REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

NORTHWIND POWER DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 9152

Members:
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

Promulgated:
MAR 06 2019
9:26 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This is a Petition for Review filed by Northwind Power Development Corporation to seek the refund or issuance of tax credit certificate ("TCC") in the amount of One Million Eight Hundred Sixty-Six Thousand Eight Hundred Fifty-Six Pesos and 13/100 (Php1,866,856.13), allegedly representing its excess and unutilized input value-added tax ("VAT") attributable to its zero-rated sales for the fourth quarter of taxable year 2011.

The Facts

Petitioner Northwind Power Development Corporation is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office at Sitio Suyo, Brgy. Buruyen, Bangui, Ilocos.[1] It is a VAT-registered entity, as shown by its Certificate of Registration No. OCN4RC0000657876 issued by the Bureau of Internal Revenue (BIR) Revenue Region No. 1.[2] Petitioner is

1 Docket, Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, Par. 1, p. 412.
2 *Id.,* Exhibit "P-3", p. 872.

likewise registered with the Board of Investments ("BOI") as a "New Operator of Wind Power Generation Plant", as evidenced by its BOI Certificate of Registration No. 2004-108 dated September 20, 2004.[3]

On the other hand, Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is engaged in the business of general building of electric generating plants and sale of renewable power.[4] It entered into a Market Participation Agreement[5] with the Philippine Electricity Market Corporation ("PEMC"), which allowed Petitioner to sell renewable energy to PEMC.[6]

On November 27, 2013, Petitioner filed with the BIR Revenue Region No. 1 its administrative claim for refund of unutilized input VAT covering the fourth quarter of taxable year 2011 in the amount of Php1,866,856.13.[7]

Subsequently, on August 28, 2015, Petitioner received a letter dated August 25, 2015 from the BIR Revenue District Office No. 1 denying its claim for VAT refund.[8]

Hence, on September 28, 2015, Petitioner filed the instant Petition for Review before this Court.[9]

On December 22, 2015, Respondent filed his Answer[10], alleging the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses.

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[3] *Id.,* Exhibit "P-4", pp. 873-881.
[4] *Id.,* Exhibit "P-29", Question and Answer No. 4, p. 454; Exhibit "P-1", pp. 630-635.
[5] *Id.,* Exhibit "P-6", pp. 882-891.
[6] *Id.,* Exhibit "P-29", Question and Answer No. 8, pp. 455-456.
[7] *Id.,* Exhibits "P-19" and "P-20", pp. 757-761.
[8] *Id.,* Exhibit "P-21", p. 762.
[9] *Id.,* pp. 10-24.
[10] *Id.,* pp. 181-188.

THE HONORABLE COURT DID NOT ACQUIRE JURISDICTION OVER THE INSTANT PETITION SINCE THE JUDICIAL CLAIMS OF PETITIONER WAS FILED OUT OF TIME.

5. In its Petition for Review, Petitioner alleged that:

5.1 Petitioner filed with the Respondent Revenue District Office No. 001, its administrative claim for refund or issuance of a tax credit certificate covering the period from October 01, 2011 to December 31, 2011 in the amount of One Million Eight Hundred Sixty-Six Thousand Eight Hundred Forty-Six Pesos and Thirteen Centavos (P1,866,856.13) on November 27, 2013;

5.2 Petitioner submitted to the Respondent additional documents in support of its application for claim of refund or issuance of a tax credit certificate on February 06, 2014 and July 18, 2014;

5.3 On August 28, 2015, Petitioner received a letter dated August 25, 2015 from the Bureau of Internal Revenue denying its claim for VAT Refund; and

5.4 Petitioner alleged that, it has thirty (30) days from receipt of the Decision or until September 27, 2015 within which to appeal the adverse decision to this Honorable Court

5.5 On September 28, 2015, Petitioner filed the instant Petition for Review before the Court of Tax appeals (CTA).

6. A perusal on the allegations of Petitioner reveals that, the instant Petition for Review was filed out of time following Section 112 (C) of the NIRC and pronouncements of Supreme Court in the case of San Roque Power Corporation and Mindanao II Geothermal Partnership.

7. Section 112 (C) of the NIRC as amended provides that:

xxx xxx xxx

8. Section 112(C) expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner. 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**.

9. 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.

10. Even when Petitioner received the denial on August 28, 2015, it does not remove the fact that the instant petition was filed out of time, considering that the denial mentioned under Section 112 (C) of NIRC is denial made by the Respondent within the hundred twenty (120) day period.

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

12. Counting from the date of submission of documents by Petitioner on February 06, 2014, the hundred twentieth (120th) day falls on June 5, 2014 since the Respondent did not render its findings within the hundred twenty (120) day period, Section 112 (C) dictates that Petitioner has thirty (30) days from the expiry of

hundred twenty (120) day or until July 05, 2014 within which to appeal before the CTA.

13. In this case, Petitioner filed the instant Petition before the CTA on September 28, 2015 or around four hundred fifty (450) days from the lapse of one hundred twenty (120) day period.

14. Even if the period of 120+30 days starts from July 18, 2014, the instant Petition is still considered to be filed out of time considering that Petitioner has until December 15, 2014 to appeal the Respondent's inaction before the CTA.

REVENUE MEMORANDUM CIRCULAR NO. 54-2014 IS APPLICABLE IN THE INSTANT CASE.

15. Petitioner alleged that, Respondent erred in applying Revenue Memorandum Circular (RMC) No. 54-2014 in the instant case since Petitioner filed its administrative claim for refund prior to the issuance of RMC No. 54-2014.

16. A Revenue Memorandum Circular (RMCs) are issuances that publish pertinent and applicable portions, as well as amplifications, of laws, rules, regulations and precedents issued by the BIR and other agencies/offices.

17. Contrary to Petitioner's allegation, the issuance of RMC No. 54-2014 is not prejudicial to the rights of the Petitioner since said RMC merely clarifies the issues relative to the Application for Value Added Tax (VAT) refund/credit that has been made by the Supreme Court in the Commissioner of Internal Revenue vs. San Roque Power Corporation and Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue in relation to Section 112 of the NIRC, which were implemented and promulgated prior to Petitioner's Application for tax refund/credit.

PETITIONER IN NOT ENTITLED TO THE REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR INPUT TAX PAID ON ITS PURCHASES OF GOODS AND SERVICES.

18. Petitioner alleged in its Petition for Review, to wit:

> *'Petitioner's entitlement to the present claim for refund in hinged on its compliance with the requirements laid down in the case if (sic) Intel Technology Philippines vs. CIR (G.R. No. 166732, April 27, 2007). xxx xxx xxx' (Italics ours)*

19. In the case of *Intel Technology Philippines vs. Commissioner of Internal Revenue*, the Honorable Supreme Court held that:

> *'Under Sections 106 (A)(2)(a)(1) in relation to 112(A) of the Tax Code, a taxpayer engaged in zero-rated or effectively zero-rated transactions* ***may apply*** *for a refund or issuance of a tax credit certificate for input taxes paid attributable to such sales* ***upon complying with the following requisites:*** *xxx xxx xxx' (Emphasis and italics ours)*

20. Contrary to Petitioner's allegation, compliance with the requisites laid down in the case of *Intel* does not make the Petitioner entitled to its claim for refund; compliance to said requisites only allows it **to apply** for a refund or issuance of a tax credit certificate subject to approval of the Respondent. This is clearly shown by the words '*may apply*' in relation to the phrase: '*upon complying with the following requisites*'.

21. The grant of tax credit is not a ministerial function of the Respondent, bearing in mind that tax refunds or credits just like tax exemptions are strictly construed against taxpayers; the latter have the burden to prove strict compliance with the conditions for the grant of the tax refund or credit. As such, submission of documents will not *motu proprio* grant its application, as careful evaluation and verification is needed by the Respondent to ascertain if Petitioner complied with the requirements in applying for tax credit. Furthermore, in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.

22. Petitioner claimed that it timely filed its Petition for Review on September 28, 2015 which is within the thirty (30) day period from receipt of Respondent's denial of its claim for refund on August 28, 2015.

> 23. As discussed earlier, a 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.
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> 24. In this case, Petitioner failed to file its Petition after the lapse of the hundred twenty (120) day period, Petitioner cannot rely on the receipt of the denial on August 28, 2015 as reckoning period within which to file its appeal to the CTA since the denial of its application was made outside the hundred twenty (120) day period. Hence, without a doubt, the instant Petition for Review was already filed out of time."

Petitioner filed its Reply (To Respondent's Answer dated December 21, 2015)[11] on January 12, 2016, positing the following arguments: (1) Petitioner's allegations under paragraphs 3, 5, 6, 7, 8, 9, 12, 13, 16, 17, 18 and 19 of the instant Petition are deemed admitted for failure of Respondent to sufficiently specifically deny the same; (2) Petitioner filed the instant Petition within the reglementary periods set by law, and this Court has jurisdiction over the present case; (3) Respondent's denial of Petitioner's instant claim for refund is without legal basis; and (4) Petitioner is entitled to the VAT refund of the input VAT it paid in relation to its zero-rated sales for the fourth quarter of taxable year 2011.

A Notice of Pre-Trial Conference was issued by the Court on January 05, 2016, setting the case for pre-trial conference on March 29, 2016.[12] Hence, Respondent's Pre-Trial Brief[13] was filed on March 23, 2016, while Petitioner filed its Pre-Trial Brief[14] on March 28, 2016.

Pre-trial conference ensued. The parties submitted their Joint Stipulation of Facts and Issues[15] on April 25, 2016. On May 17, 2016, the Court issued a Pre-Trial Order[16] adopting the parties' joint stipulations and terminating the pre-trial.

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11 *Id.*, pp. 196-216.
12 *Id.*, pp. 194-195.
13 *Id.*, pp. 230-233.
14 *Id.*, pp. 235-245.
15 *Id.*, pp. 412-421.
16 *Id.*, pp. 434-438.

Petitioner presented Nerissa N. Posadas[17] as its lone witness. Thereafter, Petitioner filed its Formal Offer of Evidence[18] on September 05, 2016, where it offered Exhibits "P-1" to "P-27", "P-29", and "P-29-a", inclusive of sub-markings.

All exhibits were admitted by the Court, except for Exhibits "P-16", "P-15-hh", and "P-17", pursuant to the Resolutions dated October 26, 2016[19] and October 09, 2017[20].

On the other hand, Respondent, through counsel, manifested that he has no evidence to present.[21]

The Court declared the case submitted for decision on April 10, 2018[22], considering Petitioner's Memorandum[23] filed on March 13, 2018 and the Records Verification Report[24] issued by the Court's Judicial Records Division on March 16, 2018, stating that Respondent failed to file a memorandum.

The Issues

The parties submitted the following issues[25] for the resolution of the Court:

1) Whether or not the BIR was correct in denying Petitioner's administrative claim for refund/tax credit certificate of unutilized input VAT paid or incurred arising from its VAT zero-rated sales or renewable energy for the fourth quarter of 2011; and

2) Whether or not Petitioner is entitled to the refund/tax credit certificate of unutilized VAT paid on purchases of goods and services which are attributable to its VAT zero-rated sales of renewable energy for the fourth quarter of the taxable year 2011.

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17 *Id.,* Amended Judicial Affidavit of Nerissa N. Posadas, pp. 453-465; Minutes of the Hearing dated August 16, 2016, p. 601.
18 *Id.,* pp. 608-626.
19 *Id.,* pp. 844-846.
20 *Id.,* pp. 912-914.
21 *Id.,* Minutes of the Hearing dated February 12, 2018, p. 926.
22 *Id.,* Resolution dated April 10, 2018, p. 947.
23 *Id.,* pp. 929-944.
24 *Id.,* Records Verification Report dated March 16, 2018, p. 945.
25 *Id.,* JSFI, Issues to be Resolved, p. 413.

Petitioner's arguments

Petitioner argues that the BIR's denial of its refund claim based on Revenue Memorandum Circular ("RMC") No. 54-2014 is erroneous since it filed its administrative claim for refund long before the said circular came into effect. Petitioner avers that at the time of filing of its administrative claim for refund on November 27, 2013, Petitioner complied with the requirement stated in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[26] that the claim for administrative refund of input VAT for purchases of goods and services directly attributable to zero-rated sales must be filed within two (2) years from the close of the taxable quarter when the sales were made.

Moreover, Petitioner contends that it has submitted documents in support of its claim together with its claim for refund on November 27, 2013, and has submitted additional documents on February 05, 2014 and July 17, 2014, pursuant to the requirements of the BIR when it served the Letter of Authority dated January 23, 2014 upon Petitioner.

Lastly, Petitioner alleges that it is entitled to the present claim for refund as it has complied with the requirements established in the case of *Intel Technology Phils., Inc. v. Commissioner of Internal Revenue*[27].

Respondent's arguments

Respondent avers that the Court did not acquire jurisdiction over the instant petition since the judicial claim of Petitioner was filed out of time, following Section 112(C) of the Tax Code and the pronouncements of the Supreme Court in the cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*[28] ("*San Roque Power Corporation*") and *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*[29] ("*Mindanao II Geothermal Partnership*"). Respondent contends that Petitioner failed to comply with one of the conditions for a judicial claim for refund under the VAT system to prosper, which is compliance with the 120+30 day mandatory and jurisdictional periods.

Respondent also argues that the issuance of RMC No. 54-2014 is not prejudicial to the rights of Petitioner since said RMC merely clarifies the issues relative to the application for VAT refund or tax credit that has been made by the Supreme Court in the cases of *San Roque Power Corporation* and *Mindanao II*

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[26] G.R. No. 184823, October 06, 2010.
[27] G.R. No. 166732, April 27, 2007.
[28] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[29] G.R. Nos. 193301 and 194637, March 11, 2013.

Geothermal Partnership, which were implemented and promulgated prior to Petitioner's application for refund or tax credit.

Discussion/Ruling

Pertinent to the resolution of the instant case is Section 112(A) and (C) of the National Internal Revenue Code ("NIRC") of 1997, as amended, which provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (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 output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> 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 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**."[30]

The administrative claim was timely filed

Pursuant to Section 112(A) of the Tax Code, the application for refund or tax credit of unutilized excess input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the fourth quarter of taxable year 2011 which closed on December 31, 2011. Counting two (2) years from said date, Petitioner had until December 31, 2013 within which to file its administrative claim for refund or tax credit of unutilized input VAT for the said quarter. Thus, Petitioner's administrative claim was seasonably filed on November 27, 2013.

The judicial claim is barred by prescription

Section 112(C) of the Tax Code states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the period of one hundred twenty (120) days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and the period of thirty (30) days, which refers to the period for filing a judicial claim with the Court of Tax Appeals.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[31], citing the landmark case of *San Roque Power Corporation*, the Supreme Court held that the taxpayer can file an appeal in one of two (2) ways: (1) file the judicial claim within thirty (30) days after the BIR Commissioner 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 the BIR Commissioner does not act within that period.

[30] *Emphasis supplied.*
[31] G.R. No. 168950, January 14, 2015.

As to when the 120-day period commences, the Supreme Court ruled in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[32] that for claims filed before June 11, 2014, or prior to the effectivity of RMC No. 54-2014, the rules provided under RMC No. 49-2003, in relation to Section 112 of the Tax Code, shall apply. Hence, Petitioner had thirty (30) days from the time of filing of its administrative claim for refund or tax credit to submit all the required supporting documents. If in the course of the investigation, additional documents are required, the BIR must inform Petitioner of the need to submit additional documents through a notice, and Petitioner has thirty (30) days to comply. Upon completion of all required documents, the 120-day period shall commence; but in all cases, all filings and submissions must be completed within the two-year period under Section 112(A) of the NIRC of 1997, as amended.

In the instant case, Petitioner filed its administrative claim for refund or issuance of TCC on November 27, 2013. Consequently, it had thirty (30) days therefrom or until December 27, 2013 within which to submit all pertinent supporting documents.

Petitioner argues that it submitted additional documents on February 05, 2014 and on July 17, 2014, pursuant to the requirement of the BIR when it served the Letter of Authority dated January 23, 2014 to Petitioner. However, the records are bereft of evidence supporting Petitioner's argument, since the letters dated February 05, 2014 and July 17, 2014, and the Letter of Authority dated January 23, 2014, were not presented in evidence by Petitioner.

Even assuming that Petitioner submitted additional documents on the said dates, the same cannot be considered by the Court since these were filed beyond the two-year period mandated by the Tax Code. Moreover, the alleged submission on July 17, 2014 is outside of the 30-day period within which Petitioner is allowed to submit additional documents from the supposed notice given by the BIR.

Thus, the 120-day period shall be reckoned from November 27, 2013 and shall run until March 27, 2014. Considering that Respondent failed to act on the subject claim within March 27, 2014, Petitioner had thirty (30) days from March 27, 2014, or until April 28, 2014[33], within which to file a judicial appeal before this Court. However, the present Petition for Review was filed only on September 28, 2015. Clearly, Petitioner's judicial claim was belatedly filed.

It bears stressing 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

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

[33] April 26, 2014 fell on a Saturday.

120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper.[34]

Petitioner's non-compliance with the mandatory periods is fatal to its claim and rendered the Court devoid of jurisdiction over the case at bar. Accordingly, the dismissal of the instant Petition for Review is in order.

WHEREFORE, premises considered, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Ma. Belen S. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

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[34] Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, Philex Mining Corporation v. Commissioner of Internal Revenue, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Acting Chairperson's Attestation, 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