REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

RIOFIL CORPORATION,
Petitioner,

\- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9031

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

Promulgated:
OCT 19 2017
11:19 a.m.

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RESOLUTION

BAUTISTA, J.:

For resolution is petitioner's Motion for Reconsideration (of the Decision dated 02 August 2017) ("MR") filed on August 22, 2017; with no comment from respondent despite notice.

On August 2, 2017, the Court promulgated a Decision, disposing of the case as follows:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for having been filed beyond the prescriptive period.
>
> **SO ORDERED.**

In denying petitioner's Petition for Review, the Court explained that the applicable rule at the time of the filing of the administrative claim is *RMC No. 49-2003;* hence, petitioner's documentary requirements sufficient to support his claim should be filed: *(1)* thirty (30) days from the filing of the administrative claim, there being no extension granted to petitioner; and *(2)* within the two (2)-year period from the close of the taxable quarter; and upon filing of complete supporting documents, or expiration of the period given, the CIR has one hundred and twenty (120) days within which to decide the claim for tax credit or refund. Applying the foregoing to the case at bar, the Court found that the administrative claim was filed on May 20, 2013, giving petitioner until June 19, 2013 to file supporting documents; and that petitioner belatedly filed supporting documents to support its claim on October 1, 2013, November 8, 2013, November 27, 2013, and November 29, 2013. The Court then continued to discuss that there being no supporting documents filed on or before June 19, 2013, the counting of the one hundred and twenty (120)-day period shall commence on June 19, 2013, giving the CIR until October 17, 2013 to decide petitioner's claim; and that there being no decision made within one hundred and twenty (120)-days, petitioner should have filed its judicial claim with the CTA within thirty (30) days from the given period, which ended on November 18, 2013. Instead, records reveal that petitioner belatedly filed its Petition for Review on April 15, 2015, after receiving a denial letter on March 17, 2015.

It its MR, petitioner avers that the Court has jurisdiction over its claim for VAT refund, having timely filed both its administrative and judicial claims. It claims that petitioner correctly filed its judicial claim within thirty (30) days from receipt of the written denial by respondent of its administrative claim.

On August 29, 2017, respondent was ordered to file his comment on petitioner's MR within fifteen (15) days from notice. Hence, respondent had until September 13, 2017 to file his comment.

On September 22, 2017, the Judicial Records Division issued a Records Verification Report stating that respondent failed to file his comment on petitioner's MR.

The Court will now resolve petitioner's MR.

It must be noted that petitioner already raised the issue of timeliness in its Memorandum[1].

Petitioner's Arguments

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[1] *Records, Vol. 3, Memorandum, Discussion,* pp. 1377-1412.

> Petitioner alleges that it timely filed both its administrative claim and judicial claim for refund; that the CIR exceeded his rule-making authority when he issued *RMC No. 54-2014*; that *RMC No. 54-2014* narrows the remedies afforded to the taxpayer under *Section 112(C) of the 1997 NIRC*; that the taxpayer should have the option to await the decision of the CIR even beyond the one hundred and twenty (120)-day period; that *RMC No. 54-2014* promotes inefficiency and condones BIR's inaction, it passes undue financial burden to the taxpayer by compelling the latter to appeal the unacted claim within thirty (30) days from the lapse of the one hundred and twenty (120)-day period; and that *RMC No. 54-2014* is confiscatory and violates the taxpayer's right to due process.
>
> It went on to explain that it is legally entitled to be refunded the amount of Php91,994,521.20 representing its unutilized and/or unapplied and excess input VAT covering the period January 1, 2012 to June 30, 2012; that its sales of services qualify as zero-rated; that it incurred or paid input VAT on its purchases for the 1st and the 2nd quarters of TY 2012; that the input taxes it paid were not utilized against any of its output VAT liabilities for the succeeding taxable quarters or years, as verified by the ICPA; that its claim for refund are attributable to zero-rated VAT sales; and that it submitted complete documents in support of its claim for refund.

These arguments have been comprehensively passed upon and refuted in the Decision dated August 2, 2017. To reiterate what the Court stipulated in the Decision, when the one hundred and twenty (120)-day period lapses and there is inaction on the part of the CIR, the taxpayer must no longer wait for it to come up with a decision, for the reason that the CIR's inaction is already deemed a denial of the refund claim.[2] Accordingly, the taxpayer must file an appeal within thirty (30) days from the lapse of the one hundred and twenty (120)-day waiting period.[3] Having failed to file its judicial claim within the above-stated period, the Court finds no cogent reason to reverse its Decision.

WHEREFORE, petitioner's Motion for Reconsideration (of the Decision dated 02 August 2017) is hereby **DENIED** for lack of merit.

SO ORDERED.

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[2] *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015, 745 SCRA 663.
[3] *Id.*

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice