REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ASURION HONG KONG LIMITED-ROHQ, *Petitioner,*	CTA EB No. 1736 (CTA CASE No. 9593)
	Present:
-versus-	DEL ROSARIO, P.J, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, BACORRO-VILLENA, and
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	MODESTO-SAN PEDRO, *JJ.*
	Promulgated: OCT 14 2019 2:22 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is the Motion for Reconsideration filed by Asurion Hong Kong Limited-ROHQ (Asurion HK-ROHQ)[1] on May 17, 2019, seeking to set aside this Court's Decision promulgated on April 29, 2019,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **DISMISSED** for lack of jurisdiction. The Resolutions dated August 10, 2017

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[1] *En Banc* Docket, pp. 125-146.
[2] *Ibid.*, pp. 942-973.

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and October 12, 2017 of the former Third Division in CTA Case No. 9593 are **AFFIRMED**."

SO ORDERED."

In its motion, Asurion HK-ROHQ merely reiterates that the 120+30-day period under RMC No. 54-2014 does not apply when the Commissioner of Internal Revenue (CIR) ordered for the submission of additional documents for its administrative claim for refund.

Asurion HK-ROHQ also insists that Section 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended, clearly provides two options to the taxpayer on how to appeal the decision of the CIR denying the claim for refund or tax credit. It claims that the subsequent decision of the CIR denying its administrative claim for refund and its subsequent appeal of the same to this Court within 30 days from the receipt of such CIR's denial is clearly within the ambit of Section 112 of the 1997 NIRC. Asurion HK-ROHQ reiterates that its claim was acted upon and expressly denied, precluding the application of the 120+30-day period or the "deemed denial" doctrine.

Lastly, Asurion HK-ROHQ argues that the rules on technicality shall not be strictly applied if it will impede administration of justice.

The CIR failed to file his comment to the Motion for Reconsideration as *per* Records Verification[3] dated September 13, 2019.

After a careful review of the grounds raised in the Motion for Reconsideration, the Court finds Asurion HK-ROHQ's arguments without merit.

Bearing in mind the ruling enunciated by the Supreme Court in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[4] this Court stands by its findings that

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[3] *Ibid.*
[4] G.R. No. 207112, December 8, 2015.

Asurion HK-ROHQ's judicial claim for VAT refund was filed out of time. As thoroughly discussed in the assailed Decision, the 120-day period within which the CIR should act on the administrative claim shall be reckoned from December 16, 2016, when Asurion HK-ROHQ filed its administrative claim together with the submission of complete documents for its refund/issuance of tax credit certificate. This Court likewise carefully explained in the assailed Decision that upon the lapse of the 120-day period given to the CIR to act upon the administrative claim, there was already a deemed denial on April 15, 2017, thus, Asurion HK-ROHQ should have filed its judicial claim within thirty (30) days therefrom, or not later than May 15, 2017. Clearly, Asurion HK-ROHQ's Petition for Review that was filed on May 19, 2017 is clearly beyond the prescribed 30-day period. To reiterate:

> "In this regard, it is relevant to refer to the pronouncement in *Total Case* where <u>the Supreme Court went on to discuss that RMC No. 54-2014 dated June 11, 2014, which takes effect on cases where administrative claims were filed on the said date of effectivity and onwards, mandates that the application for VAT refund or tax credit must be accompanied by complete supporting documents, and a statement under oath attesting to the completeness of the submitted documents, which are the only documents the taxpayer will present to support the claim; that upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted or required from the taxpayer in the course of its evaluation; and that a decision shall be rendered by the CIR based only on the documents submitted by the taxpayer</u>.
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> The Supreme Court further explained that under RMC No. 54-2014, the reckoning of the 120-day period has been withdrawn from the taxpayer, since <u>it requires him/her/it at the time of filing of the claim to complete the supporting documents and to attest that he/she/it will no longer submit any other document to prove the claim; and that the taxpayer is barred from submitting additional documents after filing the administrative claim.</u>

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> Considering that the administrative claim of Asurion HK-ROHQ was filed after June 11, 2014, the rules under RMC No. 54-2014 shall apply.
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> Records show that Asurion HK-ROHQ submitted its supporting documents per the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund labeled as Annex "A" upon the filing of its administrative claim on December 16, 2016 and executed a Sworn Certification attesting to the completeness of the submitted documents. As a consequence, no other documents must be accepted or required from the taxpayer from the said date. Accordingly, the CIR had 120 days from December 16, 2016, or until April 15, 2017 to decide on Asurion HK-ROHQ's claim.
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> Considering that the CIR, instead of deciding on the Asurion HK-ROHQ's claim, asked for additional documents. However, any subsequent submission of supporting documents made by Asurion HK-ROHQ will not move the commencement of the 120-day period. Based on this, Asurion HK-ROHQ only had until May 15, 2017, the last day of the 30-day period, within which to file its appeal before this Court. Hence, its judicial claim filed on May 19, 2017 is clearly beyond the period prescribed by law."

Accordingly, any subsequent submission of supporting documents made by Asurion, despite request from the CIR to evaluate its claim for refund/tax credit, will not move the commencement of the 120-day period. The 120-day period is reckoned from the date of filing of the application, which is also the date of submission of complete documents.[5]

Section 112(C) of the 1997 NIRC, as amended, provides for the period when the CIR should act on taxpayer's claim for input VAT refund/credit as well as the period when the taxpayer may appeal the action or inaction of the CIR on such claim, to wit:

> "SEC. 112. Refunds or Tax Credits of Input Tax.-

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[5] *B.W. Shipping Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 9115, October 19, 2018.

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

As shown, Section 112(C) of the 1997 NIRC provides that the CIR has 120 days from the date of submission of complete documents to decide on the claim for refund/tax credit. In case of full or partial denial of the claim for tax refund or tax credit, or the failure of the CIR to act on the application within the 120-day period, the taxpayer affected may, within 30 days from the receipt of the decision denying the claim or after the expiration the 120-day period, appeal the decision or the unacted claim with this Court.

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue (the "Rohm Case")*,[6] the Supreme Court held that:

> "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

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

> 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." (Underlining supplied.)

As RMC No. 54-2014 is correctly applied in this case, when the decision of the CIR was received by Asurion HK-ROHQ on April 20, 2017, it is already beyond the 120-day period reckoned from its date of filing of its administrative claim for refund with submission of complete documents. Pursuant to the Supreme Court pronouncement in *Rohm,* a denial made by the CIR beyond the 120- day period cannot be the reckoning point of the 30 days within which the taxpayer can appeal the decision with this Court.

Lastly, it must be emphasized that a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. Thus, strict compliance with the 120+30-day periods is necessary for such a claim to prosper.[7]

In sum, petitioner's belated filing of its judicial claim is fatal to its claim for its failure to observe the mandatory 120+30-day prescriptive periods, and has therefore rendered this Court devoid of jurisdiction over the Petition for Review. Clearly, there is no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[7] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.,* G.R. Nos. 187485, 196113, and 197156, February 12,2013.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen R
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice