REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PETNET, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9113

Members:

BAUTISTA, *Chairperson*
FABON- VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 14 2016
2:24 p.m.

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RESOLUTION

This resolves petitioner's Motion for Reconsideration (Re: Resolution dated February 2, 2016)[1] filed on February 26, 2016, with respondent's Comment/Opposition (To Petitioner's Motion for Reconsideration dated February 24, 2016)[2] filed by registered mail on March 16, 2016.

The Resolution[3] dated February 2, 2016 (assailed resolution) granted respondent's Motion to Dismiss,[4] and dismissed the instant case for lack of jurisdiction. The dispositive portion of the assailed resolution reads as follows:

> **WHEREFORE,** premises considered, respondent's Motion to Dismiss is **GRANTED**. Accordingly, the instant Petition for Review filed by PETNET, Inc. on August 12, 2015 is hereby **DISMISSED**.[5]

In its motion, petitioner argues that: (1) the judicial claim was filed within the period prescribed by the National Internal Revenue Code, consistent with

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1 Docket, pp. 199-213.
2 Id. at pp. 218-220.
3 Id. at pp. 194-198.
4 Id. at pp. 168-172.
5 Id. at p. 197.

jurisprudence and tax rules; (2) the ruling in *Commissioner of Internal Revenue vs. San Roque Power Corporation*[6] regarding the 120+30 day period is inapplicable in this case; (3) *San Roque* deprives taxpayers the right to exhaust all administrative remedies available, which violates due process; (4) the strict application of the 120+30 day period will reduce the CTA into a tax refund agency; and (5) the dismissal of the case based on lack of jurisdiction is unjust and erroneous.

After a careful consideration of the grounds raised in the motion for reconsideration, the Court finds that the issues and arguments raised therein had already been amply discussed, passed upon and considered by this Court in the Resolution sought to be reconsidered. Petitioner's arguments constitute neither compelling nor cogent reason to modify, much less reverse our Resolution dated February 2, 2016.

We reiterate our finding that –

> In the present case, **the 120-day period for the CIR to act on petitioner's claim ended on April 18, 2014. Hence, the 30-day period to appeal ended on May 18, 2014**. Petitioner filed its Petition for Review only on August 12, 2015, which is clearly beyond the prescribed 30-day period. Petitioner's failure to comply with this mandatory and jurisdictional requirement warrants the dismissal of its petition. (Emphasis supplied)

It bears to stress that petitioner's main contention is that its appeal was timely filed because the instant petition was filed on the thirtieth day following receipt of a letter from Revenue District Officer Isabel A. Paulino denying its administrative claim for refund. However, petitioner's application of Section 112(C)[7] of the NIRC and jurisprudence pertaining to this provision is erroneous.

Petitioner received the letter denying its administrative claim for refund on **July 13, 2015**, which is almost two years from the date of filing the administrative

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

[7] SEC. 112. *Refunds or Tax Credits of Input Tax.* –

x x x

(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.

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. (Emphasis supplied) claim on **December 19, 2013**. In effect, petitioner would have us rule that the BIR has an unlimited period within which to decide administrative claims for refund.

It is in the taxpayers' interest that the BIR decide these claims expediently, and the NIRC precisely provides a period for the BIR's action: 120 days. The law also ensures that taxpayers are not prejudiced by any inaction on the part of the BIR: it provides that inaction for 120 days on the administrative claim for refund is equivalent to a denial. This gives taxpayers recourse to the Court within 30 days, reckoned from a point of time determined by law.

Surely, had petitioner received the denial letter on July 13, 2025, or 2035, or 3015, or 5015, the refund sought would not have been as valuable as it would have been on April 18, 2014. From this absurd illustration, it is clear that, contrary to petitioner's arguments, it is in the taxpayer's benefit that the law considers 120 days of inaction of the BIR as a denial of the administrative claim for refund.

It is a well-settled rule that the right to appeal is neither a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[8] In this case, compliance with the 120+30 day period is both mandatory and jurisdictional. Petitioner's failure to observe the same warrants the dismissal of its petition.

WHEREFORE, premises considered, petitioner Petnet, Inc.'s Motion for Reconsideration (Re: Resolution dated February 2, 2016) is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[8] *Fenequito v. Vergara*, G.R. No. 172829, July 18, 2012.