REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

RIOFIL CORPORATION,
Petitioner,

CTA EB NO. 2220 ✓
(CTA Case No. 9326)

- versus -

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 0 2 2021 4:15 pm

x - x

DECISION

BACORRO-VILLENA, J.:

Assailing the Special Third Division's Decision dated 17 May 2019[1] (**assailed Decision**) and Resolution dated 27 November 2019[2] (**assailed Resolution**) in CTA Case No. 9326 entitled *Riofil Corporation v. Commissioner of Internal Revenue,* petitioner Riofil Corporation (**petitioner/Riofil**) filed the instant Petition for Review[3] pursuant to Section 3(b)[4], Rule 8, in relation to Section 2(a)[5], Rule 4 of

[1] Division Docket, Volume IV, pp. 1991-2004; Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Esperanza R. Fabon-Victorino (retired), concurring.
[2] Id., Volume V, pp. 2032-2035.
[3] *Rollo*, pp. 1-37.
[4] **Sec. 3**. *Who may appeal; period to file petition.* — ...

the Revised Rules of the Court of Tax Appeals[6] (**RRCTA**) on 30 January 2020.

PARTIES OF THE CASE

Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines.[7] Its registered address is at U-1704-1706 Hanston Square, 17 San Miguel Avenue, Ortigas Center, Brgy. San Antonio, Pasig City 1605.[8]

Respondent is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) who holds office at 5/F Bureau of Internal Revenue (**BIR**) National Office Building, Diliman, Quezon City.[9] He is vested with authority to administer and enforce all laws pertaining to internal revenue taxes and has jurisdiction to decide refunds and disputed tax assessments.[10]

FACTS OF THE CASE

Petitioner filed its Quarterly Value-Added Tax (**VAT**) Returns for the four (4) quarters of calendar year (**CY**) 2011 as follows:

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

5 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]
...

6 A.M. No. 05-11-07-CTA.

7 Exhibits "P-1", "P-1.1" and "P-1.2", Division Docket, Volume III, pp. 1408-1435.

8 Exhibit "P-29", id., Volume IV, p. 1831.

9 Joint Stipulation of Facts and Issues (JSFI), id., Volume II, p. 652.

10 Id.

Period Covered	**Nature of Return Filed**	**Date Filed**
First (1st) Quarter Ending on 31 March 2013	Original[11]	19 April 2011
Second (2nd) Quarter Ending on 30 June 2011	Original[12]	20 July 2011
	Amended[13]	24 August 2011
Third (3rd) Quarter Ending on 30 September 2011	Original[14]	18 October 2011
	Amended[15]	25 October 2011
Fourth (4th) Quarter Ending on 31 December 2011	Original[16]	24 January 2012

Subsequently, petitioner filed two (2) separate administrative claims for refund with the BIR Revenue District Office (**RDO**) No. 43A, to wit:

Administrative Claim	**Date Filed**	**Period Covered**	**Amount Claimed**
1st administrative claim[17]	06 December 2011	1st and 2nd Quarters of CY 2011	₱33,958,531.41
2nd administrative claim[18]	21 May 2012	3rd and 4th Quarters of CY 2011	45,051,779.00
Total			**₱79,010,310.41**

On 24 February 2012, Letter of Authority (**LOA**) with SN: eLA201000086907 (**1st LOA**) was issued relative to the 1st administrative claim requesting that all required documents, books and records be provided to Revenue Officer (**RO**) Edilberto Nacnac (**Nacnac**) and Group Supervisor (**GS**) Antonino Ilagan (**Ilagan**).[19]

On 03 September 2012, LOA with SN: eLA201100024730 (**2nd LOA**) was also issued for the 2nd administrative claim containing a similar request. On 06 September 2012, petitioner received it.[20]

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11 Exhibit "P-3", id., Volume III, pp. 1470-1471.
12 Exhibit "P-3.1", id., pp. 1472-1473.
13 Exhibit "P-3.1.1", id., pp. 1474-1475.
14 Exhibit "P-3.2", id., pp. 1476-1477.
15 Exhibit "P-3.2.1", id., pp. 1478-1479.
16 Exhibit "P-3.3", id., pp. 1480-1481.
17 Exhibits "P-12" and "P-12.1", id., Volume IV, pp. 1804-1805.
18 Exhibits "P-13" and "P-13.1", id., pp. 1806-1807.
19 Exhibit "P-14", id., p. 1808.
20 Exhibit "P-15", id., p. 1809.

Petitioner submitted its additional supporting documents on the following dates:

Exhibit No.	Date Submitted	Administrative Claim/s Involved
"P-17"[21]	11 April 2012	1st administrative claim
"P-17.1"[22]	26 June 2013	1st and 2nd administrative claims
"P-17.2"[23]	18 October 2013	1st and 2nd administrative claims

On 10 December 2013, petitioner received two (2) letters, both dated 08 December 2013 (**08 December 2013 letters**) executed by RO Nacnac and GS Ilagan.

Specifically, in the 1st letter[24] issued in connection with the 1st administrative claim, RO Nacnac and GS Ilagan informed petitioner of the disallowance made to the extent of ₱1,051,134.39 due to violation of the invoicing requirements. As a result, the amount sought to be refunded was reduced to ₱32,907,397.02. Petitioner was then given a period of five (5) days from receipt thereof, pursuant to Revenue Memorandum Circular (**RMC**) No. 29-2009[25], to reconcile and explain in writing the noted discrepancies and findings.

On the other hand, the 2nd letter[26] for the 2nd administrative claim essentially embodies the same contents except as to the amounts involved. Particularly, the amount of ₱1,848,568.24 was disallowed, resulting in the reduction of the amount recommended to be refunded to ₱43,203,210.76.

Subsequently, on 07 March 2016, petitioner received a Denial Letter[27] from BIR RDO No. 43A informing it that its administrative claims can no longer be pursued as they have been considered "deemed denied" on the basis of RMC No. 54-2014[28] and the Supreme Court rulings on VAT refund cases.

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21 Id., p. 1811.
22 Id., p. 1812.
23 Id., p. 1813.
24 Exhibit "P-18", BIR Records, p. 2712.
25 Clarifying Certain Issues Relative to the Processing of Claims For Tax Credit/Refund.
26 Exhibit "P-18.1", BIR Records, p. 711.
27 Exhibit "P-16", Division Docket, Volume IV, p. 1810.
28 Clarifying Issues Relative to the Application for Value-Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

PROCEEDINGS BEFORE THE COURT

Petitioner then filed its prior Petition for Review[29] within thirty (30) days therefrom or on 06 April 2016. The same was raffled to the Third Division. After the trial on the merits, the Special Third Division[30] promulgated the assailed Decision[31] denying the said prior Petition for Review for being filed out of time. The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for being filed out of time.
>
> **SO ORDERED.**
>
> ...

Aggrieved, petitioner filed a Motion for Reconsideration[32] (**MR**) on 06 June 2019. After respondent failed to file his comment thereon[33], the Special Third Division promulgated the assailed Resolution[34] denying petitioner's MR for lack of merit. The dispositive portion of the assailed Resolution states:

> ...
>
> **WHEREFORE**, finding no compelling reasons to reverse or modify the ruling of this Court in the assailed Decision dated May 17, 2019, Petitioner's "**Motion for Reconsideration (of the Decision dated May 17, 2019)**" is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

With the denial of its MR, petitioner filed the instant Petition for Review[35] with the Court *En Banc* on 30 January 2020. After respondent again failed to file his comment[36], the Court *En Banc* submitted the

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29 Division Docket, Volume I, pp. 10-23.
30 The Third Division was reconstituted after the issuance of CTA Administrative Circular No. 02-18 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court".
31 Supra at note 1.
32 Division Docket, Volume V, pp. 2006-2027.
33 *Per* Records Verification dated 29 August 2019, id., p. 2030.
34 Supra at note 2.
35 Supra at note 3.
36 *Per* Records Verification dated 23 September 2020, *Rollo*, p. 64.

case for decision on 07 October 2020.[37] The case, however, was re-raffled to the *ponente* on 15 September 2021.

ISSUES

Here, petitioner raises the following issues[38], to wit:

I.

WHETHER THE SPECIAL THIRD DIVISION ERRED IN DENYING PETITIONER RIOFIL CORPORATION'S CLAIM FOR VALUE-ADDED TAX (VAT) REFUND ON THE GROUND THAT THE PETITION FOR REVIEW WAS FILED OUT OF TIME, AND THEREFORE, THE COURT DID NOT ACQUIRE JURISDICTION OVER THE SAME; AND,

II.

WHETHER PETITIONER RIOFIL CORPORATION IS ENTITLED TO ITS CLAIM FOR REFUND IN THE AMOUNT OF ₱79,010,310.41 REPRESENTING ITS UNUTILIZED AND/OR UNAPPLIED INPUT VALUE-ADDED TAX (VAT) FOR THE TAXABLE YEAR 2011.

In support of the instant Petition for Review, petitioner primarily contends that it timely filed its administrative and judicial claims for refund.

Specifically, petitioner imputes error to the Special Third Division's action of counting the 120-day period for the CIR to decide from 05 January 2012 and 20 June 2012 (for the 1st and 2nd administrative claims, respectively) or from the lapse of the pertinent 30-day periods from the filing of such administrative claims.

According to petitioner, in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[39] (**Total Gas**), the petitioner therein filed an administrative claim for refund on 15 May 2008. Without any request from the BIR and on its own initiative, petitioner therein submitted additional supporting documents on 28 August 2008. The Supreme Court, in siding with said petitioner, reckoned the 120-day

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[37] *See* Resolution dated 07 October 2020, id., p. 66.

[38] Petition for Review, id., p. 6.

[39] G.R. No. 207112, 08 December 2015.

period from the date of submission of supporting documents and not from the filing of the administrative claim.

Thus, petitioner insists that, applying the ruling laid down in *Total Gas*, the Special Third Division should have reckoned the 120-day period for the CIR to decide the subject claims from petitioner's complete and final submission of its supporting documents on 18 October 2013.

Petitioner further argues that within the said 120-day period, or on 10 December 2013, it received the two (2) letters from BIR RDO No. 43A informing it of the partial approvals of its administrative claims. Considering that it is amenable to said partial approvals, petitioner was not inclined to file a judicial claim.

Moreover, petitioner did not also deem it proper to elevate the same to this Court since the same cannot be considered "inaction" since the BIR had been continuously and actively processing its administrative claims.

Corollary, petitioner also ascribes error to the Special Third Division when it ruled that Exhibits "P-19" to "P-28"[40] are internal

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Exhibit	Description	Reference
"P-19"	Memorandum of RDO 43(A) – East Pasig for Revenue Region 7 dated May 21, 2012.	BIR Records, pp. 2564-2565.
"P-20"	Memorandum of the Assessment Division of Revenue Region 7 for the Regional Director of Revenue Region 7.	Id., p. 2734.
"P-21"	1st Indorsement dated February 28, 2014 and signed by OIC-Chief of Assessment Division Norma P. Ceroma.	Id., p. 2738.
"P-22"	2nd Indorsement dated February 28, 2014 signed by Regional Director Jonas DP. Amora.	Id., p. 2742.
"P-23"	1st indorsement dated September 3, 2014 signed by Deputy Commissioner for Operations Group Nelson M. Aspe.	Id., p. 2743.
"P-24"	Memorandum of RDO 43(A) – East Pasig for Revenue Region 7 dated November 21, 2012.	Id., pp. 622-623.
"P-25"	Memorandum of the Assessment Division of Revenue Region 7 for the Regional Director of Revenue Region 7 dated January 28, 2014.	Id., pp. 746-747.
"P-26"	2nd Indorsement dated February 10, 2014 and signed by OIC-Chief of Assessment Division Norma P. Ceroma.	Id., p. 892.
"P-27"	3rd Indorsement dated February 10, 2014 signed by Regional Director Jonas DP. Amora.	Id., p. 891.

indorsements and memoranda addressed to and received from one (1) office/division of the BIR to another. For the Special Third Division, the said exhibits do not likewise show that petitioner received them as official communication that respondent has acted favorably on its claim. Thus, insofar as petitioner is concerned, it has no official information on whether its claim was timely and favorably acted upon by respondent.

Refuting the above, petitioner contends that while there are no dates indicating that it actually received copies of some of the said indorsements and memoranda, it does not necessarily follow that petitioner was not informed of the developments of the case.

Thus, according to respondent, had RMC No. 54-2014[41] not intervened, there was no reason for it to appeal to this Court because both the RDO No. 43A and Regional Director (**RD**) Jonas DP. Amora (**Amora**) favorably recommended refunds in the amounts acceptable to petitioner.

Petitioner also contends that the Special Third Division's interpretation runs contrary to the intention of Section 112(C)[42] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which is to give the taxpayers the benefit of choosing between appealing the actual decision of denial within 30 days from receipt thereof or appealing the inaction within 30 days from the lapse of the 120-day period.

"P-28"	1st Indorsement dated September 3, 2014 signed by Deputy Commissioner for Operations Group Nelson M. Aspe.	Id., p. 750.

41 Supra at note 28.

42 **SEC. 112.** *Refunds or Tax Credits of Input Tax.* -

...

(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 Subsections (A) and (B) 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.

...

Petitioner further argues that the BIR retains jurisdiction over its administrative claims as the revenue issuances applicable at that time allows the BIR to continue processing the same.

Specifically, under RMC No. 49-2003[43] (which the Special Third Division ruled as applicable herein following *Total Gas* considering that the subject administrative claims were filed prior to the effectivity of RMC No. 54-2014 on 11 June 2014), it is stated that "the administrative agency and the tax court may act on the case separately".

Inasmuch as RMC No. 54-2014 cannot be given retroactive application (as also held in *Total Gas*), there is no legal impediment for the BIR to continue processing petitioner's administrative claims. The issuance of Revenue Regulations (**RR**) No. 1-2017[44] further reaffirms the same as it provided therein that claims filed prior to RMC No. 54-2014 shall continue to be processed administratively. According to petitioner, it would be more in keeping with RMC No. 49-2003 for this Court to direct respondent to continue processing the administrative claim.

Lastly, petitioner avers that it complied with the requisites of a claim for refund and is thus entitled to the amount of ₱79,010,310.41 representing its unutilized and/or unapplied input VAT for CY 2011.

RULING OF THE COURT *EN BANC*

After a careful review of the records of the case, the Court *En Banc* finds no merit in the instant Petition for Review.

The reasons for the denial are discussed below.

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43 Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

44 Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed Under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014.

The resolution of the instant case lies on the determination of: (1) whether petitioner was correct in reckoning the 120-day period from its submission of additional supporting documents on 18 October 2013; and, (2) whether petitioner was correct in not elevating to this Court its administrative claims as a result of its receipt of the 08 December 2013 letters on 10 December 2013.

For ease of reference, the timeline leading to petitioner's receipt of the 08 December 2013 letters are summarized below:

Event	Date
Filing of 1st administrative claim[45]	06 December 2011
Receipt of 1st LOA[46]	24 February 2012[47]
Filing of 2nd administrative claim[48]	21 May 2012
Receipt of 2nd LOA[49]	06 September 2012
Submission of additional supporting documents[50]	11 April 2012
	26 June 2013
	18 October 2013
Receipt of 08 December 2013 letters executed by RO Nacnac and GS Ilagan[51]	10 December 2013

For petitioner, the 120-day period should have been reckoned from its submission of additional supporting documents on 18 October 2013. Since the 08 December 2013 letters were received by it on 10 December 2013 (which is within the 120-day period), partially recommending the grant of its administrative claims, there was no reason for it to appeal before this Court as it is amenable to the amounts to be granted therein. Since it only received an adverse decision denying its administrative claims on 07 March 2016, it was only then that petitioner had to appeal before this Court.

We do not agree.

45 Supra at note 17.
46 Supra at note 19.
47 The records are bereft of any indication as to when petitioner received the 1st LOA. In fact, in the instant Petition for Review, petitioner left the date of receipt of the 1st LOA in blank (*See* Petition for Review, *Rollo*, p. 12). Nevertheless, petitioner counted the 30-day period to submit from its issue date (*See* Memorandum, Division Docket, Volume IV, p. 1964).
48 Supra at note 18
49 Supra at note 20.
50 Supra at notes 21-23.
51 Supra at notes 24 and 26.

In this case, petitioner failed to submit the supporting documents within 30 days from its receipt of the subject LOAs containing the request for submission of all required documents, books and records to RO Nacnac and GS Ilagan.

In *Total Gas*, the Supreme Court ruled that a taxpayer has 30 days from the request of the investigating/processing office within which to submit the documentary requirements and upon submission **or expiration** of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund, to wit:

> ...
> Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under present law, when should the submission of documents be deemed "completed" for purposes of determining the running of the 120-day period?*
> ...
>
> Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:
>
>> *Q-18: For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?*
>>
>> A-18: **For pending claims** which have not been acted upon by the investigating/processing office due to incomplete documentation, **the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.**
>>
>> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be **officially received** only upon submission of complete documents.

> For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents **<u>within thirty (30) days from request</u> of the investigating/processing office, <u>which shall be construed as within the one hundred twenty (120) day period</u>**.

Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential. It is only upon the submission of these documents that the 120-day period would begin to run.

...

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, "officially received" as provided under RMC No. 49-2003.

> To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition[al] documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.[52]
>
> ...

Below is the summary of rules that can be deduced from the foregoing:

1. Upon filing of an application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given 30 days within which to complete the required documents;

2. If additional documents are required, the taxpayer-claimant shall submit such documents within 30 days from the request of the investigating/processing office;

3. Upon filing by the taxpayer-claimant of the complete documents to support the application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund;

4. Should the taxpayer-claimant, on the date of the filing, manifest that he or she no longer wishes to submit any other additional documents to complete the

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52 Supra at note 39; Citation omitted, emphasis and underscoring in the original text.

administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing;

5. In all cases, whatever documents a taxpayer-claimant intends to file to support his or her claim must be completed within the two-year period under Section 112(A)[53] of the NIRC of 1997, as amended; and,

6. The taxpayer-claimant has 30 days from the denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the Court of Tax Appeals (**CTA**).[54]

In this case, RD Amora issued the 1st LOA on 24 February 2012 while petitioner received the 2nd LOA on 06 September 2012, both of which contain a request to submit all required documents, books and records. Petitioner thus had 30 days therefrom, or until <u>25 March 2012</u> and <u>06 October 2012</u>, respectively, within which to submit the same.

However, petitioner submitted the additional supporting documents for the 1st administrative claim only on <u>11 April 2012</u> while it submitted further additional documents for both the 1st and 2nd administrative claims only on <u>26 June 2013</u> and <u>18 October 2013</u>.

Clearly, petitioner cannot reckon the 120-day period from 18 October 2013 as the period to submit the required documents already lapsed on 25 March 2012 and 06 October 2012 for the 1st and 2nd administrative claims, respectively. As unequivocally held in *Total Gas*, **the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled** as it only has 30 days from request of the investigating/processing office to submit the same.

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53 **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: ...

...

54 See *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,* supra at note 39.

Proceeding therefrom, respondent had until 23 July 2012 and 03 February 2013 (or 120 days counting from the lapse of the 30-day periods from 25 March 2012 and 06 October 2012, respectively) to decide the 1st and 2nd administrative claims, respectively. After which, petitioner had 30 days therefrom, or until 22 August 2012 and 05 March 2013, respectively, to file its judicial claims. **However, as noted above, petitioner only filed its judicial claim on 06 April 2016. Evidently, petitioner's judicial claim was belatedly filed. As a result, the denial of its administrative claims became final.**

It must be noted that this Court arrived at the same conclusion in the cases of *Hedcor Sibulan, Inc. v. Commissioner of Internal Revenue*[55] and *Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue*.[56]

It was also reiterated in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[57], that when the 120-day period lapses and there is inaction on the part of the CIR, the CIR's inaction is the decision itself (and there is no more need to wait for him to come up with a decision), *viz*:

> ...
> The landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation* has interpreted Section 112 (D). The Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period.
>
> In this case, the facts are not up for debate. On 11 December 2000, petitioner filed with the BIR an application for the refund or credit of accumulated unutilized creditable input taxes. Thus, the CIR had a period of 120 days from 11 December 2000, or until 10 April 2001, to act on the claim. It failed to do so, however. **Rohm Apollo should then have treated the CIR's inaction as a denial of its claim.** Petitioner would then have had 30 days, or until 10 May 2001, to file a judicial claim with the CTA. But Rohm Apollo filed a Petition for

55 CTA EB No. 1926 (CTA Case No. 9080), 24 February 2020.
56 Resolution in CTA Case No. 8877, 15 August 2018.
57 G.R. No. 168950, 14 January 2015; Citations omitted, italics in the original text and emphasis supplied.

> Review with the CTA only on 11 September 2002. The judicial claim was thus filed late.
>
> **The error of the taxpayer lies in the fact that it had mistakenly believed that a judicial claim need not be filed within 30 days from the lapse of the 120-day period.** It had believed that the only requirement is that the judicial claim must be filed within the two-year period under Sections 112(A) and (B) of the 1997 Tax Code. In other words, Rohm Apollo erroneously thought that the 30-day period does not apply to cases of the CIR's inaction after the lapse of the 120-day waiting period, and that a judicial claim is seasonably filed so long as it is done within the two year-period. Thus, it filed the Petition for Review with the CTA only on 11 September 2002.
>
> These mistaken notions have already been dispelled by *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)* and San Roque. Aichi clarified that it is only the administrative claim that must be filed within the two-year prescriptive period. San Roque, on the other hand, has ruled that the 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
>
> ...
>
> In fine, our finding is that the judicial claim for the refund or credit of unutilized input VAT was belatedly filed. Hence, the CTA lost jurisdiction over Rohm Apollo's claim for a refund or credit.
>
> The foregoing considered, there is no need to go into the merits of this case.
>
> **A final note, the taxpayers are reminded that** (sic) **when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period.**
>
> ...

Lastly, petitioner cannot also find refuge in the 08 December 2013 letters from RO Nacnac and GS Ilagan that supposedly granted its administrative claims (*albeit* partially).

For one, the said letters were both issued after the lapse of the 120-day period for respondent to decide. As such, petitioner's administrative claims are already considered denied due to inaction. Additionally, the same were mere recommendations from an RO and a GS who are not the authorized persons to grant the claim for refund. In fact, the aforementioned letters commonly state that "the [recommendation] on your refund case **shall be submitted for review and processing of higher authorities**".

Corollary, RMC No. 51-2007[58], which was then the governing rule relative to claims for refund or issuance of a tax credit certificate (**TCC**), provides:

> ...
>
> "**c. For claims above Ten Million (10M) Pesos**
>
> ➢ All reports/cases with claims exceeding Ten Million (10M) Pesos must be recommended and signed by the ACIR-Assessment Service. The same shall be forwarded to the Office of the Deputy Commissioner for Operations Group (ODCIR- OG) for final approval.
>
> ...

Since the 08 December 2013 letters that petitioner received from RO Nacnac and GS Ilagan both do not bear the recommendation of the Assistant Commissioner of Internal Revenue (**ACIR**)-Assessment Service and the final approval of the Office of the Deputy Commissioner for Operations Group (**DCIR-OG**), it cannot be said that respondent favorably acted upon petitioner's administrative claims.

Notably, as early as 03 September 2014, the authorized person to approve the grant of refund, DCIR-OG Nelson M. Aspe, had already indorsed to the RD of Revenue Region 7 the information that petitioner's administrative claims could no longer be pursued in line with the issuance of RMC No. 54-2014.[59]

In sum, although the Special Third Division mistakenly reckoned the counting of the 120-day period from the lapse of the 30-day period

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58 Circularization of the Revisions on the New Paradigm in Meeting the Collection Target as Embodied in the Memorandum Issued by OIC-CIR dated July 27, 2007.

59 Exhibits "P-23" and "P-28", BIR Records, pp. 2743 and 750.

from the filing of the administrative claims, as petitioner was subsequently issued LOAs containing the request for submission of all required documents, books and records (which constituted as the notice to produce the complete documents referred to in *Total Gas*), *still*, petitioner failed to timely submit its additional supporting documents within the prescribed period of 30 days. Consequently, the 120-day period for respondent to decide should run from the expiration of the 30-day period from notice of the LOAs. Nevertheless, in both instances, petitioner failed to timely file a judicial claim with this Court.

WHEREFORE, with the foregoing, the instant Petition for Review filed by petitioner Riofil Corporation on 30 January 2020 is hereby **DENIED** for lack of merit. Accordingly, the Special Third Division's Decision dated 17 May 2019 and Resolution dated 27 November 2019, respectively, in CTA Case No. 9326 entitled *Riofil Corporation v. Commissioner of Internal Revenue,* are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

INHIBITED
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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