; and Exhibit "R-1".
[10] Exhibit "P-18," Docket — Vol. 1, p. 75; and BIR Records, p. 3.
[11] JSFI, Docket — Vol. 1, par. 10, p. 287.

On August 16, 2018, respondent, through Regional Director Glen A. Geraldino of Revenue Region No. 8, denied petitioner's claim for VAT refund, due to its failure to submit complete supporting documents in violation of Section 112 (D) of the National Internal Revenue Code of 1997, as amended (NIRC or Tax Code).[12]

On September 27, 2018, petitioner elevated its case before the Court in Division *via* a Petition for Review[13] praying for the refund of and/or the issuance of a tax credit certificate in the amount of Two Million Five Hundred Fifteen Thousand Ninety-Four Pesos and 62/100 Centavos (₱2,515,094.62), allegedly representing its excess and unutilized input VAT on domestic purchases of goods and services, and creditable input VAT for the period, all of which are attributable to zero rated sales.[14]

In her Answer[15] filed on November 29, 2018, respondent alleged by way of special and affirmative defenses that:

1) Taxes paid and collected are presumed to have been made in accordance with law; hence, are not refundable;

2) Petitioner's claim for refund failed to comply with the substantiation requirements prescribed under Revenue Regulations No. 16-2005, in relation to Sections 113 and 237 of the 1997 Tax Code, as well as the conditions prescribed under Section 112 (A) (C) of the same Code;

3) Petitioner has the burden of proof to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim;

4) Petitioner failed to comply with the prescribed conditions to qualify its sales of goods and services made to its foreign clients/affiliates as zero-rated VAT under Sections 106 (A) (2) (a) (1), and 108 (B) (1) (2) (3) of the 1997 Tax Code; and

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[12] JSFI, Docket — Vol. 1, par. 14, p. 287; and Exhibits "P-28" and "R-16," BIR Records, p. 590.
[13] Docket – Vol. 1, pp. 10-32.
[14] Docket — Vol. 1, p. 25.
[15] Docket — Vol. 1, pp. 96 to 98.

5) Claims for refund are strictly construed against the taxpayer, as for the same partake of the nature of an exemption from taxation and as such, they are looked upon with disfavor.

Thereafter, the Court in Division issued the Pre-Trial Order dated April 15, 2019.[16]

During trial, petitioner presented its Corporate Secretary and Treasurer, Lorenzo D. Inocando.[17]

Petitioner filed its Formal Offer of Evidence/Exhibits[18] on October 15, 2019, to which the CIR filed her Comment[19] on October 25, 2019. In the Resolution dated November 22, 2019, the Court in Division admitted most of petitioner's documentary evidence, except: Exhibits "P-14" and "P-15", for failure to present the originals for comparison.

For her part, respondent presented: 1) RO Joel F. Evangelista; and 2) RO Rolando S. Dela Torre.[20]

On January 30, 2020, respondent filed her Formal Offer of Evidence/Exhibits, to which petitioner filed its Comment on February 5, 2020. In the Resolution dated March 6, 2020, the Court admitted all of respondent's documentary evidence.

With the filing of petitioner's Memorandum on August 7, 2020, and respondent's Memorandum on August 26, 2020, the case was submitted for decision on September 15, 2020.

The Court in Division rendered the assailed Decision on July 8, 2021, dismissing the Petition for Review on jurisdictional ground. It ruled that it acquired no jurisdiction over the case considering that the Petition for Review was filed before it only on September 27, 2018, or way beyond January 27, 2006, the end of the thirty (30)-day period to appeal respondent's inaction.

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[16] Docket — Vol. 1, pp. 326 to 334.
[17] Exhibit "P-29," Docket — Vol. 1, pp. 172 to 195.
[18] Docket — Vol. 1, pp. 393 to 407.
[19] Docket — Vol. 1, pp. 471 to 473.
[20] Exhibits "R-17" and "R-18," Docket — Vol. 1, pp. 105 to 113 and pp. 139 to 144, respectively.

Aggrieved, petitioner moved for reconsideration but the same was denied in the assailed Resolution dated February 8, 2022.

Unfazed, petitioner elevated the case to the Court *En Banc via* the instant Petition for Review on March 10, 2022.

In a Resolution dated April 6, 2022,[21] the Court *En Banc* ordered respondent to file her comment/opposition to the Petition. Respondent filed her Comment/Opposition on May 6, 2022.[22]

On June 7, 2022, the instant case was submitted for decision.[23]

Hence, this decision.

THE ISSUES

Petitioner raises the following issues for consideration of the Court:

> WHETHER OR NOT THE CTA THIRD DIVISION SERIOUSLY ERRED IN RENDERING THE ASSAILED DECISION AND ASSAILED RESOLUTION WHEN IT FAILED TO ASSUME JURISDICTION OVER THIS CASE AND GRANT PETITIONER'S CLAIM FOR REFUND AS THE CTA THIRD DIVISION FAILED TO RECOGNIZE THE FOLLOWING:
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> **A.** Petitioner's administrative claim was acted upon by the CIR, through a series of official acts including a certification on the submission of complete documents and recommendation for refund in the amount of ₱2,515,094.62, and thus cannot be deemed "deemed denied" after the lapse of the 120+30-day period.
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> **B.** The Denial Letter dated August 16, 2018 is a decision of the respondent, wherein Petitioner is given an option to file an appeal to the CTA as provided for under Section 112(C) of the Tax Code, as amended, and Section 7(a)(1) of Republic Act (RA) No. 1125, as amended.
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> **C.** The phrase "whichever is sooner" as provided by the Supreme Court in *Silicon case*[24] and cited by the CTA

[21] *En Banc* docket, pp. 71-72.
[22] *Id.*, pp. 78-84.
[23] *Id.*, p. 87
[24] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

Third Division amounts to a judicial legislation, and nowhere to be found either in the Tax Code, as amended, or in RA No. 1125, as amended.

D. The interpretation of the purpose of the 120+30-day period should be consistent with the legislative intent behind the amendment to Section 112(C) of the Tax Code.

E. Equity dictates that rules of technicality should not defeat a valid claim; Petitioner is entitled to the refund of VAT pursuant to the principle of *solutio indebiti*.

***Petitioner's Arguments*:**

Petitioner claims that Section 112(C) of the NIRC of 1997, as amended, provides two (2) different situations which the taxpayer may appeal to the CTA: *first*, an outright denial of the claim (whether full or partial), and *second*, a failure on the part of the CIR to act on the claim, which inaction may be deemed a denial of the claim. For petitioner, it is the first situation that should apply in this case since its administrative claim for refund was denied through a letter dated August 16, 2018.

Petitioner added that its claim cannot be considered as "unacted" because respondent "acted" on the administrative claim, through actions even beyond the lapse of the 120-day period. If there were actions made by respondent even beyond the 120-day period, there could be no "deemed denial" at the lapse of the same period, otherwise, the BIR should have stopped or should have not commenced acting at all after the lapse of the 120-day period. In fact, according to petitioner, there is no provision in the law passed by the legislature stating that after the lapse of the 120-day period, respondent is already divested of her jurisdiction to decide on the administrative claim. It stresses that there is no "inaction" in this case which could be deemed "a denial" as there were official actions made by the BIR on its administrative claim for refund. Allegedly, the letter dated August 16, 2018, denying its administrative claim for refund, is a **decision** of respondent which petitioner has the right to appeal from pursuant to the provisions of the Tax Code, as well as, the provisions under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, which grants the CTA the power to review **decisions** of the CIR in cases involving refunds of internal revenue taxes.

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Petitioner also claims that the phrases "deemed denial" and "whichever is sooner" as stated in the *Silicon case* have no statutory basis. Petitioner noted that in the *Silicon case*, the Supreme Court stated that *"[w]hether respondent rules in favor or against the taxpayer – or does not act at all on the administrative claim – within the period of 120 days from the submission of complete documents, the taxpayer **may** resort to a judicial claim before the CTA."* According to petitioner, the use of the word "may", which is consistent with Section 112(C) of the NIRC of 1997, as amended, signifies that the taxpayer "may not" also resort to judicial claim within the same period. If the taxpayer opts to pursue its administrative claim, with respondent acting on the taxpayer's claim, and rendering a denial decision thereto, it becomes mandatory to file a judicial claim within 30 days from receipt of respondent's decision. Any interpretation as to the filing of an appeal to the CTA within 30 days from the lapse of the 120-day period is mandatory is already contrary to the law and already amounts to judicial legislation, which is not allowed in this jurisdiction.

Petitioner likewise submits that the interpretation of the purpose of the 120+30-day period should be consistent with the legislative intent behind the amendment to Section 112(C) of the Tax Code. Allegedly, before the passage of RA No. 7716,[25] taxpayers were constrained to wait for a decision denying the refund/tax credit application before they may appeal to the CTA, no matter how long it took the BIR to process the pending claims. However, with the advent of RA No. 7716, if the claim is not acted upon by the CIR within the prescribed period, the taxpayer is now given the option to appeal to the CTA within 30 days from the lapse of the 120-day period from submission of complete documents. Petitioner noted that with the said amendment, the taxpayer is no longer required to wait with uncertainty for a decision. The taxpayer is now allowed to choose whether to pursue its administrative claim or take advantage of the option provided for by law, when its administrative claim is not acted upon by the CIR.

Finally, petitioner asserts that rules of technicality should not defeat a valid claim; and that it is entitled to the refund of VAT pursuant to the principle of *solutio indebiti*.

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[25] *AN ACT RESTRUCTURING THE VALUE ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASED AND ENHANCING ITS ADMINISTRATION AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.*

***Respondent's Arguments*:**

By way of Comment/Opposition,[26] respondent submits that petitioner's Petition for Review should be denied for utter lack of merit. According to respondent, the arguments/errors raised in the instant Petition for Review are merely rehash of petitioner's arguments/errors raised in its Motion for Reconsideration[27] dated August 4, 2021, which the Court in Division thoroughly discussed and passed upon in the assailed Resolution of February 8, 2022.

Nevertheless, respondent maintains that the relevant and applicable law in this case is Section 112(C) of the NIRC of 1997, as amended, which states the time requirements for filing a judicial claim for the refund or issuance of a tax credit certificate (TCC) for input VAT. The provision speaks of two (2) periods: (1) the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund or credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with the CTA. Following the said provision, the CIR has 120 days from the date of submission of complete documents, within which to rule on a taxpayer's application for tax refund or credit. And it is only after the lapse of this period without any action on the part of the CIR that the aggrieved party may, within 30 days, elevate the case to the CTA.

In the instant case, petitioner filed its administrative claim for refund, with complete supporting documents, of its alleged unutilized input VAT for the period August 1, 2003 to December 31, 2004 in the amount of ₱3,204,525.96 on August 30, 2005. Thus, the CIR has 120 days from August 30, 2005, or until December 28, 2005, to act on petitioner's administrative claim for refund. Thereafter, petitioner had 30 days, or until January 27, 2006, to challenge the CIR's inaction (which is deemed a denial) with the CTA.

Respondent highlights that petitioner belatedly filed its Petition for Review on September 27, 2018. According to respondent, petitioner was of the mistaken assumption that the 30-day period to appeal to the CTA could be reckoned from August 28, 2018, the date of receipt of the decision on its administrative claim for refund. Also, petitioner's reliance on

[26] *En Banc* docket, pp. 78-83.
[27] Docket – Vol. 2, pp. 599-623.

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Section 7(a)(1) of RA No. 1125, as amended, is misplaced. When the law provides a period within which the CIR must take action, any action taken or done beyond that period is legally construed as inaction. Undeniably, the letter dated August 16, 2018, denying petitioner's administrative claim for refund, is way beyond the 120-day period. Hence, an appeal to that decision must instead be guided by Section 7(a)(2) of RA No. 1125, as amended. In fact, in the *Silicon case*, the Supreme Court categorically upheld that any claim filed in a period less than or beyond the 120+30 days provided by the Tax Code is beyond the jurisdiction of the CTA.

Finally, respondent submits that petitioner cannot invoke the principle of *solutio indebiti* arguing that to make such principle in operation, petitioner must prove first that it is entitled to a valid claim which is deprived of him. Unfortunately, petitioner could not be allowed to substantiate its claim on account of prescription, says respondent.

The Court *En Banc's* Ruling

The instant Petition for Review was filed on time.

Before delving into the merits of the case, the Court *En Banc* shall first determine whether the present Petition for Review was timely filed.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> **SEC. 3**. *Who may appeal; period to file petition.* — xxx
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for rev'ew. [*Boldfacing supplied]*

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Records show that petitioner received the assailed Resolution on February 24, 2022. Thus, petitioner had fifteen (15) days from February 24, 2022, or until March 11, 2022, to file a Petition for Review before the Court *En Banc.*

Considering that the present Petition was filed on March 10, 2022, the same was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

After a judicious review of the arguments raised by petitioner in the instant Petition for Review, it is noted that the assigned errors raised therein are mere reiterations of matters which have been thoroughly discussed, passed upon, and resolved by the Court in Division in the assailed Decision dated July 8, 2021, and in the similarly assailed Resolution dated February 8, 2022.

Nevertheless, the Court *En Banc* finds it necessary to recapitulate and further elucidate some points that have been discussed in the assailed Decision and Resolution.

Petitioner's judicial claim with the Third Division of this Court was filed out of time.

Section 112 (A) and (C) of the NIRC of 1997, as amended, provide for the time periods for the filing and processing of administrative claim[28] and judicial claim[29] for tax refund or credit:

> SECTION. 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, ...

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[28] In *CIR vs. Mindanao II Geothermal Partnership* (G.R. No. 189440, June 18, 2014) citing *CIR vs. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823, October 6, 2010), the Supreme Court clarified the mandatory and jurisdictional nature of the 120+30-day period provided under Section 112 of the NIRC. The 2-year prescriptive period under Section 112(A) of the NIRC refers to the filing of an administrative claim with the BIR.

[29] *Id.* Section 112(C) of the NIRC pertains to judicial claim that must be filed within a mandatory and jurisdictional period of 30 days from the date of receipt of the decision denying the claim, or within 30 days from the expiration of the 120-day period for deciding the claim.

> (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**. [*Emphasis supplied]*

As for the timeline for the filing of a judicial claim, reference may be made to Section 11 of RA No. 1125,[30] as amended by RA 9282:[31]

> Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... may file an appeal with the CTA **within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action** as referred to in Section 7(a)(2) herein.
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> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** A Division of the CTA shall hear the appeal: ... [*Emphasis supplied]*

Moreover, Section 3(a), Rule 8 of the RRCTA, which implements the above provision, states:

> SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or **claims for refund of internal revenue taxes,** ... may appeal to the Court by petition for

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[30] An Act Creating the Court of Tax Appeals, June 16, 1954.

[31] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

> review filed **within thirty days** after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. ... *[Emphasis supplied]*

From the foregoing, it is clear that the administrative claim for tax refund or credit must be filed with the BIR **within two (2) years** after the close of the taxable quarter when the sales were made.[32]

In case of an adverse decision or ruling, or inaction of the CIR, the taxpayer is given a period of **thirty (30) days** from receipt of the decision or ruling, or the expiration of the 120-day period fixed by law, to file a Petition for Review with the CTA.

Said rules, as laid down in *CIR vs. San Roque Power Corporation (San Roque),* [33] have now become a hornbook doctrine:

> Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at anytime within the **two-year prescriptive period**. ... The Commissioner will have 120 days from such filing to decide the claim. **If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA**. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C). *[Emphasis supplied]*

In *CIR vs. Taganito Mining Corp.*, citing the case of *CIR vs. Mindanao II Geothermal Partnership,* [34] the Supreme Court provides a summary of the rules on prescriptive periods for claiming tax refund/credit under Section 112 of the NIRC of 1997, as amended, as follows:

> A. Two-Year Prescriptive Period
>
> ... ...
>
> B. 120+30 Day Period
>
> 1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim **within thirty days** after the Commissioner <u>denies</u> the claim <u>within the 120-day</u>

[32] *CIR vs. Team Sual Corporation*, G.R. No. 194105, February 5, 2014.
[33] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[34] G.R. No. 191498, January 15, 2014.

> 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. 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) [*Emphasis supplied]*

In the instant case, there is no dispute with regard to the timeliness of petitioner's administrative claim for refund of its excess and unutilized input VAT in the amount of ₱2,515,094.62 for the period August 1, 2003, to December 31, 2004. As correctly found by the Court in Division, the claim was filed on August 30, 2005, which is well within the 2-year reglementary period.

The crux of the controversy lies on *when* the 30-day period for filing a judicial claim shall be reckoned.

Petitioner asserts that the 30-day period should be counted from August 28, 2018,[35] the date of its receipt of the Denial Letter dated August 16, 2018, and not from the lapse of the 120-day period reckoned from the filing of its administrative claim, with complete supporting documents, on August 30, 2005.

We disagree.

In the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. CIR*,[36] it was emphasized that the **30-day period** commences after the receipt of respondent's decision or ruling **or** after the expiration of the 120-day period, **whichever is sooner**. Thus:

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[35] *En Banc* docket, Petition for Review, par. 23, p. 9.
[36] G.R. No. 182737, March 2, 2016.

> Whether respondent rules in favor of or against the taxpayer — or does not act at all on the administrative claim — within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA. ...
>
> 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**.
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law, **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA**. *[Emphasis supplied]*

Stated otherwise, the 30-day period provided by law is counted from the receipt of the CIR's decision/ruling, or from the lapse of the 120-day period, whichever is sooner. Thus, a judicial claim filed in a period *less than or beyond* the said 120+30-day period, is *outside the jurisdiction of the CTA.*

Based on the foregoing pronouncement, the CIR's inaction is "deemed a denial" of the claim. The taxpayer's failure to appeal within 30 days renders the "deemed a denial" decision of the CIR final and unappealable.[37]

In the instant case, petitioner filed its administrative claim for tax refund or credit for all six quarters (3rd and 4th quarters of 2003 and 1st to 4th quarters of 2004) on August 30, 2005. It claimed to have complied with the documentary requirements of law for the approval of its administrative claim for VAT refund or credit.[38]

As found by the Court in Division, the 120-day period for respondent to act on the administrative claim of petitioner commenced to run on **August 30, 2005,** and expired on December 28, 2005. Given the inaction of the respondent by the end of the 120-day period, petitioner had 30 days from December 28, 2005, or until **January 27, 2006**, to file its judicial claim with the CTA. However, petitioner only filed its judicial claim on **September 27, 2018**, or **more than twelve (12) years** after the lapse of the period. For petitioner's failure to comply with the 120+30-day mandatory period, this Court finds that the Court in Division correctly dismissed petitioner's

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[37] *CIR vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013.
[38] *En Banc* docket, Petition for Review, par. 15, p. 7.

judicial claim, which was filed out of time. Hence, the Court in Division did not acquire jurisdiction over the case.

We reiterate, with approval, the pertinent ruling of the Court in Division in the assailed Decision,[39] *viz.*:

> ***Petitioner's judicial claim was filed out of time.***
>
> The *second period* is specified under Section 112 (C) of the NIRC of 1997, as amended, which provides that the CIR has one hundred twenty (120) days from the date of submission of the complete documents in support of the application for refund or tax credit certificate, within which to grant or deny the claim.
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> Thereafter, upon receipt of the adverse decision, or from the lapse of the 120-day period for the CIR to act on the claim, the taxpayer has 30 days within which to file its judicial claim, through a Petition for Review before this Court. Strict compliance with the 120+30-day periods is necessary for such a claim to prosper.
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> Applying the foregoing reglementary periods to the instant case, the CIR had one hundred twenty (120) days from the filing of petitioner's administrative claim on August 30, 2005, or until **December 28, 2005**, within which to render a decision on the said claim. ...
>
> However, in this case, the CIR neither granted nor denied petitioner's refund claim within the 120-day reglementary period. Instead, respondent, through Regional Director Glen A. Geraldino of Revenue Region No. 8, denied petitioner's subject refund claim only on August 16, 2018, which is way beyond the reglementary period of 120 days.
>
> In view thereof, petitioner may not invoke August 16, 2018 as the reckoning date of the thirty (30)-day period within which to file its judicial claim for refund because it violates the mandates of Section 112 (C) of the NIRC of 1997, as amended.
>
> Thus, considering that the CIR did not act on petitioner's claim **on or before** **December** 28, 2005, petitioner had thirty (30) days, or until **January 27, 2006**, within which to file its *judicial claim* before this Court.

MW

[39] Assailed Decision, *En Banc* docket, pp. 56-69.

> Considering that the instant *Petition for Review* was filed only on **September 27, 2018**, or way beyond the thirty (30)-day period to appeal, petitioner's judicial claim was filed out of time. Therefore, this Court acquired no jurisdiction over the case.
>
> In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, it was held that the 30-day period commences after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, **whichever is sooner**, ...
>
> 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**.
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law, **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.**
>
> It is well-settled, therefore, that the 30-day period provided by law is reckoned from the date of receipt of respondent's decision/ruling rendered within the 120-day period from submission of complete documents, or after the expiration of the 120-day period, **whichever is sooner**. Consequently, any judicial claim filed in a period *less than* or *beyond* the said 120+30-day period, is outside the jurisdiction of this Court. [*Emphasis and underscoring supplied]*

As cited in the assailed Decision, let it be emphasized that in *Lapanday Foods Corporation vs. CIR (Lapanday),*[40] citing *Rohm Apollo Semiconductor Philippines vs. CIR,*[41] taxpayers are reminded that "when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for her 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."

Indubitably, when petitioner's judicial claim was filed before the Third Division of this Court on September 27, 2018, or more than twelve (12) years after the lapse of the 120+30-day mandatory and jurisdictional periods, *i.e.*, December 28,

[40] Notice, G.R. No. 252821, September 2, 2020.
[41] G.R. No. 168950, January 14, 2015.

2005, and January 27, 2006, respectively, the denial of petitioner's claim for tax credit had long attained finality.

In fine, the Court in Division did not err when it did not assume jurisdiction over the Petition for Review for having been filed out of time.

Anent the other issues and assigned errors raised by petitioner, the Court *En Banc* adopts and quotes, with approval, the disquisition of the Court in Division in the assailed Resolution,[42] *viz.*:

> ***There was no judicial Legislation in the Silicon case.***
>
> Judicial legislation, as defined, refers to a case wherein the Court reads into the law what obviously was not intended by Congress, or when the Courts limit the application or coverage of a law, or imposes conditions not provided therein. Hence, the duty of courts is limited to the application or interpretation of the law, not to make or amend it.
>
> Contrary to petitioner's contentions, there was no judicial legislation in the *Silicon* case. A thorough reading of the ruling in the said case would reveal that the phrase "whichever is sooner," pertaining to the period of filing of the judicial claim, has statutory basis.
>
> To be specific, footnote no. 49 in the *Silicon* case cites Section 11 of RA No. 1125, as amended, to wit:
>
> ... ...
>
> Based on the foregoing provision of the CTA Charter, a taxpayer must file its appeal before the CTA, within thirty (30) days after the receipt of the decision, *or after the expiration of the period fixed by law for action* as referred to in Section 7(a)(2) thereof.
>
> ... ...
>
> In order to determine whether respondent has failed to decide within a "specific period" required by law, reference must be made to the relevant provisions of the Tax Code.

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[42] Assailed Resolution, *En Banc* docket, pp. 45-54.

For instance, Section 112(C) of the NIRC of 1997, as amended, is a provision of law that stipulates "a specific period for action, in which case the inaction shall be deemed a denial." Under the said provision, the CIR is given a period of 120-days from the submission of complete documents in support of the application to either grant or deny the claim. If the claim is denied, or the CIR has not acted on it within the 120-day period, the taxpayer-claimant is then given a period of 30 days to file a judicial claim via petition for review with this Court.

In other words, based on the CTA Charter and the Tax Code, there are two (2) different scenarios wherein a judicial claim for refund may be filed with the CTA: (1) the full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the respondent having acted on the claim. It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT.

From the foregoing, it is apparent that the interpretation of the provisions of the NIRC of 1997, as amended, cannot be made in a vacuum. Rather, it must be read in conjunction with other statutes, such as the CTA Charter.

As such, the Supreme Court in the *Silicon* case, made judicial pronouncements regarding Section 112(C) of the NIRC of 1997, as amended, taking into considerations its relation to other relevant legal provisions, i.e., the CTA Charter. Evidently, the High Court did not read into the law what was not intended by Congress, nor did it impose conditions not provided therein. In fact, the Silicon case merely harmonized the provisions of existing statutes, such as the Tax Code and the CTA Charter. Clearly, petitioner's assertion that there was judicial legislation in the said case is erroneous and has no leg to stand on.

The principle of *solutio indebiti* does not apply to tax refund cases

Finally, petitioner asserts that the rules of technicality should not defeat a valid claim, applying the principle of *solutio indebiti.*

We are not convinced.

In the case of *Commissioner of Internal Revenue vs. Manila Electric Co. (Meralco),*[43] the Supreme Court rejected the application of the principle of *solutio indebiti* to tax refund cases, to wit:

"In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi-contract or *solutio indebiti* under Article 1145 of the New Civil Code. **There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause**. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. **Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid**.

Tax refunds are based on the general premise that 0taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. **Further, "a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim**.

Based on the foregoing, it is clear that *solutio indebiti* is not applicable to cases involving tax refunds. This is because the first element thereof is lacking, considering that there is a binding relation between the taxpayer and the CIR. *[Emphasis supplied]*

The Supreme Court, in a catena of cases,[44] has consistently applied the clear and unequivocal provisions of Section 112 of the NIRC of 1997, as amended, and held that

[43] G.R. No. 181459, June 9, 2014, as cited in *CIR vs. San Miguel Corporation* and *San Miguel Corporation vs. CIR*, G.R. Nos. 180740 & 180910, November 11, 2019, and *Metropolitan Bank & Trust Company vs. CIR*, G.R. No. 182582, April 17, 2017.

[44] *CIR v. San Roque Power Corporation* (G.R. No. 187485), *Taganito Mining Corporation v. CIR* (G.R. No. 196113), and *Philex Mining Corporation v. CIR* (G.R. No. 197156), February 12, 2013; *Mindanao II Geothermal Partnership v. CIR, and Mindanao I Geothermal Partnership v. CIR*, G.R. Nos. 193301 and 194637, March 11, 2013; *Rohm Apollo Semiconductor Philippines v. CIR*, G.R. No. 168950, January 14, 2015; *CIR v. Team Sual Corporation*, G.R. No. 194105, February 5, 2014; *Marubeni Philippines Corporation v. CIR*, G.R. No. 198485, June 5, 2017; *CIR v. Mindanao I Geothermal Partnership*, G.R. No. 192006. November 14, 2018; *Procter & Gamble Asia, Pte. Ltd. vs. CIR*, G.R. No. 207587, April 28, 2021 (Notice); *Energy Development Corp. vs. CIR*, G.R. No. 203367, March 17, 2021; *Lapanday Foods Corp. vs. CIR*, G.R. No. 252821, September 2, 2020 (Notice); *Carmen Copper Corp. vs. CIR*, G.R. No. 245282, June 19, 2019 (Notice).

the 120+30-day period is mandatory and jurisdictional. Its strict compliance must be observed for a claim for refund or tax credit to prosper. [45] Moreover, jurisdiction cannot be *waived* because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[46]

It is well-established that refunds are in the nature of exemptions, and thus, strictly construed against the claimant.[47] Hence, it is petitioner's burden to show that it has fully complied with the conditions for the grant of the tax refund or credit since non-compliance with the mandatory periods and non-observance of the prescriptive periods shall bar its judicial claim for tax refund or credit.[48]

In sum, the Court *En Banc* sees no compelling reason to deviate from the ruling of the Court in Division in the assailed Decision and Resolution.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated July 8, 2021, and the assailed Resolution dated February 8, 2022, both rendered by the Court's Third Division in CTA Case No. 9936, are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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[45] *Supra* at note 41.
[46] *Id.*
[47] *CIR v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, G.R. No. 209776, December 7, 2016.
[48] *CIR v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

ERLINDA P. UY
Associate Justice

ON LEAVE
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
Associate Justice

x--x

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice