REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SAN CARLOS SOLAR ENERGY INC., *Petitioner*,	**CTA EB No. 2562** (CTA Case No. 9576)
	Present:
-versus-	**DEL ROSARIO**, *PJ*, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, and **FERRER-FLORES**, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	Promulgated: APR 27 2023 11:30am

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DECISION

REYES-FAJARDO, *J.*:

Assailed in the Petition for Review[1] dated January 31, 2022 are the Decision[2] dated February 3, 2021 and Resolution[3] dated September 22, 2021 in CTA Case No. 9576, whereby the Court in Division denied San Carlos Solar Energy Inc.'s prayer for additional refund of alleged excess and unutilized input value added tax (VAT), attributable to its zero-rated sales, covering January 1 to December 31, 2015, in the amount of ₱40,624,825.97.

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1 *Rollo,* pp. 102-143.
2 *Id.* at pp. 201-220.
3 *Id.* at pp. 222-228.

The facts follow.

Petitioner is a corporation duly organized and existing under Philippine laws and is a registered VAT taxpayer with Tax Identification Number 008-514-713-000. Its principal office is located at the Emerald Arcade, F.C. Ledesma St., San Carlos City, Negros Occidental.

Respondent is the head of the Bureau of Internal Revenue (BIR) vested with the power and authority to grant a refund of or to issue a tax credit certificate for unutilized input VAT attributable to zero-rated sales.

On November 3, 2016, petitioner filed with BIR RDO No. 76, its Application for Tax Credits/Refunds (BIR Form No. 1914), with attached supporting documents, requesting for refund of its alleged unapplied and unutilized input VAT directly to its zero-rated sales for the period January 1, 2015 to December 31, 2015 in the amount of ₱92,282,341.28.

On March 14, 2017, petitioner received from BIR, a letter dated February 17, 2017, partially granting petitioner's VAT refund claim in the amount of ₱29,644,104.17 (hereinafter referred to as the BIR Decision).

Petitioner requested for a computation of the granted refund claim as stated in the BIR Decision through its letter to the BIR dated March 28, 2017, and received by BIR on March 31, 2017.

On April 6, 2017, petitioner received the BIR's letter dated April 5, 2017, providing a detailed computation of the recommended VAT refund claim of ₱29,644,104.17. The BIR computed the recommended VAT refund claim of ₱29,644,104.17 as follows:

	TOTAL
Amount of Claim	**92,282,341.28**
Adjustments and Disallowances per Audit	
Disallowed input taxes	
Non-compliance with the invoicing requirements- Sec. 113 of the NIRC of 1997, as amended	(363,200.57)
Total Adjustments and Disallowances per Audit	**(363,200.57)**

Amount Recommended per Audit- Assessment Division, RR 12	**91,919,140.71**
Adjustments and Disallowances per TARD Review	
Excess and unaccounted/unverified prior year's input tax	(331,859.81)
Disallowed input taxes due to violation of invoicing requirements- Sec. 113 of the NIRC of 1997, as amended	(1,787,894.99)
Disallowed input taxes per ITS verification pursuant to RMC 42-2003 - Q14/A14	(3,524.00)
Additional output VAT - on the Sale of Capital Goods to ISLASOL Output VAT on other income	(24,416.69)
Output VAT on other income	(51,701.16)
Final Withholding VAT on income payment to foreign affiliates pursuant to Sec. 4.112.2 of Revenue Regulations (RR) 16-2005	(18,798,522.96)
Additional disallowed input taxes due to violation of invoicing requirements- Sec. 113 of the NIRC of 1997, as amended	(652,290.06)
Net IT attributable to taxable sales pursuant to Section 4.110-4 of RR 16-20[0]15, as amended, in relation to Section 112 (A) of the 1997 NIRC, as amended	(40,624,825.97)
Total Adjustments and Disallowances per TARD Review	**(62,275,035.64)**
Recommended for VAT refund per TARD Review	**29,644,105.07**

On April 12, 2017, petitioner filed its Petition for Review before the Court in Division.

On February 3, 2021, the Court in Division rendered a Decision,[4] disposing the case as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review filed by petitioner is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

In so ruling, the Court in Division found that petitioner anchored its zero-rated sales of renewable energy (RE) under Section 15(g) of Republic Act (RA) No. 9513.[5] Among the requirements specified in its implementing rules and regulations[6] is the Department of Energy Certificate of Endorsement (DOE-COE). Given

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4 *Supra* note 2.
5 Renewable Energy Act of 2008.
6 DOE Circular No. DC2009-05-0008.

that petitioner failed to produce such document, there are no zero-rated sales from which the input VAT claimed may be attributed. For this reason, its plea for additional input VAT refund for CY 2015 was entirely denied.

Petitioner moved,[7] but failed[8] to seek reversal of the assailed Decision; hence, the present recourse.

Petitioner argues that it successfully established its zero-rated sales of RE for calendar year (CY) 2015. Specifically, the DOE-COE is only required when the incentive sought to be claimed is the tax- and duty-free importation of RE machinery, equipment, materials, and parts thereof, as well as any sale, transfer or disposition of said imported capital equipment, machinery or spare parts. This observation was confirmed by the Renewable Energy Management Bureau (REMB) Letter dated March 31, 2021, and DOE Certification dated May 10, 2021. Therefore, it cannot be faulted from its non-presentation thereof, as the incentive it availed is the VAT zero-rating on sales of RE.

Petitioner also admits that said REMB Letter and DOE Certification were not offered as its evidence during trial. It nonetheless submits that jurisprudence allows the presentation of evidence, which did not exist at the time of trial.

In sum, petitioner believes that it is entitled to additional refund its excess and unutilized input VAT, attributable to its zero-rated sales for CY 2015, in the amount of ₱40,624,825.97.

On the other hand,[9] respondent mirrors the conclusion reached by the Court in Division that the DOE-COE is a mandatory precondition to avail of the incentive of VAT zero-rating under Section 15 of RA No. 9513.

RULING

We deny the Petition.

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7 Docket (CTA Case No. 9576), pp. 2807-2828.

8 *Supra* note 3.

9 Respondent's Comment on Petitioner's Petition for Review. *Rollo*, pp. 600-605.

Our jurisdiction over refund cases is found in Section 7(a)(1) and (2) of RA No. 1125,[10] as amended by RA No. 9282, which provides:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> 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 Code or other laws administered by the Bureau of Internal Revenue;
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> ...

Section 3(a)(1) and (2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA)[11] clarified that the Court in Division has jurisdiction over the decision or inaction of respondent involving refund of internal revenue taxes, among others.[12] Specifically, before the Court in Division may exercise its jurisdiction over unutilized input VAT refund cases, Section 112(C) of the NIRC, as amended must be strictly observed, which reads as follows:

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10 An Act Creating the Court of Tax Appeals

11 A.M. 05-11-07-CTA.

12 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal the following:
(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 Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by 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 Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

> ***SEC. 112. Refunds or Tax Credits 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.

Relevantly, Item III of Revenue Memorandum Circular (RMC) No. 54-2014,[13] expressed the 120+30 days mandatory and jurisdictional periods, in the following manner:

> III. Mandatory 120+30 Day Period –
>
> 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 (120) day-period, appeal the decision or the unacted claim with the CTA. Verily, a judicial claim must be filed with the CTA within 30 days from the receipt of the Commissioner's decision denying the administrative claim or from the expiration of the 120-day period without any action from the Commissioner, as the case may be. In this regard, the taxpayer/claimant is required to observe the 120+30 day rule before lodging a petition for review with the CTA.
>
> In sum, the taxpayer can file the 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.

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13 SUBJECT: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended.

Indeed, the Bureau of Internal Revenue (BIR) has one hundred twenty (120) days from date of submission of complete supporting documents, to decide on the claimant's administrative claim for input VAT refund. At present, supporting documents are deemed complete upon the filing the refund claimant's administrative claim for input VAT refund.[14] In turn, there are two (2) ways by which a claimant may invoke the Court in Division's jurisdiction: *one,* through a Petition for Review, filed within thirty (30) days from the receipt of the BIR's adverse decision rendered within said one hundred twenty (120)-day period; *or two,* through a Petition for Review, filed within thirty (30) days after the lapse of such one hundred twenty (120)-day period, whichever comes earlier. *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[15] decreed:

> **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.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.[16]

Petitioner filed its administrative claim for input VAT refund covering the four (4) quarters of CY 2015, as well as its supporting documents on November 3, 2016.[17] Counting one hundred twenty (120) days therefrom, the BIR had until March 3, 2017 to decide on said administrative claim. As no BIR adverse decision was received by petitioner as of March 3, 2017,[18] the law considered such administrative claim as denied. Counting another thirty (30) days from March 3, 2017, petitioner had until April 3, 2017[19] to seek judicial redress. *Ergo,* petitioner's belated filing of its Petition for Review on April 12, 2017 deprived the Court in Division of jurisdiction to hear this case.

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14 See *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue,* G.R. No. 244154, July 15, 2020. Beginning June 11, 2014, or upon effectivity of RMC No. 54-2014, the documents are deemed complete upon filing of the claimant's administrative claim for input VAT refund.

15 G.R. No. 182737, March 2, 2016.

16 Boldfacing supplied.

17 *See* Exhibit "P-1," Docket (CTA Case No. 9576 - Vol. 4), p. 2539.

18 The BIR's adverse decision (Exhibit "P-2") on petitioner's input VAT refund claim for the four (4) quarters of CY 2015 was received by the latter on March 14, 2017, or outside the one hundred twenty (120)-day period under Section 112(C) of the NIRC, as amended.

19 The 30th day, April 2, 2017 fell on a Sunday.

WHEREFORE, the Petition for Review dated January 31, 2022, filed by San Carlos Solar Energy Inc., is **DENIED**, for lack of merit. The Petition for Review filed by San Carlos Solar Energy Inc. in CTA Case No. 9576, is **DISMISSED**, on jurisdictional ground.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With due respect, please see Dissenting Opinion.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With due respect, please see Dissenting Opinion.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

SAN CARLOS SOLAR ENERGY INC., Petitioner,	**CTA EB NO. 2562** (CTA Case No. 9576)
	Present:
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COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 27 2023 11:30am

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DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Justice Marian Ivy F. Reyes-Fajardo, I register my dissent to the *ponencia* as it (**1**) denies the present Petition for Review[1] filed by petitioner San Carlos Solar Energy Inc. (**petitioner/SaCaSol**) against respondent Commissioner of Internal Revenue (**respondent/CIR**) for lack of merit; (**2**) reverses and sets aside the Third Division's Decision dated 03 February 2021[2] (**Assailed Decision**) and Resolution dated 22 September 2021[3] (**Assailed Resolution**); and thereby, (**3**) dismisses the original Petition for Review[4] filed by petitioner, in CTA Case No. 9576, for lack of jurisdiction.

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1 *Rollo*, Volumes I and II, pp. 102-593, with annexes.
2 Division Docket, Volume IV, pp. 2787-2806.
3 Id., pp. 2971-2977.
4 Division Docket, Volume I, pp. 10-130, with annexes.

To recall, in the Assailed Decision[5], the Third Division denied the original Petition for Review[6] for lack of merit upon finding that petitioner is not entitled to a refund of its excess and unutilized input Value-Added Tax (**VAT**) directly attributable to its zero-rated sales for the period January to December 2015 in the amount of ₱40,624,825.97. The Third Division held that petitioner, as a Renewable Energy (**RE**) Developer, **failed to establish the existence of VAT zero-rated sales**, which is a mandatory requirement in a VAT refund claim, as there is **no showing that it was issued a Certificate of Endorsement by the Department of Energy (DOE-COE), through the Renewable Energy Management Bureau (REMB), on a *per* transaction basis**, under Section 18(C)[7], Rule 5, Part III of the implementing rules and regulations[8] (**IRR**) of Republic Act (**RA**) No. 9513 or the *Renewable Energy Act of 2008*.

Thereafter, in the Assailed Resolution[9], the Third Division denied petitioner's "Motion for Reconsideration"[10] (**MR**) thereto and its subsequent "Supplement to Motion for Reconsideration with *Ad Cautelam* Motion to Admit Additional Evidence"[11] and "Second Supplement Supplement to Motion for Reconsideration with *Ad Cautelam* Motion to Admit Additional Evidence"[12] (collectively, "**Supplemental Motions**") for lack of merit. The Third Division denied the admission of additional documentary evidence attached to petitioner's Supplemental Motions as these have not been formally offered and admitted in evidence and do not fall within the recognized exceptions on the admissibility of evidence.

In the *ponencia*, however, the Court *En Banc* reverses and sets aside the Assailed Decision[13] and Resolution[14] on the ground that the Third Division is bereft of jurisdiction to entertain petitioner's judicial claim for refund. The *ponencia* declared that petitioner's original Petition for Review[15] was filed beyond the 120+30-day mandatory and jurisdictional period. Counting the 120-day period under Section 112(C)[16] of the National Internal Revenue Code

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5 Supra at note 2.
6 Supra at note 4.
7 **SEC. 18. Conditions for Availment of Incentives and Other Privileges.** —

...

C. ***Certificate of Endorsement by the DOE***

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.** (Italics in the original text and emphasis supplied)

8 Department of Energy (DOE) Department Circular No. DC2009-05-0008.
9 Supra at note 3.
10 Division Docket, Volume IV, pp. 2807-2828.
11 Division Docket, id., pp. 2831-2867.
12 Division Docket, id., pp. 2868-2942.
13 Supra at note 2.
14 Supra at note 3.
15 Supra at note 4.
16 **SEC. 112.** *Refunds or Tax Credits of Input Tax.* —

...

(NIRC) of 1997, as amended[17], from 03 November 2016 (the date when petitioner filed its administrative claim for refund[18], respondent had **until 03 March 2017** to decide on the said administrative claim. As petitioner did not receive any adverse decision from the Bureau of Internal Revenue (**BIR**) by 03 March 2017, petitioner's administrative claim for refund is, by law, **"deemed denied"**. Counting another 30 days days from 03 March 2017, petitioner had **until 03 April 2017**[19] to seek judicial redress. Since petitioner's original Petition for Review[20] was filed with the Third Division only on **12 April 2017**, the Court is already deprived of jurisdiction to hear this case.

I, respectfully, beg to differ.

For the reasons essayed below, I submit that the Court *En Banc* should not dismiss petitioner's judicial claim for lack of jurisdiction and, instead, give due course to the present Petition for Review and resolve the same on the merits.

PETITIONER'S ORIGINAL PETITION FOR REVIEW WAS TIMELY FILED; THUS, THE THIRD DIVISION HAD JURISDICTION OVER THE CASE.

The records of the case show that petitioner filed its administrative claim for refund[21] on **03 November 2016**. Indeed, absent any indication that petitioner subsequently submitted documents, the **120-day period** under Section 112(C)[22] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, must be reckoned from 03 November 2016. Counting 120 days therefrom, respondent had until **03 March 2017** to act on petitioner's refund claim.

It is noteworthy that, on **17 February 2017**, the BIR's Deputy Commissioner for Operations Group, Nestor S. Valeroso, (**Deputy**

(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.

17 Prior to the amendments introduced by Republic Act (**RA**) No. 10963 or the Tax Reform for Acceleration and Inclusion Act ("**TRAIN Law**").

18 Exhibit **"P-1"**, Division Docket, Volume IV, p. 2539.

19 As **02 April 2017**, which is the 30th day from 03 March 2017, fell on a **Sunday**.

20 Supra at note 4.

21 Supra at note 17.

22 Supra at note 16.

Commissioner Valeroso) issued a Letter-Decision[23] (referred to as the "**BIR Decision**"), which partially granted petitioner's VAT refund claim to the extent of ₱29,644,104.17 (out of the total refund claim of ₱92,282,341.28). However, petitioner received the same only on **14 March 2017** or after the expiration of the 120-day period under Section 112(C)[24] of the NIRC of 1997, as amended.[25]

Considering that the BIR Decision[26] was issued on **17 February 2017** or before the lapse of the 120-day period (irrespective of petitioner's allegation that it received the same only on 14 March 2017), logic and reason dictate that **petitioner's administrative claim for refund claim is not "deemed denied due to inaction"** and thus, **petitioner cannot be expected to file an appeal within 30 days from the lapse of the said 120-day period** as such reckoning point applies only when there is inaction on the part of respondent.

Since respondent acted on petitioner's administrative claim for refund[27] within the 120-day period under Section 112(C)[28] of the NIRC of 1997, as amended, **the 30-day period to file a judicial appeal before the Court in Division must be reckoned from petitioner's receipt of the BIR Decision[29] on 14 March 2017** (and not on 03 March 2017 as, again, petitioner's administrative claim for refund is not "deemed denied due to inaction"). Counting 30 days therefrom, petitioner had **until 13 April 2017** to file a judicial claim.

I am not unaware of the Supreme Court's pronouncements in *Silicon Philippines, Inc. (formely Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[30] (**Silicon**) that a judicial claim shall be filed within a period of 30 days after receipt of the CIR's decision or ruling or after the expiration of the 120-day period, **whichever is sooner**, and that any claim filed in a period less than or **beyond the 120+30 days** provided by the NIRC of 1997, as amended, is **outside the jurisdiction of the CTA**. However, with due respect, I wish to emphasize that *Silicon* is not on all fours with the instant case and should not be applied to the same.

Notably, in *Silicon*, therein taxpayer-claimant's administrative claims for refund were "deemed denied due to inaction" precisely because the CIR

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23 Exhibit "**P-2**", Division Docket, Volume IV, p. 2543.
24 Supra at note 16.
25 *See* Par. 5, Jurisdictional Allegations, Petition for Review (filed on 12 April 2017), supra at note 4, pp. 11-12.
26 Supra at note 23.
27 Supra at note 17.
28 Supra at note 16.
29 Supra at note 23.
30 G.R. No. 182737, 02 March 2016.

did *not* act at all on such refund claims. Whereas, there is no such inaction in this case as, in fact, the BIR Decision[31] on petitioner's VAT refund claim was issued within the 120-day period under Section 112(C)[32] of the NIRC of 1997, as amended. Applying *Silicon* (in terms of the reckoning point for filing a judicial claim for refund) in this case to the effect that petitioner's administrative claim for refund is "deemed denied" immediately after the 120-day period lapses would effectively disregard the existence of and practically replace the BIR Decision with a "deemed denied due to inaction" decision (that should apply only when there is inaction on the part of the CIR). Such an interpretation is problematic and quite unfair especially that the Court in Division has ruled on the merits of the case.

To my mind, the proper and reasonable interpretation of the Supreme Court's declarations in *Silicon* as regards the filing of a judicial claim for refund within the 120+30-day mandatory and jurisdictional period under Section 112(C)[33] of the NIRC of 1997, as amended, gives rise to the following nuances:

1. **When the CIR <u>issues</u> a decision or ruling** on the taxpayer-claimant's administrative claim **<u>before</u> the expiration of the 120-day period** and the **taxpayer-claimant <u>receives</u> the same <u>within</u> the said period**, the taxpayer-claimant has **30 days <u>from receipt of the CIR's decision or ruling</u> to file a judicial claim**;

2. **When the CIR <u>issues</u> a decision or ruling** on the taxpayer-claimant's administrative claim **<u>before</u> the expiration of the 120-day period** *but* the **taxpayer-claimant <u>receives</u> the same <u>after</u> the said period** (as in this case), the taxpayer-claimant *still* has **30 days <u>from receipt of the CIR's decision or ruling</u> to file a judicial claim**; and,

3. **When the CIR <u>fails to act</u>** on the taxpayer-claimant's administrative claim within the 120-day period *or* **issues a decision or ruling** on the taxpayer-claimant's administrative claim **<u>after</u> the expiration of the 120-day period**, the taxpayer-claimant *must no longer wait* for the CIR to come up with a decision before filing a judicial claim within **30 days <u>from the expiration of the said 120-day period</u>** as the CIR's inaction is the decision itself.

Otherwise stated, the taxpayer-claimant may file a judicial claim within 30 days from receipt of the CIR's decision or ruling taxpayer-claimant's administrative claim for refund for as long as the said decision or ruling was

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[31] Supra at note 23.
[32] Supra at note 16.
[33] Supra at note 16.

issued within the 120-day waiting period. Any delay in the release of such *timely issued* decision or ruling and receipt thereof by the taxpayer-claimant should not prejudice the taxpayer-claimant to the effect that it loses the remedy of appeal altogether in not presuming that its administrative claim for refund is "deemed denied" upon the lapse of the 120-day period. Instead, such delay in the release of the CIR's *timely issued* decision or ruling should be tempered by preserving the remedy in favor of the taxpayer-claimant in case of receipt thereof after the expiration of the 120-day waiting period.

Now, since petitioner timely filed its original Petition for Review[34] on **12 April 2017**, within the 30-day reglementary period reckoned from receipt of the *timely issued* BIR Decision[35] on 14 March 2017, the Court's Third Division properly acquired jurisdiction over the case.

PETITIONER'S PRESENT PETITION FOR REVIEW HAS MERIT.

Considering that the Court *En Banc* (by unanimous vote of the members then present) has recently declared in *Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue*[36] (**Vestas**) that a DOE-COE is <u>not</u> a requirement to avail of the VAT zero-rating incentive under Section 15(g)[37] of RA 9513 and the Third Division's findings that petitioner was issued a DOE Certificate of Registration (**COR**) and a Board of Investments (**BOI**) COR, with due respect, it is my position that petitioner has satisfied the conditions for availment of incentives under Section 18[38], Rule 5, Part III of the IRR of RA 9513 to establish that its sales qualify for VAT zero-rating.

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34 Supra at note 4.

35 Supra at note 23.

36 CTA EB No. 2479 (CTA Case No. 9544), 14 October 2022.

37 **Sec. 15.** ***Incentives for Renewable Energy Projects and Activities.*** — RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

...

(g) Zero Percent Value-Added Tax Rate. — The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value-added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

...

38 **Sec. 18.** *Conditions for Availment of Incentives and Other Privileges.*

In *Vestas*, the Court *En Banc* concluded that a DOE-COE is required *only* for the importation of that RE machinery, equipment and materials (and not for VAT zero-rating purposes), to wit:

> ...
>
> **A reading of Section 15 of RA 9513 reveals that the term "endorsement" was only mentioned twice in the whole provision. Both were made in clear reference only to or in connection with the duty-free importation of RE machinery, equipment and materials, and their subsequent sales.**
>
> Similarly, in Section 13 of the IRR of RA 9513, the term "endorsement" was also mentioned thrice under the exemption from duties on RE machinery, equipment, and materials; specifically, under the paragraph governing the sale or disposition of the said capital equipment, *viz*:
>
> ...
>
> **Here, the wordings of the above-quoted provisions are clear. "Endorsement" is only needed for duty-free importation of RE machinery, equipment, and materials, and its subsequent sales. Thus, with respect to the services EDC purchased or secured from petitioner, to avail the VAT zero-rating incentive to the said purchases, the COE appears not to be a requisite. Hence, the COE of EDC is not an evidence to be expected from petitioner to present or produce.**
>
> Moreover, the rule in statutory construction is that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. Applying the foregoing rule, it is only logical to read the conditions for availment of incentives under Section 18 of the IRR of RA 9513, especially the requirement of the COE by the DOE, as applicable only to the incentives to where the latter was specifically mentioned in Section 13 of the said IRR and in the governing law of RA 9513. Thus, again, the COE issued by the DOE, on a *per* transaction basis, is required *only* for the incentive relating to duty-free importation on RE machinery, equipment, and materials.
>
> The foregoing interpretations are most consistent with the declared policy of RA 9513 (under Section 2 thereof), *i.e.*, to encourage the development of renewable energy resources. If the Court *En Banc* construes the IRR as imposing an additional requirement for the RE Developer to present the COE issued by the DOE, on a *per* transaction basis (to avail the VAT zero-rating incentive), We will be placing an unnecessary burden on the RE Developer and on the taxpayer it contracted with. Likewise, We will be requiring something that is not even required by the law itself.
>
> It is settled rule that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails,

> because the said rule or regulation cannot go beyond the terms and provisions of the basic law.[39]
>
> ...

The Court *En Banc* also noted in *Vestas* that based on the Citizen's Charter of the DOE, the REMB has no existing mechanism or process for the issuance of a COE for VAT zero-rating.[40] The REMB only issues four (4) types of endorsements, namely: (1) Endorsement to the Securities and Exchange Commission (**SEC**); (2) Endorsement to other concerned National Government Agencies (**NGAs**) and Local Government Units (**LGUs**); (3) Endorsement to Purchase or Transfer or Move Explosives; and, (4) COE for Duty-Free Importation Certification (**DFIC**).[41] Given that Section 18(C)[42] of the IRR[43] of RA 9513 specifically states that it is the REMB which shall issue the COE and that the REMB does not issue such a certification for VAT zero-rating purposes, therein petitioner (taxpayer-claimant) cannot be expected to secure the said requirement because the law does not require the impossible.[44]

Furthermore, it is worth noting that the Bureau of Internal Revenue (**BIR**) recently clarified, through Revenue Regulations (**RR**) No. 7-2022[45] dated <u>22 June 2022</u>, that RE Developers must *only* secure the DOE-COE requirement prior to the first year of availment specifically of the 10% corporate income tax rate incentive, *viz*:

> ...
>
> **SECTION 3. REQUIRED CERTIFICATIONS/ACCREDITATIONS FROM APPROPRIATE GOVERNMENT AGENCIES FOR THE AVAILMENT OF THE TAX INCENTIVES —** <u>RE developers</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment <u>shall secure the certifications/accreditations listed hereunder before any incentive provided for in the Act may be availed of.</u>
>
> ...

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39 Citations omitted; Emphasis and italics in the original text.

40 https://www.doe.gov.ph/sites/default/files/pdf/citizen_charter/doe-citizens-charter-cy-2020-09282020.pdf (Last accessed on 08 March 2023).

41 Id.

42 **SEC. 18. Conditions for Availment of Incentives and Other Privileges**

...

C. Certificate of Endorsement by the DOE

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a <u>Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis</u>. (Underscoring supplied)

43 Supra at note 8.

44 *Louis "Barok" C. Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, 07 December 2010.

45 Tax Incentives Under the Renewable Energy Act of 2008 and the Policies and Guidelines for the Availment Thereof.

> ***B. Certificate of Endorsement by the DOE*** — RE Developers shall secure the Certificate of Endorsement from the DOE prior to the first year of availment of the 10% corporate income tax rate incentive.
>
> Manufacturers, fabricators, and suppliers of locally produced RE equipment who import components, parts, and materials necessary for the manufacture and/or fabrication of RE equipment shall secure a Certificate of Endorsement from the DOE, through the REMB, on a per importation basis.[46]
>
> ...

Clearly from the foregoing, the Third Division erred in holding that a DOE-COE, on a *per* transaction basis, is required to avail the VAT zero-rating incentive under RA 9513 and in thus denying petitioner's judicial claim solely on the ground that it failed to submit such requirement. Since a DOE-COE applies only to the incentive of duty-free importation of RE machinery, equipment and materials, the subject sales of petitioner from its operations as a solar energy provider during the period of claim should qualify for VAT zero-rating under Section 15(g)[47] of RA 9513.

All told, I vote to **GIVE DUE COURSE** to the present Petition for Review[48] and to resolve the same on the merits.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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46 Emphasis and italics in the original text and underscoring supplied.
47 Supra at note 37.
48 Supra at note 1.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SAN CARLOS SOLAR ENERGY INC., *Petitioner,*	**CTA EB NO. 2562** (CTA Case No. 9576)
-*versus*-	Present: **DEL ROSARIO, P.J., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: 'APR 2 7 2023 11:30am

x -- x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With utmost respect, I withhold my assent to granting the instant Petition for Review and to the consequent dismissal of CTA Case No. 9576 for lack of jurisdiction.

I am of the firm view that the instant petition for review was timely filed, pursuant to ***Section 112(C) of the National Internal Revenue Code of 1997 ("Tax Code"), as amended***, which provides:

> "**SEC. 112.** ***Refunds or Tax Credits 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 compete documents in support of the application filed in accordance with Subsections (A) and (B) 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**. (Emphasis and underscoring supplied.)

In the present case, records show that petitioner filed the administrative claim for refund with respondent on 3 November 2016. On 17 February 2017, respondent rendered a decision, partially granting petitioner's claim for refund, which petitioner formally received on 14 March 2017. Considering that respondent issued a decision before the lapse of the 120-day period, petitioner's claim cannot be considered as deemed denied due to inaction. In view of respondent's action on petitioner's administrative claim for refund within the 120-day period provided in ***Section 112(C) of the Tax Code***, the 30-day period to appeal to this Court is reckoned from 14 March 2017. Petitioner's judicial appeal filed on 12 April 2017 is thus timely filed.

I also take the view that the case of ***Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue***[1] ***("Silicon Case")*** is not applicable in the present case due to the stark difference in their factual milieu. In the ***Silicon Case***, the CIR did not act on the administrative claim for refund. Thus, the "deemed denied" provision in ***Section 112(C) of the Tax Code*** applies. Meanwhile, in the present case, the CIR acted on the administrative claim of petitioner.

All told, I VOTE to **DENY** the instant *Petition for Review* and **AFFIRM** the Assailed Decision dated 3 February 2021 and Assailed Resolution dated 22 September 2021 in CTA Case No. 9576.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[1] G.R. No. 182737, 2 March 2016.