REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

NIPPON EXPRESS PHILIPPINES CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10242

Members:

DEL ROSARIO, *P.J., Chairperson,*
and
MANAHAN, *JJ.*

Promulgated:
JUN 17 2021 2:10 pm

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RESOLUTION

This resolves petitioner's **Motion for Reconsideration (re: Resolution dated 13 January 2021)** filed on January 28, 2021, without respondent's comment despite due notice, praying for the reconsideration of this Court's Resolution dated January 13, 2021 (Assailed Resolution) and for the denial of respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court.*

Petitioner argues that respondent's letter dated September 19, 2019, which it received on December 11, 2019, being the "final action" of the latter is appealable to this Court within thirty (30) days from receipt thereof. Thus, the filing of the instant Petition for Review (PFR) on January 10, 2020 was evidently on time.

Petitioner also argues that Revenue Memorandum Order (RMO) No. 25-2019, which has a period within which respondent has to act on a claim for refund, does not prohibit the filing of a request for reconsideration to respondent on his denial of its claim for refund. Hence, it has the option to appeal the decision of the Assistant Commissioner of Internal Revenue (ACIR) to the respondent himself pursuant to the doctrine of Exhaustion of Administrative Remedies.

Before going into the merits of the motion, this Court shall first determine whether the instant motion was filed on time. Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> "SECTION 1. *Who may and when to file motion.-* **Any aggrieved party may seek a reconsideration** or new trial **of any decision**, resolution, or order **of the Court**. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question." (*Emphasis supplied*)

The records of the case reveal that petitioner received the Assailed Resolution on January 21, 2021. In accordance with the abovementioned provision of the RRCTA, petitioner had until February 5, 2021 within which to file its motion for reconsideration. Thus, the filing by petitioner of its *Motion for Reconsideration (re: Resolution dated 13 January 2021)* on January 28, 2021 was on time.

Now on the substantive arguments raised in the said motion, petitioner should be aware that the issue as to the timeliness of the filing of its PFR was already thoroughly discussed in the Assailed Resolution, to wit:

> "Section 112(A) and (C) of the 1997 National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, provides for the period when petitioner should file its claim for refund or credit and when respondent should act on taxpayer's claim for input VAT refund/credit as well as the period when the latter may appeal the action or inaction of the former on such claim, respectively, to wit:
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>> 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...
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>> (B) xxx xxx xxx
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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 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 with 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 ninety (90) days period shall be punishable under Section 269 of this Code." (Emphasis supplied)

Similarly, Section 4-112.1(a), (c), and (d), of Revenue Regulations (RR) No. 13-2018 dated March 15, 2018, or the *Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended*, provides:

"**SEC. 4.112-1.** **Claims for Refund/Credit of Input Tax. —**

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) Where to file the claim for refund/credit

Claims for refunds shall be filed with the appropriate Bureau of Internal Revenue (BIR) Office (Large Taxpayers Service (LTS), Revenue District Office (RDO)) having jurisdiction over the principal place of business of the taxpayer. Claims for input tax refund of direct exporters shall be exclusively filed with the VAT Credit Audit Division (VCAD).

(d) Period within which refund/credit of input taxes shall be made

In proper cases, the Commissioner of Internal Revenue shall grant 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**.

The 90-day period to process and decide, pending the establishment of the enhanced VAT Refund System shall only be up to the date of approval of the Recommendation Report on such application for VAT refund by the Commissioner or his duly authorized representative: *Provided, That* all claims for refund/tax credit certificate filed prior to January 1, 2018 will be governed by the one hundred twenty (120)-day processing period.

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 with 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**

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> **the ninety (90)- day period shall be punishable under Section 269 of the Tax Code, as amended.**"

Applying the above-mentioned provisions, the following constitutes the last day of the two-year prescriptive period for the filing of the administrative claim for refund:

Quarter	Close of the Taxable Quarter Ending	Last day of the 2-year prescriptive period
1st	March 31, 2017	March 31, 2019
2nd	June 30, 2017	June 30, 2019
3rd	September 30, 2017	September 30, 2019
4th	December 31, 2017	December 31, 2019

The factual antecedent of this case reveals that petitioner filed its administrative claim for refund on March 29, 2019. Hence, counting the 90-day period for the respondent to act on said claim, the latter had until June 27, 2019 to act on this claim for refund.

Respondent, through his representative, denied said claim for refund on May 30, 2019. Said notice of denial was received by petitioner on June 11, 2019.

However, instead of elevating its case to this Court, petitioner filed a request for reconsideration of the May 30, 2019 denial of its claim for refund, which respondent denied with finality on September 19, 2019 and received by petitioner on December 11, 2019. Hence, petitioner filed the instant petition on January 10, 2020.

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:

> "Sec. 7. *Jurisdiction.* - The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;"

In the instant case, petitioner based its PFR on the September 19, 2019 letter of denial by respondent on its request for reconsideration of the earlier May 30, 2019 letter of denial of its claim for refund.

Now the question is, can the claimant request for a reconsideration after its claim for refund is denied? If so, can it reckon the period to file its judicial claim for refund from the respondent's decision on its request for reconsideration and not on the earlier letter of denial?

A closer look at the implementing revenue issuances reveals otherwise.

In Items II(C) and III(3) of **Revenue Memorandum Circular (RMC) No. 17-2018 dated February 27, 2018**, otherwise known as *"Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN)",* they provide that all claims for refund filed in the LTS shall be approved by the Assistant Commissioner of Internal Revenue (ACIR).

In Item II(B)(11)(b) of **Revenue Memorandum Order (RMO) No. 25-2019 dated May 15, 2019** or the *"Policies and Procedures to Implement the Ninety (90)-Day Period to Process and Grant Claims for Value-Added Tax (VAT) Refund/Credit Pursuant to Section 112 of the National Internal Revenue Code of 1997, as Amended",* the ACIR-LTS shall approve the claims filed in LTS.

Nowhere in the above cited provisions of the tax law or in its related administrative issuances does it provide that the decision of ACIR-LTS in cases of denial of the claim for refund should be elevated first to the respondent prior to the filing of the petition for review before this Court. Thus, the first denial of petitioner's claim for refund by the ACIR-LTS, i.e., May 30, 2019, should be the reckoning point for petitioner to appeal directly to this Court said denial.

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In view thereof, petitioner had 30 days from June 11, 2019 or until July 11, 2019 to file the instant PFR. However, petitioner only filed said PFR on January 10, 2020 which is way beyond the prescriptive period. Thus, the Court has no jurisdiction to continue hearing the instant case."

As shown above, particularly under Section 4-112.1(c) of Revenue Regulations (RR) No. 13-2018 dated March 15, 2018 and Revenue Memorandum Circular (RMC) No. 17-2018 dated February 27, 2018, all claims for refund filed in the Large Taxpayers Service (LTS) shall be approved by the Assistant Commissioner of Internal Revenue (ACIR) and such action is considered the final action of the respondent himself pursuant to Section 7 of the 1997 National Internal Revenue Code (NIRC), as amended, or the authority of the respondent to delegate some of his statutory powers which are not prohibited by law. The delegation of authority to approve or deny claims for refund is not among those proscribed under the 1997 NIRC, as amended.

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As to petitioner's argument that RMO No. 25-2019 did not categorically prohibit the taxpayers from requesting a reconsideration of the denial on a claim for refund, petitioner should also be aware that nowhere under Item II(B)(11)(b) of the said RMO that the decision of ACIR-LTS in cases of denial of the claim for refund should be elevated first to the respondent prior to the filing of the petition for review before this Court. Thus, it presupposes that the final action of ACIR-LTS constitutes the "final action" of respondent himself pursuant to Section 7 of the 1997 NIRC, as amended.

The factual antecedents of this case reveal that petitioner filed its claim for refund or credit of unutilized input VAT for the period January 1, 2017 to December 31, 2017 at the Bureau of Internal Revenue (BIR) Large Taxpayer Audit Division 2 on **March 29, 2019**. The 90-day prescription period for respondent to act on said claim for refund expired on **June 27, 2019**. The reckoning of the 30-day period to appeal to this Court on the basis of respondent's letter dated September 19, 2019 shall definitely violate the 90-day period under Section 112(C) of the 1997 NIRC, as amended. Thus, the position of the petitioner has no legal leg to stand on.

WHEREFORE, petitioner's *Motion for Reconsideration (re: Resolution dated 13 January 2021)* is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice