REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

LEPANTO CONSOLIDATED MINING COMPANY, *Petitioner,*	**CTA *EB* NO. 2273** *(CTA Case No. 10079)*
-versus-	Present: **DEL ROSARIO, P.J., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 12 2022 2:10 pm

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RESOLUTION

MODESTO-SAN PEDRO, J.:

Before this Court *En Banc* is petitioner's **Motion for Reconsideration (of the Honorable Court's Decision dated 16 December 2021)**, filed on 27 January 2022 ("Motion for Reconsideration),[1] with respondent's **Opposition (Re: Motion for Reconsideration of the Decision dated 16 December 2021)**, filed on 17 March 2022 ("Opposition").[2]

In the Motion for Reconsideration, petitioner alleges the following:

1. The 18 February 2019 Letter of Denial issued by the BIR makes reference to ***Revenue Regulations No. 1-2017 ("RR 1-17")*** as the basis for processing petitioner's application for VAT refund claim;

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[1] Records, pp. 164-171.
[2] *Id.*, pp. 180-185.

2. ***RR 1-17*** covers claims for tax credit that are filed before the effectivity of ***Revenue Memorandum Circular No. 54-2014 ("RMC 54-14")***. Said revenue issuances provide that covered claims shall continue to be processed administratively;

3. Clearly, ***RR 1-17*** covers the VAT refund claim of petitioner, which filed its application on 28 March 2011, or more than three (3) years before ***RMC 54-14*** took effect;

4. The Value Added Tax ("VAT") refund claim of petitioner is also not one of the tax claims that, although filed before the effectivity of ***RMC 54-14***, is not covered by ***RR 1-17***. None of the four (4) grounds that would disqualify it from being covered by ***RR 1-17*** are present in the petitioner's VAT refund claim;

5. ***Section 3 of RR 1-17*** also provides that the denial of the VAT claim shall be communicated in writing. It is clear from reading the 18 February 2019 Letter of Denial that petitioner's VAT refund claim for 2009 was processed and that only thereafter, the said claim was denied;

6. Consequently, due to these circumstances, there is no reason to doubt that petitioner's application for VAT refund claim for year 2009 was legally given due course and was thereafter denied. As such, in pursuit of the legal remedies available to it, the petitioner filed a Petition seeking relief before this Honorable Court;

7. Given the foregoing, dismissing the Petition for Review on the grounds stated in the Honorable Court's Decision, dated 16 December 2021, would result in violation of the petitioner's constitutional right to due process;

8. The Supreme Court has time and again ruled that while the right to appeal is merely statutory and not constitutional, once it is granted by statute, its denial would be a violation of the constitutional right to due process;

9. In this case, the right to appeal is clearly granted by ***Section 112 (C) of the National Internal Revenue Code ("NIRC")***. In said provision, a taxpayer whose application for tax refund is denied, in whole or in part, may appeal the denial to the Honorable Court within thirty (30) days from receipt of the notice of denial; *ft*

10. Contrary, then, to the ruling of the Honorable Court, it is clear from the facts that the Petition for Review has been timely filed under the pertinent provisions of the ***NIRC***;

11. In accordance with ***Section 112 (C) of the NIRC***, petitioner filed a Petition for Review before this Honorable Court on 10 May 2019 questioning the respondent's denial of the VAT refund claim, well within the thirty (30) day-period from the receipt of the BIR's Letter denying the claim of the petitioner; and

12. Given that petitioner is entitled to an appeal, particularly when ***Section 112 (C) of the NIRC*** is read in conjunction with ***RR 1-17***, the issuance of which is for the purpose of providing fair and adequate relief to taxpayers-claimants such as the petitioner, the denial then of the Petition is tantamount to a denial of the petitioner's right to due process under our Constitution.

Contrarily, respondent counter-argues that petitioner's contention that it did not belatedly file the instant Petition is utterly bereft of merit. When an administrative claim is not acted upon within one hundred twenty (120) – days, such inaction shall be deemed a denial. Hence, the Petition for Review was belatedly filed.

We deny the Motion for Reconsideration. The arguments raised therein are similar to those raised by petitioner in its Petition for Review filed before this Court *En Banc*. Consequently, these have already been sufficiently passed upon, discussed, and judiciously resolved in the Decision, dated 16 December 2021. The Motion for Reconsideration discloses no cogent reason to disturb the findings and conclusions which this Court made in said Decision. Thus, nothing is left for this Court to do but to deny the same.

On a last note and to the point of being repetitive, ***RR 1-17*** did not provide an exception to the mandatory and jurisdictional 120+30-day period.

A perusal of ***Section 2 of RR 1-17*** shows that claims filed prior to ***RMC 54-14*** were merely ordered to be continuously processed administratively but not judicially. It did not whatsoever create an exception to the mandatory and jurisdictional 120+30-day period, which was put into place by law and affirmed by jurisprudence.

A mere regulation cannot create an exception not provided by the law it seeks to implement. Implementing rules and regulations may not enlarge, alter or restrict the provisions of the law they seek to implement.[3]

RR 1-17 was only issued to restart the processing of administrative claims for input VAT refund which were deemed denied due to the erroneous application of ***RMC 54-14***.[4] However, this is solely confined to the BIR level and does not extend to the judicial level.

WHEREFORE, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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3 Pilipinas Kao, Inc. v. Honorable Court of Appeals and Board of Investments, G.R. No. 105014, 18 December 2001.

4 Section 2, RR 1-17.

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice