REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

CHEMREZ, INC.,
Petitioner,

– *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9247

Members:
Bautista, Chairperson,
Fabon-Victorino, and
Ringpis-Liban, *JJ.*

Promulgated:
FEB 10 2016
2:46 p.m.

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RESOLUTION

On January 21, 2016, the Court received petitioner's "Petition for Review" praying that judgment be rendered ordering respondent to refund and/or to issue a tax credit certificate ("TCC") in favor of petitioner the unutilized input value-added tax ("VAT") for the period January 1, 2006 to December 30, 2006 in the aggregate amount of Php54,635,211.22.

However, a perusal of the Petition for Review shows that the Court has no jurisdiction over the subject matter.

As regards VAT refunds, the settled rule is that the 120+30 day period under *Section 112(C)*[1] *of the 1997 National Internal Revenue Code*

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[1] Section 112(D) of the 1997 NIRC provides:

> Sec. 112. *Refunds or Tax Credits of Input Tax.* –
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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 Subsection (A) hereof.

(*"NIRC"*)[2] is mandatory. Thus, the Supreme Court in *Commissioner of Internal Revenue ("CIR") v. San Roque Power Corporation*[3] held that Philex Mining Corporation ("Philex") belatedly filed its claim for refund. According to the Supreme Court, the inaction of the CIR within the 120-day period is deemed a denial of Philex's claim. Accordingly, Philex had 30 days from the expiration of the 120-day period within which to file its judicial claim with the Court. Its failure to do so rendered the decision of the CIR final and unappealable. The relevant discussion of the Supreme Court is, as follows:

> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim long after the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing. Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
>
> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise.

> 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.

[2] Republic Act No. 8424, as amended (1997).
[3] G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 690 SCRA 336.

> Philex failed to comply with the statutory conditions and must thus bear the consequences.

Similar to Philex, petitioner in this case belatedly filed its judicial claim. The input VAT being claimed by petitioner is for the period January 1, 2006 to December 30, 2006. Petitioner filed its administrative claim on December 26, 2007. It filed, however, its judicial claim only on January 21, 2016 or 7 years after the expiration of the 120-day period.

Following the Supreme Court's ruling in the *San Roque* case, respondent had 120 days, or until April 24, 2008, within which to decide on petitioner's administrative claim for refund. Considering respondent failed to act on petitioner's claim for refund within 120 days, petitioner had 30 days therefrom, or until May 26, 2008,[4] within which to file its judicial claim. Nevertheless, petitioner waited for respondent's actual denial of petitioner's administrative claim before it filed the judicial claim. Petitioner's failure to timely file its judicial claim is fatal to its petition.

As a case of late filing, this Court is rendered without jurisdiction to entertain the instant petition in accordance with the Court *En Banc*'s pronouncements in *Chevron Holdings, Inc. v. CIR*, to wit:

> It bears stressing that the "Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction." Notably, by virtue of Republic Act No. 9282, the jurisdiction of the Court of Tax Appeals has been considerably expanded to include not only decisions or rulings but inaction of the Commissioner of Internal Revenue. Thus, <u>the decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, specifically on a claim for refund, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 120-day period fixed by law for the Commissioner to act on a claim for refund</u>. Otherwise stated, <u>the 30-day period after the receipt of such decision or ruling, or inaction on the part of the CIR within which to file an appeal is jurisdictional and failure to comply therewith</u>

[4] The last day of the 120+30 day period falls on May 24, 2008. However, considering the same falls on a Saturday, the last day for filing the judicial claim is on May 26, 2008, the immediately succeeding working day.

> would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the appeal or petition for review. Significantly, said period is not merely directory but mandatory and it is beyond the power of the courts to extend or shorten the same.[5]

WHEREFORE, premises considered, petitioner's "Petition for Review" filed on January 21, 2016 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[5] Emphasis ours.