REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LAPANDAY FOODS CORPORATION, Petitioner,	**CTA EB NO. 2032** (CTA Case No. 9885)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: **JUL 22 2020** 2:50pm

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DECISION

***BACORRO-VILLENA, J.*:**

At bar is a Petition for Review[1] filed by petitioner Lapanday Foods Corporation (**petitioner/LFC**) seeking to nullify the Resolutions

[1] Rule 8 - Procedure in Civil Cases, Section 3(b), RRCTA.
Section 3. *Who may appeal; period to file petition.* —
. . .
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

dated 10 September 2018[2] and 21 February 2019[3], respectively, of the Court's Third Division in CTA Case No. 9885, entitled *Lapanday Foods Corporation v. Commissioner of Internal Revenue*. The dispositive portion of the assailed 10 September 2018 Resolution reads:

> ...
>
> **WHEREFORE**, the Petition for Review filed by petitioner Lapanday Foods Corporation is hereby **DISMISSED**, for lack of jurisdiction.
>
> **SO ORDERED.**
>
> ...

The Special Third Division[4] denied petitioner's Motion for Reconsideration (**MR**) of the above Resolution on 21 February 2019, *viz*:

> ...
>
> WHEREFORE, the Motion for Reconsideration (of the Resolution dated 10 September 2018) dated September 28, 2018 filed by petitioner is hereby DENIED, for lack of merit.
>
> With the affirmation of the dismissal of the Petition for Review, the (1) Urgent Motion for Additional Time To File Answer dated December 3, 2018; (2) Compliance dated December 5, 2018; and (3) Answer (to the Petition for Review dated 25 July 2018) dated December 7, 2018, all filed by respondent, are merely NOTED and declared MOOT.
>
> **SO ORDERED.**
>
> ...

The antecedent facts follow.

Petitioner is a VAT-registered entity engaged in the production and export of fruits and other agricultural products, the sales of which

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additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

2 Division Docket, Volume I, pp. 540-545.

3 Id., Volume II, pp. 616-623.

4 Pursuant to Administrative Circular No. 02-2018 entitled Reorganizing the Three (3) Divisions of the Court dated September 18, 2018.
"...In accordance with Section 3, Rule VII of the IRCTA, a motion for reconsideration of a decision or resolution shall be acted upon by the ponente and other members of the Division, whether regular or acting, who participated in the rendition of the decision or resolution sought to be reconsidered irrespective of whether such members are already in other Divisions at the time the motion for reconsideration is filed or acted upon..."

are classified as zero-rated in accordance with Section 106(A)(2)(a)(1)[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.[6]

In 2009, petitioner filed with the Bureau of Internal Revenue (**BIR**) successive applications for administrative claims for the issuance of tax credit certificates (**TCCs**), pursuant to Section 112(C)[7] of the NIRC of 1997, as amended. The TCCs sought were to cover the excess and unutilized input value-added tax (**VAT**) from zero-rated sales for the four quarters of taxable year (**TY**) 2007 summarized as follows:

Period of Sales (2007)	**Date of Administrative Claim**	**Amount of Claim**
1st Quarter (January to March)	19 January 2009	₱19,335,058.21
2nd Quarter (April to June)	28 January 2009	₱7,310,094.66
3rd Quarter (July to September)	30 April 2009	₱11,128,982.29
4th Quarter (October to December)	16 May 2009	₱21,741,640.31
Total Amount of Claim		**₱59,515,775.47**

On 10 January 2012, petitioner received from respondent Commissioner of Internal Revenue (**CIR/respondent**) the First Notice asking for additional documents. Thereafter or on 07 March 2013,

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5 **Sec. 106**. *Value-added Tax on Sale of Goods or Properties.* –
(A) *Rate and Base of Tax.* –
...
(2) Zero-rated Sales of Goods or Properties. — The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) *Export Sales.* – The term *"export sales"* means:
(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
...

6 Paragraph 11, Statement of Relevant Facts, Memorandum for the Petitioner, *Rollo*, Volume II, p. 614.

7 **Sec. 112.** – *Refunds or Tax Credit of Input Tax.* –
...
(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.
...

petitioner also received a Second Notice for additional documents for its applications for TCCs.[8]

On 27 June 2018, petitioner received a Notice of Denial[9], dated 16 April 2018, stating that its applications for the issuance of tax credit certificate are all denied for failure of petitioner to substantiate its claim.

On 25 July 2018 and within thirty (30) days from receipt of the 16 April 2018 Notice of Denial on 27 June 2018, petitioner filed a Petition for Review before this Court and the same was raffled to the Court's Third Division.

In the assailed Resolution dated 10 September 2018, the Court's Third Division dismissed the case *motu propio* for lack of jurisdiction as the judicial claim for the issuance of TCCs was filed out of time. Petitioner filed its MR, but the same was denied.[10]

In the herein Petition for Review, petitioner assigns the following errors to the Third Division:

I.

THE HONORABLE COURT OF TAX APPEALS - THIRD DIVISION ERRED IN DECIDING THAT IT HAS NO JURISDICTION TO RULE ON THE DENIAL LETTER OF THE BUREAU OF INTERNAL REVENUE, AS APPEALED BY THE PETITIONER WITHIN THIRTY (30) DAYS FROM RECEIPT THEREOF; and,

II.

THE COURT OF TAX APPEALS - THIRD DIVISION, WHEN IT RULED THAT IT HAS NO JURISDICTION OVER THE CASE, ALSO ERRONEOUSLY DENIED PETITIONER'S ENTITLEMENT TO ITS CLAIM FOR TAX CREDIT CERTIFICATE ALTHOUGH SUCH CLAIM CAN BE FULLY SUPPORTED.

In support of its claim, petitioner belabors on its alleged right to wait for the CIR decision in its administrative claim before filing the judicial claim before this Court. It insists that Section 112(C) of the

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8 Paragraph 17, Statement of Relevant Facts, Memorandum for the Petitioner, *Rollo*, Volume II, p. 616.

9 Id., Volume I, pp. 65-66.

10 Supra at note 3.

NIRC of 1997, as amended, provides for alternative options; one is to file the judicial claim within thirty (30) days from receipt of the decision and the other, to file it within thirty (30) days from the *lapse* of the 120-day waiting period (for the CIR to decide).

Petitioner interprets Section 112(C) of the NIRC of 1997, as amended, to be directing the CIR to take action. However, to its mind, the provision does require that the 30-day period (to appeal to this Court) must be prior to the lapse of the 120-day period of the CIR to decide and not the date when the latter's decision is actually issued within or beyond the 120-day period. According to it, to deem that respondent CIR could only decide within the 120-day period follows that his 16 April 2018 Notice of Denial[11] is void (as it was issued beyond the supposed mandatory period). Proceeding from this, it argues that the law provides for the CIR to act on the claim within 120 days, otherwise he loses its power to do so.

Petitioner contends further that the cases discussing the mandatory nature of the 120+30 day period, such as in *Commissioner of Internal Revenue v. San Roque Power Corporation*[12] (**San Roque**), pertains to premature filing of the judicial claim. It does not involve claims filed *after* the CIR's issuance of his decision (beyond the 120-day period).

Lastly, petitioner contends that it is clearly entitled to its claim for issuance of the TCCs arising from its excess input VAT from zero-rated sales. Hence, it should have been given an opportunity to prove its claim.

Respondent, for his part, agrees that the Court has no jurisdiction over petitioner's claim as it was filed out of time. The dismissal of the belatedly-filed Petition for Review before the Third Division was proper. His decision on petitioner's administrative claim has likewise attained finality and has become unappealable.

The Court's ruling is essayed below, in *seriatim*.

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11 Supra at note 9.
12 G.R. No. 187485, 12 February 2013.

After a careful review of the case, the Court is constrained to deny this petition.

In plethora of cases, the Supreme Court consistently made categorical that the 120-day and 30-day reglementary periods in refund or tax credit cases, pursuant to Section 112(C) of the NIRC of 1997, as amended, as, are both mandatory and jurisdictional.[13] This is clear from the wordings of the said provision:

> ...
>
> **SEC 112.** – *Refunds or Tax Credit of Input Tax.* –
>
> ...
>
> (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 <u>Subsection (A) hereof</u>.
>
> 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.[14]
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> ...

When Section 112(C) states that "the taxpayer affected may, within thirty (30) days from 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", the law does not make the 120+30 day periods optional just because the law uses the word "may".[15] The word "may" simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the

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[13] *CE Luzon Geothermal Power Company, Inc. v. CIR*, G.R. No. 197526, 26 July 2017.
[14] Underscoring in the orginal text.
[15] *CIR v. Mindanao II Geothermal Partnership*, G.R. No. 189440, 18 June 2014.

imagination can the word "may" be construed as making the 120+30 day periods optional.[16]

Petitioner's contention that it had the right to wait for the CIR's decision and from said decision reckon the 30-day period to appeal is specious. The CIR's decision appealable to this Court is one issued within the 120-day period. The absence of the decision issued within the 120-day period should have been petitioner's cue to deem the inaction as denial of its claims (that resultantly ripened its right to file judicial claim before this Court). There is no alternative option to wait for the CIR's decision beyond the 120-day period as petitioner claims.

Additionally, there is no question that petitioner timely filed the successive administrative claims within two (2) years from the close of the taxable quarters when sales were made. Applying the timeline provided, petitioner should have filed its judicial claim before this Court based on the dates illustrated below :

Taxable Quarter for 2007	**Date of Filing of Administrative Claim**	**End of 120-day period**	**End of 30-day period**
1st Quarter	19 January 2009	19 May 2009	18 June 2009
2nd Quarter	28 January 2009	27 May 2009	26 June 2009
3rd Quarter	30 April 2009	28 August 2009	27 September 2009
4th Quarter	16 May 2009	13 September 2009	13 October 2009

Considering that the Petition for Review (covering the four quarters of TY 2007) was only filed on 25 July 2018, *short of a decade thereafter*, the Court cannot now entertain petitioner's judicial claim.

Moreover, petitioner is gravely mistaken in its argument that the 120+30 day mandatory period in *San Roque* pertains only to premature filing of cases. The Supreme Court in *Team Energy Corporation, et al. v. Commissioner of Internal Revenue*[17] (**Team Energy**), citing the ruling in *Philex Mining Corporation v. Commissioner of Internal Revenue,* held:

16 Id.
17 G.R No. 197663, 14 March 2018.

...

In this case, Team Energy's judicial claim was filed beyond the 30-day period required in Section 112(D). The administrative claim for refund was filed on December 17, 2004. Thus, BIR had 120 days to act on the claim, or until April 16, 2005. Team Energy, in turn, had until May 16, 2005 to file a petition with the Court of Tax Appeals but filed its appeal only on July 22, 2005, or 67 days late. Thus, the Court of Tax Appeals En Banc correctly denied its claim for refund due to prescription.

...

When Team Energy filed its refund claim in 2004, the 1997 NIRC [as amended] was already in effect, which clearly provided for: (a) 120 days for the Commissioner to act on a taxpayer's claim; and (b) 30 days for the taxpayer to appeal either from the Commissioner's decision or from the expiration of the 120-day period, in case of the Commissioner's inaction.

...

San Roque dealt with judicial claims which were either prematurely filed or had already prescribed. That case, specifically in G.R. No. 197156, *Philex Mining Corporation v. Commissioner of Internal Revenue,* involved the filing of a judicial claim beyond the 30-day period to appeal as in this case. Then and there, this Court rejected Philex Mining Corporation's (Philex) judicial claim because of late filing:

> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim long after the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
>
> The Atlas doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim.**

> **Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable.** The right to appeal to the CTA from the decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.
>
> ...
>
> Further, the Commissioner's inaction on Team Energy's claim during the 120-day period is "deemed a denial", pursuant to Section 7(a)(2) of Republic Act No. 1125, as amended by Section 7 of Republic Act No. 9282. Team Energy had 30 days from the expiration of the 120-day period to file its judicial claim with the Court of Tax Appeals. Its failure to do so rendered the Commissioner's "deemed a denial" decision as final and inappealable.[18]
>
> ...

Petitioner's contention that it should be given an opportunity to prove its claim for issuance of TCCs as it is clearly entitled to them is likewise misplaced. While it may be entitled to the issuance of TCCs for its excess input VAT, such is merely a statutory privilege that should be claimed following the established procedures and within the time allowed by law. The pronouncement in *Team Enegy* is instructive, thus:

> ...
>
> Team Energy's contention that denial of its duly proven refund claim would constitute unjust enrichment on the part of the government is misplaced.
>
> "Excess input tax is not an excessively, erroneously, or illegally collected tax." A claim for refund of this tax is in the nature of a tax exemption, which is based on Sections 110(B) and 112(A) of 1997 NIRC, allowing VAT-registered persons to recover the excess input taxes they have paid in relation to their zero-rated sales. "The term 'excess' input VAT simply means that the input VAT available as [refund] credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due."

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[18] Emphasis in the original text.

> Accordingly, claims for tax refund/credit of excess input tax are governed not by Section 229 but only by Section 112 of the NIRC.
>
> **A claim for input VAT refund or credit is construed strictly against the taxpayer. Accordingly, there must be strict compliance with the prescriptive periods and substantive requirements set by law before a claim for tax refund or credit may prosper. The mere fact that Team Energy has proved its excess input VAT does not entitle it as a matter of right to a tax refund or credit. The 120+30-day periods in Section 112 is not a mere procedural technicality that can be set aside if the claim is otherwise meritorious. It is mandatory and jurisdictional condition imposed by law. Team Energy's failure to comply with the prescriptive periods is, thus, fatal to its claim.**[19]
>
> ...

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated 10 September 2018 and 21 February 2019 in CTA Case No. 9885, entitled *Lapanday Foods Corporation v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[19] Emphasis supplied.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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