REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ORICA PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10152

Members:

MANAHAN, *P.J., Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

MAY 08 2024
12:30 p.m.

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D E C I S I O N

MANAHAN, *J.:*

This is a *Petition for Review*[1] filed by petitioner Orica Philippines, Inc. (Orica) against respondent Commissioner of Internal Revenue (CIR) on August 16, 2019, praying that the denial by the respondent of its administrative claim for refund be reversed, and that judgment be rendered ordering respondent CIR to refund its excess and unutilized input value-added tax (VAT) attributable to its export sales for the second (2nd) to fourth (4th) quarters of fiscal year (FY) ended September 30, 2017 or the period from January 1, 2017 to September 30, 2017 in the amount of Php27,185,243.95.[2]

THE PARTIES

Petitioner Orica is a corporation registered with the Securities and Exchange Commission (SEC) and as a taxpayer with Taxpayer's Identification Number (TIN) 000-059-661-000,[3] with principal office address at 11/F Tower 2, Rockwell Business Center, Ortigas Avenue, Ugong, Pasig City.[4]

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[1] Docket, CTA Case No. 10152, Vol. I, pp. 10-20.
[2] *Id.*, Vol. I, Prayer, Petition for Review, pp. 17-18; Docket, Vol. I, Statement of the Case, Pre-Trial Order dated February 18, 2020, p. 235.
[3] *Id.*, Vol. I, Joint Stipulation of Facts and Issues (JSFI), p. 222.
[4] *Id.*, Vol. I, The Parties, Petition for Review, p. 10.

Respondent CIR is authorized to decide, approve and grant applications for refund and/or issuance of tax credit representing a taxpayer's excess internal revenue tax payments.[5]

THE FACTS

On March 20, 2019, petitioner filed an application/request for refund of its excess input VAT.[6]

On July 17, 2019, petitioner received letter dated June 10, 2019 from the Assessment Service, granting its claim for the refund of its excess input VAT for the covered period but only in the amount of Php511,515.44 and denied/disallowed the remaining amount of Php26,673,728.51.[7]

The letter dated June 10, 2019 shows the details of the disallowances leading to the eventual denial of petitioner's claim, to wit:[8]

	Local	Importations	Total
AMOUNT OF CLAIM	**P22,769,847.94**	**P4,415,396.01**	**P27,185,243.95**
Deductions per VCAD Verification			
Disallowed IT due to violation on invoicing requirements	P(5,949,273.25)	(4,031,282.00)	P(9,980,555.25)
Disallowed IT per ITS verification	(5,749.92)	-	(5,749.92)
Discrepancy of IT per schedule submitted as against Quarterly VAT return	(1,439,549.45)	(384,114.01)	(1,823,663.46)
Subtotal	P(7,394,572.62)	P(4,415,396.01)	P(11,809,968.63)
VCAD Recommendation	**P15,375,275.32**	-	**P15,375,275.32**
Deductions per TARD Review			
Disallowed IT due to non-compliance with the invoicing requirements – big-ticket suppliers	P(1,733,061.13)	-	P(1,733,061.13)
Disallowed IT per ITS verification	(1,366,097.13)	-	(1,366,097.13)
Disallowed IT on capital good exceeding 1M	(1,093,033.25)	-	(1,093,033.25)
Disallowed IT on importations	(37,613.00)	-	(37,613.00)
Output VAT assessed on other income	(227,675.10)	-	(227,675.10)
Additional output Vat on disposal assets	(36,126.69)	-	(36,126.69)
Out VAT on credit memos considered taxable sales	(803,548.27)	-	(803,548.27)
IT allocation on unsupported zero-rated sales considered as exempt	(9,476,605.30)	-	(9,476,605.30)
Discrepancy per amount of claim against available IT	(0.01)	-	(0.01)
Subtotal	P(14,863,759.88)	-	P(14,863,759.88)
Net Amount Recommended for VAT Refund	**P511,515.44**	-	**P511,515.44**

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[5] Docket, Vol. I, JSFI, p. 222.
[6] *Id.*, Vol. I, Stipulation of Facts, JSFI, p. 223.
[7] *Id.*
[8] *Id.*

On August 16, 2019, petitioner filed the instant Petition for Review.[9] Thus, respondent was directed to file and serve his Answer to the Court and petitioner, respectively.[10]

On October 30, 2019, after the Court granted[11] his *Motion for Extension of Time to File Answer*,[12] respondent filed his *Answer*[13] with the following special and affirmative defenses, to wit:

1. The instant judicial claim should be denied for petitioner's failure to substantiate the claim for refund at the administrative level as it is an established fact that a decision by the CIR has already been rendered and in such case, the Supreme Court has held that the duty of the court is now limited in determining whether the decision is proper; and

2. The claim for refund should be denied for failure to comply with the mandatory invoicing requirements pursuant to Section 113 in relation to Section 110 of the Tax Code, as amended.

On November 7, 2019, the Pre-Trial Conference was set by the Court and the parties are directed to file their respective Pre-Trial Brief five (5) days before the scheduled date.[14]

On January 17, 2020, petitioner filed its *Pre-Trial Brief*[15] while respondent filed his *Pre-Trial Brief*[16] on December 12, 2019.

On February 5, 2020, the parties submitted their *Joint Stipulation of Facts and Issues*.[17] On February 18, 2020, the Court issued the *Pre-Trial Order*.[18]

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[9] Docket, Vol. I, JSFI, p. 223; Docket, Vol. I, Petition for Review, p. 10.
[10] *Id.*, Vol I, Summons dated September 10, 2019, p. 54.
[11] *Id.*, Vol I, Order dated October 7, 2019, p. 61.
[12] *Id.*, Vol I, pp. 64-72.
[13] *Id.*, Vol I, pp. 64-73.
[14] *Id.*, Vol I, Notice of Pre-Trial Conference, pp. 75-78.
[15] *Id.*, Vol I, pp. 111-119.
[16] *Id.*, Vol I, pp. 104-107.
[17] *Id.*, Vol I, pp. 222-229.
[18] *Id.*, Vol I, pp. 235-242. *cm*

Trial ensued. Petitioner presented first its witnesses and evidence.[19] On December 7, 2020, petitioner filed its *Formal Offer of Evidence* (FOE).[20]

In *Resolution* dated February 22, 2021,[21] the Court admitted petitioner's Exhibits "P-1", "P-2", "P-2-1", "P-3", "P-4 to P-6", "P-7 to P-15","P-16 to P-19", "P-20", "P-20-1", "P-21", "P-21-1", "P-22", "P-24", "P-24-1", "P-25", "P-25-1", "P-26", "P-27-1", "P-27-2", "P-28", "P-26-1", "P-26-2", "P-29", "P-30", "P-31 to P-39", "P-40 to P-42", "P-43 to P-45", "P-46", "P-47 to P-49", "P-50 to P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-70", "P-71", "P-74", "P-77", "P-84 to P-322, with sub-markings","P-323 to P-325", "P-326", "P-327", "P-329", "P-331 to P-334", "P-335 to P-813", "P-814 to P-816", "P-817 to 842", "P-843 to P-847", "P-848 to P-854", "P-855 to P-872", "P-1527", "P-1528 to P-1536", "P-1537 to P-1545", "P-1546 to P-1548", "P-1549 to P-1551", "P-1552", "P-2", "P-1553 to P-1563", "P-1564 to P-1576", "P-1577 to P-1599", "P-1600 to P-1779", "P-1780 to P-1833", "P-1834", "P-1835", "P-1836 to P-1860", "P-1861", "P-1862", "P-1863 to P-1866", "P-1867", "P-1868 to P-1960", "P-1961 to P-1985", "P-1986", "P-1987 to P-1990", "P-1602", "P-2290 to P-2296", "P-4354", "P-2297 to P-2537", "P-2538 to P-2543", "P-2669 to P-2707", "P-2708 to P-2709", "P-2711 to P-2771", "P-2772 to P-2773", "P-2774 to 2775", "P-2776 to P-2779", "P-2780 to P-2782", "P-2783 toP-2791", "P-2792 to P-2799", "P-2800 to P-2805", "P-2806 to P-2809", "P2810 to P-2820", "P-2815", "P-2818", "P-2823", "P-2824 to P-2825", "P-2826 to P-2827", "P-3107 to P-3122", "P-3123 to P-3410", "P-3411", "P-3412 to P-3560", "P-3561 to P-3584", "P-3585 to P-3626", "P-3627 to P-3633", "P-3634", "P-3635 to P-3673", "P-3674 to P-3675", "P-3676", "P-3409", "P-3114", "P-3677 to P-3685", "P-3686", "P-3687", "P-3688", "P-3689", "P-3965 to P-4008, with sub-markings", "P-4360", "P-4361 to P-4364", "P-4009 to P-4201", "P-4202 to P-4329", "P-4330 to P-4331", "P-4332 to P-4335", "P-4336 to P-4337", "P-4338 to P-4343", "P-4344 to P-4347", "P-4348 to P-4350", "P-4351 to P-4353", "P-4355 to P-4358", and "P-4359".

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[19] Docket, Vol. I, Minutes of the Hearing held on February 20, 2020, pp. 248-250; Docket, Vol. I, Minutes of the Hearing held on February 27, 2020, pp. 257-259.
[20] *Id.*, Vol. II, pp. 646-664.
[21] *Id.*, Vol. II, pp. 736-739.

Other exhibits offered were denied either by failure of the petitioner to present the originals for comparison or for not being found in the records of the case.[22]

Petitioner moved for the reconsideration[23] of the denied exhibits on March 17, 2021 which was partially granted and admitted Exhibits "P-23", "P-23-1", "P-72", "P-75", "P-78", "P-80", "P-82", "P-83", "P-85", "P-88", "P-91", "P-94", "P-97", "P-100", "P-103", "P-106", "P-109", "P-112", "P-115", "P-118", "P-121", "P-124", "P-127", "P-130", "P-133", "P-136", "P-139", "P-142", "P-145", "P-148", "P-151", "P-154", "P-157", "P-160", "P-163", "P-166", "P-169", "P-172", "P-177", "P-180", "P-183", "P-186", "P-189", "P-192", "P-195", "P-198", "P-201", "P-204", "P-207", "P-210","P-213", "P-216", "P-219", "P-222", "P-225", "P-228", "P-231", "P-234", "P-237", "P-246", "P-249", "P-252", "P-255", "P-258", "P-261", "P-264", "P-267", "P-270", "P-273", "P-276", "P-279", "P-282", "P-285", "P-288", "P-291", "P-294", "P-297", "P-300", "P-303", "P-306", "P-309", "P-312", "P-315", "P-318", "P-321", "P-2544 to P-2661", "P-2663 to P-2668", and "P-2821 to P-2822". However, Exhibits "P-319" and "P-2662" were still denied.[24]

On February 15, 2022, petitioner filed a *Motion with Leave of Court to Reopen the Case for Presentation of Additional Evidence with Motion for Leave to Allow Conditional Recall of Independent CPA (of Orica Philippines, Inc.)*[25] which was eventually denied[26] by the Court for lack of merit.

Respondent presented his witnesses and evidence on June 14, 2022.[27] On June 15, 2022, respondent filed his *FOE*[28] while a *Comment on the Respondent's Formal Offer of Evidence (by Petitioner Orica Philippines, Inc.)*[29] was filed on June 23, 2022. Except for respondent's Exhibit "R-5", all other exhibits were admitted for his failure to submit the duly marked exhibit.[30] The Court directed the parties to file their respective memoranda.[31]

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[22] Docket, Vol. II, Formal Offer of Evidence, pp. 737-738.
[23] *Id.*, Vol. II, Motion for Reconsideration with Leave of Court to Allow the ICPA to Submit and Amend ICPA Report (Re: Resolution on the Formal Offer of Evidence dated 22 February 2021), pp. 742-750.
[24] *Id.*, Vol. II, Resolution dated November 17, 2021, pp. 763-767.
[25] *Id.*, Vol. II, pp. 836-840.
[26] *Id.*, Vol. II, Resolution dated March 24, 2022, pp. 1054-1055.
[27] *Id.*, Vol. II, Minutes of the Hearing held on June 14, 2022, pp. 1058 to 1058-C.
[28] *Id.*, Vol. II, pp. 1063-1066.
[29] *Id.*, Vol. II, pp. 1068-1070.
[30] *Id.*, Vol. II, Resolution dated August 4, 2022, pp. 1072-1073.
[31] *Id.* om

Respondent filed his Memoranda[32] on August 30, 2022. On the other hand, the *Memorandum with Motion for Leave of Court to Reopen the Case for Presentation of Additional Evidence (of Orica Philippines, Inc.)*[33] was filed on September 8, 2022 which was partially granted[34] by this Court on January 6, 2023.

Thus, the Court recalled the Independent Certified Public Accountant (ICPA) and testified anew on March 14, 2023.[35] On even date, petitioner filed a *Compliance (for the Submission of Petitioner's Supplemental Formal Offer of Evidence)*[36] with the attached *Supplemental Formal Offer of Evidence.*[37]

The Court admitted petitioner's Exhibits "P-6" and "P-4360" and submitted the case for decision.[38]

ISSUES

The following issues to be resolved by the Court are as follows:

1. Whether petitioner is entitled to a tax refund amounting to Php27,185,243.95 representing the alleged excess and/or unutilized input VAT credits attributable to its zero-rated sales for the 2nd to 4th quarters of FY 2017 (or the period 1 January 2017 to 30 September 2017); and

2. Whether respondent erred in merely granting Php511,515.44 out of the Php27,185,243.95 worth of input VAT credits attributable to petitioner's zero-rated sales for the 2nd to 4th quarters of FY 2017.[39]

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[32] Docket, Vol. II, pp. 1074-1080.
[33] *Id.*, Vol. II, pp. 1082-1126.
[34] *Id.*, Vol. II, Resolution dated January 6, 2023, pp. 1138-1140.
[35] *Id.*, Vol. II, Order dated March 14, 2023, pp. 1143-1144.
[36] *Id.*, Vol. II, pp. 1146-1148.
[37] *Id.*, Vol. II, pp. 1149-1151.
[38] *Id.*, Vol. II, Resolution dated June 6, 2023, p. 1158.
[39] *Id.*, Vol. I, Issues, Pre-Trial Order dated February 18, 2020, p. 237.

Petitioner's Arguments[40]

Petitioner argues that it is a VAT registered entity as required under Section 112(A) of the 1997 National Internal Revenue Code (NIRC), as amended, and that the administrative and judicial claim for refund was filed within the prescriptive period provided under the said provision.

Petitioner insists that it is engaged in VAT zero-rated or effectively zero-rated transactions as required under the 1997 NIRC, as amended, and its pertinent regulations, and its sales were paid for in acceptable foreign currency exchange and the proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Petitioner further alleges that the input taxes due from the purchases of goods and services directly attributable to its zero-rated sales were duly supported by VAT invoices or official receipts, and that the claimed input VAT payments were not applied against any output tax in the succeeding periods.

Respondent's Arguments[41]

Respondent argues that the petition must be dismissed for the failure of petitioner to substantiate its administrative claim for refund, and that petitioner is not entitled to the refund of the amount of Php27,185,243.95.

RULING OF THE COURT

The *Petition for Review* is dismissed for lack of jurisdiction.

Requisites for the grant of the refund or issuance of Tax Credit Certificate under the law.

Section 112(A) and (C) of the 1997 NIRC, as amended by Republic Act (RA) No. 10963, provides, in part, as follows:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* —

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[40] *Supra*, Note 30.
[41] *Supra*, Note 9.

> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, 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 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.
>
> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Based on the aforequoted provision of Section 112 of the 1997 NIRC, as amended, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites may be classified into the following categories:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. the refund claim is filed with the Bureau of

Internal Revenue (BIR) within two (2) years after the close of the taxable quarter when the sales were made;[42]

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[43]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[44]

<u>In relation to the taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[45]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[46]

<u>As regards the taxpayer's input VAT being refunded</u>:

6. the input taxes are not transitional input taxes;[47]

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[42] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[43] Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

[44] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra*; and AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue, *supra*.

[45] *Ibid.*

[46] *Ibid.*

[47] *Ibid.*

7. the input taxes are due or paid;[48]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[49] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[50]

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[51] Thus, it behooves petitioner to show compliance with each of the foregoing requisites. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative claim for refund was timely filed.

The *first* requisite pertains to the filing of a claim for tax refund or tax credit of input VAT before the BIR, within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 2nd to 4th quarters of FY 2017. Counting two (2) years from the close of the said quarters, respectively, the following table indicates the pertinent last day

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[48] *Ibid.*

[49] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*

[50] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra*; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, supra.*

[51] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

for the filing of an administrative claim for the concerned quarter/ period, to wit:

Period FY 2017	Close of the taxable quarter	Last day to file Administrative Claim
2nd	March 31, 2017	March 31, 2019
3rd	June 30, 2017	June 30, 2019
4th	September 30, 2017	September 30, 2019

Petitioner filed its administrative claims for refund on March 20, 2019. Thus, there is no dispute that petitioner timely filed such claim for refund for said quarters.

The judicial claim was filed out of time.

As regards the *second* requisite, the same necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 90-day period under Section 112(C) of the 1997 NIRC, as amended.

"In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,*[52] the Supreme Court summarized the rules regarding the prescriptive periods of the administrative and judicial claims for refund or tax credit of input VAT. The pertinent rules for the judicial claim are quoted below:

> **"B. 120(now 90) + 30-Day Period**
>
> 1. 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 120-day (now 90-day) period, or (2) file the judicial claim within thirty days from the expiration of the 120-day (now 90-day) period if the Commissioner does not act within the 120-day (now 90-day) period.
>
> 2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
>
> 3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi and San Roque).*

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[52] G.R. No. 173241, March 25, 2015, citing *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, G.R. No. 191496, January 15, 2014.

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque).*

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (San Roque).

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,*[53] the Supreme Court stated:

> "A final note, the taxpayers are reminded that when the 120-day (now 90-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 must file an appeal within 30 days from the lapse of the 120-day (now 90-day) waiting period."

The Supreme Court has also stated that 'any claim filed in a period less than or beyond the 120+30 (now 90+30) days provided by the 1997 NIRC, as amended, is outside the jurisdiction of the Court of Tax Appeals (CTA).[54]

Thus, from the filing of petitioner's administrative claim on March 20, 2019, respondent had ninety (90) days or until June 18, 2019, to act on the said claim. In case of inaction within the said 90-day period, petitioner has thirty (30) days from such expiration to file its judicial claim, or until July 18, 2019.

In the present case, the BIR issued the letter or "VAT Refund Notice" dated June 10, 2019[55] partially denying petitioner's claim for refund, which while dated within the ninety (90)-day period, was received by petitioner only on July 17, 2019, which is already beyond the ninety (90)-day period.

Petitioner then filed its judicial claim for refund, via the present *Petition for Review,*[56] on August 16, 2019, which was beyond the 90+30-day period for respondent to resolve the

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[53] G.R. No. 168950, January 14, 2015, see also *Lapanday Foods Corporation vs. Commissioner of Internal Revenue,* G.R. No. 252821, September 2, 2020.
[54] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 182737, March 2, 2016.
[55] Docket, Vol. II, Exhibit "P-23", p. 728, and Exhibit "P-23-1", p. 729.
[56] *Supra,* Note 1.

administrative claim and for petitioner to file its judicial claim, which ended on July 18, 2019.

It is reiterated that the "judicial claim should be filed within a period of thirty (30) days after the receipt of respondent's decision or ruling **or after the expiration of the 120-day [now 90-day] period, whichever is sooner**."[57] Petitioner's receipt of the June 10, 2019 letter on July 17, 2019 does not alter the jurisdictional period within which to appeal due to inaction. Here, the thirty (30)-day period to appeal to the CTA due to inaction commenced on June 19, 2019, after the lapse of the ninety (90)-day period on June 18, 2019, and ended on July 18, 2019.

Clearly, the instant Petition for Review, filed only on August 16, 2019, was filed out of time. Thus, this Court has no jurisdiction.

WHEREFORE, premises considered, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

[57] *Supra*, Note 54.

ATTESTATION

I attest 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's Division.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice