REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

ADVANCED WORLD SYSTEM, INC.,	**CTA CASE NO. 9983**
Petitioner,	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 1 1 2023 2:48 p.m.

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D E C I S I O N

MODESTO-SAN PEDRO, J.:

The Case

The instant case involves a claim for Tax Credit Certificate ("TCC") or refund of petitioner's alleged excess and unutilized input value-added tax ("VAT") arising from its zero-rated sales for the fiscal period from 1 April 2011 to 31 March 2012 in the total amount of Four Million Five Hundred Thirty One Thousand Nine Hundred Sixty Four Pesos and 75/100 Pesos (Php4,531,964.75).[1]

The Parties

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at Unit 505, Fifth Floor, ATC BPO 1, Madrigal Avenue, Alabang Town Center, Alabang, Muntinlupa City.[2]

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[1] See Statement of the Case, Pre-Trial Order, Records, Vol. 2, p. 605.
[2] See Statement of Facts and Issues, Pre-Trial Order, *id.*, p. 606.

Meanwhile, respondent is the Commissioner of Internal Revenue ("CIR") with office address at the Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City. He is authorized under the law to act on the claims for refunds, TCC, and other matters involving the enforcement of the ***National Internal Revenue Code, as amended*** ("***NIRC***").[3]

The Facts

Petitioner enjoys fiscal incentives pursuant to the ***1987 Omnibus Investments Code*** as declared in its Certificate of Registration No. 2001-147 issued by the Board of Investments ("BOI"), including the Specific Terms and Conditions appended thereto, dated 18 September 2001.[4]

Petitioner filed the following VAT returns for the fiscal year starting from 1 April 2011 and ending on 31 March 2012 on the following dates:

VAT return	Date of filing
First quarter[5]	20 July 2011
Second quarter[6]	20 October 2011
Third quarter[7]	20 January 2012
Fourth quarter[8]	20 April 2012
Amended fourth quarter[9]	15 May 2012

On 18 March 2013, petitioner filed its administrative claim for refund of alleged excess and unutilized input VAT in the total amount of Four Million Five Hundred Thirty One Thousand Nine Hundred Sixty Four Pesos and 75/100 Pesos (Php4,531,964.75).[10]

On 8 November 2018, petitioner received a Letter, dated 17 October 2018, from respondent denying its administrative claim for VAT refund.[11] In response, it then filed the instant Petition for Review("Petition") on 7 December 2018, assailing said denial.[12]

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3 *Ibid.*
4 Exhibit "P-4", *id.*, pp. 819-824.
5 Exhibit "P-9", *id.*, pp. 860-861.
6 Exhibit "P-12", *id.*, pp. 866-867.
7 Exhibit "P-15", *id.*, pp. 872-873.
8 Exhibit "P-18", *id.*, pp. 878-879
9 Exhibit "P-19", *id.*, pp. 880-881.
10 Exhibits "P-25", "P-26" "P-26-1", "P-26-2", "P-26-3", "P-26-4", "P-26-5", "P-26-6" and "P-26-7", *id.*, pp. 896-908.
11 See Statement of Facts and Issues, Pre-Trial Order, *id.*, p. 606.
12 Records Vol. 1, pp. 10-135.

On 4 January 2019, Summons was served to respondent requiring him to file an Answer to the Petition.[13]

On 21 February 2019, respondent filed a Motion to Dismiss on the ground that the Court failed to acquire jurisdiction over the instant Petition as petitioner did not observe the 120+30-day mandatory and jurisdictional period.[14] The Court denied said Motion in a Resolution, dated 9 May 2019.[15]

On 24 June 2019, respondent filed his Answer.[16]

On 5 July 2019, this Court issued a Notice of Pre-Trial Conference setting the Pre-Trial Conference on 10 October 2019.[17]

Petitioner then filed a Reply to respondent's Answer on 11 July 2019.[18]

On 20 September 2019, petitioner filed a Motion for Commissioning of Independent Certified Public Accountant ("ICPA"),[19] attaching thereto the Judicial Affidavit of the ICPA, Ms. Myra Celeste O. Dabalos.[20]

Respondent filed his Pre-Trial Brief[21] and the Judicial Affidavit of his witness, revenue officer Clariza M. Barangan on 4 October 2019.[22] Meanwhile, petitioner submitted the Judicial Affidavit of its witness, Ms. Cherry Catarata, on 4 October 2019[23] and its Pre-Trial Brief on 7 October 2019.[24]

Pre-Trial was held on 10 October 2019, during which Ms. Dabalos was commissioned by the Court as the ICPA for the instant case.[25]

On 25 October 2019, petitioner filed an Amended Judicial Affidavit of its witness, Ms. Catarata.[26] Meanwhile, on 30 October 2019, respondent filed the Judicial Affidavit of his witness, Group Supervisor Jovelyn L. Borromeo.[27]

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13 *Id.*, pp. 136-137.
14 *Id.*, pp. 143-152.
15 *Id.*, pp.167-170.
16 *Id.*, pp. 171-184.
17 *Id.*, pp. 185-186.
18 *Id.*, pp. 187-193.
19 *Id.*, pp. 195-198.
20 Exhibit "P-30", *id.*, pp. 199-209.
21 *Id.*, pp. 213-216.
22 *Id.*, pp. 217-226.
23 *Id.*, pp. 227-341.
24 *Id.*, pp. 342-362.
25 *Id*, pp. 367-372.
26 Exhibit "P-70", *id.*, pp. 373-488.
27 *Id.*, pp. 490-499.

Thereafter, on 30 October 2019, the parties filed their Joint Stipulation of Facts and Issues.[28]

On 12 November 2019, Ms. Dabalos submitted her ICPA Report.[29] Subsequently, on 29 November 2019, petitioner filed the Judicial Affidavit of Ms. Dabalos in relation to her ICPA Report.[30]

The Court then issued a Pre-Trial Order on 14 January 2020.[31]

Petitioner presented its witness, Ms. Catarata on 6 February 2020.[32]

Ms. Dabalos then submitted an Amended ICPA Report on 20 October 2020.[33] In relation thereto petitioner submitted an Amended Judicial Affidavit of Ms. Dabalos on 22 October 2020.[34] On 24 November 2020, Ms. Dabalos was placed in the witness stand for cross-examination on her testimony with respect to the Amended ICPA Report, while respondent manifested that he would no longer present any evidence for the instant case.[35]

Petitioner then filed its Formal Offer of Evidence on 16 December 2020,[36] to which respondent interposed some objections as to the admissibility of certain documents offered in evidence.[37]

In a Resolution,[38] dated 11 February 2021, the Court admitted all of petitioner's formally offered evidence except for a few exhibits for failure to present the originals for comparison or for not being found in the records of the case.

On 17 May 2021, petitioner filed its Memorandum.[39] Meanwhile, respondent filed his Memorandum on 26 March 2021 through registered mail.[40] Thus, in a Resolution, dated 12 July 2022, the instant case was submitted for Decision.

Hence, this Decision.

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28 *Id.*, pp. 500-505.
29 *Id.*, pp. 517-561.
30 Records Vol. 2, pp. 583-598.
31 *Id.*, pp. 604-613.
32 *Id.*, pp. 636-638.
33 *Id.*, pp. 698-742.
34 Exhibit "P-71", *id.*, pp. 744-764.
35 *Id.*, pp. 766-768.
36 *Id.*, pp. 776-908.
37 *Id.*, pp. 910-922.
38 *Id.*, pp. 799-805.
39 *Id.*, pp. 936-984.
40 *Id.*, pp. 987-1002.

The Issues[41]

The issues submitted for this Court's resolution are:

Whether or not petitioner's judicial claim was filed beyond the prescriptive period as provided in ***Section 112 (C) of the NIRC***, thereby depriving the Court of jurisdiction over the instant case; and

Whether or not petitioner is entitled to its claim for refund or issuance of TCC on its alleged unutilized input tax attributable to its alleged zero-rated sales amounting to Four Million Five Hundred Thirty One Thousand Nine Hundred Sixty Four Pesos and 75/100 Pesos (Php4,531,964.75) incurred for the fiscal period from 1 April 2011 until 31 March 2012.

Arguments of the Parties

Petitioner's Arguments[42]

Petitioner avers that it is entitled to a refund of excess and unutilized input VAT. Petitioner presents the following arguments:

First, the administrative claim for refund or issuance of TCC was timely filed;

Second, petitioner timely filed its judicial claim for refund or issuance of TCC;

Third, petitioner is entitled to a claim of VAT refund in accordance with ***Section 108 (B) (2) of the NIRC*** in relation to ***Sections 110 (B) and 112 (A) of the NIRC***;

Fourth, petitioner submitted bank settlement advices and Certifications from Rizal Commercial Banking Corporation in support of its inward remittances for export sales; and

Fifth, petitioner's claimed input VAT are properly supported by invoices and official receipts. W

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[41] See Statement of Facts and Issues, Pre-Trial Order, *id.,* p. 607.
[42] *Id.,* pp. 953-981.

Respondent's Arguments[43]

In refutation, respondent alleged that petitioner's judicial claim is filed out of time, thereby depriving the Court of jurisdiction to try and hear the case. The inaction of the CIR within the 120-day period on the administrative claim for refund shall be "deemed a denial" pursuant to ***Revenue Memorandum Circular No. 54-2014 ("RMC 54-14")***. Further, in ***Court of Tax Appeals Case Nos. 9864 and 9984,*** this Court dismissed petitioner's Petition for Review for lack of jurisdiction for failure to comply with the mandatory and jurisdictional 120+30-day period.

The Ruling of the Court

The instant Petition for Review must be **DISMISSED** for lack of jurisdiction.

A taxpayer-applicants claims for refunds or tax credits must be timely filed.

The provision that governs the present claim for refund of unutilized input VAT attributable to zero-rated sales is ***Section 112 (A) and (C) of the NIRC***, which reads:

> "**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.
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> (B) … W

[43] *Id.*, pp. 988-999.

> (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 compete 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**."

(Emphasis, Ours.)

Based on the foregoing provisions, a taxpayer applicant must comply with two specific requisites regarding the timeliness of its claim to successfully obtain a tax refund or credit:

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[44]

2. the judicial claim is filed with this Court within thirty (30) days from receipt of an adverse decision (*i.e.,* partial or full denial of the administrative claim),[45] or upon the lapse of the period given to the CIR to act on an administrative claim (*i.e.,* one hundred twenty (120) days from the filing of such claim) wherein the CIR failed to act on the same within such period (in which case, the claim for refund is deemed denied by the CIR), whichever comes first;[46]

Petitioner timely filed its administrative claim but belatedly filed its judicial claim.

Pursuant to ***Sections 112 (A) and (C) the NIRC*** the claim for refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales must be administratively filed with the BIR within two (2) years counted from the close of the taxable quarter when the relevant sales were made. N

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[44] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

[45] Steag State Power, Inc. vs. Commissioner of Internal Revenue, G.R. No. 205282, 14 January 2019; Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue, G.R. No. 168950, 14 January 2015.

[46] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue, G.R. No. 182737, 2 March 2016.

Applying the foregoing to the instant case, and since petitioner's claim for refund pertained to a fiscal period that started from 1 April 2011 and ended on 30 March 2012, petitioner had the following periods to file its administrative claim:

Taxable quarter	Close of the taxable quarter	Last day for filing administrative VAT refund claim
First quarter	30 June 2011	30 June 2013
Second quarter	30 September 2011	30 September 2013
Third quarter	31 December 2011	31 December 2013
Fourth quarter	30 March 2012	30 March 2014

As the administrative claim for refund covering all the taxable quarters provided above was filed on 18 March 2013, the administrative claim is timely filed.

With respect to the judicial claim, however, it must be reiterated that the administrative claim for refund subject of the instant case was filed on 18 March 2013,[47] which is before the effectivity date (*i.e.*, 1 January 2018[48]) of the amendments introduced to the ***NIRC*** by ***Republic Act No. 10963 ("TRAIN Law")***. Thus, all amendments caused by the ***TRAIN Law*** to the ***NIRC*** are wholly inapplicable to the present case. It is noteworthy that tax laws are applied prospectively unless otherwise expressly provided for.[49]

As the administrative claims were filed before the effectivity of the ***TRAIN Law***, these are subject to the mandatory and jurisdictional 120+30-day period which was in effect before such amendatory law. ***The pre-TRAIN Law Section 112 (C) of the NIRC*** provides, as follows:

> **"SEC. 112. Refunds or Tax Credits of Input Tax. -**
>
> 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 Subsections (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)

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47 Exhibits "P-25", "P-26" "P-26-1", "P-26-2", "P-26-3", "P-26-4", "P-26-5", "P-26-6" and "P-26-7", Records Vol. 1., pp. 896-908.

48 Section 87, Republic Act No. 10963.

49 Commissioner of Internal Revenue v. Acosta, G.R. No. 154068, 3 August 2007.

> 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."

While this provision provides for two (2) points within which the 30-day period to file a judicial claim may start (upon expiration of the 120-day period given to respondent to act on a request for input tax refund and upon receipt of respondent's adverse decision) the same are not alternative in nature.

The 30 day period given to a taxpayer to file a judicial claim for input tax refund starts from whichever of the two starting points comes first, under the ***Pre-Train Law NIRC***. Taxpayers do not have the option to wait for an actual adverse decision by respondent before filing a judicial claim before this Court if the 120-day waiting period has already lapsed. Otherwise, such judicial action would belatedly filed, thereby causing this Court to never obtain the jurisdiction to try the same. This rule is known as the mandatory and jurisdictional 120+30-day period enunciated by the Supreme Court in ***Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue***.[50]

The rationale for the mandatory and jurisdictional 120+30-day period is that inaction by respondent within the 120-day period given him to decide a claim for input tax refund is treated as a denial by itself. Hence, there is no need for a taxpayer to wait for an actual denial as its request for input VAT refund has been deemed denied, by express provision of law.[51]

In ***Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue***,[52] the Supreme Court had a chance to categorically declare that a judicial appeal must be instituted immediately within thirty (30) days from the expiration of the 120-day period given to respondent to decide claims for input tax refund considering that such inaction by respondent is already considered a denial of such claims, *viz.*:

> "A final note, the taxpayers are reminded that 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 and underscoring, Ours)

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[50] G.R. No. 187485, G.R. No. 196113 and G.R. No. 197156, 12 February 2013.
[51] *Commissioner of Internal Revenue v. San Roque Power Corporation,* G.R. No. 187485, 12 February 2013.
[52] G.R. No. 168950, 14 January 2015.

Further, in ***Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,***[53] the High Court ruled that "**<u>any claim filed in a period</u>** less than or **<u>beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.</u>**"[54]

Petitioner filed its administrative claim for input VAT refund for the fiscal period starting on 1 April 2011 until 31 March 2012 on 18 March 2013. Applying the 120-day waiting period, respondent had until 16 July 2013 within which to decide said administrative claim for input VAT refund. Considering that respondent did not act upon said administrative claims within the said 120-day waiting period, petitioner should have filed its judicial claim before this Court on or before 15 August 2013, which is thirty (30) days from the lapse of the 120-day waiting period. As petitioner filed the Petition before this Court only on 7 December 2018, the same is markedly belatedly filed for more than five (5) years.

That respondent ultimately acted upon petitioner's claim for refund via a letter, dated 17 October 10`8, is of no moment. Certainly, it does not afford petitioner a fresh thirty-(30) day period within which to file a Petition for Review.

This Court thus has no jurisdiction to entertain the instant Petition as petitioner failed to comply with the mandatory and jurisdictional 120+30-day period.

At this juncture, the Court emphasizes that tax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayers; hence, a taxpayer claimant has the burden to prove compliance with the conditions for the grant of the tax refund or credit.[55]

WHEREFORE, the Petition for Review filed by petitioner Advanced World System, Inc. is hereby **DISMISSED** for lack of jurisdiction.

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[53] G.R. No. 182737, 02 March 2016.
[54] Emphasis and Underscoring, Ours.
[55] Sitel Philippines Corp. v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017 *citing* Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation), G.R. No. 180434, 20 January 2016.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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