REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LAPANDAY FOODS CORPORATION, Petitioner,	CTA CASE NO. 9885
	Members:
- versus -	FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 10 2018 11:50 a.m.

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RESOLUTION

This Petition for Review filed by petitioner Lapanday Foods Corporation on July 25, 2018 involves a claim for refund of input value-added taxes (VAT) attributable to zero-rated export sales for the year 2007 in the amount of ₱59,515,775.47.

Section 112 of the NIRC lays down the procedure for filing claims for VAT refunds and prescribes the corresponding periods therefor.[1] It reads as follows:

> 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

[1] Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. No. 197519, November 8, 2017.

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 sales and also in taxable or exempt sale of goods or 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 nonzero-rated sales."

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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.

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."

As provided in Section 112 (A) and (D)[2] of the NIRC, a taxpayer has two (2) years from the close of the taxable quarter when the relevant zero-rated sales were made within which to file with the Commissioner of Internal Revenue (CIR) an administrative claim for refund or credit of unutilized input VAT attributable to such sales. On the other hand, the CIR has 120 days from receipt of the complete documents to substantiate such claim within which to act on the same. Upon receipt of the adverse decision, a taxpayer has 30 days within which to appeal to the CTA. However, if the 120-day period expires without any decision from the

[2] Now C.

CIR, the taxpayer may assail the CIR's inaction in a Petition for Review filed with the CTA within 30 days from the expiration of the 120-day period.[3]

The Supreme Court explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertains only to the filing of the administrative claim with the BIR.[4]

Under Section 112(C) of the NIRC of 1997, as amended, the CIR has 120 days within which to grant or deny a claim for refund. Upon receipt of the 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 to seek judicial review via a petition filed with the CTA.[5]

To recapitulate, under Section 112(C) of the NIRC, a taxpayer-claimant may file a petition for review with the CTA within 30 days from either: (1) the receipt of the decision of the CIR denying, in full or in part, the claim for refund/tax credit; or (2) the lapse of the 120-day period for the CIR to decide the claim for refund /tax credit.[6]

The present claim for refund of input VAT is for the four quarters of the year 2007. Counting two years from the close of the taxable quarters when the relevant sales were made, petitioner had until March 31, June 30, September 30, and December 31 of 2009 to file its administrative claims for refund for the four (4) quarters of year 2007.

It appears from the averments in the Petition that petitioner seasonably filed its administrative claim on January 19, 2009 for the first quarter, on January 28, 2009

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[3] Commissioner of Internal Revenue vs. Toledo Power Company, G.R. No. 196415, December 02, 2015 and Toledo Power Company vs. Commissioner of Internal Revenue, G.R. No. 196451.
[4] Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue, G.R. No. 201326, February 8, 2017.
[5] Commissioner of Internal Revenue vs. Hedcor Sibulan, Inc., G.R. No. 209306, September 27, 2017.
[6] Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation), G.R. No. 194105, February 5, 2014.

for the second quarter, on April 30, 2009 for the third quarter, and on May 16, 2009 for the fourth quarter.[7]

From the filing of the claims for refund, respondent CIR had 120 days within which to act on the said claims for refund at his level. Thus, from the filing of the administrative claim for refund for the fourth quarter with respondent on May 16, 2009, the CIR had 120 days or until September 13, 2009, to resolve the same. There being no action taken by respondent, petitioner had 30 days or until October 13, 2009 to file judicial claim via a Petition for Review with this Court.

Clear as a day that the instant Petition for Review filed by petitioner on July 25, 2018, or nine years from the filing of the administrative claim for refund for the fourth quarter of the year 2007 was filed way out of time.

Given that the reckoning point to determine the timeliness of the Petition for Review was the date of filing of the administrative claim for the fourth quarter, even without citing the actual dates of filing of the administrative claims, the judicial claim through the Petition for Review for the first to third quarters of year 2007 was clearly filed out of time as well.

Plain from the jurisprudential pronouncements and the applicable provisions of Section 112 of the NIRC of 1997, as amended, that a taxpayer-claimant only has a limited period of thirty (30) days from the expiration of the 120-day period of inaction of the Commissioner of Internal Revenue to file its judicial claim with this Court. Failure to do so, the judicial claim shall prescribe or be considered as filed out of time. x x x To recapitulate, the mandatory rule is that a judicial claim must be filed with the CTA within thirty (30) days from the receipt of the Commissioner's decision denying the administrative claim or from the expiration of the 120-day period without any action from the

[7] Paragraph 15, Petition for Review dated July 25, 2018, p.4

Commissioner. Otherwise, said judicial claim shall be considered as filed out of time.[8]

Significantly, Section 112 (D) (now renumbered as Section 112[C]) of RA 8424, which is explicit on the **mandatory and jurisdictional nature** of the 120+30-day period, was effective on January 1, 1998.[9]

Since the instant Petition for Review was filed out of time, the Court has no jurisdiction to entertain the same.

Settled is the rule that jurisdiction over the subject matter is conferred by law and is determined by the material allegations of the complaint. It cannot be acquired through, or waived by, any act or omission of the parties, neither can it be cured by their silence, acquiescence, or even express consent.[10] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[11]

Finally, well-settled is the rule that the issue of jurisdiction over the subject matter may at any time either be raised by the parties or considered by the Court *motu proprio*. As such, the jurisdiction of the CTA over the appeal could still be determined x x despite its not being raised as an issue by the parties.[12] In addition, courts have the power to *motu proprio* dismiss an action over which it has no jurisdiction. The grounds for *motu proprio* dismissal by the court are provided in Rule 9, Section 1 of the Revised Rules of Court x x x.[13]

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[8] Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc., G.R. No. 169778, March 12, 2014.
[9] Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 190021, October 22, 2014.
[10] Spouses Erwin C. Santiago and Marinela A. Santiago; Spouses Gaudencio A. Manimtim, Jr. and Editha P. Manimtim; Spouses Ramiro C. Albaran and Elva C. Albaran; and Cesar F. Odan vs. Northbay Knitting, Inc., G.R. No. 217296, October 11, 2017.
[11] Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc., G.R. No. 169778, March 12, 2014.
[12] Takenaka Corporation-Philippine Branch vs. Commissioner of Internal Revenue, G.R. No. 193321, October 19, 2016.
[13] Aichi Forging Company of Asia, Inc. vs. Court of Tax Appeals – En Banc and Commissioner of Internal Revenue, G.R. No. 193625, August 30, 2017.

WHEREFORE, the Petition for Review filed by petitioner Lapanday Foods Corporation is hereby **DISMISSED**, for lack of jurisdiction.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice