REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

DENSO PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10046

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

OCT 02 2019 · 11:13a.m.

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RESOLUTION

This resolves respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court**[1] filed on July 23, 2019 praying that said motion be given due course and petitioner's Petition for Review (PFR) be dismissed for being time-barred and/or lack of jurisdiction.

In the said PFR, petitioner alleged that its administrative claim for refund for its excess and/or unutilized input value-added taxes (VAT) covers the following application with the corresponding taxable quarter, to wit:[2]

VAT Refund Application	Period covered
1st	January 1 to March 31, 2005 October 1 to December 31, 2005 January 1, 2006 to March 31, 2006 April 1, to June 30, 2006
2nd	October 1 to December 31, 2006 April 1 to June 30, 2007
3rd	July 1 to September 30, 2007
4th	January 1 to March 31, 2008

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[1] Docket, CTA Case No. 10046, Vol. I, pp. 158-164.
[2] *Id.*, Vol. I, Petition for Review, p. 11-12.

Petitioner also alleged therein that said applications, as its administrative claim for refund, were filed on the following dates, to wit:[3]

VAT Refund Application	Date Filed
1st	January 29, 2007
2nd	November 26, 2008
3rd	September 23, 2009
4th	March 30, 2010

It further alleged that, on the date of filing of each VAT refund applications, it tendered its complete supporting documents, including its sales invoices, purchase invoices, and relevant import and export documents.[4]

On March 8, 2019, petitioner filed its judicial claim for refund by filing said PFR before this Court after it received the notice of denial of its motion for reconsideration from the respondent for the four (4) Notices of Denial, all dated November 26, 2018, which denied all the VAT refund applications.[5]

In the instant motion, respondent argues that the filing of said PFR on March 8, 2019 was beyond the mandatory and jurisdictional 120+30-day period under Section 112(D) of the 1997 National Internal Revenue Code (NIRC), as amended. He further argues that the subsequent letter of denial for the said administrative claim is of no moment and has no bearing.[6]

Petitioner in its Comment[7], which was filed on August 14, 2019, argues that this Court has jurisdiction over its petition and that the respondent's reliance on Revenue Memorandum Circular (RMC) No. 54-2014 as to the latter's interpretation of Section 112(D)[8] is misplaced.

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[3] Docket, Vol. I, Petition for Review, p. 17.
[4] *Id.*
[5] *Id.* at 10.
[6] *Id.*, Vol. I, Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court, Vol. I, p. 159.
[7] *Id.*, Vol. III, Comment/Opposition (to the Motion for Early Resolution on the Issue of Jurisdiction dated 19 July 2019), pp. 1351-1360.
[8] *Id.* at pp.1351-1352.

Petitioner further argues that its petition involves factual issues that are better heard in a full-blown trial.[9]

Respondent's arguments are tenable.

Section 112(A) and (C) of the 1997 NIRC, as amended, provides for the period when the petitioner should file its claim and when respondent should act on taxpayer's claim for input VAT refund/credit as well as the period when the latter may appeal the action or inaction of the former on such claim, respectively, 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, **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...
>
> (B) xxx xxx xxx
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - <u>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</u> 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**, <u>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</u>. (*Emphasis and underscore ours*)
>
> xxx xxx xxx

As shown in the above-cited provision, petitioner has 2-year period to file its claim for refund of input VAT from the time of the close of the taxable quarter when the sales were made and the respondent has 120 days from the date of submission of petitioner's complete supporting documents of such application to act on the same.

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[9] *Id.* at pp.1357-1358.

As such, the law provides for two scenarios before a judicial claim for refund may be filed with the CTA: (1) the full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the CIR having acted on the claim. It is only from the expiry date of either one may a taxpayer-claimant within 30 days file its judicial claim for refund or tax credit for unutilized input VAT. Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.[10]

Prior to June 11, 2014, the issuance date of RMC No. 54-2014, the applicant/claimant had thirty (30) days within which to submit the complete documentary requirements sufficient to support his claim, unless given further extension by the respondent. 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. If, however, the applicant/claimant manifests that he no longer wishes to submit any other additional documents to complete his administrative claim, the 120-day period shall begin to run from the date of filing.[11]

In the instant case, petitioner did allege that the date of filing of each VAT refund application was the date when it submitted its complete supporting documents. Thus, the reckoning date for the two (2)-year period and 120-day period shall be counted from the date of filing of the administrative claim for input VAT refund, to wit:

Quarter Ending	**Last day of filing of claim for refund**	**Date of Filing of Administrative Claim**	**Last day of the 120-day period**
March 31, 2005	March 31, 2007	January 29, 2007	May 29, 2007
December 31, 2005	December 31, 2007	January 29, 2007	May 29, 2007
March 31, 2006	March 31, 2008	January 29, 2007	May 29, 2007
June 30, 2006	June 30, 2008	January 29, 2007	May 29, 2007
December 31, 2006	December 31, 2008	November 26, 2008	March 26, 2009
June 30, 2007	June 30, 2009	November 26, 2008	March 26, 2009
September 30, 2007	September 30, 2009	September 23, 2009	January 21, 2010
March 31, 2008	March 31, 2010	March 30, 2010	July 28, 2010

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[10] *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue*, G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018.

[11] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 08, 2015.

Now the question is whether the petitioner has the option either to file an appeal within 30 days after the lapse of the 120-period without action from the respondent or to wait until the latter issues a ruling on the said claims for VAT refund/credit?

We rule in the negative.

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* [12], the Supreme Court ruled that the 30-day period of filing an appeal is mandatory and jurisdictional after the expiration of the 120-day period if the applicant/claimant will opt to file an appeal, to wit:

> "When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from 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," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, ...
>
> xxx xxx xxx
>
> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods..."

The doctrine on the mandatory and jurisdictional nature of the 120+30-day period is also reiterated in several subsequent rulings of the Supreme Court.[13]

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[12] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

[13] *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue,* G.R. Nos. 193301 and 194637, March 11, 2013; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,* G.R. No. 173241, March 25, 2015; *Commissioner of Internal Revenue v. Toledo Power Company,* G.R. Nos. 196415 and 196451, December 02, 2015; *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue,* G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018.

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[14], the Supreme Court provides a summary of rules on prescriptive periods for claiming refunds or credit of input VAT, to wit:

SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)

3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008**. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. (*San Roque*)

B. 120+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 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.

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*)

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*)

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[14] G.R. No. 191498, January 15, 2014.

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

As shown above, the only exception to the doctrine of 120+30-day period is when the claim for refund or credit of input VAT was filed between December 10, 2003 and October 5, 2010, when BIR Ruling No. DA-489-03 was still in force. Although instant case is within the coverage of the aforesaid ruling, it is not a premature filing before this Court but a late filing. Thus, the exception is not applicable in the instant case.

In the instant case, respondent did not act on the last day of the 120-day period shown in the above table, hence, it means that the VAT refund applications were deemed denied.

Applying the above-mentioned provision of the 1997 NIRC, as amended, and cases above-cited, petitioner has 30-days from the last day of said 120-period to file an appeal before this Court or until the following dates, to wit:

Quarter Ending	**Last day of the 120-day period**	**Last day of the 30-day period to Appeal**
March 31, 2005	May 29, 2007	June 28, 2007
December 31, 2005	May 29, 2007	June 28, 2007
March 31, 2006	May 29, 2007	June 28, 2007
June 30, 2006	May 29, 2007	June 28, 2007
December 31, 2006	March 26, 2009	April 25, 2007
June 30, 2007	March 26, 2009	April 25, 2007
September 30, 2007	January 21, 2010	February 20, 2010
March 31, 2008	July 28, 2010	August 27, 2010

Thus, the filing of the petition for review on March 8, 2019 was beyond the 30-day period under Section 112(C) of the 1997 NIRC, as amended.

The Court has no jurisdiction to continue hearing the instant case.

In view of the foregoing, this Court will no longer discuss the other issues raised by the petitioner for the same reason above-cited.

WHEREFORE, premises considered, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court is hereby **GRANTED**. Accordingly, the

Petition for Review under CTA Case No. 10046 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice