REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES), LTD.,	**CTA CASE NO. 8847**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 15 2016 2:18 pm

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RESOLUTION

CASANOVA, *J.*:

This addresses petitioner's **Motion for Reconsideration (of the Decision dated 3 June 2016)**, filed on June 16, 2016, with respondent's **COMMENT/OPPOSITION (Motion for Reconsideration)**, filed on July 1, 2016.

Petitioner seeks reconsideration of the Court's Decision promulgated on June 3, 2016 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

[1] Docket, pp. 560-571.

SO ORDERED."[2]

Petitioner asserts that the Petition for Review was timely filed within 30 days from the notice of respondent's action, i.e., from the issuance of Revenue Memorandum Circular (RMC) No. 54-14 which serves as the denial of its claim for refund of the alleged unutilized input tax attributable to zero-rated sales for the calendar year 2012. Petitioner treats RMC No. 54-14 as the blanket denial of all pending administrative VAT refund claims.

Petitioner further maintains that it is not mandatory for respondent to issue the denial of the claim for VAT refund within the 120-day period from the date of submission of complete documents; and that the taxpayer has the option to file the judicial appeal either from the receipt of the denial of the claim or after the expiration of the 120-day period. According to petitioner, the two options of the taxpayer granted under Section 112(C) of the Tax Code are similar to the remedies granted to the taxpayer under Section 228 of the Tax Code on disputed assessments. It cites the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue* (*Lascona*)[3].

Meanwhile, respondent counters petitioner's arguments and insists that the latter failed to strictly comply with the requirements under Section 112(C) of the NIRC of 1997, as amended. Respondent contends that the petition was filed seventy-three (73) days late, and thus, the Court has no jurisdiction to rule on the merits of the case.

We find the Motion for Reconsideration devoid of merit.

For proper disposition of the issue thus posed, the provisions of Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, are quoted as follows:

> "**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

[2] Docket (Vol. II), p. 570.
[3] G.R. No. 171251, March 5, 2012.

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 or 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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.

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) 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." (emphases supplied)

In the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[4] *(Mindanao),* the Supreme Court interpreted the provisions of Section 112 of the NIRC of 1997 and

[4] G.R. No. 191498, January 15, 2014.

provided a summary of rules on prescriptive periods for claiming refund or credit of unutilized input VAT, to wit:

"SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)

3. The only other rule is the Atlas ruling, which applied only from **8 June 2007** to **12 September 2008**. *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. (*San Roque*)

B. 120+30 Day Period

1. **The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period**.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi* and *San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5

October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque*)" (Underlining supplied)

The same conclusion was reached in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[5] *(Apollo)*, where the Supreme Court ruled:

> "The landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation* has interpreted Section 112 (D). The Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the Commissioner **denies the claim within the 120-day waiting period**, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period." (Underlining supplied, citation omitted)

Finally, in the recent case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue (Intel)*,[6] the Supreme Court emphasized that "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 submission of complete documents**, the taxpayer may resort to a judicial claim before the CTA."

The pronouncements of the Supreme Court in *Mindanao, Apollo and Intel* cases dispel petitioner's notion that it can file a judicial claim even beyond the 120+30-day prescriptive periods. Predicated upon the said cases, the taxpayer can file an appeal in one of two ways:

(1) file the judicial claim within 30 days after the Commissioner **denies the claim within the 120-day waiting period**; or

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[5] G.R. No. 168950, January 14, 2015.
[6] G.R. No. 182737, March 2, 2016.

(2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period.

Thus, failure on the part of petitioner to strictly abide by the said rule forecloses its right to seek recourse before the Court. As discussed in the assailed Decision,[7] petitioner filed a judicial claim seventy-three (73) days late, thus:

> "xxx Subsequently, in a transmittal letter dated December 3, 2013, petitioner requested the DOF-OSS to acknowledge the submission of additional supporting documents made by petitioner in support of its claim for application of a tax credit certificate on unutilized input VAT for CY 2012. The said letter was received/acknowledged by the DOF-OSS on December 4, 2013. Thus, the running of the 120-day period within which respondent is mandated to act shall commence on December 4, 2013, the date when petitioner last submitted the documents in support of its cause.
>
> Counting 120 days from December 4, 2013, the lapse of the 120-day period would fall on April 3, 2014. Since respondent failed to act on petitioner's claim on the said date, petitioner has 30 days from April 3, 2014 or until May 5, 2014 within which to file a judicial appeal before us. Here, petitioner filed the instant petition only on July 18, 2014, or seventy three (73) days late."

Moreover, petitioner's reliance in *Lascona*[8] is misplaced. In *Lascona,* the Supreme Court discussed at length the options given to a taxpayer in case the respondent failed to act on a *disputed assessment* within the 180-day period as provided for in Section 228 of the NIRC of 1997, as amended. Here, the issue involves the interpretation of Section 112 of the NIRC of 1997, as amended, where the Supreme Court, in *Mindanao, Apollo and Intel* cases, made clear the rules on prescriptive periods.

Finally, it is petitioner's thesis that only in RMC 54-14 that the respondent made an express declaration that her inaction after the expiration of the 120-day period should be deemed as a denial of all

[7] Decision, p. 10, docket, p. 569.
[8] *Supra,* see Note 3.

pending administrative claims for VAT refund. We carefully scrutinized the said circular and found that it merely affirms the ruling of the Supreme Court in *Mindanao*.

It is in light of the foregoing discussion that We find no need to brush aside the findings and conclusions in the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (of the Decision dated 3 June 2016)** is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice