REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

ADVANCED WORLD SYSTEMS, INC.,	**CTA CASE NO. 9767**
Petitioner,	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 26 2020 4:10 p.m.

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RESOLUTION

For resolution is respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court filed on 26 February 2020 (hereinafter referred to as "Motion") with petitioner's Comment [Re: Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated 21 February 2020] filed on 30 June 2020 (hereinafter referred to as "Comment").

In his Motion, respondent alleges that the Petition for Review was filed beyond the mandatory and jurisdictional thirty (30) day period from the expiration of the one hundred twenty (120) day period pursuant to ***Section 112 of the National Internal Revenue Code of 1997 (hereinafter referred to as "Tax Code") and Revenue Memorandum Circular ("RMC") No. 54-2014***.

Respondent contends that when petitioner filed its administrative VAT refund/credit claim on 16 March 2012, respondent had 120 days or until 16 July 2012 to decide on the same. Given that the administrative claim was not acted upon within the 120-day period, it was deemed denied. Petitioner's recourse was to elevate the matter to this Court within 30 days from the lapse of the 120-day period or until 16 August 2012.

Considering that the instant Petition for Review was filed only on 12 February 2018 or beyond the mandatory 120+30 day periods, respondent alleges that it was filed out of time, and therefore, should be dismissed for being time-barred and/or lack of jurisdiction.

Lastly, respondent argues that since the issue of jurisdiction is not an evidentiary matter that will require trial and that it may easily be resolved on the face of the Petition, it prays for the early resolution of the above-captioned case.

On the other hand, petitioner argues that the commencement of the 30-day period to file the judicial claim should be counted from its receipt of the Denial Letter on 11 January 2018, and not after the expiration of the 120-day period.

Petitioner alleges that, although its administrative claim was considered deemed denied under ***RMC No. 54-2014***, it was, thereafter, reinstated and re-processed by the Bureau of Internal Revenue ("BIR") pursuant to ***Revenue Regulation ("RR") No. 1-2017***. Considering that the BIR re-processed its administrative claim, the BIR in effect vacated its deemed denied ruling and waived the applicability of the 120+30 day periods in this case.

Petitioner argues that the enforcement of the 120+30 day periods would cause unwarranted and undue prejudice to the petitioner since it merely relied on the aforementioned BIR issuances.

Finally, petitioner contends that assuming the allegation of the respondent is correct, the commencement of the 120-day period should be counted from its submission of the supporting documents of its VAT refund/credit claim with the BIR. In this regard, petitioner insists that the question on whether and/or when it submitted the supporting documents is an issue that needs the consideration of evidentiary matters and, therefore, the same cannot be resolved without going through the merits of the case.

After considering the respective arguments of the parties, the Court finds for the respondent.

Section 112 of the Tax Code provides that a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit certificate or refund of creditable input tax attributable to such sales, 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, <u>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</u> due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax**: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in

> taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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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 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, <u>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</u>**.".[1]

Based on the aforementioned provision, a VAT refund/credit claim is initiated by filing the said claim with the BIR within 2 years after the close of the taxable quarter when the sales were made. This is the administrative phase of the VAT refund/credit claim (hereinafter referred to as "administrative claim").

Depending on when the administrative claim was filed, the Supreme Court in ***Pilipinas Total Gas, Inc., v. Commissioner of Internal Revenue***[2] laid down the rules on when the documentary requirements in support of the administrative claim should be submitted to the BIR, to wit:

> "To summarize, for the just disposition of the subject controversy, **<u>the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR.</u> Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund.** Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
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> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

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[1] Emphasis supplied.
[2] G.R. No. 207112, 8 December 2015.

> **<u>It bears mentioning at this point that the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014, such as the claim at bench</u>**. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:
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> The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
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> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.
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> **<u>Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim</u>**."

In this case, since the administrative claim was filed on 16 March 2012, ***Pilipinas Total Gas, Inc., v. Commissioner of Internal Revenue***[3] grants the VAT-registered person 30 days, from the filing of the administrative claim, to submit its supporting documents.

From the submission of the supporting documents, respondent has 120 days within which to decide whether to grant or deny the VAT refund/credit claim. In case the respondent fails to rule on the said claim, the administrative claim will be considered deemed denied as ruled by the Supreme Court in ***Silicon Philippines, Inc. vs. CIR***,[4] to wit

> "**Upon the filing of an administrative claim, respondent is given a period of 120 days** within which to (1) **grant a refund or issue the tax credit certificate for creditable input taxes;** or (2) **make a full or partial denial of the claim for a tax refund or tax credit. <u>Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.</u>"**

In case of full or partial denial of the administrative claim, or inaction of the respondent, the VAT-registered person is given another remedy which

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[3] G.R. No. 207112, 8 December 2015.
[4] G.R. No. 182737, 2 March 2016.

is to file an appeal to this Court. This is the judicial phase of the claim (hereinafter referred to as "judicial claim").

The judicial claim should be filed within 30 days from receipt of respondent's decision or ruling, or after the expiration of the 120-day period, whichever is sooner, as ruled in ***Silicon Philippines, Inc. vs. CIR,***[5] to wit:

> "**Whether respondent rules in favor of or against the taxpayer — or does not act at all on the administrative claim — within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**
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> Section 7 of Republic Act No. (R.A.) 1125 (An Act Creating the Court of Tax Appeals), as amended, provides:
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>> SECTION 7. Jurisdiction. — The CTA shall exercise:
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>> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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>> 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;
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> **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.**"[6]

In ***Mindanao II Geothermal Partnership v. CIR,***[7] the Supreme Court held that the 120+30 day periods are both mandatory and jurisdictional. Non-compliance with both periods will render the VAT-registered person's judicial claim void, to wit:

> "In the Aichi case cited by both the CTA Division and the CTA En Banc, **the Court held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim**

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[5] *Id.*

[6] Emphasis supplied.

[7] Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue, G.R. No. 204745, 8 December 2014 *citing* Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, 6 October 2010 and Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113, and 197156, 12 February 2013.

> **<u>for refund/credit of input VAT before the CTA. Consequently, its non-observance would lead to the dismissal of the judicial claim on the ground of lack of jurisdiction</u>**. Aichi also clarified that the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims. Succinctly put, once the administrative claim is filed within the two (2)-year prescriptive period, the claimant must wait for the 120-day period to end and, thereafter, he is given a 30-day period to file his judicial claim before the CTA, even if said 120-day and 30-day periods would exceed the aforementioned two (2)-year prescriptive period."[8]

In this case, the subject matter of the instant Petition is petitioner's VAT refund/credit claim for the period 1 April 2010 to 31 March 2011, amounting to Php 4,494,279.36.[9]

Considering that the petitioner was able to allege in its Petition for Review the date of filing of its administrative and judicial claims, as well as the date of its submission of the documentary requirements supporting its administrative claim, the Court agrees with the respondent that it can resolve the Motion by relying on the allegations in the Petition for Review without the need of going through trial.

As stated in the Petition for Review, petitioner filed its administrative claim, together with the supporting documentary requirements on 16 March 2012.[10] Nowhere in the instant Petition did it state that the petitioner filed additional documents after 16 March 2012.

Therefore, assuming that the administrative claim was timely filed, respondent had 120 days counted from 16 March 2012 or until 14 July 2012 to resolve the administrative claim. Considering that 14 July 2012 fell on a Saturday, the due date of the respondent to resolve the administrative claim was extended to 16 July 2012.

However, in this case, respondent failed to rule on the administrative claim within the said period. Considering this, the administrative claim is deemed denied and the recourse of the petitioner was to file its judicial claim within 30 days after 16 July 2012 or until 15 August 2012. Since the Petition for Review was filed only on 12 February 2018, the same was clearly filed out of time.[11]

Even assuming *arguendo* that petitioner made use of the 30-day period and filed additional documents to support its administrative claim, the fact still remains that the instant Petition was filed beyond the mandatory 120+30 days periods since in this scenario, the petitioner is mandated to have filed its Petition for Review on 12 September 2012, which is years before the filing of the instant Petition.[12]

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[8] Emphasis supplied.
[9] See Petition for Review, Docket, Vol. 1, p. 10-277.
[10] *Id.*, p. 13.
[11] *Ibid.*
[12] Petitioner filed its administrative claim on 16 March 2012. Assuming it submitted additional documents, it had until 15 April 2012 to do so. Hence, the respondent had until 13 August 2012 to decide on the

The contention of the petitioner that the 30-day period to file the judicial claim should be counted from its receipt of the Denial Letter on 11 January 2018, is without merit. As ruled by the Supreme Court in ***CIR v. San Roque Power Corporation,***[13] the receipt of the Denial Letter after the lapse of the 120-day period is inconsequential, because the VAT refund/credit claim, by this time, is already deemed denied, and had become final and unappealable after the lapse of 30 days, to wit:

> The Atlas doctrine cannot save Philex from the late filing of its judicial claim. **<u>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.</u>** The right to appeal to the CTA from a 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.[14]

Likewise, petitioner's allegation that the deemed denied provision was first introduced and only became a rule by virtue of ***RMC No. 54-2014***[15] is without merit. As correctly ruled by the Court's *En Banc* in ***Hedcor, Inc., v. CIR,***[16] the deemed denied rule is a concept created by law and established by statute, and not by mere administrative issuance, to wit:

> "The charter of this Court expressly provides that its jurisdiction is **to review on appeal "decisions of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes." <u>However, the same charter also expressly provides that if respondent fails to decide within "a specific period" required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. It is the respondent's decision, or inaction "deemed a denial", that the taxpayer can take to this Court for review. Without a decision or an "inaction x x x deemed a denial" of the respondent, this Court has no jurisdiction over a petition for review</u>**.
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> **<u>Thus, the "deemed denied" concept is not an administrative invention created via RMC No. 54-2014. Rather, it is one engrained in the law, or is a concept established by statute. Such being the case, with or without RMC No. 54-2014, there can be "deemed a denial" of an administrative refund claim. Correspondingly, the issue as to whether or not there was a retroactive application of RMC No. 54-2014 has no bearing in this case.</u>**"[17]

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administrative claim. Considering that respondent failed to render a decision, petitioner only had until 12 September 2012 to file its Petition with this Court.

[13] Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113, and 197156, 12 February 2013.

[14] Emphasis supplied.

[15] SUBJECT: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended, 11 June 2014.

[16] CTA EB Case No. 1867, 7 August 2019.

[17] Emphasis supplied.

Furthermore, a close reading of ***RMC No. 54-2014*** shows that the BIR did not establish a new rule in processing VAT refund/credit claims, but only summarized the rulings of the Supreme Court in ***Commissioner of Internal Revenue vs. San Roque Power Corporation***[18] and ***Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue.***[19]

Finally, the Court does not agree with the petitioner's contention that the period to file the judicial claim was revived or reinstated by ***RR No. 1-2017.***[20]

First, the Court notes that ***RR No. 1-2017*** did not extend the period to file the judicial claim in this Court. ***RR No. 1-2017*** only mentions the processing of the VAT refund/credit claim at the administrative level; and

Second, the 120+30 day periods are conferred by law and, therefore, are mandatory and jurisdictional. It cannot be altered or modified by the Courts, and most especially by the BIR.[21] Hence, even assuming ***RR No. 1-2017*** had the effect of reviving petitioner's administrative claim, the same did not affect the period to file the judicial claim. The law is clear that the judicial claim for VAT refund/credit should be made within 30 days from the lapse of the 120-day period or from the receipt of the decision of the BIR, whichever is sooner. To subscribe to the view of the petitioner would be an outright violation of the rule established under the Tax Code, Revised Rules of the Court of Tax Appeals, and jurisprudence.

As a final note, the parties are reminded that this Court, even if vested with special jurisdiction, is a court of general jurisdiction which can only take cognizance of such matters that are clearly within its statutory authority. Relative thereto, when it appears from the pleadings or the evidence on record that this Court has no jurisdiction over the subject matter, such as this case, the Court has no choice but to dismiss the claim.[22]

WHEREFORE, premises considered, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court is **GRANTED.** The instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[18] G.R. Nos. 187485, 196113 and 197156, 12 February 2013.
[19] G.R. Nos. 193301 and 194637, 11 March 2013.
[20] SUBJECT: Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014, 3 January 2017.
[21] Nippon Express (Philippines) Corp v. CIR, GR No. 185666, 4 February 2015.
[22] *Id.*

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice