Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MITSUBA PHILS. TECHNICAL CENTER CORP. Petitioner,	**CTA Case No. 9032**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **COTANGCO-MANALASTAS**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 12 2015 3:42 pm

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RESOLUTION

This resolves respondent's Motion to Dismiss[1] filed, *via* registered mail, on June 15, 2015, with petitioner's Comment/Opposition (To Respondent's Motion to Dismiss), filed, through registered mail, on August 17, 2015, praying that petitioner's Petition for Review be dismissed for lack of jurisdiction.

However, since only three (3) copies of the said Comment/Opposition was filed by petitioner, the latter was directed by this Court, in its Minute Resolution dated August 13, 2015, to submit additional one (1) copy of the same within a period of ten (10) days from notice, pursuant to A.M. No. 11-9-4-SC, in relation to CTA *En Banc* Resolution No. 5-2013 dated May 28, 2013.

In response, petitioner submitted its Compliance (To Minute Resolution Dated 13 August 2015), via registered mail, on August 17, 2015, which was received by the Court on August 27, 2015. Hence, petitioner's compliance was **NOTED** by the Court on September 1, 2015.

Hence, this Motion to Dismiss.

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[1] Docket, pp. 127-131.

Respondent, relying on the case of *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[2] *(Rohm Case)*, argues that this Court has no jurisdiction to try the instant case on the ground that the judicial claim was filed out of time. According to respondent, petitioner violated the 120+30 day periods provided under Section 112 (C) of the National Internal Revenue Code, as amended, when it filed the instant Petition on April 15, 2015, or three (3) years after filing its administrative claim for refund or credit with the Bureau of Internal Revenue (BIR) on March 9, 2012.

Respondent further insists that the March 12, 2015 Decision[3] of Revenue District Officer Isabel A. Paulino has no force and effect because respondent was only given a period of 120-days to grant or deny the taxpayer's claim for refund. Accordingly, petitioner should not have waited for the respondent's Letter-Decision dated March 12, 2015 to file its judicial claim since the mere lapse of the 120-day period is already a denial of its claim for refund. And, considering that there was already a denial of its claim on November 8, 2012 (lapse of the 120-day period), counted from petitioner's last submission of documents on July 11, 2014, petitioner should have filed its judicial claim within thirty (30) days from November 8, 2012 or not later than December 8, 2012.

On the other hand, petitioner contends that the *Rohm Case* should not be applied in the instant case since the antecedent facts in that case are not exactly similar with the instant case. In *Rohm Case*, the Commissioner of Internal Revenue completely failed to act on the administrative complaint of the taxpayer within the 120-day period granted under Section 112 (C) of the NIRC of 1997, as amended. In the instant case, however, respondent did a concrete act on petitioner's administrative claim by issuing a Letter of Authority No. 047-2012-00000081 dated March 30, 2012.[4] Thus, it insists that such singular positive acknowledgment and action on the part of respondent took the instant case out of the ambit of the *Rohm Case* doctrine.

Petitioner adds that it could not yet file the judicial claim within the period provided under Section 112 (C) on the simple ground that its administrative claim filed on March 9, 2012, was still being processed/evaluated as late as July 3, 2014, as shown in Ms. Paulino's letter, which is herein quoted for ready reference:

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[2] G.R. No. 168950, January 14, 2015.
[3] Annex "DD" to the Petition for Review, Docket, p. 118.
[4] Stated in the letter of BIR, Region No. 8, RDO No. 47, East Makati dated July 3, 2014, attached as Annex "BB" to the instant Petition for Review, Docket, p. 116.

> "This has reference to your application for tax credits/refunds that was filed on March 9, 2012 of which Letter of Authority No. 047-2012-00000081 dated March 30, 2012 was issued on your claim for VAT Refund for the period January 1 to December 31, 2010.
>
> Records of the case disclosed that Revenue District Officer Gerry O. Dumayas on its letter dated July 12, 2013, have requested you to submit the following requirements to facilitate and expedite the processing of your claim for VAT refund;
>
> 1. Photocopy of approved Application for Zero-Rated Sales
> 2. Soft copy of Summary of purchases and input taxes showing the total amount of claim for VAT refund.
> 3. Vat returns filed for the quarter showing that the tax credited on purchases of zero-rated sales were not applied against output tax for a certain quarter/s and VAT returns for the succeeding quarter
> 4. Certificates from DOF, BOC, EPZA that you have not file similar claims for tax credit for the period under audit.
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> However, only the certification from DOF and copies of filed VAT returns for the taxable year 2010 was (sic) submitted to this office up to date. Hence, we reiterate, in finality, for the submission of the abovementioned documents within ten (10) days from receipt hereof, otherwise, non-submission shall be deemed a waiver on your part and mean a denial of your claim for VAT refund."

Petitioner further states that, not wanting to waive its claim for refund/credit, it sent a transmittal letter[5] dated July 11, 2014 to Ms. Paulino, submitting therein the additional documentary requirements stated in the latter's July 3, 2014 letter.

Petitioner, likewise, claims that its subsequent follow-ups with Ms. Paulino's office yielded the same standard reply that its claim was "still in process". Thus, petitioner was completely aghast when it received of Ms. Paulino's letter dated March 12, 2015[6] on March 16, 2015, informing it that its claim for refund/tax credit was denied on the

[5] Annex "CC" to the Petition for Review, Docket, p. 117.
[6] Annex "DD" to the Petition for Review, Docket, p. 118.

alleged ground of "failure to submit complete documentary evidence/s in support of its claim pursuant to Revenue Memorandum Order 53-98 dated June 1, 1998 and Revenue Memorandum Circular No. 54-2014 dated June 11, 2014. x x x"

Petitioner also insists that its claim for refund/credit should be counted from the date it submitted the complete documents in support of its application. In addition, petitioner submits that respondent's act of issuing a Letter of Authority on March 5, 2012[7], effectively tolled the running of the 120-day waiting period.

Lastly, it argues that even the land mark case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[8] cannot be applied in the instant case because respondent acted within the 120-day period by issuing Letter of Authority No. 047-2012-00000081 dated March 30, 2012. Accordingly, respondent continued to act and did not deny the claim outright by directing petitioner to submit additional documents even beyond the 120-day waiting period, or until March 12, 2015, when the BIR finally denied the claim allegedly due to incomplete documents.

By such reasons, petitioner argues that it correctly filed judicial claim within thirty (30) days from notice of denial of its administrative claim on March 16, 2015, notwithstanding that the said denial was made outside the 120-day period.

We find merit on respondent's Motion to Dismiss.

The crux of the controversy in this case is the reckoning of the prescriptive period for filing a judicial claim for refund or credit of unutilized input VAT under the 1997 NIRC, as amended.

Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997 laid down the manner in which the refund or credit of unutilized input tax may be made, *to wit*:

> "(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

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[7] Per Annex "BB", the date should be March 30, 2012.
[8] G.R. No. 187485, February 12, 2013.

> 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."

In the landmark case of *CIR v. Aichi Forging Company of Asia, Inc.,*[9] the Supreme Court explained that, if the administrative claim is filed within the two (2)-year prescriptive period, the Commissioner of Internal Revenue (CIR) has 120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit], within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

The Supreme Court sitting *En Banc* further clarified in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[10] *(San Roque),* **that judicial claims filed from January 1, 1998 until the present should strictly adhere to the 120+30-day period referred to in Section 112 of the NIRC of 1997.** The only exception is the period December 10, 2003 until October 6, 2010. Within this period, BIR Ruling No. DA-489-03 is recognized as an equitable estoppel, during which judicial claims may be filed even before the expiration of the 120-day period granted to the CIR to decide on a claim for a refund. It is, likewise, ruled therein that the 30-day period under Section 112 (C) does not only apply to cases of actual denial by the Commissioner of Internal Revenue (CIR) of the claim for refund or credit, but also to cases of inaction by the CIR, *to wit:*

> "Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:
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> > . . . the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the

[9] G.R. No. 184823, October 6, 2010
[10] G.R. Nos. 187485, 196113, and 197156, February 12, 2013

claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

The San Roque pronouncement is clear. The taxpayer can file the appeal in one of two ways: **(1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period."**

And, since the present administrative and judicial claims for refund or issuance of tax credit certificate (TCC) of its unutilized input VAT for taxable year 2010 were filed on March 9, 2012 and April 15, 2015, respectively, petitioner must, therefore, strictly comply with the foregoing 120+30-day period.

In the case at bar, while there is no doubt that petitioner observed the required two (2)-year period within which to file its administrative claim for refund/tax credit, its judicial claim was, nonetheless, filed beyond the 30-day period. A table of relevant dates is herein provided for easy reference:

Taxable Year 2010	Date of Filing of Administrative Claim	End of the 120-Day Period for the CIR to Decide	End of 30-day Period to File Judicial Claim	Date of Actual Filing of Judicial Claim
1st to 4th Quarters	March 9, 2012	July 7, 2012	August 6, 2012	April 15, 2015

Based therefrom, it is evident that petitioner filed its judicial claim long after the lapse of 30-day period under Section 112 of the

1997 Tax Code, or specifically, 982 days after the lapse of the 30-day period. Thus, the CTA has no jurisdiction over the instant claim of petitioner as the Petition for Review was belatedly filed on April 15, 2015.

By such reason, respondent insists that that instant case should be dismissed for lack of jurisdiction following the doctrine enunciated in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[11] *(Rohm Case).*

Nonetheless, petitioner posits that the *Rohm Case* is inapplicable on the ground that the CIR completely failed to act on the administrative claim, while in the instant case the CIR did a concrete act on petitioner's administrative claim within the 120-day period by issuing a Letter of Authority (LOA) dated March 30, 2012. Accordingly, such singular positive acknowledgment on the part of respondent took the instant case out of the ambit of the Rohm Case; and, that the issuance of the LOA effectively tolled the running of the 120-day waiting period.

We do not agree.

For one, while admittedly not on all fours with the instant case, the ruling in *Rohm Case* may still be applied by analogy since the said case also involves late filing of judicial claim, to wit:

> " x x x its judicial claim was filed on 11 September 2002 — long after 10 May 2001, the last day of the 30-day period for appeal. The case thus falls under the general rule — the 30-day period is mandatory and jurisdictional.
>
> xxx xxx xxx
>
> In fine, our finding is that the judicial claim for the refund or credit of unutilized input VAT was belatedly filed. Hence, the CTA lost jurisdiction over Rohm Apollo's claim for a refund or credit."

Second, *Rohm Case* was decided based on the previously discussed landmark cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*[12] *(San Roque Case) and Aichi Forging Company*

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[11] G.R. No. 168950, January 14, 2015.
[12] G.R. No. 187485, February 12, 2013

of Asia, Inc.[13] *(Aichi Case).* Thus, this Court has no recourse but to adhere to the same following the principle of *stare decisis et non quieta movere,* which means "to abide by, or adhere to, decided cases.[14] Under the doctrine of *stare decisis,* when this Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same.[15] Moreover, the interpretation of the law by the Highest Tribunal is part of the law as of the date of its original passage since the Court's interpretation merely establishes contemporary legislative intent that the construed law purports to carry into effect.[16]

By such reasons, the declarations of the Supreme Court on the judicial claim of *Rohm Case* are just as applicable to that of petitioner. One of which is the declaration 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 must file an appeal within 30 days from the lapse of the 120-day waiting period."

Applying the foregoing judicial precept, We, therefore, conclude that the July 3, 2014 letter[17] of Revenue District Officer Isabel A. Paulino, requiring petitioner to submit additional documents in support of its application for refund or credit, and March 12, 2015 Decision[18] of same officer, denying petitioner's claim for failure to submit complete documentary evidence, have no force and effect because respondent was only given a period of one hundred twenty (120)-days to grant or deny the taxpayer's claim for refund. Thus, the submission[19] by petitioner of the required documents stated in aforesaid July 3, 2014 letter is of no moment.

With regard to petitioner's allegation that respondent did a concrete act on petitioner's administrative claim by issuing a Letter of Authority LOA which, accordingly, effectively tolled the running of the 120-day waiting period, the same, likewise, deserves scant consideration by the Court.

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

[14] Fort Bonifacio Development Corp. vs. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 and 181092, November 19, 2014, citing Black's Law Dictionary, Abridged Fifth Edition, Copyright 1983 by West Publishing Co., 3rd Reprint — 1987.

[15] Ibid, citing Ty v. Banco Filipino Savings and Mortgage Bank, G.R. No. 188302, June 27, 2012.

[16] Philippine Constitution Association vs. Enriquez, G.R. No. 113105, August 19, 1994.

[17] Annex "BB" to the Petition for Review, Docket, p. 116

[18] Annex "DD" to the Petition for Review, Docket, p. 118.

[19] See footnote no. 5.

Records show that the said LOA was merely cited in the July 3, 2014 letter of Revenue District Officer Isabela A. Paulino addressed to petitioner's President.[20] No copy of the same was provided by petitioner which could aid this Court in ascertaining the existence and the contents thereof. Further, granting for the sake of argument that a LOA was issued, there is, nonetheless, no indication or allegation that petitioner submitted additional documents pursuant to the said LOA. Had petitioner submitted additional documents therein, then the Court would have used such date of submission as reckoning date of the 120-day period. The rule is well-settled that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[21]

All told, the CTA is bereft of jurisdiction to hear petitioner's judicial appeal considering that its Petition for Review was filed beyond the mandatory 30-day period.

WHEREFORE, premises considered, respondent's Motion to Dismiss is hereby **GRANTED**. Accordingly, petitioner's Petition for Review filed on April 15, 2015 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[20] See footnote no. 4.
[21] Spouses Guidangen vs. Wooden, G.R. No. 174445, February 15, 2012,citing Fernandez v. Amagna, G.R. No. 152614, September 30, 2009.