Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

ALLEGRO MICROSYSTEMS PHILIPPINES, INC.,
Petitioner,

-versus-

THE UNDERSECRETARY OF THE DEPARTMENT OF FINANCE AND CHAIRMAN OF THE ONE-STOP-SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER, THE COMMISSIONER OF INTERNAL REVENUE, AND THE COMMISSIONER OF THE BUREAU OF CUSTOMS,
Respondents.

CTA CASE NO. 8882

Members:

DEL ROSARIO, Chairperson
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
JAN 20 2015 ; 10:39 a.m.

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RESOLUTION

Submitted for Resolution is the "Motion to Dismiss" in the "Answer with Motion to Dismiss" filed by respondent Commissioner of Internal Revenue (CIR) dated 15 October 2014, which was adopted by respondents Undersecretary of the Department of Finance and Commissioner of Customs on 30 October 2014, praying for the dismissal of the Petition for Review for palpable lack of merit and/ or for lack of jurisdiction of this Court to entertain the case.

In support thereof, respondents allege that petitioner's claim for refund or issuance of a tax credit certificate (TCC) in the amount of Php129,770,030.10, representing its unutilized input VAT arising from its importation attributable to its zero-rated export sales for the Fiscal Year (FY) covering 1 April 2012 to 31 March 2013, failed to comply with the substantiation requirements under Revenue

Regulations No. 16-2005 in relation to Section 113 and 237 of the 1997 Tax Code, as well as, the conditions/ requirements prescribed under Section 112 (A) (C) (D) of the 1997 Tax Code.[1]

Respondents further allege that this Court does not have jurisdiction over the subject matter since the instant Petition for Review which was filed by petitioner on 29 August 2014 is beyond the 30-day reglementary period to appeal from the lapse of the 120-day period due to the inaction of respondent CIR, in violation of the provision under Section 112 (C) of the 1997 Tax Code.[2]

However, petitioner Allegro Microsystems Philippines, Inc. (AMPI) maintains that this Court has exclusive jurisdiction over the instant Petition for Review under Rule 4, Section 3 (a) (1) in relation to Rule 8, Section 3 (a) of the Revised Rules of the Court of Tax Appeals (RRCTA),[3] since the petition originates from a denial of a claim for VAT

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[1] Paragraph 9 of "Answer with Motion to Dismiss" filed by Respondent CIR.
[2] *Id.,* paragraph 10.
[3] Rule 4, Sec. 3. Cases within the jurisdiction of the Court in Division . – The Court in Division shall exercise:

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> > (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;
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> > xxx xxx xxx

Rule 8

Sec. 3. Who may appeal; period to file petition. –

> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments...

refund/credit.[4] AMPI posits it awaited the decision of respondent denying its claim for a refund/ tax credit certificate even after the lapse of the 120-day period.[5]

The material dates pertinent to the resolution of the instant case are stated hereunder.

On 26 September 2013, AMPI filed its administrative claim[6] for the issuance of a TCC in the aggregate amount of Php 129,770,030.10 with One-Stop-Shop, representing its unutilized excess Input VAT for FY 2013.

On 29 August 2014, AMPI filed a Petition for Review[7] to annul, reverse and set aside the alleged Decision of respondent CIR, through the office of Assistant Commissioner Erlinda A. Simple denying AMPI's claim for a tax refund or issuance of a TCC for its unutilized Input Value-Added Tax arising from importations attributable to its zero-rated export sales for the FY 1 April 2012 to 31 March 2013 in the aggregate amount of Php129,770,030.10.[8]

The main issue in the instant case is whether this Court has jurisdiction to decide the case.

The crux of the issue is the difference in perspective between the parties. Petitioner is of the position that the reckoning point of their appeal is the denial of its administrative claim while respondent is of the position that their reckoning point is the inaction of CIR.

Based on the evidence presented, the Rules and the law, as well as pertinent jurisprudence, the Court is constrained to rule against petitioner.

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[4] Paragraph 1 of Reply filed by Petitioner.
[5] *Id.*, paragraph 13.
[6] Paragraph 2.1.2 of Petition for Review filed by Petitioner.
[7] Division Docket, pp. 7-34.
[8] *Supra* note 6, at paragraph 1.1.

Firstly, petitioner claims that there was a denial from respondent Commissioner through the office of Assistant Commissioner Erlinda A. Simple.[9] But based on the records petitioner has not produced a single iota of evidence to substantiate the claim other than the mere assertion of such supposed fact. It is elementary that the burden of proof lies with the party who alleges the existence of a fact or thing necessary in the prosecution or defense (sic) of an action.[10] Petitioner failed in this regard.

Secondly, the position of petitioner that Rule 4, Section 3(a)(1)in relation to Rule 8, Section 3(a) of RRCTA governs the case as it claims that there was a denial of its administrative claim is erroneous. As stated above, said denial of the administrative claim is not borne by the records. The proper Rule that should govern is Rule 4 Section 3 (a) (2) in relation to Rule 8, Section 3 (a) of the RRCTA.[11]

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[9] *Id.*, paragraph 4.9 & 4.10.
[10] G.R. No. 183622, 8 February 2012.
[11] Rule 4, Sec. 3. Cases within the jurisdiction of the Court in Division . - The Court in Division shall exercise:

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> xxx xxx xxx
>
> (2) Inaction by 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 law administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action.
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> xxx xxx xxx

Rule 8

Sec. 3. Who may appeal; period to file petition. -

> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments...

The charter of the CTA expressly provides that if the Commissioner 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.[12]

Thirdly, the manner of the construction and application of Section 112 (c) of the NIRC, as well as the cases of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[13] (Aichi) and *San Roque v. Commissioner of Internal Revenue*[14] (San Roque) to support petitioner's position is incorrect.

In this regard, AMPI contends that Section 112 (c) provides that the taxpayer has an option to wait for the decision of respondent even after the lapse of the 120-day period provided therein. It further states that the above-mentioned cases have not yet ruled that the CIR no longer has the jurisdiction to decide a claim for refund after the 120-day period.

Such contention is bereft of merit.

San Roque, in explaining the applicable provision of law, states that if the Commissioner 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.[15] It can readily be gleaned that Section 112 (c) provides a specific period for the Commissioner to decide. And as such, upon the lapse of said period, the inaction shall be considered a denial. Said provision reads:

> "SEC. 112. Refunds or Tax Credits of Input Tax. -

[12] CIR v. San Roque Power Corp., G.R. Nos. 187485, 196113 and 197156, 12 February 2013.
[13] G.R. No. 184823, 6 October 2010.
[14] G.R. Nos. 187485, 196113 and 197156, 12 February 2013.
[15] *Id.*

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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 <u>failure on the part of the Commissioner to act on the application</u> within the period prescribed above, <u>the taxpayer affected may, within thirty (30) days</u>** from receipt of the decision denying the claim **or <u>after the expiration of the one hundred twenty-day period, appeal</u>** the decision **or <u>the unacted claim with the Court of Tax Appeals</u>**." (Emphasis and underscoring supplied)

Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership (Mindanao II Geothermal) categorically provides that the 30-day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by CIR as well.[16]

As *Mindanao II Geothermal* expounded:

> "Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:
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> x x x 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,

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

appeal the decision or the unacted claim with the Court of Tax Appeals.

This law is clear, plain, and unequivocal. Following the well-settled verba legis doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, **the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on 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."** (Emphasis supplied)

As if to clear doubt as to any other possible interpretation of Section 112 (c), *Mindanao II Geothermal* states that the *San Roque* pronouncement is clear. The taxpayer can file the 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.[17] Filing an appeal outside of these reglementary periods divest the Court of its jurisdiction to entertain such, these periods being mandatory and jurisdictional.

In this regard, *San Roque* states that "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. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper** whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was

[17] *Id.*

adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional."

Lastly, it is to be noted that a VAT-registered person has two (2) years after the close of the taxable quarter when the pertinent sales were made within which to apply with the CIR a refund or tax credit of creditable input tax that remains unutilized. The CIR in turn has 120-days from the date of submission of complete documents in support of the application for refund or tax credit of input tax to grant or deny the same pursuant to Section 112 (c) of the NIRC of 1997, as amended. Upon notice of denial or the expiration of the allowable period of 120-days without any action on the part of the CIR, the VAT-registered person has 30-days within which to appeal the adverse decision or the inaction of the CIR with the CTA.[18] The Court cannot help but stress that petitioner filed its administrative claim and supporting documents on 26 September 2013. It only filed its judicial claim on 29 August 2014 which was already beyond the prescribed period to appeal. As such, the Court in Division no longer has the competence to entertain the appeal.

WHEREFORE, premises considered, respondent's "Motion to Dismiss" is **GRANTED**. Accordingly, the Petition for Review filed by Allegro Microsystems Philippines, Inc. on 29 August 2014 is hereby **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

[18] CE Casecnan Water and Energy Company, Inc. v. CIR, CTA EB No. 726, June 26, 2012.