REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10079

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:
NOV 07 2019 ; 3:10 pm

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RESOLUTION

On August 6, 2019, respondent filed his *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court,* stating that the Petition for Review was filed beyond the mandatory and jurisdictional thirty (30)-day period from the expiration of the one hundred twenty (120)-day period pursuant to Section 112(C) of the 1997 National Internal Revenue Code, as amended (NIRC).

On September 30, 2019, petitioner posted its *Comment/Opposition (to the Respondent's Motion for Early Resolution dated 05 August 2019),* which was received by the Court on October 9, 2019. Petitioner states that it timely filed its Petition for Review within thirty (30) days from receipt of the denial of its claim for refund.

Section 112(C), prior to the amendments of the TRAIN law[1], provides the following periods for the judicial claim for tax credit/refund:

SEC. 112. *Refund or Tax Credits of Input Tax.* –

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[1] Republic Act No. 10963, Tax Reform for Accelaration and Inclusion Act, January 1, 2018.

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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 a tax credit certificate for creditable input taxes within one hundred twenty days (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> 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.

In *Commissioner of Internal Revenue v. San Roque Power Corporation*,[2] the Supreme Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the BIR Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the BIR Commissioner does not act within that period.

This was further reiterated in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,[3] which stated:

> 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, whichever is sooner.

In this case, petitioner states that it filed its administrative claims on March 28, 2011 and June 30, 2011 with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF-OSS) for the 1st and 2nd quarters of 2009 and 3rd and 4th quarters of 2009, respectively.[4]

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[2] G.R. Nos. 187485, 196113, and 197156, February 12, 2013; cited in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[3] G.R. No. 182737, March 2, 2016.
[4] Docket, Petition for Review (PFR), p. 11.

Petitioner also states that it submitted the complete required documents in support of its applications on the same dates.[5]

Counting 120 days from March 28, 2011 and June 30, 2011, the CIR had until July 26, 2011 and October 28, 2011, respectively within which to act on petitioner's claim for refund. Considering that respondent CIR/DOF-OSS failed to act thereon within the 120-day period, petitioner had thirty (30) days after the lapse of the 120-day period or until August 25, 2011 and November 27, 2011 within which to file its judicial appeals before this Court. It should be noted that a denial of the claim for refund made <u>after</u> the 120+30 day period is not considered in counting the period for judicial appeal. This is because the inaction of the CIR during the 120-day period is "deemed a denial", and without a timely appeal, said inaction which is "deemed a denial" becomes final and unappealable.[6]

Here, petitioner's Petition for Review was filed only on May 10, 2019, clearly, several years after the lapse of the 120+30 day period to file a judicial claim. The receipt of the denial dated February 18, 2019 on April 10, 2019, which is <u>after</u> the 120-day period is inconsequential, even with the effectivity of the TRAIN law. It should be noted that in the instant case, the "deemed a denial" became final long before the TRAIN law became effective on January 1, 2018.

Petitioner's reliance on Revenue Regulations No. 1-2017[7] is misplaced. Nothing therein modified the periods to appeal to the Court of Tax Appeals.

It has been emphasized repeatedly that compliance with the 120+30 day periods prescribed under Section 112(C) of the NIRC is mandatory and jurisdictional. Accordingly, petitioner's belated filing of its judicial claim rendered the Court devoid of jurisdiction over it. Thus, the dismissal of the Petition for Review is in order.

WHEREFORE, respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* is **GRANTED**.

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[5] Docket, PFR, p. 11.
[6] *Chemrez, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 1448, May 30, 2016.
[7] Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014.

Accordingly, the Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice