REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

LAPANDAY DIVERSIFIED PRODUCTS CORP., *Petitioner,*	**CTA *EB* NO. 2199** *(CTA Case No. 9989)*
-*versus*-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 10 2021 4:25 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW (Re: Resolution dated 15 August 2019 and Resolution dated 22 November 2019) ("Petition")**, filed last 13 December 2019,[1] with respondents' **COMMENT/OPPOSITION Re: Petitioner's Petition for Review ("Opposition")**, filed on 27 January 2020.[2] h

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[1] Records, pp. 1-101.
[2] *Id.*, pp. 105-110.

The Parties

Petitioner **LAPANDAY DIVERSIFIED PRODUCTS CORP. ("Lapanday")** is a duly registered domestic corporation with principal address at Maryknoll Road, Barangay Pampanga, Lanang, Davao City.

Respondent **COMMISSIONER OF INTERNAL REVENUE ("CIR")** is the head of the Bureau of Internal Revenue ("BIR") and empowered to perform the duties of said office, including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously paid taxes, as provided by law. He may be served summons, pleadings, and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The Facts

Petitioner alleges that it filed before respondent administrative claims for issuance of tax credit certificates ("TCC") for its excess and unutilized input Value Added Taxes ("VAT") on account of zero-rated sales covering the four (4) quarters of taxable year ("TY") 2012, as follows:[3]

Period Covered	Administrative Claim Filed On
1st Quarter – TY 2012	22 August 2013
2nd Quarter – TY 2012	22 August 2013
3rd Quarter – TY 2012	30 August 2013
4th Quarter – TY 2012	30 August 2013

All four (4) administrative claims were collectively denied by respondent in a Letter, dated 29 October 2018 ("Denial Letter"), which was received by petitioner on 26 November 2018.[4] The grounds stated in the Denial Letter were the following:

1) Failure to submit the airway bills/bills of lading evidencing proof of actual shipment of goods from the Philippines to Lapanday's foreign client/s relative to its export transactions during the period of claim.

2) Unallowable input taxes on local purchases of goods and services in the aggregate amount of Php9,110,608.80 for not being supported by corresponding sales invoices and official receipts, in conformance with ***Revenue Audit Memorandum No. 2-93*** in relation to ***Sections 110, 113, and 237 of the Tax Code***, and non-compliance with ***Revenue Memorandum Order No. 16-2007.***

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[3] *Id.*, p. 4.
[4] *Ibid.*

3) Failure to submit the copy of the BIR Authority to Print for the sales invoices for the zero-rated transactions.[5]

Upon receipt of the Denial Letter, petitioner filed a Petition for Review before the Court in Division on 20 December 2018 to appeal the denial of its administrative claims.[6]

On 31 May 2019, respondent filed a Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court assailing the Court in Division's jurisdiction on the basis that the judicial claim was filed out of time.[7] Petitioner filed its Motion to Admit Attached Comment/Opposition (To Respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated 24 May 2019) in response thereto on 29 July 2019.[8]

Thereafter, the Court in Division issued a Resolution, dated 15 August 2019, dismissing the judicial claim for lack of jurisdiction.[9] Following receipt of said Resolution on 2 September 2019,[10] petitioner filed a Motion for Reconsideration (Of the Resolution dated 15 August 2019) on 17 September 2019.[11]

The Court in Division then issued a Resolution, dated 22 November 2019, denying petitioner's Motion for Reconsideration (Of the Resolution dated 15 August 2019),[12] which was received by petitioner on 29 November 2019.[13]

Thus, petitioner filed the instant Petition filed on 13 December 2019.

Afterwards, this Court issued a Resolution, dated 16 January 2020, requiring respondent to file a Comment on the Petition within ten (10) days from notice,[14] which was complied with by respondent by filing the Opposition on 27 January 2020.

Following the filing of the Opposition, this Court issued a Resolution, dated 10 February 2020, submitting the Petition for decision.[15]

[5] *Id.*, p. 6.
[6] *Id.*, p. 4; See Petition for Review, Annex "D", Petition, *Id.*, pp. 53-74.
[7] See Resolution, dated 15 August 2019, Annex "B", Petition, *Id.*, p. 39-46.
[8] *Ibid.*
[9] *Ibid.*
[10] Records, p. 7.
[11] See Motion for Reconsideration (Of the Resolution dated 15 August 2019), Annex "E", Petition, *Id.*, pp. 75-101.
[12] See Resolution dated 22 November 2019, Annex "C", Petition, *Id.*, pp. 48-52.
[13] Records, p. 7.
[14] *Id.*, pp. 102-104.
[15] *Id.*, pp. 111-113.

The Assigned Errors

In the **Petition,** petitioner raised the following issues: [16]

"(A)

THE HONORABLE COURT IN DIVISION ERRED IN DECIDING THAT IT HAS NO JURISDICTION TO RULE ON THE LETTER DENIAL OF THE BIR, AS APPEALED BY THE PETITIONER WITHIN THIRTY (30) DAYS FROM RECEIPT THEREOF.

