REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TAIHEI ALLTECH CONSTRUCTION (PHIL.), INC., Petitioner,	**CTA CASE NO. 10108**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 03 2020 3:33 pm

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RESOLUTION

For resolution is respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court**, filed on October 11, 2019, with petitioner's **Comment/Opposition (to: Respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court)**, filed on November 14, 2019.

In his motion, respondent moves for the early determination of this Court's jurisdiction considering that the issue of jurisdiction is not an evidentiary matter that will require trial to resolve the same. He maintains that on the face of the petition alone, the question of jurisdiction may easily be resolved.

Respondent reiterates petitioner's allegations that the application for tax credit/refund was filed on September 30, 2013 for the period of July 1 to September 30, 2011, then on December 23, 2013 for the period of October 1 to December 31, 2011. Assuming that the administrative claims for refund were filed on time, respondent has 120 days or until January 28, 2014, and April 22, 2014, respectively, within which to decide on the claim.

Respondent invokes Revenue Memorandum Circular (RMC) No. 54-2014, which provides that if the administrative claim is not acted upon within 120 days, the inaction shall be deemed a denial. Accordingly, petitioner has 30 days from the lapse of 120 days or until February 27 and May 22, 2014, respectively, within which to file a judicial claim before the Court of Tax Appeals (CTA). In the instant case, the petition was filed only on July 10, 2019, therefore, the judicial claim was filed out of time.

Respondent also contends that his subsequent denial is of no moment, considering that the denial letter has been rendered long after the lapse of the period within which the petitioner could have elevated the matter to this Court. Consequently, he avers that this Court has no jurisdiction over the instant Petition for Review.

On the other hand, petitioner argues that RMC No. 54-2014 should not be retroactively applied to its claim. Further, with the issuance of Revenue Regulations (RR) No. 1-2017, petitioner's claim for refund was re-processed by respondent. Unfortunately, the claim was denied on June 10, 2019. Thus, its petition was timely filed before this Court.

Pertinent to the resolution of the present case are Sections 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provide:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** —
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> 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 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."

Pursuant to the above provisions, the Commissioner of Internal Revenue (CIR) has 120 days from the date of the submission of the complete documents in support of the application for tax refund/credit within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the CIR. However, if after the 120-day period, the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[1] the Supreme Court held:

> **"Whether respondent rules in favor of or against the taxpayer — or does not act at all on the administrative claim — within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**
>
> xxx xxx xxx
>
> **The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, <u>whichever is sooner</u>.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law, **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA**." *(Emphases and underscoring supplied)*

[1] G.R. No. 182737, March 2, 2016.

Based on the foregoing doctrinal pronouncements, the 30-day period provided by law should be reckoned after the receipt of respondent's decision/ruling or after the expiration of the 120-day period, **whichever is sooner**. In addition, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day periods is outside the jurisdiction of this Court.

Moreover, in the case of *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,*[2] the Supreme Court reminded taxpayers that when the 120-day period lapses and there is inaction on the part of the respondent within the said period, the taxpayer must no longer wait for respondent to come up with a decision.

In the instant case, counting from the filing of the administrative claims for refund and submission of supporting documents as alleged in the petition, which were on September 30, 2013 and December 23, 2013, the end of the 120-day period is on January 28, 2014 and April 22, 2014, respectively. Hence, petitioner should have elevated the matter before this Court on **February 27,** and **May 22, 2014**, respectively. However, petitioner waited for respondent's decision, which it received on June 10, 2019. Following the foregoing provisions of the NIRC and the rulings of the Supreme Court, the 30-day period should have been reckoned from the expiration of the 120-day period and not on any other later date. Since the filing of the instant petition is on July 10, 2019, the claim was made beyond the 120+30 day periods, the same is outside the jurisdiction of this Court.

Clearly, the Court determined the jurisdiction of this Court based on the relevant law and jurisprudence, and not on the retroactive application of RMC No. 54-2014. In this regard, it is likewise relevant to refer to the pronouncement in the case of *Pilipinas Total Gas, Inc. vs Commissioner of Internal Revenue*[3] where the Supreme Court summarized the rules for claims for refund made prior to the issuance of RMC No. 54-2014 on June 11, 2014, to wit:

> "To summarize, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim,

[2] G.R. No. 168950, January 14, 2015.
[3] G.R. No. 207112, December 8, 2015.

unless given further extension by the CIR. Then, **upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund.** Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other additional documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. **The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.**"

Notably, Section 3(2) of RR No. 1-2017 also mandates that respondent should have decided on the claim within 120 days from the date of submission of complete documents, or from the date of filing of application, if the claimant-taxpayer did not submit additional documents.

Accordingly, petitioner's allegation that respondent re-processed its claim for refund pursuant to RR No. 1-2017, and therefore, the counting of the 30-day period within which to file a judicial claim before this court reckoned from the date of receipt of respondent's denial letter, cannot be sustained.

WHEREFORE, finding that the instant petition was not timely filed and therefore, the Court has no jurisdiction over the same, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** is **GRANTED**. Accordingly, the instant case is **DISMISSED**.

SO ORDERED.

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

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice