REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NORTHWIND POWER DEVELOPMENT CORPORATION, *Petitioner,*	**CTA Case No. 9202**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 1 8 2018 1:10 p.m.

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D E C I S I O N

MANAHAN, *J.:*

The case involves the *Petition for Review*[1] filed by Northwind Power Development Corporation (NPDC) to seek the refund or issuance of tax credit certificate in the amount of Five Hundred Eighty-Four Thousand Four Hundred Fifty-Three Pesos and 93/100 (₱584,453.93), allegedly representing unutilized input value-added tax (VAT) attributable to its zero-rated sales for the first quarter of taxable year (TY) 2011.

THE PARTIES

Petitioner NPDC is a corporation duly organized and existing under and by virtue of Philippine laws, with principal offices at Sitio Suyo, Brgy. Buruyen, Bangui, Ilocos Norte.[2] It is registered with the Energy Regulatory Commission (ERC) and the Board of Investments (BOI) as a "New Operator of Wind Power Generation Plant", as evidenced by its Certificate of Registration No. 2004-108 dated September 20, 2004.[3] Petitioner is likewise registered with the Bureau of Internal

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[1] Docket, Vol. I, CTA Case No. 9202, pp. 10-30.
[2] *Id.*, Vol. 1, Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), p. 397.
[3] *Id.*, Vol. 2, Par. 4, Petitioner's Memorandum, p. 704.

Revenue (BIR) as a VAT entity as shown by its Certificate of Registration No. OCN4RC000657876 dated October 13, 2000.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

Petitioner sold renewable power generated from wind energy to Ilocos Norte Electric Cooperative (INEC) and to Philippine Electricity Market Corporation (PEMC).[5]

Petitioner filed its Quarterly VAT Return for the first quarter of taxable year 2011 on June 17, 2011, showing overpayment in the amount of ₱3,958,339.26.[6]

On March 25, 2013, petitioner filed with the BIR its administrative claim for refund of its alleged unutilized input VAT for the first quarter of taxable year 2011.[7]

On October 15, 2015, petitioner received from the BIR a letter dated September 29, 2015 denying its claim for refund for the first quarter of 2011.[8]

On November 16, 2015, petitioner filed the instant Petition for Review[9] before this Court.

In the Answer[10] filed on January 28, 2016, respondent interposed several special and affirmative defenses. Respondent argued that petitioner failed to file the instant Petition for Review within the period prescribed by law and jurisprudence. As a consequence, the Court of Tax Appeals

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[4] Docket, Vol. 2, Par. 3, Petitioner's Memorandum, p. 704.
[5] *Id.*, Vol. 2, Par. 5, Petitioner's Memorandum, p. 704.
[6] *Id.*, Vol. I, Exhibit "10", p. 341.
[7] BIR Records, Exhibit "P-23", pp. 186-190.
[8] Docket, Vol. 1, Exhibit "P-24", p. 31.
[9] *Supra.*, Note 1.
[10] Docket, Vol. 1, pp. 188-197.

never acquired jurisdiction over the case. And assuming *arguendo* that the Petition for Review was timely filed, petitioner must prove that it complied with all the statutory and administrative requirements to be entitled to a tax refund.

Respondent likewise explained that Revenue Memorandum Circular (RMC) No. 54-2014 is a mere legislative interpretation. It only adopted the two scenarios envisioned under prevailing jurisprudence pertaining to Section 112(C) of the National Internal Revenue Code, as amended. There is no retroactive effect to speak of in this case.

Thereafter, petitioner filed its Reply (To Respondent's Answer dated January 27, 2016)[11] on February 16, 2016, alleging, among others, that it filed the instant petition within the reglementary period and this Court has jurisdiction over the present case. Petitioner avers that under the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[12], the Supreme Court ruled that Revenue Memorandum Circular No. 54-2014, which provided the new rule that all pending VAT refund claims which have not been acted upon by the BIR and have been pending more than 120 days from the day of filing are automatically denied, does not apply to VAT refund claims filed before the effectivity of the subject RMC on June 11, 2014.

The case was set for pre-trial on March 17, 2016.[13] Accordingly, respondent filed his Pre-Trial Brief[14] on March 10, 2016, while petitioner filed its Pre-Trial Brief[15] on March 15, 2016.

On April 6, 2016, the parties submitted their Joint Stipulation of Facts and Issues[16]. Subsequently, the Court issued a Pre-Trial Order[17] on April 13, 2016, approving and adopting the parties' Joint Stipulation of Facts and Issues and terminating the pre-trial.

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[11] Docket, Vol. 1, pp. 201-215.
[12] G.R. No. 207112, December 8, 2015.
[13] Docket, Vol. 1, pp. 199-200.
[14] *Id.*, Vol. 1, pp. 217-220.
[15] *Id.*, Vol. 1, pp. 222-232.
[16] *Id.*, Vol. 1, pp. 397-406.
[17] *Id.*, Vol. 1, pp. 413-417.

During trial, petitioner presented its witness, Nerissa N. Posadas, who testified by way of Judicial Affidavit[18] and Supplemental Judicial Affidavit[19].

Subsequently, petitioner filed its Formal Offer of Evidence[20] on September 19, 2016, consisting of Exhibits "P-1" to "P-32", inclusive of submarkings.

In the Resolution[21] dated November 28, 2016, the Court admitted petitioner's formally offered exhibits, except for Exhibits "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-15", "P-16-j", "P-16-w", "P-16-bb", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", and "P-23".

Thereafter, petitioner filed a Motion for Reconsideration. However, the Court still denied admission of the said exhibits in the Resolution[22] dated December 1, 2017.

On the other hand, respondent, through counsel, manifested that he will not be presenting any witness.[23]

The Court then declared the case submitted for decision on January 31, 2018,[24] considering respondent's Memorandum[25] filed on December 6, 2016 and petitioner's Memorandum[26] filed on January 23, 2018.

ISSUE/S

The parties submitted the following issue for this Court's resolution:

> Whether petitioner is entitled to a tax refund or tax credit in the aggregate amount of Five Hundred Eighty- Four Thousand Four Hundred Fifty-Three Pesos and 93/100 (₱584,453.93), allegedly representing unutilized input VAT attributable to its

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[18] Docket, Vol. 1, pp. 233-245.
[19] *Id.*, Vol. 2, pp. 428-434.
[20] *Id.*, Vol. 2, pp. 611-633.
[21] *Id*, Vol. 2, pp. 661-662.
[22] *Id.*, Vol. 2, pp. 694-696.
[23] *Id.*, Vol. 2, p. 610.
[24] *Id.*, Vol. 2, p. 726.
[25] *Id.* Vol. 2, pp. 663-671.
[26] *Id.* Vol. 2, pp. 703-720.

VAT zero-rated sales for the first quarter of taxable year 2011.

Petitioner's Arguments

Petitioner claims that this Court has jurisdiction over the present case. Petitioner anchors its arguments on Section 112(A) of the NIRC of 1997, as amended, which provides that a taxpayer whose sales are VAT zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply with respondent for the refund of the input VAT paid, and Section 112(C) of the same law which provides that within thirty (30) days after receipt of the decision denying the claim for refund of input VAT, the taxpayer, may appeal the denial to this Court. Petitioner argues that it had a period of 30 days from receipt of the decision denying its refund claim on October 15, 2015 or until November 14, 2015 to appeal the denial of its administrative claim for refund. Considering that November 14, 2015 fell on a Saturday, petitioner's deadline to appeal shall be on the next working day, November 16, 2015. Petitioner maintains that its judicial claim was seasonably filed.

Petitioner also opposes respondent's basis for denying its administrative claim. Allegedly, the cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[27] and *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[28] cannot be applied to the present case. Petitioner maintains that there was no inaction on the part of the BIR. Petitioner points out that respondent acted upon its claim by issuing the Letter dated September 29, 2015.

Further, petitioner contends that RMC No. 54-2014 is inapplicable to the instant petition since its administrative claim for refund was filed on March 25, 2013 long before the said RMC came into effect on June 11, 2014. Citing the case of *BPI Leasing Corp. vs. The Honorable Court of Appeals, et al.*[29], petitioner avers that administrative rules and regulations only operate prospectively, unless the legislative intent to the contrary is manifest by express terms or by necessary implication. Petitioner maintains that the denial of the claim

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[27] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[28] G.R. Nos. 193301 and 194637, March 11, 2013.
[29] G.R. No. 127624, November 18, 2003.

for refund due to alleged non-compliance with RMC No. 54-2014 is grossly prejudicial to its right to due process.

Lastly, petitioner claims 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 under Sections 106 and 112(A) of the NIRC of 1997, as amended.

Respondent's Arguments

Respondent argues that the Court has no jurisdiction over the case since petitioner failed to file the instant petition within the period prescribed by law and jurisprudence.

Respondent alleges that petitioner failed to file its judicial claim in accordance with the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[30], where the Supreme Court purportedly explained the mandatory 120 + 30-day periods for the filing of administrative and judicial claims as adopted in RMC No. 54-2014. Here, the taxpayer can file the appeal in one of two ways: (1) file the claim within 30 days after the BIR Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the BIR Commissioner does not act within the 120-day period.

Respondent points out that since petitioner filed its administrative claim on March 25, 2013, the 120-day period expired on July 23, 2013 and the 30-day period within which to file the judicial claim should be until August 22, 2013. However, the Petition for Review was only filed on November 16, 2015. Consequently, the instant petition should not be given due course for lack of jurisdiction.

Moreover, respondent maintains that RMC No. 54-2014 is a mere legislative interpretation and there is no retroactive effect to speak of in this case. Respondent based his argument on the case of *Accenture, Inc. vs. Commissioner of Internal Revenue*[31] that when the High Court decides a case, it does not pass a new law, but merely interprets a pre-existing one.

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[30] G.R. No. 184823, October 6, 2010.
[31] G.R. No. 190102, July 11, 2012.

Finally, respondent argues that to support petitioner's claim, it must prove that it has complied with all the statutory and administrative requirements for tax refund.

DISCUSSION/RULING

The Court will determine first whether it has jurisdiction to entertain the present case.

On March 25, 2013, petitioner filed with the BIR its administrative claim for refund or tax credit of its unutilized input VAT payments directly attributable to its zero-rated sales for the first quarter of taxable year 2011, together with the required supporting documents.[32]

On October 15, 2015, petitioner received from the BIR a letter dated September 29, 2015 stating the following:

> "This has reference to the corporation's *claim for refund of unutilized input taxes* for the months of *January 1 to March 31, 2011* pursuant to the Letter of Authority No. LOA-001-2013-00000011 SN eLA2010-00074735 dated July 12, 2013.
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> In connection therewith, please be informed that based on the decisions of the Supreme Court in the cases of '*Commissioner of Internal Revenue versus San Roque Power Corporation' and 'Mindanao II Geothermal Partnership versus Commissioner of Internal Revenue'* processing of claims for refund or issuance of the Tax Credit Certificate for creditable input taxes within 120 days from the date of submission of complete documents had become mandatory in view of such decisions, as well as the provisions of Revenue Memorandum Circular (RMC) No. 54-2014 which clarified the issues relative to such applications for VAT refund/credit, we regret to inform you that the corporations applications for refund of unutilized input taxes could no longer be processed by this office. xxx"

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[32] Docket, Vol. 2, Par. 14, Petitioner's Memorandum, p. 707.

Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, provides for the period when to file an administrative claim for refund with the BIR and a judicial claim for refund with the CTA, to wit:

> "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.
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> xxx xxx xxx
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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 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)*

Pursuant to the afore-quoted provision, a VAT-registered taxpayer whose sale is 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 a refund or the tax credit of its creditable input tax due or paid attributable to such sales.

The provision further states that upon filing of the administrative claim for refund, the BIR has 120 days from the date of submission of the complete documents in support of the application to either grant or deny the claim. However, should the BIR deny fully or partially the claim, the taxpayer has 30 days from the receipt of the decision denying the claim or in case of inaction by the BIR, from the expiration of the 120 days, to file an appeal with the Court.

In *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[33], the Supreme Court clarified the two scenarios contemplated under Section 112(D)[34] of the NIRC that are appealable to the CTA within the 30-day period, to wit:

> "In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) 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.**" (*Emphasis supplied*)

Moreover, the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[35] ("*San Roque* case" for brevity) is instructive as to what would constitute as decisions of respondent that are appealable to this Court, *viz.*:

> "The charter of the CTA expressly provides that its jurisdiction is to review on appeal 'decisions of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes.' When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no 'decision' of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also 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**

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[33] G.R. No. 184823, October 6, 2010.
[34] Now Section 112(C) of the NIRC of 1997.
[35] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

> **credit**. It is the Commissioner's decision, or **inaction 'deemed a denial,' that the taxpayer can take to the CTA for review**. Without a decision or an 'inaction x x x deemed a denial' of the Commissioner, the CTA has no jurisdiction over a petition for review." *(Emphasis supplied)*

The foregoing interpretation was reiterated by the Supreme Court in the consolidated case of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*[36] ("*Mindanao II Geothermal* case" for brevity), where the High Tribunal provided a "Summary of Rules on Prescriptive Periods Involving VAT," to wit:

> "We summarize the rules on **the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, as follows:**
>
> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. **If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.**
>
> (3) **A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.**
>
> (4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, as an exception to the mandatory and jurisdictional 120+30-day periods." *(Emphasis supplied)*

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

From the above-quoted Supreme Court ruling, in order for the Court to acquire jurisdiction over an appeal on claims for refund, compliance with the 120-day plus 30-day periods is mandatory.

In the instant case, the counting of the 120-day period should start from March 25, 2013, the time of filing of administrative claim with the required supporting documents. The BIR had until July 23, 2013 to act on petitioner's administrative claim. Based on records, respondent failed to act on the said administrative claim within the 120-day period. Thus, petitioner should have filed its judicial claim before this Court within 30 days from the lapse of the 120-day period or until August 22, 2013. However, the Petition for Review was only filed on November 16, 2015.

Petitioner failed to consider the "inaction" of respondent as "deemed denial" of its administrative claim. Petitioner's assertion that the counting of 30 days starts from the receipt of the Letter[37] dated September 29, 2015 on October 15, 2015 is a wrong interpretation and application of the law and jurisprudence. The inaction of respondent on petitioner's refund claim during the 120-day period is deemed a denial of its claim. Petitioner had 30 days from the expiration of the 120-day period to file its judicial claim with this Court. Its failure to do so rendered the decision of denial by inaction of respondent final and unappealable.

Petitioner's belated filing of the Petition for Review before the Court of Tax Appeals deprived the latter of its jurisdiction to act on the same.

As regards petitioner's contention that RMC No. 54-2014 is inapplicable to the instant petition since its administrative claim for refund was filed on March 25, 2013 long before the said RMC came into effect on June 11, 2014 and that administrative rules and regulations only operate prospectively is misplaced. RMC No. 54-2014 dated June 11, 2014 merely clarifies issues relative to the application for VAT refund/credit under Section 112 of the Tax Code, as amended, as elucidated in the decisions made by the Supreme Court in the *San Roque* case and in the *Mindanao II Geothermal* case. The circular was

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[37] Docket, Vol. 1, Exhibit "P-24", p. 31.

issued merely to summarize the rules on filing and processing of applications for VAT refund/tax credit.

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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.
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