REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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CARMEN COPPER CORPORATION, Petitioner,	**CTA EB No. 2399** (CTA Case Nos. 8902 & 8958)
	Present:
- *versus* -	**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:*** JUN 22 2022 3:08 pm

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RESOLUTION

UY, *J.*:

For resolution is petitioner's ***MOTION FOR RECONSIDERATION (Re: Decision dated 17 March 2022)*** filed on April 6, 2022,[1] the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. The Decision dated June 16, 2020 and the Resolution dated October 30, 2020, rendered by the Second Division of this Court in CTA Case Nos. 8902 & 8958 are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

[1] EB Docket, pp. 188 to 201.

On April 28, 2022, respondent filed his ***OPPOSITION (Re: Motion for Reconsideration of the Decision dated 17 March 2022)***[2].

Hence, this resolution.

Petitioner's Motion for Reconsideration:

In its *Motion for Reconsideration*, petitioner argues that it timely filed its judicial claims for refund falling within the 30-day period from receipt of the Notices issued by the BIR-Large Taxpayers Services.

Petitioner reiterates that Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, gives the taxpayer the option of filing its judicial claim for refund within thirty (30) days from receipt of the Commissioner of Internal Revenue's (CIR) decision or inaction, regardless of the lapse of the one hundred twenty (120)-day period with respect to a judicial claim arising from an actual decision from the CIR.

According to petitioner, Section 112 (C) of the NIRC of 1997, as amended, uses the word "or", which is a disjunctive term indicating that the law prescribes two alternative possibilities. Thus, a taxpayer may choose to wait for the denial by the CIR before it can file its judicial appeal, or wait for the lapse of the 120-day period, and treat it as a denial of its claim for refund of tax credit. The option is given to the taxpayer whether to wait for the denial of its tax refund or tax credit.

In case the CIR issues a decision beyond the 120-day period, the taxpayer allegedly should have 30 days from the receipt of such denial to file its claim with the Court of Tax Appeals (CTA). To hold otherwise deprives the taxpayer the full 30-day period to question the full or partial denial of its claim for tax refund or tax credit provided under the law.

Moreover, petitioner contends that the ruling in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[3] (*Rohm* case) relied upon by the Court in Division and the Court *En*

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[2] EB Docket, pp. 208 to 212.
[3] G.R. No. 168950, January 14, 2015.

Banc is not applicable in the present case because it is merely an *obiter dictum*, hence, it is not a binding precedent.

Again, petitioner submits that the interpretation in the cases of *Rizal Banking Corporation v. Commissioner of Internal Revenue*[4] (*Rizal Banking* case) and *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[5] (*Lascona* case), even though assessment cases, should also be given to Section 112(C) of the NIRC of 1997, as amended, due to the substantial similarity of their provisions.

Petitioner further argues that its decision to wait for the final decision of the CIR is consistent with the doctrine of exhaustion of administrative remedies. Petitioner relied in good faith that the administrative claim with the CIR was necessary because under the said doctrine, before a party is allowed to seek intervention of the court, the claimant must have availed of all the means of administrative processes afforded to the claimant.

Lastly, petitioner claims that it has sufficiently complied with the requisites for a valid claim for refund of the excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales.

Respondent's opposition:

Respondent reiterates the ruling of the Court in Division in the Decision dated June 16, 2020 that petitioner belatedly filed its judicial claims or beyond the 30-day period prescribed by law.

Respondent also contends that it is incumbent upon petitioner to prove that it is entitled to the refund sought. Failure to prove the same is fatal to its claim for tax refund. It is a well-settled principle in taxation that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law. In the present case, petitioner failed to discharge its burden of establishing its claim for tax refund or credit.

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[4] G.R. No. 168498, April 24, 2007.
[5] G.R. No. 171251, March 5, 2012.

THE COURT *EN BANC'S* RULING

After a careful examination and consideration of petitioner's Motion for Reconsideration, the Court *En Banc* finds that the grounds raised in the said Motion are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein, save for some points that are addressed below.

In reiteration, We find petitioner's argument that it can wait until it received respondent's decision, even after the 120-day waiting period, before it could file a judicial claim for refund with the CTA to be erroneous.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*,[6] the Supreme Court held, to wit:

> "Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial."

Based on the foregoing, the Supreme Court explained that Section 112 (C) of the NIRC of 1997, as amended, provides a waiting period of only 120 days to give time for respondent CIR to act on the administrative claim for refund or tax credit. In case of respondent's inaction within the said period, said inaction is deemed a denial of the claim.

Correspondingly, the 30-day period to file a judicial claim begins either upon receipt of respondent's adverse decision within the 120-day period or upon expiration of the 120-day period, whichever arises first.

To be clear, the decision of the respondent that is appealable to the CTA is the decision rendered by respondent within the 120-day

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

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period. Petitioner is mistaken in thinking that it can wait until it received respondent's decision even after the 120-day waiting period before it could file its judicial claim. Unfortunately, there is no available option to wait for respondent's decision beyond the 120-day period.

Hence, taxpayer-claimants, such as petitioner, should no longer wait for an actual adverse decision from respondent before filing a judicial claim before the CTA if the 120-day waiting period has already lapsed. Otherwise, such judicial action would be belatedly filed, depriving the CTA of its jurisdiction to try their judicial claim for refund or tax credit. This rule is known as the mandatory and jurisdictional 120+30 day period.

Again, one of the conditions for a successful judicial claim of refund or tax credit under the VAT system is compliance with the 120+30 mandatory and jurisdictional periods. Strict compliance with the 120+30 day periods is necessary for such a claim to prosper.[7]

Likewise unavailing is petitioner's contention that the following ruling in the *Rohm* case is merely an *obiter dictum*, to wit:

> "A final note, the taxpayers are reminded that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for 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."

An *obiter dictum* is "an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before [the court]."[8] 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

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[7] *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. Nos. 187485, 196113, 197156, February 12, 2013; *Commissioner of Internal Revenue vs. Mindanao I Geothermal Partnership,* G.R. No. 192006, November 14, 2018.

[8] *Jeoffy Gerobiese Y Alemania vs. People of the Philippines*, G.R. No. 221006, July 7, 2021.

introduced by way of illustration, or analogy or argument. Such are not binding precedents.[9]

With the foregoing definition in mind, it appears that the main issue in the *Rohm* case pertains to a determination of whether or not the CTA acquired jurisdiction over the claim for the refund or tax credit of unutilized input VAT. In the said case, the Supreme Court delved upon the merit of the judicial claim for refund pursuant to Section 112 (D) [now Section 112 (C)] of the NIRC of 1997, as amended.

Thus, the ruling of the Supreme Court in the *Rohm* case as regards to the application of the 120+30-day periods cannot be treated as mere "opinions" or "remarks". Neither are these merely incidental or collateral to a question or point involved in the case. Rather, the pronouncements therein pertain to the interpretation of the Supreme Court of the provisions of Section 112 (C) of the NIRC of 1997, as amended.

In other words, the interpretation by the Supreme Court in the *Rohm* case of Section 112 (C) of the NIRC of 1997, as amended cannot simply be dismissed by petitioner as a mere *obiter dictum*, but in fact, is a binding precedent pursuant to Article 8 of the Civil Code of the Philippines, which provides that judicial decisions applying or interpretating the laws or the Constitution shall form a part of the legal system of the Philippines.

In sum, petitioner failed to present new matters or arguments which may compel Us to reconsider and reverse the assailed Decision.

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[9] *Francisco N. Villanueva, Jr., vs. The Hon. Court of Appeals and Roques Villadores*, G.R. No. 142947, March 19, 2002.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice