REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD., Petitioner,	**CTA EB NO. 1506** (CTA Case No. 8847)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 19 2017 3:41 p.m.

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DECISION

RINGPIS-LIBAN, *J.:*

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] (Assailed Decision) dated June 03, 2016 and Resolution[2] (Assailed Resolution) dated August 15, 2016 of the Court of Tax Appeals Second Division (Second Division), dismissing for lack of jurisdiction Petitioner's claim for refund or issuance of a Tax Credit Certificate (TCC) in the amount of Php30,355,097.48, representing its alleged input tax on its zero-rated sales for the calendar year (CY) 2012.

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1 Penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda, Jr. concurring. Docket, pp. 560-571.
2 *Id.*, pp. 591-597.

The Facts

The facts as found by the Second Division are as follows:

"Petitioner Maersk Global Services Centres (Philippines) Ltd. is a foreign corporation, duly organized and existing under the laws of Hong Kong and licensed to do business in the Philippines as a regional operating headquarters, with principal office at the 29th Floor, Wynsum Corporate Plaza, F. Ortigas Jr. Road, Ortigas Center, Pasig City.

Respondent is the duly appointed Commissioner of Internal Revenue with office address at the Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City.

Petitioner is registered with the BIR as a Value-Added Tax (VAT) taxpayer with Taxpayer Identification No. (TIN) 005-650-708-000.

On October 15, 2007, a Service Agreement was executed by and between A.P. Moller – Maersk A/S and [P]etitioner. A.P. Moller – Maersk A/S is a non-resident foreign corporation doing business outside of the Philippines with address at Denmark, Esplanaden 50,1098 Copenhagen.

Petitioner filed its quarterly VAT returns (BIR Form 2550Q) for the 1st, 2nd, 3rd and 4th quarters of calendar year (CY) 2012 on the following dates:

Quarter of CY 2012	Date Filed
1st	April 25, 2012
2nd	July 25, 2012
3rd	May 24, 2013
4th	January 25, 2013

On July 16, 2013, [P]etitioner filed its administrative claim before the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF-OSS).

In a transmittal letter dated December 3, 2013, [P]etitioner requested the DOF-OSS to acknowledge the submission of additional supporting documents. The same was received by the DOF-OSS on December 4, 2013.

On July 18, 2014, [P]etitioner filed the instant Petition for Review before the court, and the same was docketed as CTA Case No. 8847."[3]

The Ruling of the Second Division

On June 03, 2016, the Second Division promulgated the Assailed Decision dismissing the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction."[4]

Aggrieved, Petitioner filed a Motion for Reconsideration[5] on June 16, 2016, which the Second Division denied in the Assailed Resolution on August 15, 2016, thus:

> "**WHEREFORE**, premises considered, [P]etitioner's **Motion for Reconsideration (of the Decision dated 3 June 2016)** is hereby **DENIED** for lack of merit."[6]

On September 02, 2016, Petitioner filed a Motion for Extension of Time to File Petition for Review,[7] which the Court granted in a Resolution dated September 08, 2016.[8]

On September 22, 2016, Petitioner filed the present Petition for Review.[9]

On October 14, 2016, the Court issued a Resolution[10] which ordered Respondent to comment on the Petition for Review. Respondent filed on October 26, 2016 its Comment.[11]

On December 05, 2016, the Court issued a Resolution[12] submitting the case for decision.

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[3] *Id.*, pp. 560-562.
[4] *Id.*, p. 570.
[5] *Id.*, p. 572-583.
[6] *Id.*, p. 597.
[7] Rollo, pp. 1-6. Record shows that Petitioner received the assailed Resolution on August 22, 2016; Docket, p. 590.
[8] Rollo, p. 7-A.
[9] *Id.*, pp. 8-30.
[10] *Id.*, pp. 71-72.
[11] *Id.*, pp. 73-78.
[12] *Id.*, pp. 80-81.

The Issues

Petitioner raises the following grounds in support of its petition:

1. The Supreme Court's pronouncement that a denial of a VAT refund claim must be made within 120 days in the cases involving the inaction of Respondent on a VAT refund claim is a mere *obiter dictum*. It is not applicable in the instant Petition which involves a denial rendered by Respondent after the lapse of the 120-day period; and

2. The tax refunds and tax assessments are parallel remedies. Following the ruling in *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, a taxpayer does not lose his right of judicial appeal if the Respondent denies the VAT refund claim after the 120-day period.[13]

The Ruling of the Court

The petition is bereft of merit.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. It merely reiterates the arguments it raised in its Motion for Reconsideration which have been extensively addressed by this Court in the Assailed Resolution. Needless to state, the issue of jurisdiction over Petitioner's judicial claim for input VAT refund has already been laid to rest in the Assailed Decision and Assailed Resolution. Nevertheless, we will discuss at length, once again, the demerits of Petitioner's arguments which may serve as a guidepost in deciding issues of similar nature in the future.

Under the law, a taxpayer is given the remedy of refund in case of unutilized input VAT. The filing of a claim however, is subject to two (2) time requirements: (a) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT (*i.e.*, administrative claim); and (b) the 30-day period for filing an appeal with this Court (*i.e.*, judicial claim). For clarity and reference, Sections 112(A) and (C) of the 1997 National Internal Revenue Code (NIRC) are reproduced below:

"SEC. 112. **Refunds or Tax Credits of Input Tax.** —

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13 *Id.*, p. 17.

> (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.
>
> xxx xxx xxx
>
> (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) 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, <u>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.</u>**"[14]

Petitioner insists that in view of the above provision, Respondent is given one hundred twenty (120) days to grant a taxpayer's claim for refund. If no action on the claim has been taken by Respondent during the said period, the taxpayer who filed the refund, may already appeal to this Court within thirty (30) days from the lapse thereof. Alternatively, the taxpayer may also decide not to immediately appeal to this Court, and instead wait for the decision of Respondent on the claim for refund. Upon full or partial denial thereof by Respondent, the taxpayer has thirty (30) days to appeal to this Court.

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[14] *Emphasis and underscoring supplied.*

In other words, Petitioner avers that a taxpayer has two (2) options, in the event Respondent fails to act on its claim for refund within the 120-day period: (a) file a judicial claim with this Court within thirty (30) days, or (b) wait for the decision on the claim for refund and, in case of full or partial denial, appeal therefrom within thirty (30) days. Petitioner contends that it availed of the second option.

We disagree.

It bears no consequence if there was a denial of the VAT refund claim by the Respondent after the 120-day period, as Petitioner alleges in this case. Petitioner should have filed a judicial claim before this Court within thirty (30) days, as soon as Respondent failed to act on its administrative claim within one hundred twenty (120) days from submission of complete documents in support of its claim. This argument has long been settled and such position is solidly supported by jurisprudence.

In *Commissioner of Internal Revenue v. San Roque Power Corporation*[15], Section 112(C) of the 1997 NIRC was interpreted as follows –

> "The taxpayer can file the judicial claim (1) only within thirty days **after the Commissioner partially or fully denies the claim <u>within</u> <u>the</u> <u>120-day</u> <u>period</u>**, or (2) only within thirty days from the expiration of the 120- day period if the Commissioner does not act within the 120-day period."[16]

As can be gleaned from above, the Supreme Court categorically declared that an appeal to a denial of a taxpayer's administrative claim may only be made if such denial was issued within the 120-day period.

The pronouncement in *San Roque* was echoed in *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[17], to wit:

> "The San Roque pronouncement is clear. The taxpayer can file the appeal in one of two ways: (1) **file the judicial claim within thirty days <u>after</u> <u>the</u> <u>Commissioner</u> <u>denies</u> <u>the</u> <u>claim</u> <u>within</u> <u>the</u> <u>120-day</u> <u>period</u>**, 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."[18]

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[15] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[16] *Emphasis and underscoring supplied.*
[17] G.R. No. 191498, January 15, 2014.
[18] *Emphasis and underscoring supplied.*

Thus, when the High Court provided a summary of rules on prescriptive periods for claiming refund or credit of Input VAT in *Mindanao II*, it was reiterated that in order to appeal the denial by Respondent, such denial must be within the 120-day period:

> "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 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)
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> B. 120+30 Day Period
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> > 1. The taxpayer can file an appeal in one of two ways: (1) **file the judicial claim within thirty days <u>after the Commissioner denies the claim within the 120-day period</u>**, 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)"[19]

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[20], taxpayers were even reminded that the lapse of the 120-day period constitutes a denial by Respondent, and an appeal within thirty (30) days therefrom must already be made:

> "**when the 120-day period lapses and there is inaction on the part of the CIR, <u>they must no longer wait for it to come up with a decision thereafter.</u>** 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."[21]

Applying the disquisition above, in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*[22], it was held that "the judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling <u>or</u> after the expiration of the 120-day period, <u>whichever is sooner</u>."[23]

Evidently in the jurisprudential authorities cited, it was repeatedly stressed that **an appeal to a denial of a taxpayer's administrative claim may only be made if such denial was issued within the 120-day period. And when the 120-day period lapses without any decision issued by Respondent, only an appeal to the inaction of Respondent may be made**.

Time and again, it has been held that decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[24] In this regard, this Court can only apply the law as ruled upon and/or interpreted by the High Court. We have no other option but to abide by the ruling of the Supreme Court in the cases above-mentioned regarding the interpretation of Section 112(C) of the 1997 NIRC.[25]

Thus, Petitioner cannot invoke the Decision rendered by the Second Division in the case of *Emerson Electric (Asia) Limited-ROHQ v. Commissioner of*

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19 *Emphasis and underscoring supplied.*
20 G.R. No. 168950, January 14, 2015.
21 *Emphasis and underscoring supplied.*
22 G.R. No. 182737, March 02, 2016.
23 *Underscoring supplied.*
24 Visayas Geothermal Power Company v. Commissioner of Internal Revenue, G.R. No. 197525, June 4, 2014.
25 Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113 and 197156, February 12, 2013 *citing* The Philippine Veterans Affairs Office v. Brigida V. Segundo, G.R. No. L-51570, August 15, 1988.

Internal Revenue[26] because it was declared in no uncertain terms in *San Roque* that decisions of this Court do not constitute as binding precedents, to wit:

> "Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system."

Considering that only decisions of the Supreme Court can be cited as binding precedents, Petitioner's reliance on the Decisions of this Court, is clearly misguided, if not misplaced.

Further, Petitioner cannot argue that it was only in Revenue Memorandum Circular No. (RMC) 54-14[27] that Respondent's inaction after the expiration of the 120-day period was considered as deemed denial of all administrative claims for refund. It must be emphasized that the cases of *San Roque*, *Mindanao II*, *Rohm Apollo* and *Silicon Philippines* all pertain to claims filed prior to the issuance of RMC 54-14. Consequently, the "deemed denial concept" was already existing even before RMC 54-14 was issued. Moreover, as pointed out by the Second Division in the Assailed Resolution, RMC 54-14 only affirmed the ruling laid down in *Mindanao II*.[28]

Lastly, we agree with the Second Division that Petitioner cannot rely on *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[29]. *Lascona* pertains to disputed assessments and not to claims of refund, as in the instant case –

> "Moreover, [P]etitioner's reliance in *Lascona* is misplaced. In *Lascona*, the Supreme Court discussed at length the options given to a taxpayer in case the [R]espondent failed to act on a *disputed assessment* within the 180-day period as provided for in Section 228 of the NIRC of 1997, as amended. Here, the issue involves the interpretation of Section 112 of the NIRC of 1997, as amended, where the Supreme Court, in *Mindanao, Apollo* and *Intel* cases, made clear the rules on prescriptive periods."[30]

Considering these pronouncements, We need to summarize anew the periods involved in this case, to wit:

[26] CTA Case No. 8470, October 01, 2014.
[27] Issued June 11, 2014.
[28] Docket pp. 596-597.
[29] G.R. No. 171251, March 05, 2012.
[30] Docket, p. 596.

Period	Filing date of administrative claim	Submission of documentary requirements sufficient to support the claim[31]	Last day of the 120-day period under Section 112(C) of the 1997 NIRC	Last day of the 30-day period to judicially appeal said inaction before the Court of Tax Appeals	Filing date of Petition for Review
1st to 4th Quarter 2012	July 16, 2013	December 4, 2013	April 3, 2014	May 5, 2014[32]	July 18, 2014

From the foregoing, Petitioner's judicial claim for the aforementioned quarters was filed with the Second Division only on July 18, 2014, which was way beyond the mandatory 120+30 days to seek judicial recourse. A claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. Strict compliance with the 120+30 day periods is necessary for such a claim to prosper.[33]

Such non-compliance with the said mandatory period of 120+30 days is fatal to Petitioner's claim of refund on the ground of prescription, resulting in the Second Division's lack of jurisdiction over the said judicial claim.

WHEREFORE, premises considered, the Petition for Review is **DISMISSED** for lack of jurisdiction. The Decision dated June 03, 2016 and the Resolution dated August 15, 2016 of the Second Division in CTA Case No. 8847 are **AFFIRMED**.

SO ORDERED.

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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31 For claims filed prior to the issuance of Revenue Memorandum Circular No. 54-14 (June 11, 2014), the taxpayer has thirty (30) days within which to submit the supporting documents. In the event additional documents are required by the Bureau of Internal Revenue, the taxpayer shall submit such documents within thirty (30) days from request of the investigation/processing unit. In such case, the 120+30 day period must be counted from the date of submission of supporting documents. (Pilipinas Total v. Commissioner of Internal Revenue, G.R. No. 207112, December 08, 2015).

32 Since May 03, 2014 fell on a Saturday, Petitioner had until May 05, 2014, Monday, within which to file.

33 Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation), G.R. No. 180434, January 20, 2016 *citing* Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Catherine T. Manahan
CATHERINE T. MANAHAN
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