REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

DEDON MANUFACTURING, INC., Petitioner,	**CTA CASE NO. 8926**
	Members:
- versus -	**FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 29 2018 10:12 a.m.

x - x

RESOLUTION

RINGPIS-LIBAN, *J*.:

For resolution is petitioner's **Motion for Reconsideration**, filed by registered mail on June 28, 2018, and received by the Court on July 10, 2018, with respondent's **Opposition (Re: Petitioner's Motion for Reconsideration dated 27 June 2018)**, filed on July 31, 2018.

Petitioner seeks reconsideration of the Court's Decision dated May 21, 2018 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."

In the assailed Decision, this Court held that petitioner did not timely file its judicial claim for refund. It failed to comply with the mandatory 120 + 30 day period prescribed by law when it filed its Petition for Review only 120 days after the effectivity of Revenue Memorandum Circular (RMC) No. 54-2014.

Petitioner maintains that prior June 11, 2014, which is the issuance of RMC No. 54-2014, the Department of Finance One Stop Shop (DOF-OSS) processed its previous claims for refund for more than 120 days. Thus, the mandatory period only commenced from June 11, 2014.

However, in the assailed Decision, this Court found petitioner's arguments bereft of merit as there is nothing in the law nor regulations or circulars issued by the Department of Finance (DOF) or the Bureau of Internal Revenue (BIR), which provides that the 120-day period may be reckoned upon the issuance of RMC No. 54-2014. Since it is a mere clarification of what is provided in Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, the reckoning of the 120-day period remains from the submission of the complete documents in support of the administrative claim for refund, whether filed directly with BIR Office or with the DOF-OSS Center.

The Court further took note of the fact that certain applications for refund filed before the DOF-OSS were acted beyond the period prescribed by Administrative Order (AO) No. 266, which is within 30 days from filing of the application. However, that does not result in allowing petitioner to sleep on its right to appeal before the Court of Tax Appeals (CTA) when the case is deemed denied, which is after the 120-day period to decide. Said period is intended to benefit the taxpayer to ensure that its claim is decided judiciously and expeditiously and that to prolong the processing of the application for refund would be actually prejudicial to its interest.

Thus, petitioner prays for a reconsideration of the above ruling based on the following grounds: (1) it should not be penalized by the protracted processing procedure of DOF-OSS on petitioner's claim for refund; and (2) RMC No. 54-2014 should not be applied retroactively as confirmed by Revenue Regulations (RR) No. 1-2017.

Petitioner points out that the DOF-OSS has a long-standing and consistent processing practice to act and issue tax credits or refund beyond the 120-day period provided by the law because the review and actual audit of the supporting documents is quite laborious, thus, such cannot even be completed within 120 days.

Moreover, it asserts that Section 112(C) of the NIRC of 1997, as amended, provides that the 120-day period is computed from the time of submission of complete documents, citing a portion of the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[1] (*Pilipinas Total Gas case*). Hence,

[1] G.R. No. 207112, December 8, 2015.

the Court erred in computing the 120 days from the date of filing of the application.

In addition, it avers that RMC No. 54-2014 should not be applied retroactively to applications for tax refunds/credits pending before the DOF-OSS prior to its issuance.

It cited paragraphs 3 and 4 of Sections 1 and 2 of RR No. 1-2017, which provide:

> "It appears that RMC No. 54-2014 was being given retroactive effect because pending claims were deemed denied upon expiration of the 120-day period from the date the claims were filed even though the taxpayer-claimants are still in the process of submitting the complete documents which was allowed under RMC No. 49-2003. It presumed that the pending claims had been filed with complete documents and the same have remained unacted upon beyond the 120-day period.
>
> On December 8, 2016 *[sic]*, the Supreme court, in the case of Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue (G.R. No. 207112), decreed that taxpayers 'have every right to pursue their claims in the manner provided by existing regulations at the time it was filed', and therefore, RMC No. 54-2014 cannot be applied retroactively as this would prejudice taxpayers whose VAT claims for tax credit or tax refund were filed and pending before June 11, 2014, the date RMC No. 54-2014 took effect. This judicial declaration compels the need to clarify the tax treatment and processing of applications for VAT tax credit/refund filed and pending prior to RMC 54-2014.
>
> **SEC. 2. SCOPE.** – Pursuant to the provisions of Section 244, in relation to Section 246 and Section 112 of the Tax Code, as amended, these Regulations are issued to give effect to the doctrinal rule laid down in the aforecited *Pilipinas Total Gas* case and to afford fair and adequate relief to taxpayer-claimants whose claims were 'deemed denied' as a result of the retroactive application of RMC No. 54-2014. For this purpose, and consistent with the judicial 'summation of rules' decreed to be 'made applicable to claims of tax credit/refund filed before June 11, 2014', such claims filed prior to RMC No. 54-2014 shall continue to be processed administratively."

Respondent, on the other hand, counters petitioner's motion by asserting that this Court correctly ruled that it has no jurisdiction over the petition and that RMC No. 54-2014 merely called for the application of the provisions of the NIRC of 1997, as amended, in the advent of the decisions of the Supreme Court.

At the outset, it must be noted that all of the grounds raised by petitioner in its motion were already passed upon and resolved by the Court in the assailed Decision.

Section 112(C) of the NIRC of 1997, as amended, in relation to RMC No. 49-2003, provides that the counting of the 120-day period reckons from the date of submission of complete documents supporting the application for claim for refund. However, upon the issuance of RMC No. 54-2014 on June 11, 2014, claimants are required to submit an affidavit stating that it has already submitted complete supporting documents together with its application for refund. Thus, starting June 11, 2014, the 120-day period to decide begins to run from the filing of the application for claim for refund.

Consequently, for claims filed before June 11, 2014, or prior to the effectivity of RMC No. 54-2014, such as the administrative claims for refund involved in the instant case, the rules provided under RMC No. 49-2003, in relation to Section 112 of NIRC of 1997, as amended, shall apply.

Relevantly, the Court reiterates the Supreme Court's ruling in the *Pilipinas Total Gas case*:

> "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:
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> > 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 compete 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 **within thirty (30) days from request of the investigating/processing office, which shall be construed as within the one hundred twenty (120)-day period.**

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."[2] (*Emphasis supplied*)

It is clear from the foregoing that the 120-day period would begin to run upon the submission of the supporting documents. In this regard, records show that petitioner submitted supporting documents[3] together with the filing of its administrative claims for refund for the taxable years 2009[4], 2010[5] and 2011[6]. Thus, the Court correctly reckoned the 120-day period from the filing of the administrative claim for refund.

Also, as found by the Court in the assailed Decision, the notices received by petitioner requiring the submission of certain documents for the processing

[2] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.
[3] Exhibits P-27, P-28 and P-29, BIR Records, Folders I, II and III.
[4] Exhibit "P-27", BIR Records, Folder I, p. 429.
[5] Exhibit "P-28", BIR Records, Folder II, p. 227.
[6] Exhibit "P-29", BIR Records, Folder III, p. 1.

of the claim for refund for taxable years 2009 and 2010 were not dated. And even if the Court assumes that petitioner received the notices on the date indicated therein, the said dates were still beyond the 120-day period to decide. As to the administrative claim for refund for taxable year 2010, there is nothing in the records which would show that respondent requested for additional documents to support petitioner's claim.

Thus, in further applying RMC No. 49-2003 and the *Pilipinas Total Gas case*, the Court found that the request for additional documents or any subsequent submission of additional documents did not toll the running of the 120-day period. Otherwise, the process would have no ending.

Clearly, there was no retroactive application of RMC No. 54-2014 in this case.

At this juncture, it must be pointed out that the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise.[7] For failure to comply with the statutory conditions, petitioner must therefore bear the consequences. It has lost its right to claim a refund by virtue of its own failure to observe the prescriptive period.

Consequently, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on May 21, 2018, dismissing the Petition for Review for lack of jurisdiction.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

[7] *Commissioner of Internal Revenue, vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, October 22, 2014.