REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

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:*** MAR 17 2022 1:40 pm

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on December 4, 2020 by petitioner Carmen Copper Corporation against respondent, Commissioner of Internal Revenue, praying that the Decision dated June 16, 2020[2] and Resolution dated October 30, 2020,[3] rendered by the Second Division of this Court (Court in Division), in CTA Case Nos. 8902 & 8958 entitled, *"Carmen Copper Corporation, Petitioner vs. Commissioner of Internal Revenue,*

[1] EB Docket, pp. 1 to 19.

[2] Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred by Associate Justice Cielito N. Mindaro-Grulla and Associate Justice Jean Marie A. Bacorro-Villena, EB Docket, pp. 25 to 52; Division Docket (CTA Case Nos. 8902 & 8958), pp. 1331 to 1358.

[3] Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred by Associate Justice Jean Marie A. Bacorro-Villena; EB Docket, pp. 53 to 57; Division Docket (CTA Case Nos. 8092 & 8958), pp. 1381 to 1385.

Respondent," be set aside, that petitioner be declared entitled to a refund or tax credit in the amount of ₱88,870,582.05 representing the total disallowance of the excess and unapplied input value-added tax (VAT) payments which are directly attributable to its zero-rated sales for taxable year (TY) 2012, and that respondent be ordered to immediately refund the said amount in favor of petitioner. The dispositive portions thereof respectively read as follows:

Decision dated June 16, 2020:

> "**WHEREFORE,** premises considered, the instant Petitions for Review are **DENIED** for lack of jurisdiction.
>
> **SO ORDERED."**

Resolution dated October 30, 2020:

> "**WHEREFORE,** in view of the foregoing, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Carmen Copper Corporation is a corporation duly organized and existing under the laws of the Philippines, with business address at the 7th Floor, Quad Alpha Centrum Building, 125 Pioneer Street, Mandaluyong City. It is a duly registered taxpayer with the Bureau of Internal Revenue (BIR) under Certificate of Registration No. 8RC0000048993 dated October 5, 2004. It is likewise registered with the Board of Investment (BOI) as a new producer of copper concentrate with non-pioneer status.

Respondent Commissioner of Internal Revenue (CIR) is a public officer duly appointed and is the head of the BIR, the government agency officially responsible for the assessment and collection of all national and internal revenue taxes, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City. He is vested with the power and authority to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected or of input VAT attributable to zero-rated sales.

For calendar years (CY) 2012, 2013, and 2014, petitioner filed its Quarterly VAT Returns, as follows:

Period	VAT Return	Date of Filing
1st Quarter – CY 2012 (January 1, 2012 to March 31, 2012)	Quarterly VAT Return	April 25, 2012
2nd Quarter – CY 2012 (April 1, 2012 to June 30, 2012)	Quarterly VAT Return	July 25, 2012
3rd Quarter – CY 2012 (July 1, 2012 to September 30, 2012)	Quarterly VAT Return	October 25, 2012
3rd Quarter – CY 2012 (July 1, 2012 to September 30, 2012)	Amended Quarterly VAT Return	January 25, 2013
3rd Quarter – CY 2012 (July 1, 2012 to September 30, 2012)	2nd Amendment Quarterly VAT Return	April 13, 2013
4th Quarter – CY 2012 (October 1, 2012 to December 31, 2012)	Quarterly VAT Return	January 24, 2013
1st Quarter – CY 2013 (January 1, 2013 to March 31, 2013)	Quarterly VAT Return	April 25, 2013
2nd Quarter – CY 2013 (April 1, 2013 to June 30, 2013)	Quarterly VAT Return	July 25, 2013
3rd Quarter – CY 2013 (July 1, 2013 to September 30, 2013)	Quarterly VAT Return	October 25, 2013
4th Quarter – CY 2013 (October 1, 2013 to December 31, 2013)	Quarterly VAT Return	January 24, 2014
1st Quarter – CY 2014 (January 1, 2014 to March 31, 2014)	Quarterly VAT Return	April 25, 2014
2nd Quarter – CY 2014 (April 1, 2014 to June 30, 2014)	Quarterly VAT Return	July 25, 2014
3rd Quarter – CY 2014 (July 1, 2014 to September 30, 2014)	Quarterly VAT Return	October 25, 2014
4th Quarter – CY 2014 (October 1, 2014 to December 31, 2014)	Quarterly VAT Return	January 24, 2015

For CY 2015, petitioner filed its 1st Quarterly VAT Return on April 15, 2015, and Monthly VAT Declarations for April and May of CY 2015 on May 23, 2015 and June 24, 2015, respectively.

Subsequently, petitioner filed its administrative claims for refund for the 1st and 2nd quarters of CY 2012 on August 12, 2013 and December 17, 2013, respectively; and for the 3rd and 4th quarters of CY 2012, on March 19, 2014. Relative thereto, respondent issued a Letter of Authority (LOA) No. LOA-121-2013-00000109 on August 29, 2013 and a Memorandum of Assignment No. R-12-13-042 on December 18, 2013.

Respondent partially denied petitioner's administrative claims for refund for the 1st and 2nd quarters of CY 2012 on September 2, 2014 and for the 3rd and 4th quarters of CY 2012 on October 29, 2014.

Considering the partial denial of its claims for refund, petitioner filed two (2) separate appeals with this Court, by way of *Petitions for Review,* docketed as follows, and raffled to the First Division of this Court:

CTA Case No. 8902 filed on October 7, 2014 covering the 1st and 2nd quarters of CY 2012; and
CTA Case No. 8958 filed on December 22, 2014 covering the 3rd and 4th quarters of CY 2012.

On December 19, 2014, respondent transmitted the *BIR records* with respect to the tax case involving petitioner's 1st and 2nd quarters of CY 2012.

On January 7, 2015, the Court in Division received respondent's *Answer* in **CTA Case No. 8902**, filed thru registered mail on December 15, 2014. In said Answer, respondent raised the following special and affirmative defenses:

1) Tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the state. Consequently, there are construed strictly against the taxpayer and liberally in favor of the taxing authority. Thus, taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund;

2) To support petitioner's claim, it is imperative for it to prove that it has satisfied the requirements under the Tax Code and other issuances of the BIR;

3) Petitioner must prove that the aggregate amount of ₱44,468,902.28 allegedly representing excess and unutilized input VAT for the 1st to 4th quarters of calendar year 2012 is properly documented;

4) Petitioner alleges that its claim for refund are zero-rated sales to PEZA and BOI registered entities covering the 1st to 4th quarters of taxable year 2012. Corollary thereto, it must

show compliance with the requirements set forth under Section 112(c) of the Tax Code of 1997 and Revenue Memorandum Order (RMO) No. 53-98;

5) Petitioner's claim for refund is not a claim for refund of erroneously or illegally collected taxes where petitioner may choose the evidence it wishes to prove its case, but rather allegedly a claim for excess input taxes where the prescribed documentation is needed by the BIR;

6) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the BIR. A claim for refund is not ipso facto granted because respondent CIR still has to investigate and ascertain the validity of the claim;

7) Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.

8) In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund/ Failure to comply therewith warrants a dismissal of the taxpayer claim for refund.

9) Petitioner has the burden of proving that the right to such tax credit indubitably exist and a well-founded doubt is fatal to its claim.

Likewise, respondent filed his *Answer* on January 22, 2015 for **CTA Case No. 8958**, interposing the following special and affirmative defenses:

1) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the BIR;

2) The amount of ₱44,401,679.77. representing alleged excess and unapplied input VAT directly attributable to its zero-rated

sales for the third and fourth quarters of taxable year 2012 was not properly documented.

3) In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

4) Petitioner must show it has complied with the provisions of Section 112 of the National Internal Revenue Code (NIRC) of 1997 on the prescriptive period for claiming tax refund/credit.

5) Petitioner must prove that it paid the alleged VAT input taxes for the periods stated.

6) Petitioner must prove that its sale of services is subject to VAT at zero percent (0%).

7) Petitioner must prove that its alleged unutilized input VAT has not been applied against any output liabilities both in the current or succeeding year.

8) Petitioner must also show that it has met the invoicing requirement under Section 113 of the Tax Code and Section 4.108-1 of Revenue Regulations (RR) No. 7-95 before such claim for refund or credit can be granted.

9) The input taxes claimed on the amortized input tax attributable to purchases/importations of capital goods exceeding ₱1,000,000.00 in the total amount of ₱44,401,679.77 was disallowed in accordance with the provisions of Section 112 of the NIRC of 1997.

10) Petitioner as the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all, tax refunds, like tax exemptions, are construed strictly against the taxpayer.

11) Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.

12) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and such, they are looked upon with disfavor.

Thereafter, CTA Case No. 8902 was set for pre-trial conference on March 26, 2015. However, petitioner filed an *Omnibus Motion to Consolidate with Urgent Motion to Reset Pre-Trial Conference* on March 12, 2015. Consequently, the Court in Division reset the pre-trial conference on June 4, 2015 and directed respondent to comment on the motion to consolidate.

On the other hand, the pre-trial conference for CTA Case No. 8958 was scheduled on February 15, 2015 but petitioner likewise filed an *Urgent Motion to Reset Pre-Trial Conference* on February 5, 2015; and the Court in Division granted the same, thus, resetting the pre-trial conference on April 23, 2015.

On March 11, 2015, petitioner filed a *Manifestation with Motion to Suspend Proceedings* in CTA Case No. 8958. Respondent failed to file a comment on the said motion to suspend proceedings. However, in CTA Case No. 8902, respondent filed his *Comment (Re: Omnibus Motion to Consolidate with Urgent Motion to Reset Pre-Trial Conference dated 12 March 2015)* on April 7, 2015.

In the Resolution dated May 28, 2015, the Court in Division granted the Motion to Consolidate CTA Case No. 8958 with CTA Case No. 8902; and the previously scheduled pre-trial conference on June 4, 2015 was reset to July 2, 2015. On June 11, 2015, the Court in Division noted petitioner's Manifestation and declared the Motion to Suspend Proceedings filed in CTA Case No. 8958 as moot.

After the pre-trial conference held on July 2, 2015, the parties submitted their *Joint Stipulation of Facts and Issues (JSFI)* on July 20, 2015. Thereafter, the parties submitted a *Supplemental Joint Stipulation of Facts and Issues* on August 24, 2015 pursuant to the Court in Division's Resolution dated August 10, 2015 directing the parties to supplement their JSFI by indicating their list of documentary exhibits, names of witnesses to be presented and the agreed trial dates.

Subsequently, the Court in Division approved the parties JSFI and Supplemental JSFI on September 9, 2015 and terminated Pre-Trial. The Pre-Trial Order was issued on October 13, 2015.

During trial, petitioner presented the following witnesses: Atty. Carmen-Rose A. Basallo-Estampador, petitioner's Assistant Corporate Secretary; Neil U. Sison, the Court-Commissioned Independent Certified Public Accountant (ICPA); and Francisco D. Nuez, petitioner's Superintendent-Treasury Department, who substituted Jesus B. Caparida who passed away during the course of the trial.

Thereafter, petitioner filed its *Formal Offer of Evidence* on December 27, 2016 with respondent's *Comment to Petitioner's Formal Offer of Evidence* filed on January 9, 2017.

In the Resolution dated July 3, 2017, the Court in Division admitted most of petitioner's exhibits except for some that were denied admission due to failure to properly mark the exhibits.

Thus, petitioner filed a *Motion for Reconsideration (of the Resolution dated July 3, 2017)* on July 21, 2017. On August 15, 2018, the Court in Division partially granted petitioner's Motion for Reconsideration and admitted some of petitioner's previously denied exhibits. As a result, petitioner filed anew a *Motion for Partial Reconsideration (Re: Resolution dated 15 August 2018)* on September 10, 2018.

Meanwhile, CTA Case Nos. 8902 and 8958 were transferred to the Second Division of this Court pursuant to CTA Administrative Circular No. 02-2018.[4]

On January 28, 2019, the Court in Division partially granted petitioner's *Motion for Partial Reconsideration (Re: Resolution dated 15 August 2018)* and admitted some of petitioner's exhibits except for some that were denied admission for not being found in the records; or for being unreadable; or for failure of the exhibit formally offered to correspondent with the document actually marked.

For respondent's part, respondent presented Revenue Officer Ana Veronica Asis as his sole witness.

Thereafter, respondent formally offered his documentary evidence in open court on February 18, 2018. There being no

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[4] "Reorganizing the Three (3) Divisions of the Court".

objection from petitioner, the Court in Division admitted all of respondent's exhibits.

Considering the filing of respondent's *Memorandum* on March 14, 2019 and petitioner's *Memorandum* on April 22, 2014, the Court in Division submitted for decision CTA Case Nos. 8902 & 8958 on May 14, 2019.

In the assailed Decision[5] dated June 16, 2020, the Court in Division denied the consolidated *Petitions for Review* for lack of jurisdiction.

Petitioner filed a *Motion for Reconsideration (Re: Decision dated 16 June 2020)* on July 6, 2020, while respondent filed its *Comment/Opposition (Re: Motion for Reconsideration dated October 25, 2019)* on December 9, 2019 with respondent's *Opposition (Re: Motion for Reconsideration of the Decision dated 16 June 2020)* filed on July 30, 2020.

In the assailed Resolution[6] dated October 30, 2020, the Court in Division denied the *Motion for Reconsideration* for lack of merit.

Undaunted, petitioner filed via registered mail the instant *Petition for Review* on December 4, 2020[7] before the Court *En Banc*. In the Resolution[8] dated February 10, 2021, respondent was directed to file his comment to the *Petition for Review*, within ten (10) days from notice. On March 1, 2020, respondent filed its *Comment (Re: Petition for Review)*.[9]

Thereafter, the *Petition for Review* was submitted for Decision on May 19, 2021.[10]

On March 25, 2021, petitioner filed a *Reply (Re: Comment dated 26 February 2021)*[11] alleging, *inter alia*, that its judicial claims for refund of its accumulated excess input VAT for the four quarters of

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[5] EB Docket, pp. 25 to 52.
[6] EB Docket, pp. 53 to 57.
[7] EB Docket, pp. 1 to 19.
[8] EB Docket, pp. 128 to 129.
[9] EB Docket, pp. 130 to 135.
[10] EB Docket, pp. 137 to 138.
[11] EB Docket, pp. 139 to 149.

TY 2021 were timely filed based on the provisions of the NIRC of 1997, as amended, and existing jurisprudence; and that petitioner was able to sufficiently prove that it is entitled to the refund sought.

In the Resolution dated June 21, 2021, the instant *Petition* was submitted for decision after the Court *En Banc* noted and admitted petitioner's Reply.

Hence, this *Decision*.

ISSUES

As gleaned from the grounds raised in support of its *Petition for Review*, petitioner in effect, raises the following issues:

1) Whether or not petitioner timely filed its judicial claim for refund for all quarters of TY 2012 before the Court in Division.

2) Whether or not petitioner is entitled to a tax refund or issuance of a tax credit certificate in the amount of ₱88,870,582.05, representing its excess and unutilized input VAT for TY 2012.

Petitioner's arguments:

Petitioner maintains that it timely filed its judicial claims for refund, the reckoning points of which should be its receipt of the Notices issued by the BIR-Large Taxpayers Services.

According to petitioner, the cases of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[12] (*Mindanao* case) and *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internal Revenue*[13] (*Rohm* case), as cited by the Court in Division in the Assailed Decision, are not applicable in the instant case since both *Mindanao* and *Rohm* dealt with the late filing of a judicial claim for refund due to the inaction of the respondent on their administrative claims for refund.

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[12] G.R. No. 191498, January 15, 2014.
[13] G.R. No. 168950, January 14, 2015.

Petitioner asserts that the instant case is not based on the inaction of respondent, but instead is based on respondent's partial denial of petitioner's claims. Allegedly, it is the receipt of the Notices issued by the BIR-Large Taxpayers Services on September 5, 2014 and November 20, 2014, respectively, that should trigger the application of Section 112 (C) of the NIRC of 1997, as amended, and not the lapse of the 120-day period. As such, the Petitions for Review filed before the Court in Division were timely filed on October 7, 2014 and December 22, 2014.

Section 112 (c) of the Tax Code does not indicate that a judicial claim for refund must be filed from receipt of the respondent's decision or inaction, whichever is earlier. To require that judicial claim for refund should be filed in such manner would be akin to judicial legislation, which is contrary to the constitutional separation of powers.

Allegedly, the taxpayer is given the option of filing its judicial claim for refund within thirty (30) days from receipt of the respondent's 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 respondent.

Citing *Rizal Banking Corporation vs. Commissioner of Internal Revenue*[14] (*Rizal Banking* case), and *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*[15] (*Lascona* case), petitioner submits that Section 112 (C) of the NIRC of 1997, as amended, should be interpreted similarly with Section 228 where the taxpayer is given the option to await the final decision of respondent due to the substantial similarity of their provisions.

Lastly, petitioner argues that it relied in good faith on the various cases decided by the Supreme Court which allowed judicial claims to proceed despite the lapse of the 120+30-day period. Petitioner claims that it should not be penalized for availing of the maximum period given by law and jurisprudence within which to file its judicial claims.

Respondent's counter-arguments:

Respondent counter-argues that the Court in Division correctly

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

ruled it had no jurisdiction over the case; petitioner's judicial claims for refund were filed beyond the thirty (30)-day period prescribed by law.

According to respondent, it is incumbent upon petitioner to prove that it is entitled to the refund sought. Petitioner's failure to prove the same is fatal to its claim for tax refund. It is 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. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic and statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. In this case, petitioner failed to discharge its burden of establishing its claim for a tax refund or credit.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Petitioner's judicial claims for refund for TY 2012 were belatedly filed. Thus, the Court in Division has no jurisdiction to entertain petitioner's appeal.

At the outset, there is no dispute raised with regard to the timeliness of the filing of petitioner's *administrative claim* before respondent. The bone of contention, however, lies on whether or not petitioner's judicial claims were timely filed.

Petitioner insists that the consolidated Petitions for Review before the Court in Division were timely filed within thirty (30) days counted from September 5, 2014 and November 20, 2014, or the dates when petitioner received the First and Second Notices issued by the BIR-Large Taxpayers Service which partially denied petitioner's claim for input VAT refund. Allegedly, with regard to the First Notice received on September 5, 2014, petitioner had until October 5, 2014[16] to file the Petition for Review. As regards to the

[16] October 5, 2014 fell on a Sunday and October 6, 2014 was declared a regular holiday in observance of *Eidul Adha* (Presidential Proclamation No. 875, September 12, 2014). The Petition for Review in CTA Case No. 8092 was filed on October 7, 2014, the next working day.

Second Notice received on November 20, 2014, petitioner avers that it had until December 20, 2014[17] to file the Petition for Review.

We do not agree.

Section 112 (C) of the NIRC of 1997, as amended by Republic Act No. 9337,[18] provides:

" SECTION 112. *Refunds or Tax Credits of Input Tax.* – x x x

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 a tax credit certificate for creditable input taxes within one hundred twenty (120) days from 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 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."

At this juncture, it should be noted that Section 112(C) was subsequently amended by Republic Act No. 10963, otherwise known as the *Tax Reform for Acceleration and Inclusion* or "TRAIN" Law which took effect on January 1, 2018. The amendment pertains to the 120-day period, which was shortened to a period of 90 days from the date of submission of complete documents in support of the refund

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[17] December 20, 2014 fell on a Saturday. The Petition for Review in CTA Case No. 8958 was filed on December 22, 2014, the next working day.

[18] 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.

application for the CIR to act on a taxpayer's application for refund.[19]

However, the TRAIN Law is not applicable to the instant case, considering that it took effect only on January 1, 2018, while the instant *Petition for Review* involves a refund claim of input VAT incurred during CY 2012. Hence, the aforequoted provisions shall still apply.

Likewise, Section 4.112-1 of Revenue Regulations No. 16-2005[20] reads as follows:

> "Section 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* –
>
> xxx xxx xxx
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> (d) *Period within which refund or tax credit certificate/refund of input taxes shall be made*
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court

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[19] Republic Act No. 10963, "**Section 36**. Section 112 of the NIRC, as amended is hereby further amended to reads as follows:

"(A) x x x

(B) x x x

(C) Period within which Refund of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision within the Court of Tax Appeals: *Provided,* however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-days period shall be punishable under Section 269 of this Code."

[20] "Consolidated Value-Added Tax Regulations of 2005", September 1, 2005.

of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period."

Based on the foregoing provisions, the CIR has 120 days from the date of submission of the complete documents in support of the application for refund or tax credit certificate, within which to grant or deny the claim.

Thereafter, upon receipt of the adverse decision, or from the lapse of the 120-day period for the CIR to act on the claim, the taxpayer has 30 days within which to file its judicial claim, through a Petition for Review before the Court in Division.

To be clear, the word "may" in Section 112 (C) refers to the choice of remedy and not to the period for seeking such remedy, *i.e.*, the taxpayer may or may not appeal the claim, but if it elects to do so, the appeal must be filed within the 30-day period.[21]

Jurisprudence thereon consistently holds that the 120-day and 30-day reglementary periods in tax refund cases pursuant to Section 112(C) of the NIRC of 1997, as amended, are both mandatory and jurisdictional.[22]

Thus, contrary to petitioner's contentions, one of the conditions for a successful judicial claim or refund or credit under the VAT system

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[21] *Commissioner of Internal Revenue vs. Mindanao I Geothermal Partnership,* G.R. No. 192006, November 14, 2018.

[22] *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 197526, July 26, 2017; *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 197980, December 1, 2016; *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 182737, March 2, 2016; *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015; *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue,* G.R. No. 204745, December 8, 2014; *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue,* G.R. No. 196907, March 13, 2013; *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

is compliance with the 120+30 day ***mandatory and jurisdictional periods***. Strict compliance with the 120+30 day periods is necessary for such a claim to prosper.[23]

As explained by the Supreme Court in the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[24] the 30-day period commences after the receipt of respondent's decision or ruling **or** after the expiration of the 120-day period, **whichever is sooner**, 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 law,[25] **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)*

Based on the foregoing, it is clear that the 30-day period provided by law should be reckoned after the receipt of respondent's decision/ruling or after the expiration of the 120-day period, **whichever is sooner**. Consequently, any judicial claim filed in a

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

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

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

period less than or beyond the said 120+30-day periods is outside the jurisdiction of this Court.

As regards to petitioner's contention that the *Mindanao* and *Rohm* cases are not applicable, the pronouncements of the Supreme Court in the said cases are relevantly applicable to the instant case.

In the *Mindanao* case, the Supreme Court laid down clearly that rules on the 120+30-day period for claiming refund or credit of input VAT. While, in the *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,*[26] the Supreme Court emphasized that when the 120-day period lapses and there is no decision/ruling from the CIR within the said period, the taxpayer must no longer wait for the CIR to come up with a decision, 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." *(Emphasis supplied)*

Accordingly, the inaction, *i.e.,* failure of the CIR to render a decision/ruling on the taxpayer's administrative claim for refund, ***within*** the 120-day period, is deemed a denial of its claim and should aptly be treated by the taxpayer as such.

Hence, a taxpayer should *no longer wait* for respondent to render a decision on the taxpayer's administrative claim for refund before filing a judicial claim before the Court in Division. In other words, a taxpayer must timely file its Petition for Review within 30 days from the lapse of the 120-day waiting period. Otherwise, any claim filed beyond the 120+30-day period is outside the jurisdiction of this Court.

It bears stressing that petitioner's reliance in the cases of *Rizal Banking* and *Lascona* are erroneous as the said cases involve an assessment and interpretation of Section 228 of the NIRC of 1997, as

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

amended, and not a claim for refund of input VAT under Section 112 of the NIRC of 1997, as amended.

To reckon the counting of the 120-day period, the issuance prior to RMC No. 54-2014[27] shall apply. The prevailing rules and regulations then on the application for VAT refund was RMC No. 49-2003[28] wherein the applicant for VAT refund or credit is given a 30-day period within which to submit the documentary requirements sufficient to support such claim, and upon submission thereof within the said 30-day period, the 120-day period under Section 112 (C) of the 1997 NIRC, as amended, shall start to run.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[29] the Supreme Court held:

> "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. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
>
> 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.

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[27] The pronouncements made in RMC No. 54-2014 applies o administrative cases filed after June 11, 2014.

[28] SUBJECT: Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

[29] G.R. No. 207112, December 8, 2015.

> It bears mentioning at this point that the 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 xxx xxx xxx"

In this case, petitioner filed its administrative claims for refund for the 1st and 2nd quarters of CY 2012 on August 12, 2013[30] and December 17, 2013,[31] respectively; while for the 3rd and 4th quarters of CY 2012, both were filed on March 19, 2014.[32]

Notably, petitioner did not allege any other dates as to when it filed its supporting documents. Hence, the reckoning dates for the start of the running of the 120-day period are August 12, 2013, December 17, 2013 and March 19, 2014.

Accordingly, respondent had 120 days from said dates or until December 10, 2013, April 16, 2014 and July 14, 2014, respectively, within which to render a decision on the said claim. However, in this case, there was no full or partial denial of the claim ***within*** the 120-day period. Rather, the 120-day period lapsed *without* a decision or ruling from the CIR.

Thus petitioner had 30 days from the above-mentioned expiry dates, or until January 9, 2014, May 16, 2014 and August 18, 2014, to file its judicial claims for refund.

Petitioner filed its judicial claim for refund for the 1st and 2nd quarters of CY 2012 on October 7, 2014, and for the 3rd and 4th quarters of CY 2012 on December 22, 2014, or way beyond the 30-day period to appeal. Hence, petitioner's judicial claims were filed out of time, and the Court in Division could not validly exercise jurisdiction over the Petitions for Review in CTA Case No. 8902 and CTA Case No. 8958.

For easy reference, the relevant dates in this case are summarized as follows:

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[30] Exhibits "P-12", Division Docket (CTA Case Nos. 8902 & 8958) – Vol. II, p. 794.
[31] "Exhibits "P-13", Division Docket (CTA Case Nos. 8902 & 8958) – Vol. II, p. 870.
[32] Exhibits "P-14" and "P-15", Division Docket (CTA Case Nos. 8902 & 8958) – Vol. II, pp. 910 to 912 and 944 to 946.

Taxable Quarter (CY 2012)	Date of filing of Administrative Claims	End of the 120-day period for the CIR to decide on the claim	End of the 30-day period to file judicial claim	Date of Filing of Judicial Claim
1st Quarter	August 12, 2013	December 10, 2013	January 9, 2014	October 7, 2014
2nd Quarter	December 17, 2013	April 16, 2014	May 16, 2014	October 7, 2014
3rd Quarter	March 19, 2014	July 17, 2014	August 18, 2014[33]	December 22, 2014
4th Quarter	March 19, 2014	July 17, 2014	August 18, 2014	December 22, 2014

The First and Second Notices issued by the BIR and received by petitioner on September 5, 2014 and November 20, 2014, respectively, which partially denied petitioner's administrative claims, are without effect, since the 30-day period after the expiration of the 120-day period came sooner than the 30-day period from the said dates of receipt. Thus, this Court indeed has no jurisdiction to entertain the present appeal.

To reiterate, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of this Court.

Lastly, We emphasize that a tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund by showing that he has strictly complied with the conditions for the grant of the tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. Noncompliance with the mandatory periods, nonobservance of the prescriptive periods, and nonadherence to exhaustion of administrative remedies, bar a taxpayer's claim for tax refund or credit.[34]

In view of the foregoing disquisition, this Court upholds the factual findings and ruling of the Court in Division in the assailed Decision and Resolution.

[33] August 16 and 17, 2014 fell on a Saturday and Sunday, respectively. The next working day is August 18, 2014.
[34] *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 184360, 184361, & 184384, February 19, 2014.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **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.

ERLINDA P. UY
Associate Justice

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
Associate Justice

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