REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FLUID SOLUTIONS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9471

Members:

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

Promulgated:
MAR 18 2019
11:10 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

The Petition for Review filed on September 15, 2016, prays for the issuance of a tax credit certificate in the amount of ₱1,500,000.00 allegedly representing petitioner's unutilized input tax for calendar year 2014.[1]

THE FACTS

Petitioner is a corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Unit 812 AIC Burgundy Empire Tower, ADB Avenue, corner Sapphire and Garnet Roads, Ortigas Center, Pasig City. Petitioner is primarily engaged in the business of trading goods such

[1] Summary of the Case, Pre-Trial Order, Docket, p. 188.

as lubricants, metalworking fluids, adhesives, sealants, and chemicals on wholesale and retail basis. Petitioner is duly registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 006-814-533-000.[2]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of his Office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997 (the "Tax Code") and other tax laws, rules and regulations. He may be served summons, pleadings and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

On March 30, 2015, petitioner filed an administrative claim for the issuance of tax credit certificate (TCC) covering the taxable years 2013 and 2014 in the aggregate amount of ₱2,363,353.85.[4] Thereafter, the following ensued:

Date	**Particulars**	**Exhibit**
July 21, 2015	Application for TCC recommended for denial by Revenue District Officer Josephine S. Virtucio[5]	P-2014[6]
August 25, 2015	Petitioner requested for a reexamination of its application	P-2015[7]
September 28, 2015	First Request for the Presentation of Records was received by petitioner.[8]	P-2017[9]
October 8, 2015	Transmittal of documents/schedules by petitioner	P-2020[10]
October 15, 2015	Transmittal of documents/schedules by petitioner for the year 2013	P-2021[11]
October 22, 2015	Transmittal of documents/schedules by petitioner for the year 2014	P-2022[12]
December 29, 2015	Transmittal of documents/schedules by petitioner for the years 2013 and 2014	P-2023[13]

[2] Par. 1, Petition for Review, Docket, pp. 10-11; Exhibit "P-4", Articles of Incorporation; Exhibit "P-6", Certificate of Registration (BIR Form 2303).
[3] Par. 2, Petition for Review, Docket, p. 11; Par. 2, Answer, Docket, p. 60.
[4] Exhibit "P-2013", Docket, p. 274.
[5] Admitted Facts, Joint Stipulation of Facts (JSF), Docket, p. 185.
[6] Docket, p. 275.
[7] Docket, p. 276.
[8] Admitted Facts, Joint Stipulation of Facts (JSF), Docket, p. 183.
[9] Docket, p. 279.
[10] Docket, p. 285.
[11] Docket, p. 286.
[12] Docket, p. 287.
[13] Docket, p. 288.

Likewise, on December 29, 2015, petitioner filed an amended application for TCC covering the taxable year 2014 in the amount of ₱1,500,000.00.[14]

On January 26, 2016, a Letter of Authority, ("LOA") authorizing Revenue Officer Maryrose Vega and GS Roland Zamora of Revenue District No. 43A-East Pasig to examine petitioner's documents and records was sent to petitioner.[15]

Petitioner transmitted documents/schedules for the year 2014 per attached LOA on February 3, 2016.[16]

In a letter dated July 27, 2016, which was received by petitioner on August 16, 2016, petitioner's claim was denied.[17]

The Letter from Respondent dated July 27, 2016 states that the claim of Petitioner was denied on the ground that the Petitioner (1) did not submit complete documents in accordance with Annex A of RMC No. 54-2014; and (2) the inaction of the Commissioner within 120-days from the time of submission of the complete documents is a "deemed denial" of the claim.[18]

On September 15, 2016, petitioner filed its judicial claim for refund of allegedly unutilized input tax for calendar year 2014, in the aggregate amount of ₱1,500,000.00.[19]

On December 6, 2016, respondent filed his Answer,[20] with the following Affirmative Defenses:

> 25. The herein Petition was filed out of time. Under RMC No. 54-2014, petitioner should have filed the judicial claim within 30 days from the lapse of the 120-day, in cases of inaction by the Commissioner, counted from the filing of the claim for tax refund/credit. ge

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[14] Exhibit "P-2018", Docket, p. 280.
[15] Admitted Facts, Joint Stipulation of Facts (JSF), Docket, p. 184.
[16] Exhibit "P-2024"; Docket, p. 289.
[17] Exhibit "P-2019", Docket, p. 281.
[18] Admitted Facts, Joint Stipulation of Facts (JSF), Docket, p. 184.
[19] Docket, pp. 10-32.
[20] Docket, pp. 60-65.

On December 16, 2016, petitioner filed its Reply.[21]

On February 2, 2017, this case was set for pre-trial conference. However, the pre-trial conference was reset to March 2, 2017[22] and then reset to March 30, 2017.[23]

On April 24, 2017, the Court promulgated the Pre-Trial Order.[24]

During trial, petitioner presented three (3) witnesses: (1) Mr. Leandro M. Lontok, Independent Certified Public Accountant (ICPA), (2) Mr. Brian C. Lim, President of Fluid Solutions, and (3) Ms. Lorena S. Maniebo, Account Manager of Fluid Solutions. The witnesses testified on direct by way of judicial affidavit. In view of the absence of the counsel for respondent, petitioner moved that the respondent's right to cross-examine their witnesses be deemed waived, which the Court granted.[25]

On May 15, 2017, petitioner filed its Formal Offer of Evidence (FOE).[26] Respondent failed to file comment on petitioner's FOE per Records Verification dated June 1, 2017.[27]

On August 1, 2017, the Court issued a Resolution[28] admitting Exhibits "P-1 to 1946", "P-1948 to 2012", "P-2014", "P-2017", "P-2019", and "P-2025", subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case. The Court denied the admission of Exhibit "P-1947", for not being found in the records; and Exhibits "P-2013", "P-2013-A", "P-2015", P-2015-A", "P-2016", "P-2016-A", "P-2018", "P-2018-A", "P-2020", "P-2020-A", "P-2021", "P-2021-A", "P-2022", "P-2022A", "P-2023", "P-2023-A", "P-2024", "P-2024-A, and "P-2026", for failure to submit the originals for comparison.

On August 2, 2017,[29] considering the manifestation of petitioner's counsel and upon oral motion, the Court allowed petitioner

[21] Docket, pp. 66-70.
[22] Minutes of the Hearing dated February 2, 2017, Docket, p. 146.
[23] Notice of Resetting, Docket, p. 151.
[24] Docket, pp. 188-192.
[25] Minutes of the Hearing dated May 3, 2017, Docket, p. 238.
[26] Docket, pp. 240-245.
[27] Docket, p. 246.
[28] Docket, pp. 248-249.
[29] Minutes of the Hearing, Docket, p. 253; Order, Docket, p. 254.

to present the denied exhibits for comparison subject to the payment of fine. The Court set a Commissioner's Hearing on August 14, 2017. The Court granted petitioner a period of five (5) days from August 14, 2017 within which to file a Motion for Partial Reconsideration and granted respondent the same period of time from receipt thereof within which to file Comment thereto. The Court also granted respondent's Urgent Motion to Cancel and Reset Hearing.

On August 8, 2018,[30] the Court partially granted petitioner's Motions for Partial Reconsideration filed on August 7, 2017 and on August 22, 2017, and denied for lack of merit petitioner's Motion to Set Date for Commissioner's Hearing. The Court partially reconsiders the Resolution dated August 1, 2017 and admits Exhibits "P-2013", "P-2013-A", "P-2015", P-2015-A", "P-2016", "P-2016-A", "P-2018", "P-2018-A", "P-2020", "P-2020-A", "P-2021", "P-2021-A", "P-2022", "P-2022A", "P-2023", "P-2023-A", "P-2024", and "P-2024-A".

The Court set the initial presentation of respondent's evidence on March 12, 2018. During the hearing on March 12, 2018,[31] both parties failed to appear despite due notice. The Court granted the parties a period of twenty (20) days from receipt of the Order within which to file their respective Memoranda.

On April 16, 2018, petitioner filed its Memorandum.[32] Respondent failed to file Memorandum.[33] On April 25, 2018, the Court submitted this case for decision.[34]

ISSUES[35]

1. Whether or not the Petition for Review was timely filed.
2. Whether or not petitioner is entitled to the claim for refund/tax credit.

[30] Resolution, Docket, pp. 309-311.
[31] Minutes of the Hearing, Docket, p. 317; Order, Docket, p. 318.
[32] Docket, pp. 319-347.
[33] Records Verification dated April 23, 2018, Docket, p. 348.
[34] Docket, p. 349.
[35] Statement of the Facts & Issues, Pre-Trial Order, Docket, p. 188.

THE COURT'S RULING

We will first determine whether the petition is timely filed.

Petitioner's claim for the issuance of a tax credit certificate (TCC) in the amount of ₱1,500,000.00 representing unutilized excess input taxes for the taxable 2014 is anchored on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which states that:

> "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, 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. *(Emphasis Supplied).*

Based on the foregoing provision, the administrative claim for refund or issuance of TCC must be filed within the two-year prescriptive period after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. *Jr*

Reckoned from the close of the taxable quarters when the zero-rated sales were made, petitioner had until the following dates to file an administrative claim:

Period (2014)	End of the Taxable Quarter	End of Two-Year Prescriptive Period
1st Quarter	3/31/2014	3/31/2016
2nd Quarter	6/30/2014	6/30/2016
3rd Quarter	9/30/2014	9/30/2016
4th Quarter	12/31/2014	12/31/2016

Based on the foregoing, petitioner's administrative claims filed with the BIR on March 30, 2015 and December 29, 2015 fall within the period prescribed by law.

Petitioner alleges that its petition was timely filed citing Section 112 (C) of the NIRC of 1997, as amended. According to petitioner, the said provision gives the taxpayer the option to file an appeal with the CTA within thirty (30) days from receipt of the denial by the CIR.

Petitioner also alleges that RMC 54-2014, being a mere administrative issuance, cannot amend legislative acts, and that the periods provided under Section 112 (C) of the Tax Code should not be disregarded on the basis of the mere administrative issuance. Petitioner argues that even assuming arguendo that RMC 54-2014 did not amend the law, said issuance does not apply in this case. Petitioner avers that there was no inaction by the respondent from the time petitioner filed its amended claim for unutilized VAT refund on December 29, 2015. Petitioner alleges that respondent acted positively on the claim and even ordered the petitioner to submit specific documents several times through a letter denominated as First Request for Presentation of Records and marked as "P-2017" in the Formal Offer of Evidence.

The allegations are bereft of merit.

Section 112(C) of the NIRC of 1997, as amended, provides:

"(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." *(Emphases supplied)*

"Based on the plain language of the foregoing provision, the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA."[36]

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. ("Aichi")*,[37] the Supreme Court ruled that the 120-day period granted to the CIR was mandatory and jurisdictional, the non-observance of which was fatal to the filing of a judicial claim with the CTA.[38] Pertinent portion of the *Aichi* case provides:

> The second paragraph of Section 112(D)[39] of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

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[36] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017.
[37] G.R. No. 184823, October 6, 2010.
[38] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017.
[39] Now Section 112 (C) of the NIRC of 1997, as amended.

In the consolidated cases of *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,*[40] Supreme Court *En Banc* stated that:

> Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).
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> xxx xxx xxx
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> xxx **The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional.** The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. xxx
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> 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

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

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, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.

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

xxx xxx xxx

Section 112(D)[41] of the 1997 Tax Code is clear, unequivocal, and categorical that the Commissioner has **120 days to act** on an administrative claim. The taxpayer can **file the judicial claim** (1) ***only within thirty days after the Commissioner partially or fully denies the claim*** within the 120- day period, or (2) ***only within thirty days from the expiration of the 120- day period*** if the Commissioner does not act within the 120-day period." *(Emphases Supplied.)*

In the case *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,*[42] *("Pilipinas Total Gas" case),* the Supreme Court *En Banc* already recognized the applicability of RMC 54-2014 starting June 11, 2014. The Supreme Court *En Banc* categorically stated that, "under the

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[41] Now Section 112(C) of the NIRC of 1997, as amended.
[42] G.R. No. 207112, December 8, 2015.

current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since **it requires him at the time he files his claim to complete his supporting documents** and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is **barred from submitting additional documents after he has filed his administrative claim**." It follows that RMC 54-2014 is applicable to the instant case because petitioner's administrative claim was filed on December 29, 2015.

Based on the foregoing discussions, it is clear that the Commissioner has 120 days to act on the administrative claim. In the instant case, the reckoning point of the 120 days from submission of complete documents for respondent to act on petitioner's claim, is the same date of the filing of the administrative claim as mandated by RMC 54-2014. Counting from December 29, 2015, the date of petitioner's amended application for TCC, respondent had until April 27, 2016 to act on petitioner's claim. In case of denial of or inaction on its claim, petitioner had 30 days or until May 27, 2016 to appeal respondent's decision or the unacted claim with the CTA.

In the instant case, respondent did not reach a decision on or before April 27, 2016, hence, it should be deemed a denial by petitioner. However, petitioner waited until it received the letter from BIR denying its claim on August 16, 2016 before it filed an appeal with the CTA within 30 days therefrom. The instant Petition for Review was filed on September 15, 2016.[43] Thus, the judicial claim was filed 111 days after April 27, 2016, which was the last day of the 120-day period granted to the commissioner to act on the administrative claim. In other words, the Petition for Review was filed 81 days late.

Unfortunately, petitioner shares the same fate as *Philex* whose judicial claim was filed after the lapse of the 30-day period. The Supreme Court said of *Philex*:[44]

> "xxx The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, **"deemed a denial"** of Philex's claim. **Philex had 30 days from the expiration of the 120-day period to**

[43] Petition for Review, Docket, pp. 10-31.
[44] *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*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

> **file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable.** The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences." *(Emphases Supplied.)*

We reiterate that the 120+30 day periods are mandatory and jurisdictional. Clearly, the expiration of the 120-day period came earlier than the receipt of the letter denying the claim. The 120-day period is crucial in filing an appeal with the CTA. In fine, petitioner's judicial claim for TCC cannot prosper for its failure to comply with the 30-day mandatory and jurisdictional period set forth by law.

WHEREFORE, premises considered, petitioner's Petition for Review, which was filed out of time, is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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.

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

ROMAN G. DEL ROSARIO
Presiding Justice