REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

NIPPON EXPRESS PHILIPPINES CORPORATION, *Petitioner,*	**CTA Case No. 10242** Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 13 2021 1:21 pm

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R E S O L U T I O N

This resolves respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** posted on October 12, 2020 and received by this Court on October 20, 2020 praying that the instant motion be given due course and that petitioner's Petition for Review (PFR) be dismissed for being time-barred and/or lack of jurisdiction.

Respondent avers that petitioner admitted under paragraph 4.12 of its PFR that on June 11, 2019, petitioner received the former's Letter dated May 30, 2019 denying its claim for refund or credit of unutilized input value added-tax (VAT) for the period January 1, 2017 to December 31, 2017. Thus, petitioner had thirty (30) days from June 11, 2019 or until July 11, 2019 within which to elevate its case to this Court.

However, as alleged by respondent, petitioner only filed the instant PFR on January 10, 2020. Hence, the case must be dismissed for being filed out of time.

Petitioner, in its **Comment/Opposition (re: Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court)**, counters that it received the September 19, 2019 letter of Commissioner Caesar Dulay denying its claim for refund on December 11, 2019, which it considered as the final decision of the respondent. Thus, it may file the instant PFR on or before January 10, 2020.

In the instant PFR and as stipulated in the Joint Stipulated of Facts and Issues (JSFI), petitioner admitted that on March 29, 2019, it filed its claim for refund or credit of unutilized input VAT for the period January 1, 2017 to December 31, 2017 at the Bureau of Internal Revenue (BIR) Large Taxpayer Audit Division 2.

On June 11, 2019, petitioner admitted that it received a Letter dated May 30, 2019 signed by Ms. Teresita M. Dizon, Officer-in-Charge (OIC)-Assistant Commissioner, Large Taxpayer Service (LTS), denying said claim for refund or credit.

On July 10, 2019, as admitted in the instant petition, petitioner filed a request for reconsideration on said denial.

On December 11, 2019, petitioner allegedly received a letter dated September 19, 2019 which sustained the denial of former's claim for refund or credit.

Section 112(A) and (C) of the 1997 National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, provides for the period when petitioner should file its claim for refund or credit and when respondent should act on taxpayer's claim for input VAT refund/credit as well as the period when the latter may appeal the action or inaction of the former on such claim, respectively, to wit:

> 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...
>
> (B) 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 for creditable input taxes **within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed** in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find

that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code." (Emphasis supplied)

Similarly, Section 4-112.1(a), (c), and (d), of Revenue Regulations (RR) No. 13-2018 dated March 15, 2018, or the *Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended,* provides:

"SEC. 4.112-1. <u>**Claims for Refund/Credit of Input Tax**</u>. —

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) Where to file the claim for refund/credit

Claims for refunds shall be filed with the appropriate Bureau of Internal Revenue (BIR) Office (Large Taxpayers Service (LTS), Revenue District Office (RDO)) having jurisdiction over the principal place of business of the taxpayer. Claims for input tax refund of direct exporters <u>shall be exclusively</u> filed with the VAT Credit Audit Division (VCAD).

(d) Period within which refund/credit of input taxes shall be made

In proper cases, the Commissioner of Internal Revenue shall grant refund for creditable input taxes within <u>**ninety (90) days**</u> from the date of submission of the <u>***official* receipts or invoices and other documents**</u> in support of the application filed in accordance with subsections (A) and (B) hereof: <u>***Provided, That,* should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial**</u>.

<u>**The 90-day period to process and decide, pending the establishment of the enhanced VAT Refund System**</u>

> **shall only be up to the date of approval of the Recommendation Report on such application for VAT refund by the Commissioner or his duly authorized representative: *Provided, That* all claims for refund/tax credit certificate filed prior to January 1, 2018 will be governed by the one hundred twenty (120)-day processing period.**
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: ***Provided, however,* that failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)- day period shall be punishable under Section 269 of the Tax Code, as amended**."

Applying the above-mentioned provisions, the following constitutes the last day of the two-year prescriptive period for the filing of the administrative claim for refund:

Quarter	**Close of the Taxable Quarter Ending**	**Last day of the 2-year prescriptive period**
1st	March 31, 2017	March 31, 2019
2nd	June 30, 2017	June 30, 2019
3rd	September 30, 2017	September 30, 2019
4th	December 31, 2017	December 31, 2019

The factual antecedent of this case reveals that petitioner filed its administrative claim for refund on March 29, 2019. Hence, counting the 90-day period for the respondent to act on said claim, the latter had until June 27, 2019 to act on this claim for refund.

Respondent, through his representative, denied said claim for refund on May 30, 2019. Said notice of denial was received by petitioner on June 11, 2019.

However, instead of elevating its case to this Court, petitioner filed a request for reconsideration of the May 30, 2019 denial of its claim for refund, which respondent denied with finality on September 19, 2019 and received by petitioner on December 11, 2019. Hence, petitioner filed the instant petition on January 10, 2020.

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides: *an*

> "Sec. 7. *Jurisdiction.* - The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;"

In the instant case, petitioner based its PFR on the September 19, 2019 letter of denial by respondent on its request for reconsideration of the earlier May 30, 2019 letter of denial of its claim for refund.

Now the question is, can the claimant request for a reconsideration after its claim for refund is denied? If so, can it reckon the period to file its judicial claim for refund from the respondent's decision on its request for reconsideration and not on the earlier letter of denial?

A closer look at the implementing revenue issuances reveals otherwise.

In Items II(C) and III(3) of **Revenue Memorandum Circular (RMC) No. 17-2018 dated February 27, 2018**, otherwise known as *"Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN)"*, it is provided that all claims for refund filed in the LTS shall be approved by the Assistant Commissioner of Internal Revenue (ACIR).

In Item II(B)(11)(b) of **Revenue Memorandum Order (RMO) No. 25-2019 dated May 15, 2019** or the *"Policies and Procedures to Implement the Ninety (90)-Day Period to Process and Grant Claims for Value-Added Tax (VAT) Refund/Credit Pursuant to Section 112 of the National Internal Revenue Code of 1997, as Amended"*, the ACIR-LTS shall approve the claims filed in LTS.

Nowhere in the above cited provisions of the tax law or in its related administrative issuances does it provide that the decision of ACIR-LTS in cases of denial of the claim for refund should be elevated first to the respondent prior to the filing of the petition for review before this Court. Thus, the first denial of petitioner's claim for refund by the ACIR-LTS, i.e., May 30, 2019, should be the reckoning point for petitioner to appeal directly to this Court said denial.

However, instead of filing the instant petition immediately before this Court, petitioner elevated its case to the respondent. Petitioner should be reminded that under Section 7 of the 1997 NIRC, as amended, the respondent may delegate his power to his subordinates except for certain functions, to wit:

> "SEC. 7. *Authority of the Commissioner to Delegate* Power. - **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> > (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
> >
> > (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
> >
> > (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

Based on the foregoing, the delegated power of the ACIR to act on claims for refund, is not one of the prohibited acts that the respondent cannot delegate.

In view thereof, petitioner had 30 days from June 11, 2019 or until July 11, 2019 to file the instant PFR. However, petitioner only filed said PFR on January 10, 2020 which is way beyond the prescriptive period. Thus, the Court has no jurisdiction to continue hearing the instant case.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.**[1]

WHEREFORE, premises considered, respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* is hereby **GRANTED**. Accordingly, the Petition for Review under CTA Case No. 10242 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

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[1] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.