REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

PETNET, INC., Petitioner,	**CTA EB No. 1479** (CTA Case No. 9113)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 01 2018 4:02 p.m.

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review* filed by Petnet, Inc. on July 22, 2016 against the Commissioner of Internal Revenue, praying for the reversal and setting aside of the Resolutions dated February 2, 2016[1] and June 14, 2016[2], rendered by the Third Division of this Court (Court in Division)[3] in CTA Case No. 9113, entitled *"Petnet, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

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[1] EB Docket, pp. 77 to 81.
[2] EB Docket, pp. 82 to 84.
[3] Composed of the Honorable Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban.

<u>Resolution dated February 2, 2016</u>:

> "**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.**"

<u>Resolution dated June 14, 2016</u>:

> "**WHEREFORE**, premises considered, petitioner Petnet, Inc.'s Motion for Reconsideration (Re: Resolution dated February 2, 2016) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Petnet, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines with Securities and Exchange Commission (SEC) Registration No. A1998-09672, and business address at 2/F East Offices Building, 114 Aguirre St., Legaspi Village, Makati City.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, with authority to, among others, decide, approve and grant claims for refund or tax credit of internal revenue taxes and is holding office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On August 12, 2015, petitioner filed a *Petition for Review*,[4] praying that judgment be rendered ordering respondent to refund or issue in favor of petitioner a tax credit certificate in the amount of ₱7,008,836.55, allegedly representing its unutilized input value-added tax (VAT) for the period from April 1, 2012 to December 31, 2012 directly attributable to petitioner's zero-rated sale of services involving money remittance services rendered to Western Union.

The Court in Division issued the *Summons* dated August 25, 2015,[5] requiring respondent file before the said Court, and serve on

[4] Division Docket (CTA Case No. 9113), pp. 12 to 31.
[5] Division Docket (CTA Case No. 9113), p. 160.

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petitioner, his *Answer* to the said *Petition for Review*.

On September 3, 2015, respondent filed his *Motion For Extension of Time To File Answer*,[6] praying that he be granted an extension of thirty (30) days from September 10, 2015 or until October 10, 2015, within which to file his *Answer*.

In the Resolution dated September 15, 2015,[7] the Court in Division granted the said *Motion For Extension*, with a warning that no further extension shall be allowed.

However, instead of filing an *Answer*, respondent filed a *Motion to Dismiss* on October 9, 2015 for the Court in Division's lack of jurisdiction to entertain the case,[8] arguing that the judicial claim was filed out of time and that the 30-day period to appeal is mandatory and jurisdictional.

In the assailed Resolution dated February 2, 2016,[9] respondent's *Motion to Dismiss* was granted by the Court in Division, and accordingly, dismissed petitioner's *Petition for Review*.

Petitioner then filed its *Motion for Reconsideration (Re: Resolution dated February 2, 2016)* on February 26, 2016.[10] After being ordered by the Court in Division,[11] respondent filed his *Comment/Opposition (To Petitioner's Motion for Reconsideration dated February 24, 2016)* on March 16, 2016.[12]

Thereafter, the Court in Division rendered the assailed Resolution dated June 14, 2016,[13] denying petitioner's *Motion for Reconsideration* for lack of merit.

On July 7, 2016, petitioner filed before the Court *En Banc* a *Motion For Extension of Time To file Petition for Review*,[14] praying for a period of fifteen (15) days from July 7, 2016, or until July 22, 2016, within which to file its *Petition for Review*.

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[6] Division Docket (CTA Case No. 9113), pp. 161 to 163.
[7] Division Docket (CTA Case No. 9113), p. 166.
[8] Division Docket (CTA Case No. 9113), pp. 168 to 172.
[9] EB Docket, pp. 77 to 81; Division Docket (CTA Case No. 9113), pp. 194 to 198.
[10] Division Docket (CTA Case No. 9113), pp. 199 to 213.
[11] Resolution dated March 7, 2016, Division Docket (CTA Case No. 9113), p. 216.
[12] Division Docket (CTA Case No. 9113), pp. 218 to 220.
[13] EB Docket, pp. 82 to 84; Division Docket (CTA Case No. 9113), pp. 223 to 225.
[14] EB Docket, pp. 1 to 4.

The Court *En Banc* then granted petitioner a final and non-extendible period of fifteen (15) days from July 7, 2016, or until July 22, 2016, within which to file the said *Petition for Review.*[15]

On July 22, 2016, petitioner filed the instant *Petition for Review.*[16]

Subsequently, in the Resolution dated September 21, 2016,[17] the Court *En Banc* ordered respondent to file his *Comment* to the instant Petition for Review within ten (10) days from receipt thereof. However, respondent did not file the said *Comment.*[18]

In the Resolution dated November 11, 2016,[19] the Court *En Banc* gave due course to the instant *Petition for Review*, and directed the parties to submit their respective memoranda.

Petitioner filed its *Memorandum* on December 27, 2016.[20] Respondent, however, failed to file his *Memorandum.*[21]

On February 13, 2017, the instant case was deemed submitted for decision.[22]

Parenthetically, petitioner filed a *Motion To Take Judicial Notice (Re: BIR Revenue Regulations No. 1-2017)* on March 10, 2017.[23] The Court *En Banc* took note of the said *Motion* via a Minute Resolution dated March 21, 2017.[24]

Hence, this Decision.

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[15] Minute Resolution dated July 13, 2016, EB Docket, p. 5.
[16] EB Docket, pp. 6 to 45.
[17] EB Docket, pp. 214 to 215.
[18] Records Verification dated November 3, 2016 issued by the Judicial Records Division of this Court, EB Docket, p. 223.
[19] EB Docket, pp. 225 to 226.
[20] EB Docket, pp. 227 to 259.
[21] Records Verification dated January 5, 2017 issued by the Judicial Records Division of this Court, EB Docket, p. 261.
[22] EB Docket, pp. 263 to 264.
[23] EB Docket, pp. 278 to 280.
[24] EB Docket, p. 287.

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THE ISSUE

As the Court *En Banc* sees it, the issue for resolution is:

"WHETHER OR NOT THE COURT IN DIVISION WAS CORRECT IN DISMISSING THE PETITION FOR REVIEW IN CTA CASE NO. 9113."

Petitioner's arguments:

Petitioner relies on the following grounds to support the instant *Petition for Review*, to wit:

"A. THE VAT REFUND APPLICATION WAS FILED WITHIN THE PERIOD PRESCRIBED BY SECTION 112(C).

B. RMC 54-2014 CANNOT BE RETROACTIVELY APPLIED IN THIS CASE.

C. THE CASES CITED BY THE RESPONDENT ARE INAPPLICABLE TO THE CASE AT BAR.

D. THE APPLICATION OF THE RULINGS IN SAN ROQUE AND ROHM APOLLO AND THE DENIAL LETTER BASED ON RMC 54-2014 VIOLATE THE TAXPAYER'S CONSTITUTIONAL RIGHT TO DUE PROCESS.

E. THE APPLICATION OF THE RULINGS IN SAN ROQUE AND ROHM APOLLO AND THE DENIAL LETTER BASED ON RMC 54-2014 DEPRIVES THE TAXPAYER OF ITS RIGHT TO EXHAUST ADMINISTRATIVE REMEDIES.

F. RMC 54-2014 EFFECTIVELY REDUCED THIS HONORABLE COURT INTO A TAX REFUND AGENCY.

G. THE DENIAL AND DISMISSAL CONSTITUTES A DEPRIVATION OF THE TAXPAYER OF ITS LAWFUL AND STATUTORY RIGHT TO APPEAL A CLEARLY ERRONEOUS DECISION.

H. RESPONDENT, THROUGH THE REVENUE OFFICERS, ACTED IN A MANNER AMOUNTING TO GRAVE ABUSE OF DISCRETION BECAUSE THE BIR IS ESTOPPED FROM DENYING THE COMPLETENESS OF THE SUPPORTING DOCUMENTS.

I. PETITIONER MET THE REQUISITES FOR THE CLAIM OF UNUTILIZED INPUT VAT."[25]

THE COURT *EN BANC*'S RULING

The Court in Division was correct in dismissing petitioner's *Petition for Review* in CTA Case No. 9113.

***The Court in Division did not have jurisdiction to entertain the case* a quo.**

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[26] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[27] Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[28] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[29]

It must be emphasized that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[30]

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[25] EB Docket, pp. 15 to 16, and 233 to 234.

[26] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, citing *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals*, G.R. No. L-23988, January 2, 1968.

[27] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

[28] *Id.*, citing *Justino Laresma vs. Antonio P. Abellana*, G.R. No. 140973, November 11, 2004.

[29] *Id.*

[30] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.

Pertinent to the resolution of whether the Court in Division has jurisdiction over the *Petition for Review* in CTA Case No. 9113 is Section 112(A) and (C) of the NIRC of 1997[31], as amended by Republic Act (RA) No. 9337[32], which provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax* –
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> (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, to the extent that such input tax has not been applied against the output tax**; xxx.
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> xxx xxx xxx
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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.
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> **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.**" *(Emphases supplied)*

Based on the above-stated Section 112(A), the administrative claim of a VAT-registered person for the issuance by respondent of a TCC or the refund of unutilized input VAT must be filed within two (2)

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[31] As embodied in Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997".

[32] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim involves the refund of petitioner's alleged unutilized input VAT for the period April 1, 2012 to December 31, 2012, or for the second, third, and fourth quarters of 2012. Counting two (2) years from the end of each of the said quarters, petitioner had until the following dates to respectively file the administrative claim, to wit: June 30, 2014 for the second quarter of 2012; September 30, 2014 for the third quarter of 2012; and December 31, 2014 for the fourth quarter of 2012. Thus, since petitioner's administrative claim for the said three (3) quarters was filed on December 19, 2013, the same was filed well within the two (2)-year prescriptive period under the aforequoted Section 112(A) of the NIRC of 1997, as amended.

As for the judicial claim, the above-quoted Section 112(C) of the NIRC of 1997, as amended, prescribes the period for the filing thereof. Such provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for respondent to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with this Court.

In the landmark case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.* ("*San Roque* case"),[33] the Supreme Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty (30) days after respondent denies the claim within the 120-day waiting period, or (2) file the judicial claim within thirty (30) days from the expiration of the 120-day period if respondent does not act within that period.[34]

As can be gleaned from Section 112(C), the 120-day period commences to run from the date of submission of complete documents supporting the administrative claim.[35] As to when should the submission of supporting documents deemed "completed" for purposes of determining the running of the 120-day period, the Supreme Court, in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas* case")[36], has this to say, to wit:

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[33] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[34] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[35] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.
[36] G.R. No. 207112, December 8, 2015.

"From the above, it is apparent that the CIR has 120 days **from the date of submission of complete documents** to decide a claim for tax credit or refund of creditable input taxes. The taxpayer may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a 'denial due to inaction,' appeal the decision or unacted claim to the CTA.

To be clear, Section 112(C) categorically provides that the 120-day period is counted '**from the date of submission of complete documents** in support of the application.' xxx.

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Indeed, the 120-day period granted to the CIR to decide the administrative claim under the Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.

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Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under present law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?*

Ideally, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess

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utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, *ideally*, the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.

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Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:

> Q-18: *For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?*
>
> A-18: For **pending claims** which have not been acted upon by the investigating/processing office due to incomplete documentation, **the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.**
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> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be officially received only upon submission of complete documents.
>
> For current and future claims for tax credit/refund, the same shall be processed

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> within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents **<u>within thirty (30) days from request of the investigating/processing office, which shall be construed as within the one hundred twenty (120)-day period.</u>**
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> [Emphases Supplied]

Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential. It is only upon the submission of these documents that the 120-day period would begin to run.

Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112 (B) of the NIRC, Section 112 (D) was amended and renamed 112 (C). Thus:

> (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.

With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, <u>for purposes of determining ***when*** the supporting documents have been completed – *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.</u> The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be

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afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are *actually* complete as required by law - is for the CIR and the courts to determine. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

Moreover, under Section 112 (A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.

To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. <u>Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given,</u>

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> <u>the CIR has 120 days within which to decide the claim for tax credit or refund.</u> Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition[al] documents to complete his administrative claim, the 120[-]day period allowed to the CIR begins to run from the date of filing.
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> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected." *(Underscoring supplied)*

Based on the foregoing, from the date of filing of the administrative claim, the taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support the said claim, unless such taxpayer was given further extension by the Commissioner. Upon filing by the taxpayer of complete documents, or the expiration of the period given, the Commissioner has one hundred twenty (120) days within which to decide the claim. Nevertheless, it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.

In this case, petitioner has already admitted that it has submitted complete documents in support of its administrative claim upon the filing thereof, to wit:

> "3. On December 19, 2013, Petitioner formally filed an administrative claim for refund and/or issuance of Tax Credit Certificate on its unutilized input VAT for the period April 1, 2012 to December 31, 2012 with the Bureau of Internal Revenue—Revenue Region 8 Makati, Revenue District Office No. 47 ('BIR-RDO' 47') **with submission of complete documents in support of its claim.**"[37] *(Emphasis supplied)*
>
> "3. On 19 December 2013, Petitioner formally filed an administrative claim for refund and/or issuance of Tax Credit Certificate on its unutilized input VAT for the period 1 April 2012 to 31 December 2012 with the Bureau of Internal Revenue—Revenue Region 8 Makati,

[37] Par. 3, Petition for Review, Division Docket (CTA Case No. 9113), p. 13.

Revenue District Office No. 47 ('BIR-RDO' 47') **with submission of complete documents in support of its claim**."[38] *(Emphasis supplied)*

"10. On 19 December 2013, Petitioner filed an administrative claim for refund with the BIR-RDO 47 in the total amount of ₱7,008,836.55 representing its unutilized input VAT for the period 1 April 2012 to 31 December 2012 **with submission of complete documents supporting its claim**."[39] *(Emphasis supplied)*

Thus, the 120-day period shall be reckoned from December 19, 2013 and shall end on April 18, 2014. Considering that respondent failed to act on the subject claim, petitioner had thirty (30) days after the lapse of the 120-day period or until May 18, 2014 within which to file a judicial appeal before this Court. However, the *Petition for Review* in CTA Case No. 9113 was filed only on August 12, 2015.[40] Hence, it is clear that petitioner's judicial claim was belatedly filed.

Petitioner, however, argues that Section 112(C) of the NIRC of 1997, as amended, provides that a taxpayer has a period of thirty (30) days from receipt of respondent's denial of its administrative claim for refund of excess and unutilized input VAT within which to appeal such decision to this Court.

In this connection, petitioner alleges that it received respondent's decision denying its administrative claim for refund on July 13, 2015,[41] and therefore, petitioner claims that it had a period of thirty (30) days from the said date, or until August 12, 2015, within which to appeal to this Court the respondent's decision denying petitioner's claim.

The Court disagrees with petitioner.

Section 7(a)(1), (2) and 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, reads as follows:

"SEC. 7. *Jurisdiction.* — **The CTA shall exercise:**

(a) **Exclusive appellate jurisdiction to review by**

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[38] Par. 3, Petition for Review, EB Docket, pp. 8 to 9.
[39] Par. 10, Petitioner's Memorandum, EB Docket, p. 231.
[40] Division Docket (CTA Case No. 9113), p. 12.
[41] Par. 11, Petitioner's Memorandum, EB Docket, p. 231.

appeal, as herein provided:

> (1) **<u>Decisions</u> of the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) **<u>Inaction</u> by the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, <u>in which case the inaction shall be deemed a denial</u>**;" *(Emphases supplied)*

"SEC. 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** xxx 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.**

xxx xxx xxx." *(Emphases supplied)*

Based on the foregoing provisions, the concerned taxpayer may appeal to this Court a decision or an inaction, which is deemed a denial, of the Commissioner of Internal Revenue, within thirty (30) days from receipt of the decision, ruling or inaction of the latter after the expiration of the period fixed by law for action.

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue* ("*Rohm Apollo* case"),[42] the Supreme Court reminded all taxpayers as follows:

"The error of the taxpayer lies in the fact that it

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[42] G.R. No. 168950, January 14, 2015.

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> **had mistakenly believed that a judicial claim need not be filed within 30 days from the lapse of the 120-day period.** It had believed that the only requirement is that the judicial claim must be filed within the two-year period under Sections 112(A) and (B) of the 1997 Tax Code. In other words, Rohm Apollo erroneously thought that the 30-day period does not apply to cases of the CIR's inaction after the lapse of the 120-day waiting period, and that a judicial claim is seasonably filed so long as it is done within the two year-period. Thus, it filed the Petition for Review with the CTA only on 11 September 2002.
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> These mistaken notions have already been dispelled by *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*[43] and *San Roque*. *Aichi* clarified that it is only the administrative claim that must be filed within the two-year prescriptive period. ***San Roque*, on the other hand, has ruled that the 30-day period always applies, whether there is a denial or inaction on the part of the CIR.**
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> xxx xxx xxx
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> **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, <u>they must no longer wait for it to come up with a decision thereafter</u>. The CIR's inaction is the decision itself. <u>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.</u>**" *(Emphasis and underscoring supplied)*

With the foregoing jurisprudential pronouncements, it can be easily discerned that petitioner's contention that the denial and dismissal of the case constitutes a deprivation of the taxpayer of its lawful and statutory right to appeal a clearly erroneous decision deserves scant consideration. Apparently, the error in the said contention is that it presupposes that the 120-day period under Section 112(C) of the NIRC of 1997, as amended, may be disregarded; and that petitioner may just wait for the respondent's decision.

However, contrary to petitioner's position, Section 7(a)(2) of RA

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[43] G.R. No. 184823, October 6, 2010.

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No. 1125, as amended by RA No. 9282, and the *Rohm Apollo* case, are clear that an inaction within a period fixed by law for action is already deemed a denial, and thus, should already be appealed after the expiration of the said prescribed period, which in this case, refers to the 120-day period under Section 112(C) of the NIRC of 1997, as amended.

Moreover, the ruling in the *Rohm Apollo* case was even bolstered by the High Court, in the later case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue* ("*Silicon* case"),[44] to wit:

> "**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.**
>
> xxx xxx xxx
>
> **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 the law,[45] **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.**" *(Emphases and underscoring supplied)*

On the basis of the foregoing jurisprudence, after the expiration of the said 120-day period, the concerned taxpayer must already file an appeal before this Court within 30 days; otherwise, the appeal is not cognizable by this Court.

Needless to say, this Court is enjoined to adhere to judicial

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[44] G.R. No. 182737, March 2, 2016.

[45] In *CIR v. San Roque Power Corporation* (G.R. Nos. 187485, 196113 and 197156, 12 February 2013), the Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 up to its reversal in *CIR v. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823) on 6 October 2010 need not wait for the lapse of the 120+30 days period.

precedents, such as the foregoing cases. In *Commission on Higher Education vs. Dasig*,[46] the Supreme Court said:

> "...it is the duty of lower courts **to obey the decisions of the Supreme Court** and render obeisance to its status as the apex of the hierarchy of courts. 'A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation.' **'There is only one Supreme Court from whose decision all other courts should take their bearings,'** so declared Justice J. B. L. Reyes." *(Emphases supplied)*

Moreover, We disagree with the contention of petitioner that any declaration in the *San Roque* and *Rohm Apollo* cases with respect to the issue of filing of the judicial claim within 30 days after respondent denies the claim, is a mere *obiter dictum.*

Indeed, an *obiter dictum* is defined as follows:

> "...**an opinion** expressed by a court upon some question of law that is *not necessary* in the determination of the case before the court. It is **a remark** made, or opinion expressed, by a judge, in his decision **upon a cause *by the way*, that is, *incidentally* or *collaterally*,** and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being **a mere expression of an opinion** with no binding force for purposes of *res judicata*."[47] *(Emphases supplied)*

However, the pronouncements of the Supreme Court in the *San Roque* and *Rohm Apollo* cases, and even in the *Silicon* case, as regards the application of the 120+30-day periods are not mere *"opinions"* or *"remarks"*; and neither are they stated *"upon a cause* by the way". They are rather the interpretation of the High Court of Section 112 of the NIRC of 1997, as amended. Thus, they become

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[46] G.R. No. 172776, December 17, 2008.

[47] *James Ient, et.al., vs. Tullett Prebon (Philippines), Inc.,* G.R. No. 189158 & 189530, January 11, 2017.

part of the law of the land, pursuant to Article 8 of the Civil Code of the Philippines, to wit:

> "Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

Relative thereto, in *People of the Philippines vs. Jabinal,*[48] the Supreme Court ruled:

> "**Decisions of this Court**, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system ...' **The interpretation upon a law by this Court** constitutes, in a way, a part of the law as of the date that law originally passed, since **this Court's construction** merely establishes the contemporaneous legislative intent that law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of legal maxim *'legis interpretatio legis vim obtinet'* — the interpretation placed upon the written law by a competent court has the force of law. xxx." *(Emphases and underscoring supplied)*

Correspondingly, the interpretation of the aforequoted Section 112 of the NIRC of 1997, as amended, stated by the Supreme Court in the *San Roque* and *Rohm Apollo* cases, and also in the *Silicon* case, anent the application of the 120+30-day periods, cannot be simply dismissed by petitioner as a mere *obiter dictum*.

Lastly, it must be emphasized that a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30-day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30-day periods is necessary for such a claim to prosper.[49]

Correspondingly, petitioner's belated filing of its judicial claim for failure to observe the mandatory 120+30-day periods is fatal to its

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[48] G.R. No. L-30061, February 27, 1974, 55 SCRA 607.
[49] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

claim and has rendered the Court in Division devoid of jurisdiction over petitioner's claim. Thus, the dismissal of petitioner's *Petition for Review* in CTA Case No. 9113 was in order.

In any event, petitioner is correct that Revenue Memorandum Circular No. (RMC) 54-2014 must not be given a retroactive application.

RMC 54-2014 cannot be given a retroactive application.

In the *Pilipinas Total Gas* case, the Supreme Court said:

> "It bears mentioning at this point that that foregoing summation of the rules *should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014,* such as the claim at bench. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:
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> > The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
> >
> > 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. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant."
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> Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his

claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.

On this score, the Court finds that the foregoing issuance cannot be applied retroactively to the case at bar since *it imposes new obligations upon taxpayers in order to perfect their administrative claim*, that is, [1] compliance with the mandate to submit the 'supporting documents' enumerated under RMC 54-2014 under its 'Annex A'; and [2] the filing of 'a statement under oath attesting to the completeness of the submitted documents,' referred to in RMC 54-2014 as 'Annex B.' This should not prejudice taxpayers who have every right to pursue their claims in the manner provided by existing regulations at the time it was filed.

As provided under Section 246 of the Tax Code:

> **SEC. 246.** ***Non-Retroactivity of Rulings.*** – Any revocation, modification or reversal of *any of the rules and regulations* promulgated in accordance with the preceding Sections or *any of the rulings or circulars promulgated by the Commissioner* **shall not be given retroactive application if the revocation, modification or or reversal will be prejudicial to the taxpayers**, except in the following cases:
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> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required by him by the Bureau of Internal Revenue;
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> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith.
>
> [Emphasis and Italics Supplied]"

Based on the foregoing, since RMC 54-2014 was issued only on June 11, 2014, the same cannot be given a retroactive application, pursuant to Section 246 of the NIRC of 1997, since it imposes new obligations upon taxpayers in order to perfect their administrative claim. Furthermore, it is noteworthy that the Bureau of Internal Revenue has already recognized the prospective application of RMC

54-2014 under Revenue Regulations No. 1-2017[50] dated January 3, 2017.

Thus, RMC 54-2014 should not have been applied in the instant case by respondent, considering that the subject administrative claim was filed prior to June 11, 2014, or specifically, on December 19, 2013.

Nevertheless, notwithstanding a prospective application of RMC 54-2014, it does not alter the fact that petitioner belatedly filed its *Petition for Review* in CTA Case No. 9113, as already discussed and ruled herein. Thus, the Court in Division was correct in dismissing the case for lack of jurisdiction.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[50] SUBJECT: Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed Under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014.

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CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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

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