REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

LEPANTO CONSOLIDATED MINING COMPANY, *Petitioner,*	**CTA *EB* NO. 2273** *(CTA Case No. 10079)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 16 2021 2:50pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")**, filed on 30 June 2020,[1] with respondents' **COMMENT(Re: Petition for Review) ("Comment")**, filed on 28 October 2020.[2]

The Parties

Petitioner **LEPANTO CONSOLIDATED MINING COMPANY** is a duly registered domestic corporation with principal address at 21/F Lepanto Bldg., 8747 Paseo de Roxas, Makati City.

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[1] Records, pp. 1-130.

[2] *Id.*, pp. 145-149.

Respondent **COMMISSIONER OF INTERNAL REVENUE** is the head of the Bureau of Internal Revenue ("BIR") and empowered to perform the duties of said office, including, among others, the power to decide, approve, and grant refunds or tax credits of excess and/or unutilized input Value Added Taxes ("VAT"), as provided by law. He may be served summons, pleadings and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The Facts

Petitioner alleges that it filed before respondent administrative claims for issuance of tax credit certificates ("TCC") for its excess and unutilized input VAT on account of zero-rated sales on 28 March 2011 covering the 1st and 2nd quarters of taxable year ("TY") 2009 in the amount of Four Million Nine Hundred Sixty-Nine Thousand Seven Hundred Ninety-Three and 28/100 Pesos (Php4,969,793.28) and Nine Million Eight Hundred Fifty Thousand Seven Hundred Thirty and 58/100 Pesos (Php9,850,730.58), respectively; and on 30 June 2011 covering the 3rd and 4th quarters of TY 2009 in the amount of Three Million Seven Hundred Nine Thousands Two Hundred Fifty-Two and 49/100 Pesos (Php3,709,252.49) and Five Million Six Hundred Eighty-Six Thousand Four Hundred Forty-Nine and 08/100 Pesos (Php5,686,449.08), respectively.[3] Thus, the total amount of excess and/or unutilized input VAT being claimed for refund by petitioner is Twenty-Four Million Two Hundred Sixteen Thousand Two Hundred Twenty-Five and 43/100 Pesos (Php24,216,225.43).[4]

These were collectively denied by respondent in a Letter, dated 13 February 2019 ("Denial Letter"), which was received by petitioner on 10 April 2019.[5] Respondent denied petitioner's claims for input VAT refund allegedly due to excess deductions over the amount applied for as tax refund/credit.[6]

Upon receipt of the Denial Letter, petitioner filed a Petition for Review before the Court in Division on 10 May 2019 to appeal the denial of its administrative claims.[7]

On 6 August 2019, respondent filed a Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court assailing the Court in Division's jurisdiction on the basis of the judicial claim allegedly being filed

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[3] *Id.*, p. 5.
[4] *Id.*, p. 6.
[5] *Ibid.*
[6] Annex "I", Petition for Review, Division Docket, pp. 34-35.
[7] Records, p. 6; See Petition for Review, Division Docket, pp. 10-92.

out of time.[8] Petitioner filed a Comment/Opposition in response thereto through registered mail on 30 September 2019.[9]

Thereafter, the Court in Division issued a Resolution, dated 7 November 2019, dismissing the judicial claim for lack of jurisdiction.[10] Following receipt of said Resolution on 13 November 2019,[11] petitioner filed a Motion for Reconsideration (of the Honorable Court's Resolution dated 7 November 2019) on 28 November 2019.[12]

The Court in Division then issued a Resolution, dated 12 February 2020, denying petitioner's Motion for Reconsideration (of the Honorable Court's Resolution dated 7 November 2019),[13] which was received by petitioner on 11 March 2020.[14]

Thus, the instant **Petition** was filed on 30 June 2020.

Afterwards, this Court *En Banc* issued a Resolution, dated 8 September 2020, requiring petitioner to submit a compliant Verification and Certification of Non-Forum Shopping,[15] which was complied with by petitioner through a Compliance, dated 25 September 2020.[16] In a Resolution, dated 8 October 2020, this Court *En Banc* noted such Compliance and required respondent to file a Comment on the Petition within ten (10) days from notice.[17] Thereafter, respondent filed a Motion to Admit Attached Comment on 28 October 2020[18] attaching therein the **Comment.**

On 6 January 2021, this Court *En Banc* issued a Resolution granting respondent's Motion to Admit Attached Comment. With the admission of the Comment, the Petition was likewise submitted for Decision.[19]

Hence, this Decision.

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8 *Id.*, pp. 136-145.
9 *Id.*, pp. 183-191.
10 Annex "A", Petition, Records, pp. 24-28.
11 *Ibid;* Records, p. 8.
12 Records, p. 8; Annex "E", Petition, *id.*, pp. 57-66.
13 Annex "B", Petition, *id.*, pp. 29-32.
14 *Ibid;* Records, p. 2.
15 *Id.*, pp. 131-133.
16 *Id.*, pp. 134-137
17 *Id.*, pp. 138-140.
18 *Id.*, pp. 141-149.
19 *Id.*, pp. 150-152.

The Assigned Errors

In the **Petition,** petitioner failed to specifically provide the alleged errors committed by the Court in Division. A perusal however of the contents of the Petition would show that the main issue to be resolved by the Court *En Banc* is as follows:

> **WHETHER OR NOT THE COURT IN DIVISION ERRED IN DISMISSING THE PETITION FOR REVIEW ON THE GROUND OF ALLEGED LACK OF JURISDICTION PURPORTEDLY DUE TO THE JUDICIAL CLAIM BEING FILED OUT OF TIME.**

Arguments of the Parties

Petitioner argued the following:[20]

1. The Court in Division erred when it dismissed the Petition for Review for lack of jurisdiction purportedly due to it being filed out of time. The deadline for the filing of the Petition for Review should have been reckoned from the receipt of the Denial Letter as ***Revenue Regulation No. 1-2017 ("RR 1-17")*** provides that the result of tax credit claims covered by the said issuance shall be communicated in writing by the concerned revenue official.

    a. In fact, under ***Section 112 (C) of the National Internal Revenue Code, as amended by Republic Act No. 10963 ("TRAIN Law") ("NIRC")***, a taxpayer whose application for tax refund is denied, in whole or in part, may appeal the denial to the Honorable Court within thirty (30) days from receipt of the Notice of Denial.

    b. There can be no deemed denials of administrative claims processed under ***RR 1-17*** as the said revenue issuance clearly contemplates written denials.

2. The Court in Division erred in ruling that the input VAT refund claim of petitioner has already been deemed denied. On the contrary, there was actual denial of the petitioner's claim through the Denial Letter which clearly states that petitioner's claim was processed and that it is solely due to the purported non-submission of mandatory requirements that the claim was denied.

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[20] *Id.*, pp. 8-18.

3. Petitioner is entitled to a TCC for its input VAT refund claim in the total amount of Twenty-Four Million Two Hundred Sixteen Thousand Two Hundred Twenty-Five and 43/100 Pesos (Php24,216,225.43).

4. The Court in Division's dismissal of the Petition for Review is tantamount to a denial of the right to appeal and a violation of petitioner's constitutional right to due process.

In the **Comment,** respondent alleged that the Court in Division properly dismissed the Petition for Review as the same was filed out of time.[21]

The Ruling of the Court En Banc

This Court resolves to **DENY** the **Petition** for lack of merit.

Petitioner belatedly filed its judicial claim.

Petitioner's main contention is that in the ***TRAIN Law*** version of ***Section 112 (C) of the Tax Code***, a judicial claim for input VAT refund can be filed within thirty (30) days from receipt of the decision denying the administrative claim for input VAT refund. Following this, petitioner is of the position that when it received the Denial Letter on 10 April 2019, it had until 10 May 2019 to file a Petition for Review with the Court in Division. Considering that petitioner filed a Petition for Review with the Court in Division on 10 May 2019, petitioner posits that it timely filed its judicial claim for input VAT refund.

This is erroneous. Petitioner belatedly filed its judicial claim.

Contrary to petitioner's allegation, the applicable version of the ***NIRC*** for the instant case is the ***pre-TRAIN Law*** version. This is because the administrative claims for refund subject of the instant case were filed on 28 March 2011 and 30 June 2011, which are all before the effectivity date of the ***TRAIN Law*** (*i.e.,* 1 January 2018[22]). Thus, all amendments caused by the ***TRAIN Law*** to the ***NIRC*** are wholly inapplicable to the present case. It is noteworthy that tax laws are applied prospectively unless otherwise expressly provided for.[23]

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[21] *Id.*, pp. 145-147.
[22] Section 87, Republic Act No. 10963.
[23] Commissioner of Internal Revenue v. Acosta, G.R. No. 154068, 3 August 2007.

As the administrative claims were filed before the effectivity of the ***TRAIN Law***, these are subject to the mandatory and jurisdictional 120+30 day period which was in effect before such amendatory law. ***The pre-TRAIN Law Section 112 (C) of the Tax Code*** provides, as follows:

> **"SEC. 112. Refunds or Tax Credits of Input Tax. -**
>
> xxx xxx xxx
>
> **(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.** - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (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."

While this provision provides for two (2) points within which the 30-day period to file a judicial claim may start, namely: a) upon expiration of the 120-day period given to respondent to act on a request for input tax refund, and b) upon receipt of respondent's adverse decision, the same are not alternative in nature.

The 30-day period given to a taxpayer to file a judicial claim for input tax refund shall start from whichever of the two starting points comes first. Taxpayers do not have the option to wait for an actual adverse decision by respondent before filing a judicial claim before this Court if the 120-day waiting period has already lapsed. Otherwise, such judicial action is belatedly filed, thereby causing this Court to lose its jurisdiction to try the same. This rule is known as the mandatory and jurisdictional 120+30-day period enunciated by the Supreme Court in ***Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue*** and ***Philex Mining Corporation v. Commissioner of Internal Revenue.***[24]

The rationale for the mandatory and jurisdictional 120+30-day period is that inaction by respondent within the 120-day period given him to decide a claim for input tax refund is treated as a denial by itself. Hence, there is no

[24] G.R. No. 187485, G.R. No. 196113 and G.R. No. 197156, 12 February 2013.

more need for a taxpayer to wait for an actual denial as its request for input VAT refund has been deemed denied, by express provision of law.[25]

In ***Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,***[26] the Supreme Court had a chance to categorically declare that a judicial appeal must be instituted immediately within 30 days from the expiration of the 120-day period given to respondent to decide claims for input tax refund considering that such inaction by respondent is already considered a denial of such claims:

> "A final note, the taxpayers are reminded that that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer **<u>must file an appeal within 30 days from the lapse of the 120-day waiting period."</u>**
> (Emphasis and underscoring, Ours.)

Furthermore, in ***Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,***[27] the High Court ruled that "**<u>any claim filed in a period</u>** less than or **<u>beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA</u>**."[28]

It is undisputed that petitioner filed its administrative claims for input VAT refund for the 1st and 2nd taxable quarters of TY 2009, and 3rd and 4th taxable quarters of TY 2009 on 28 March 2011 and 30 June 2011, respectively. Applying the 120-day waiting period, respondent had the following periods within which to decide said administrative claims for input VAT refund:

Taxable quarters	Date when administrative claim for refund was filed	Last day for respondent to decide
1st and 2nd taxable quarters	28 March 2011	26 July 2011
3rd and 4th taxable quarters	30 June 2011	28 October 2011

[25] Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. No. 187485, 12 February 2013.
[26] G.R. No. 168950, 14 January 2015.
[27] G.R. No. 182737, 02 March 2016.
[28] Emphasis and Underscoring, Ours.

Considering that respondent did not act upon said administrative claims within the said 120-day waiting period, petitioner should have filed its judicial claims to this Court on or before the following dates, following the 30-day period given to taxpayers within which to file a judicial claim:

Taxable quarters	Last day for respondent to decide	Last day to file judicial claim
1st and 2nd taxable quarters	26 July 2011	25 August 2011
3rd and 4th taxable quarters	28 October 2011	27 November 2011

As petitioner filed the Petition for Review before the Court in Division only on 10 May 2019, the same is belatedly filed by more than eight (8) years.

Considering this, the Court in Division had no jurisdiction to entertain the Petition for Review as petitioner failed to comply with the mandatory and jurisdictional 120+30-day period.

RR 1-17 did not provide an exception to the mandatory and jurisdictional 120+30-day period.

Petitioner argues that there can be no deemed denial for those administrative claims for input VAT refund processed under ***RR 1-17***, such as petitioner's administrative claim, because ***RR 1-17*** specifically contemplates a written decision. Consequently, for petitioner, the Court in Division erred in holding that its administrative claim had already been deemed denied. This is misplaced.

A perusal of ***Section 2 of RR 1-17*** shows that claims filed prior to ***Revenue Memorandum Circular No. 54-14 ("RMC 54-14")*** were merely ordered to be continuously processed administratively but not judicially. It did not whatsoever create an exception to the mandatory and jurisdictional 120+30-day period, which was put into place by law and affirmed by jurisprudence. A mere regulation cannot create an exception not provided by the law it seeks to implement. Implementing rules and regulations may not enlarge, alter or restrict the provisions of the law they seek to implement.[29]

[29] Pilipinas Kao, Inc. v. Honorable Court of Appeals and Board of Investments, G.R. No. 105014, 18 December 2001.

RR 1-17 was only issued to restart the processing of administrative claims for input VAT refund which were deemed denied due to the erroneous application of ***RMC 54-14***.[30] However, this is solely confined to the BIR level and does not extend to the judicial level.

Following the above discussions, this Court deems it unnecessary to resolve the remaining issues.

WHEREFORE, the instant Petition is hereby **DENIED** for lack of merit. Accordingly, the Resolution, dated 7 November 2019, and Resolution, dated 12 February 2020, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[30] Section 2, RR 1-17.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(Took no part.)
LANEE S. CUI-DAVID
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