REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NORTHWIND POWER DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9162

Members:

CASTAÑEDA, JR., *Chairperson,* and
MANAHAN, *JJ.*

Promulgated:

APR 29 2019 4:20 pm

x - x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's **Motion for Reconsideration**, filed on December 21, 2018, with respondent's **Opposition (To Petitioner's Motion for Reconsideration dated 20 December 2018)**, filed on February 6, 2019.

Petitioner moves for reconsideration of the Decision (assailed Decision) dated December 5, 2018, wherein the Court ruled that it has no jurisdiction over the Petition for Review, considering the same was filed in violation of the 120+30 day rule under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. The dispositive portion of the assailed Decision states:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED**."

Petitioner argues that the Court erred in denying its administrative claim for input Value-Added Tax (VAT) refund for the First Quarter of 2012 on the basis that Revenue Memorandum Circular (RMC) No. 54-2014 was issued on June 21, 2014 while its application for refund for the First Quarter of 2012 was filed on March 26, 2014, thus, the said circular cannot be given retroactive effect. Petitioner further argues that it cannot be expected to comply with the requirements of a non-existing regulation.

Petitioner further contends that the letters issued by the Bureau of Internal Revenue (BIR) denying the administrative claims for refund for 2012 for failure to submit documentary requirements within the prescribed reglementary period is without factual basis. According to petitioner, it took special care to attach to the applications the necessary supporting documents, such as VAT Returns, Summary List of Sales, Summary List of Purchases, official receipts it issued, official receipts and invoices issued by its suppliers of goods and services, as well as other documents to prove the VAT zero-rating of its sales of electricity generated through renewable source. These documents, by themselves, are sufficient to prove that it is entitled to the refund of the input VAT paid for purchases of goods and services which are directly attributable to its VAT zero-rated sales for 2012.

Petitioner adds that it was not apprised of the basis of the denial as the Letters of Denial failed to cite which particular provision of RMC No. 54-2014 was not complied with.

Petitioner also maintains that it is entitled to the refund of the input VAT paid or incurred in relation to or attributable to its zero-rated sales of electricity generated through renewable sources of energy, on the basis that: (1) it is engaged in VAT zero-rated sales; (2) it is a VAT-registered taxpayer; (3) the administrative claims for refund were filed within the two-year prescriptive period allowed by law; (4) the input VAT subject of the refund claims are supported by official receipts/invoices compliant with invoicing requirements under Revenue Regulation No. 16-2005; and (5) The input VAT subject of the refund claims were paid or incurred in relation to and attributable to its 2012 zero-rated sales of electricity generated through renewable source.

Further, petitioner avers that RMC No. 54-2014 is not a valid basis to deny its instant claim for refund. It argues that it filed its claim within two (2) years from the close of the respective taxable quarters and submitted the required documents to support its claims for refund. Hence, the BIR erred in stating that petitioner failed to submit the supporting documents within the required period.

Petitioner likewise assails the last part of RMC No. 54-2014 for lack of basis which states that failure to file a judicial claim with the Court of Tax Appeals within thirty (30) days from the expiration of the 120-day period rendered the Commissioner's decision or inaction "deemed a denial", final and appealable. Petitioner emphasized that, in the cases of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[1] (Mindanao) and *Commissioner of Internal Revenue vs. San Roque Power Corporation*[2] (San Roque) cited in RMC No. 54-2014, said cases do not contain a discussion to the effect that in case the BIR fails to act within the 120-day period under Section 112(C) of the NIRC, the BIR is already proscribed from acting on the claim and the application is already denied.

Petitioner posits that what these Decisions (*San Roque* and *Mindanao*) emphasize is that a taxpayer has an option to appeal the decision of the Commissioner to the Court of Tax Appeals (CTA) within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period. Thus, when the BIR acted upon petitioner's administrative claims for refund by issuing Letters of Denial, the applicable prescriptive period is not the thirty (30) days to appeal in case of inaction by the BIR, rather, the from the receipt of the BIR's decision on the administrative claims for refund under Section 112(C) of the NIRC of 1997.

On the other hand, respondent agrees with the Court that it cannot exercise jurisdiction over the petition for it was filed beyond the period allowed by law.

On the non-retroactivity of RMC No. 54-2014, respondent counters that it is not applicable in the instant case on the basis that the assailed RMC merely called for the application of the provisions of the Tax Code in light of the decisions of the Supreme Court.

The Court finds the instant motion without merit.

---

[1] G.R. Nos. 193301 and 194637, March 11, 2013.

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

The arguments raised by the petitioner are mere rehash of the same facts and issues which have already been thoroughly discussed in the assailed Decision.

Notably, petitioner repeatedly mentioned RMC No. 54-2014 in its motion for reconsideration. However, the Court never cited the said RMC as basis in ruling the instant Petition for Review.

On the contrary, the Court found that it has no jurisdiction over the instant case on the basis of Section 112(C) of the NIRC of 1997, as amended, and the Supreme Court's ruling in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[3] *(Aichi Forging).*

To reiterate, the case of *Aichi Forging* clarified the two scenarios contemplated under Section 112(D) of the NIRC *[now Sec. 112(C)]*, stating that the 30 day-period to file an appeal should commence: **(1) when a decision is issued by the CIR <u>before</u> the lapse of the 120-day period and (2) when no decision is made after the 120-day period.**

It must also be noted that in the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[4], the Supreme Court summarized the rules on the 120+30 day period for claiming refund or credit of input VAT:

> "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:
>
> xxx xxx xxx
>
> **A. 120+30 Day Period**
>
> 1. <u>The taxpayer can file an appeal in one of two ways:</u> (1) file the judicial claim <u>within thirty days after the Commissioner denies the claim within the 120-day period</u>,

---

[3] G.R. No. 184823, October 6, 2010.

[4] *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership,* G.R. No 191498, January 15, 2014.

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)

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

Likewise, in *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internal Revenue*[5], the Supreme Court emphasized:

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

In view of the foregoing cases, it is clear that the Commissioner has 120 days to act upon the administrative claim for refund. Expiration of the 120-day period without any action from the Commissioner is considered a denial by inaction of the administrative claim. Consequently, the running of the 30-day period commences upon the expiration of the 120-day. Thus, the taxpayer may file its judicial claim to the Court within 30 days from the expiration of the 120-day period.

---

[5] *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

In the instant case, based on the evidence presented, the expiration of the 120-day period came earlier than the receipt of the denial letters. Thus, petitioner should have filed its appeal within the 30-day period from the expiration of the 120 days and not from the receipt of the denial letters.

Accordingly, the Court affirms its ruling that petitioner belatedly filed its judicial claim for the unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2012. Thus, the Court cannot acquire jurisdiction over the petition.

Finding no cogent reason to reverse the ruling in the assailed Decision, the denial of the Petition for Review filed by Northwind Power Development Corporation is affirmed.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice