REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>FIRST DIVISION</u>

IBEX PHILIPPINES INC. (FORMERLY TRG PHILIPPINES, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8849

Members:

DEL ROSARIO, *<u>P.J.</u>, Chairperson,*
UY, *and*
MINDARO-GRULLA, *<u>JJ.</u>*

Promulgated:
APR 11 2018 ; 3:04 pm

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RESOLUTION

MINDARO-GRULLA, *<u>J.</u>*:

For the Court's resolution is petitioner's **Motion for Reconsideration (of the Decision dated 13 September 2017)**, filed on October 2, 2017, without respondent's comment as per Records Verification dated January 17, 2018.

Petitioner moves for the reconsideration of the Decision promulgated on September 13, 2017, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review filed by Ibex Philippines Inc. (Formerly TRG Philippines, Inc.) is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED.**"

Petitioner contends that the Petition for Review was timely filed within thirty (30) days to be counted from June 30, 2014 or the date when it was notified by respondent's revenue officers of the issuance of Revenue Memorandum Circular (RMC) No. 54-14 which denied all pending value added tax (VAT) refund claims. Hence, it claims that it had until July 30, 2014 to file the Petition for Review.

Petitioner's motion has no merit.

It must be stressed that upon the lapse of the 120-day period, the only remedy available to petitioner is to file a Petition for Review to the Court within thirty (30) days from said period. Notably, the option of awaiting the decision of respondent and filing a Petition for Review from the said decision to the Court is allowed only before the expiration of the 120-day period.

In the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[1], the Supreme Court laid down the summary of rules on prescriptive periods for claim claiming refund or credit of input VAT, as follows:

> "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

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

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

In the case of *Commissioner of Internal Revenue vs. Dash Engineering Philippines, Inc.*[2], the Supreme Court ruled that:

> "In *San Roque*, one of the respondents similarly filed its petition for review with the CTA well after the 120+30-day period. In denying the taxpayer's claim for refund, this Court explained that:

[2] G.R. No. 184145, December 11, 2013.

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> 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 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. xxx"

From the foregoing, respondent is given a period of 120 days from submission of complete documents in support of its administrative claim within which to act on claims for refund or issuance of tax credit certificate (TCC). On this note, petitioner can file an appeal in one of two (2) ways: (1) file the judicial claim within thirty (30) days after the respondent denies the claim within the 120-day period, or (2) file the judicial claim within thirty (30) days from the expiration of the 120-day period if the respondent does not act within the 120-day period.

In other words, when the 120-day period lapses and there is inaction on the part of respondent, petitioner must no longer wait for respondent to come up with a decision thereafter. The respondent's inaction is the decision itself. It is already a denial of the refund claim. Thus, petitioner must file an appeal within thirty (30) days from the lapse of the 120-day waiting period.[3]

Hence, petitioner's claim that thirty (30)-day period to file its Petition for Review should be reckoned from the date it was notified by respondent's revenue officers of the issuance of RMC No. 54-14 on June 30, 2014, had no legal basis.

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

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In this case, the thirty (30)-day period for petitioner to file its Petition for Review should be counted from the expiration of the 120-day waiting period covering its claims for the third and fourth quarters of taxable year 2008, first to fourth quarters of taxable years 2009, 2010 and 2011 on February 27, 2011, May 29, 2011, August 28, 2011, November 25, 2011, February 25, 2012, May 10, 2012, August 26, 2012, November 24, 2012, February 23, 2012, May 9, 2013, August 20, 2013, November 25, 2013, February 24, 2013 and May 2, 2013. Therefore, counting thirty (30) days from the said dates, the Petition for Review, filed only on July 23, 2014, was clearly out of time.

It bears stressing 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.[4]

To reiterate, the thirty (30)-day period within which to file an appeal of the denial of the claim or inaction on the part of the respondent is both mandatory and jurisdictional, and noncompliance therewith precludes the Court from acquiring jurisdiction over the case.

Accordingly, the Court finds no compelling reason to justify the reversal of the assailed Decision.

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

SO ORDERED.

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

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[4] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

*Petitioner's Motion for Reconsideration (of the Decision dated 13 September 2017)