REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SMCC PHILIPPINES, INC. (Formerly: Sumicon Phil. Corp.), Petitioner,	**CTA CASE NO. 9082**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson, and* **BACORRO-VILLENA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 2 1 2021 3:00 PM

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's Motion for Reconsideration filed on February 9, 2021, with respondent's Comment/Opposition (on Petitioner's Motion for Reconsideration With Notice of Change of Address) filed by registered mail on March 11, 2021.

In the assailed Decision, the Court dismissed petitioner's claim for refund of ₱70,110,003.90, allegedly representing unutilized input VAT for the first and second quarters of Calendar Year (CY) 2012, on the ground of lack of jurisdiction due to late filing of the judicial claim based on the holding in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue.*[1]

Petitioner contends that the *Rohm Apollo* holding is inapplicable insofar as it was *justified* to wait for the denial of the administrative claim, which it received only on June 5, 2015, before it could file the petition on July 6, 2015, within the 30-day reglementary period.

The Court is not convinced.

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[1] G.R. No. 168950, January 14, 2015.

Petitioner need only refer to Section 112(C) of the NIRC of 1997, as amended, which provides a very *limited window* when a taxpayer can file a judicial claim before the Court:

> "(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper case, 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.
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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."

As stated in the provision, the CIR must act on the *administrative* claim within 120 days from the submission of complete documents in support of the application. On the one hand, in the event of an adverse decision, the taxpayer *may* elevate the matter to the CTA by way of a petition for review within 30 days from the receipt of the CIR's decision. On the other hand, if the 120-day period lapses without any action from the CIR, the taxpayer *may* validly treat the inaction as denial and file a petition for review before the CTA within 30 days from the expiration of the 120-day period.

The established facts of the case show that after petitioner filed its administrative claim with the Bureau of Internal Revenue (BIR), it received a Letter of Authority (LOA) on July 11, 2013[2] in connection with said claim. Thereafter, upon request of the BIR, it submitted additional documents to support its claim on March 27, 2014[3] and on August 1, 2014.[4]

From August 1, 2014, the date of submission of complete documents, respondent only had *120 days* or until November 29, 2014, within which to act on the administrative claim. Respondent's inaction as of November 29, 2014, therefore, is *deemed a denial* of petitioner's administrative claim. After the lapse of the 120-day period, petitioner

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[2] Exhibit P-9, Docket, Vol. II, p. 886.
[3] Exhibit P-10, Docket, Vol. II, p. 887.
[4] Exhibit P-11, Docket, Vol. II, p. 888.

only had 30 days from November 29, 2014, or until December 29, 2014, to elevate its claim before the Court.

Contrary to petitioner's position, since the 120+30 days fixed by law is mandatory and jurisdictional, as declared by the Supreme Court *En Banc* in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[5] the taxpayer is *not given an option to wait* for the respondent to deny its claim, as it actually did in this case, before it can appeal to the Court.

"The word 'may' in Section 112 (C) refers to the choice of remedy and *not to the period* for seeking such remedy, i.e., the taxpayer may or may not appeal the claim, but if it elects to do so, the appeal must be filed within the 30-day period."[6]

In other words, the taxpayer is *not* compelled to elevate its claim to the Court. It can opt not to. However, *if it does opt to appeal*, it should do so within the mandatory and jurisdictional 120+30 days.

Specifically, 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."[7]

WHEREFORE, in light of the foregoing, the motion is **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[5] G.R. No. 187485, February 12, 2013.

[6] *Commissioner of Internal Revenue v. Mindanao I Geothermal Partnership*, G.R. No. 192006, November 14, 2018; Italicization supplied.

[7] *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 173241, March 25, 2015.