REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LAPANDAY DIVERSIFIED PRODUCTS CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2299
(CTA Case No. 10027)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
OCT 26 2021 2:45 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Lapanday Diversified Products Corp. (**petitioner/LDPC**), seeking to nullify the Court's First Division's Resolution dated 21 January 2020[2] dismissing the case for lack of jurisdiction and the subsequent Resolution dated 30 June 2020[3] denying its Motion for Reconsideration (**MR**) in CTA

[1] Filed on 21 July 2020, *Rollo*, pp. 1-40.
[2] Signed by Presiding Justice Roman G. Del Rosario, Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Associate Justice Catherine T. Manahan. Division Docket, pp. 425-430.
[3] Id., pp. 471-474.

Case No. 10027, entitled *Lapanday Diversified Products Corp. v. Commissioner of Internal Revenue.*

The antecedent facts follow.

Petitioner is a value-added tax (**VAT**)-registered entity engaged in the production and export of fruits and other agricultural products, the sales of which are classified as zero-rated, in accordance with Section 106(A)(2)(a)(1)[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.[5]

On 25 November 2011, petitioner filed its administrative claim for the issuance of tax credit certificates (**TCCs**) pursuant to Section 112(C)[6] of the NIRC of 1997, as amended, for the excess and unutilized input VAT from zero-rated sales for the four (4) quarters of the taxable year (**TY**) 2010 amounting to ₱19,552,670.78.

On 21 January 2019, petitioner received a letter dated 10 December 2018[7] (**Denial Letter**) denying its claim for VAT credit representing unutilized input VAT for the period 01 January 2010 to 31 December 2010.

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4 **Sec. 106.** *Value-added Tax on Sale of Goods or Properties.* –
(A) *Rate and Base of Tax.* –
...
(2) 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);
...

5 Paragraph 15, Statement of Relevant Facts, Petition for Review, *Rollo*, p. 4.

6 **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.
...

7 Annex "P-5", Petition for Review, Division Docket, pp. 32-33.

On 20 February 2019 and within thirty (30) days from receipt of the Denial Letter, petitioner filed a Petition for Review before the Court in Division to appeal the denial of its administrative claim. The same was raffled to the Court's First Division, docketed as CTA Case No. 10027.

For his part, respondent moved for the dismissal of the petition contending the absence of jurisdiction on the part of the Court in Division. Later, in the assailed Resolution dated 21 January 2020[8], the First Division found merit in respondent's argument and dismissed the case. According to the First Division:

> ...
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> In the case at bar, petitioner's administrative claim for input VAT refund relative to the first, second, third, and fourth [q]uarters of TY 2010 were all filed on November 25, 2011. Consistent with the above observations, respondent had 120-days therefrom, or until March 24, 2012 to act on petitioner's administrative claim for refund, but he failed. *A fortiori*, petitioner had another 30 days, or until April 23, 2012 to elevate its refund claim before this Court. Evidently, the instant petition was belatedly filed on February 20, 2019, effectively depriving the Court of the requisite competence to hear the present Petition for Review.[9]
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> ...

Unconvinced, petitioner filed an MR but the First Division maintained its prior resolve. In the now similarly assailed Resolution of 30 June 2020[10], the Court denied petitioner's MR.

Thereafter, petitioner elevated the First Division's assailed Resolutions in the instant Petition for Review filed on 21 July 2020. On 26 October 2020, respondent filed his Comment/Opposition (Re: Petitioner's Petition for Review).[11]

In its bid to have the Court *En Banc* reverse the First Division's actions, petitioner assigns the following errors:

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8 Supra at note 2.
9 Division Docket, p. 428; Citations omitted.
10 Supra at note 3.
11 *Rollo*, pp. 109-114.

I.
THE FIRST DIVISION ERRED IN DECIDING THAT IT HAS NO JURISDICTION TO RULE ON THE DENIAL LETTER OF THE BUREAU OF INTERNAL REVENUE, AS APPEALED BY PETITIONER LAPANDAY DIVERSIFIED PRODUCTS CORP. WITHIN THIRTY (30) DAYS FROM RECEIPT THEREOF; and,

II.
THE FIRST DIVISION ERRONEOUSLY DENIED PETITIONER LAPANDAY DIVERSIFIED PRODUCTS CORP.'S ENTITLEMENT TO ITS CLAIM FOR TAX CREDIT CERTIFICATE, WHEN SUCH CLAIM CAN BE FULLY SUPPORTED, WHEN IT RULED THAT IT HAS NO JURISDICTION OVER THE CASE.

In support of its claim, petitioner forwards the arguments below.

First, petitioner claims that it has the right to wait for respondent's decision in its administrative claim before filing the judicial claim before this Court. According to it, Section 112(C)[12] of the NIRC of 1997, as amended, provides for alternative options, namely: (1) to file the judicial claim within 30 days from receipt of the decision; and, (2) to file within 30 days from the lapse of the 120-day waiting period. It contends that it availed of the first option.

Petitioner adds that Section 112(C) of the NIRC of 1997, as amended, is a directive for respondent to take action. However, it implies that the provision did not require that the 30-day period to appeal to this Court must only precede the lapse of the 120-day period of respondent and not the date when his decision is actually issued, within or beyond the 120-day period.

Likewise, petitioner posits that the doctrines relating to the 120+30-day period revolve around the premature filing of the judicial claim during the 120-day waiting period. It should not be interpreted to limit the alternative statutory remedy of filing a judicial claim within the 30-day filing period from actual receipt of the denial of the administrative claim, considering that respondent nevertheless resolved the claim even if the 120-day period had long lapsed.

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[12] **Sec. 112**. *Refunds or Tax Credits of Input Tax.*

Second, petitioner contends that respondent is deemed estopped from claiming prescription since he ultimately acted on its claim despite the lapse of the 120-day period. According to petitioner, respondent has acknowledged that the administrative claim was still pending before him and that he has to act thereon. Hence, since respondent decided its claim, petitioner insists that it should be able to question a denial by filing a Petition for Review (which it did). For petitioner, it would be incongruous and absurd for the Court to rule that the claim can no longer be questioned when in fact respondent himself still considered it a live and pending claim before him (until it was denied).

Third, petitioner argues that it is clearly entitled to its claim for the issuance of a TCC arising from its excess input VAT from zero-rated sales. Hence, the Court should have given it an opportunity to prove its claim.

Expectedly, respondent finds no error in the assailed Resolutions of the First Division. Respondent highlights that petitioner filed its administrative claim for the issuance of a TCC on 25 November 2011, covering the four (4) quarters of TY 2010. Counting 120 days therefrom, respondent had until 24 March 2012 to decide. In turn, petitioner had 30 days, or until 23 April 2012, to appeal the denial to this Court. However, petitioner only filed the Petition for Review before the Court on 20 February 2019, which was way beyond the period provided for in Section 112(C) of the NIRC of 1997, as amended.

The Court *En Banc's* ruling follows below.

The issues that petitioner presented before Us are no longer novel. In a long line of cases, the Supreme Court has consistently held that the 120-day and 30-day reglementary periods in tax refund cases pursuant to Section 112(C) of the NIRC of 1997, as amended, are both mandatory and jurisdictional.[13] Section 112(C) of the NIRC of 1997, as amended reads:

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[13] Some of these cases are: *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 197526, 26 July 2017; *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, 08 February 2017; *Deutsche Knowledge Services Pte Ltd. v. Commissioner of Internal Revenue*, G.R. No. 197980, 01 December 2016; *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, 13 June 2016; *Procter and Gamble Asia PTE Ltd. v. Commissioner of Internal Revenue*,

> ...
> **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.
> ...

The above-quoted provision provides two (2) possible scenarios. The first is when the CIR denies the administrative claim for a refund *within* 120 days. The second is when the CIR fails to act within 120 days. Taxpayers must await either for the decision of the CIR or for the lapse of the 120 days before filing their judicial claims with this Court.[14]

Petitioner's contention that it had the right to wait for respondent's decision and reckon the 30-day period to appeal from the said decision is specious. The decision appealable to this Court is that which respondent issued within the 120-day period. The absence of any decision or action from the BIR within the 120-day period should have prompted petitioner to deem the same as a denial of its claim (ripe for filing of a judicial claim before this Court). Contrary to its claim, there is no alternative option to wait for respondent's decision beyond the 120-day period.

G.R. No. 204277, 30 May 2016; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 182737, 02 March 2016; *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, 08 December 2015; *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. No. 204745, 08 December 2014; *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, 13 March 2013; *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, 06 October 2010.

14 Id.

Furtheremore, there is no question that petitioner timely filed the administrative claim with the BIR within two (2) years from the close of the taxable quarters when its sales were made. However, the Petition for Review filed before this Court (covering the four (4) quarters of TY 2010) was filed only 20 February 2019, way *beyond* the prescribed period.

Petitioner is thus gravely mistaken in its insistence that the 120+30 day mandatory period, as elucidated in *Commissioner of Internal Revenue v. San Roque Power Corporation*[15], pertains only to the premature filing of cases. In *Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*[16] (**Team Energy**), the Supreme Court held:

> ...
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> 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.
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> ...
>
> When Team Energy filed its refund claim in 2004, the 1997 NIRC 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.
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> ...
>
> *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:

15 G.R. No. 187485, 12 February 2013.
16 G.R. No. 197663, 14 March 2018; Citations omitted, emphasis and italics in the original text.

> 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.

...

Petitioner's contention that it should be given an opportunity to prove its claim for the issuance of a TCC as it is clearly entitled thereto is also misplaced. While it may be entitled to the issuance of a TCC 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 Energy* is enlightening, *viz*:

> ...
>
> 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 the 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." 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.**[17]
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> ...

Lastly, it must be emphasized that a claim for tax credit or refund, like a claim for tax exemption, is construed strictly against the taxpayer. Thus, strict compliance with the 120+30-day period is necessary for such a claim to prosper.[18]

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[17] Supra at note 16; Citations omitted and emphasis supplied.

[18] Supra at note 15.

In sum, petitioner's belated filing of its judicial claim on 20 February 2019 is fatal to its claim for its failure to observe the mandatory 120+30-day period, and has therefore rendered the Court's First Division devoid of jurisdiction over its Petition for Review.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Lapanday Diversified Products Corp. on 21 July 2020 is hereby **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated 21 January 2020 and 30 June 2020, respectively, in CTA Case No. 10027, entitled *Lapanday Diversified Products Corp. 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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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