(B)

THE COURT IN DIVISION ERRED IN UPHOLDING THE RESOLUTION, DATED 15 AUGUST 2019, BASED ON THE PRINCIPLE OF STARE DECISIS.

(C)

THE COURT IN DIVISION ERRONEOUSLY DENIED PETITIONER'S ENTITLEMENT TO ITS CLAIM FOR TCC, WHEN SUCH CLAIM CAN BE FULLY SUPPORTED, WHEN IT RULED THAT IT HAS NO JURISDICTION OVER THE CASE."

Arguments of the Parties

Petitioner posed the following arguments:[17]

1. ***Section 112 (C) of the National Internal Revenue Code of 1997, as Amended ("Tax Code")*** allows the taxpayer the alternative remedies of filing the judicial claim (1) within the 30-day period from the receipt of decision of respondent or (2) within the 30-day period after the expiration of the 120-day waiting period.

[16] *Id.*, p. 8.
[17] *Id.*, pp. 9-28.

a. Petitioner availed of the first remedy, which was to await respondent's decision before it validly filed its judicial claim.

b. The assailed interpretation of the mandatory and jurisdictional nature of the 120-day waiting period and the 30-day filing period will result in the **Denial Letter** being void itself, and ***Revenue Regulations No. 01-2017 ("RR 1-17")*** on continuing the processing of claims prior to the issuance of ***Revenue Memorandum Circular No. 54-2014 ("RMC 54-14")*** being without effect.

c. The history of the 120-day period shows that it was developed to support the interest of the taxpayer, by allowing him a remedy even before respondent's decision is issued and to force him to act in a timely manner.

d. This Court's jurisdiction, as established by law, clearly makes a distinction between the two (2) causes of action: (a) cases on respondent's decision, and (b) the inaction of respondent beyond a period specified in the ***Tax Code***.

e. Even the current ***Tax Reform for Acceleration and Inclusion ("TRAIN") Law*** reinforces the intention that the 30-day period is for the benefit of the taxpayer and now is clearly reckoned from receipt of respondent's decision.

f. Following legislative intent, as manifested in the ***TRAIN Law***, it is respondent, and not the taxpayer, who is accountable for the mandatory nature of the 120-day period to process the input tax refund/TCC. Under the ***TRAIN Law***, failure to comply with the 120-day period is a criminal offense of the responsible officer/agent.

2. The doctrine of *Stare Decisis* does not apply in petitioner's case precisely because the factual circumstances of all the cited Supreme Court decisions in the Resolution, dated 15 August 2019, differ from the factual circumstances of petitioner.

3. Petitioner is entitled to its claim for TCC amounting to Php13,152,795.46 pertaining to unutilized input taxes for TY 2012 attributable to its zero-rated export sales.

In the **Opposition,** respondent alleged that this Court is correct in ruling that it has no jurisdiction over the case.[18]

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[18] *Id.*, pp. 105-108.

The Ruling of the Court En Banc

*This Court resolves to **DENY** the **Petition** for lack of merit.*

Section 112 (C) of the Tax Code does not provide alternative remedies to the taxpayer. Petitioner belatedly filed its judicial claim.

Petitioner's main contention is that ***Section 112 (C) of the Tax Code*** provides for two (2) remedies available to a taxpayer seeking to appeal an unfavorable action on its administrative claim for input tax refund, namely, file a judicial claim within 30 days from: a) receipt of respondent's adverse decision or b) upon expiration of the 120-day period given to respondent to act upon said administrative claim for input tax refund. It is petitioner's position that these remedies are alternative in nature. Thus, petitioner argues that it cannot be deprived of its right to appeal an adverse decision issued beyond the 120-day period given to respondent to decide. This is erroneous.

Section 112 (C) of the Tax Code provides, as follows:

> "**SEC. 112. Refunds or Tax Credits of Input Tax.** -
>
> xxx xxx xxx
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> **(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."

While this provision provides for two (2) points within which the 30-day period to file a judicial claim may start, namely: a) upon expiration of the 120-day period given to respondent to act on a request for input tax refund and b) upon receipt of respondent's adverse decision, the same are not alternative in nature.

The 30-day period given to a taxpayer to file a judicial claim for input tax refund shall start from which of the two starting points comes first. Taxpayers do not have the option to wait for an actual adverse decision by respondent before filing a judicial claim before this Court if the 120-day waiting period has already lapsed. Otherwise, such judicial action would be belatedly filed, thereby causing this Court to lose its jurisdiction to try the said judicial claim for input tax refund. This rule is known as the mandatory and jurisdictional 120+30-day period enunciated by the Supreme Court in ***Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue.***[19]

The rationale for the mandatory and jurisdictional 120+30-day period is that inaction by respondent within the 120-day period given him to decide a claim for input tax refund is already treated a denial in itself. Hence, there is no more need for a taxpayer to wait for an actual denial as its request for input tax refund has been deemed denied, by express provision of law.[20]

In ***Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue***,[21] the Supreme Court had a chance to categorically declare that a judicial appeal must be instituted immediately within 30 days from the expiration of the 120-day period given to respondent to decide claims for input tax refund considering that such inaction by respondent is already considered a denial of such claims:

> "A final note, the taxpayers are reminded that that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer **<u>must file an appeal within 30 days from the lapse of the 120-day waiting period."</u>**
> (Emphasis and underscoring, Ours)

Further, in ***Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue***,[22] the High Court ruled that "**<u>any claim filed in a period</u>** less than or **<u>beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA</u>**."[23]

It is undisputed that petitioner filed its administrative claims for input tax refund for the 1st, 2nd, 3rd, and 4th quarters of TY 2012 on 22 August 2013, 22 August 2013, 30 August 2013, and 30 August 2013, respectively. Applying the 120-day waiting period, respondent had until 20 December 2013, 20

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[19] G.R. No. 187485, G.R. No. 196113 and G.R. No. 197156, 12 February 2013.
[20] Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. No. 187485, 12 February 2013.
[21] G.R. No. 168950, 14 January 2015.
[22] G.R. No. 182737, 02 March 2016.
[23] Emphasis and Underscoring, Ours.

December 2013, 28 December 2013, and 28 December 2013, respectively, within which to decide said administrative claims for input tax refund. Considering that respondent did not act upon said administrative claims within the said 120-day period, petitioner should have filed its judicial claims with this Court on or before 20 January 2014,[24] 20 January 2014,[25] 27 January 2014, and 27 January 2014, respectively, following the 30-day period given to taxpayers within which to file a judicial claim. As petitioner filed the present Petition only on 13 December 2019, the same is undoubtedly belatedly filed.

Considering this, the Court in Division indeed had no jurisdiction to entertain the Petition as petitioner failed to comply with the mandatory and jurisdictional 120+30-day period.

RR 1-17 did not provide an exception to the mandatory and jurisdictional 120+30-day period.

Petitioner argues that the assailed interpretation of the mandatory and jurisdictional nature of the 120+30-day period will result in the Denial Letter being void itself and ***RR 1-17*** on continuing the processing of claims prior to the issuance of ***RMC 54-14*** being without effect. This is misplaced.

A perusal of ***Section 2 of RR 1-17*** shows that claims filed prior to ***RMC 54-14*** were merely ordered to be continuously processed administratively but not judicially. It did not whatsoever create an exception to the mandatory and jurisdictional 120+30-day period, which was put into place by law and affirmed by jurisprudence. A mere regulation cannot create an exception not provided by the law it seeks to implement. Implementing rules and regulations may not enlarge, alter, or restrict the provisions of the law they seek to implement.[26]

RR 1-17 was merely issued to restart the processing of the administrative claims for input tax refund which were deemed denied due to the erroneous application of ***RMC 54-14***.[27] However, this is solely confined to the level of the BIR and does not extend to the judicial level.

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[24] 19 February 2014 fell on a Sunday, while the next working day was on 20 January 2014.
[25] As stated, 19 February 2014 fell on a Sunday, while the next working day was on 20 January 2014.
[26] Pilipinas Kao, Inc. v. Honorable Court of Appeals and Board of Investments, G.R. No. 105014, 18 December 2001.
[27] Section 2, RR 1-17.

The provisions of the TRAIN Law are inapplicable to the present case.

Petitioner further argues that Congress intended taxpayers to have a right to judicially appeal decisions on its claims for input tax refund even if the same was issued beyond the 120-day period. According to petitioner, this intention was expressed under the ***TRAIN Law*** when Congress amended ***Section 112 (C) of the Tax Code*** by simply reckoning the 30-day period to appeal a denial of a claim for input tax refund only from receipt of respondent's decision (with the 120-day waiting period removed as tacking point of said 30-day period to appeal). For petitioner, this only shows that a judicial appeal filed after 30-days from: a) the inaction by respondent within the 120-day waiting period or b) after receipt of a denial in writing were two (2) separate and distinct remedies ever since. Again, this argument is erroneous.

The ***TRAIN Law*** is inapplicable to the Petition, considering that the former took effect only on 1 January 2018,[28] while the latter involved claims for input taxes incurred during TY 2012. Hence, whatever legislature intended during its deliberations and eventual passage of the ***TRAIN Law*** is wholly irrelevant to the Petition. Tax laws are applied prospectively unless otherwise expressly provided for.[29]

Following the above discussions, this Court deems it unnecessary to resolve the remaining issues.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolution, dated 15 August 2019, and Resolution, dated 22 November 2019, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[28] Section 87, Republic Act No. 10963.
[29] Commissioner of Internal Revenue v. Acosta, G.R. No. 154068, 3 August 2007.

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

JEAN MARIE A. BACORRÒ-VILLENA
Associate Justice

C E R T I F I C A T I O N

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