REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ORICA PHILIPPINES, INC.,
Petitioner,

CTA EB NO. 2926
(CTA Case No. 10036)

Present:

DEL ROSARIO, *PJ,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES *JJ.*

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 01 2025 3:20pm

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DECISION

FERRER-FLORES, J.:

Before the Court *En Banc* is a **Petition for Review (Re: Honorable Court of Tax Appeals – Special First Division's Resolution dated 14 May 2024)**[1] filed on June 14, 2024 by **Orica Philippines, Inc. (petitioner)** against the **Commissioner of Internal Revenue (respondent/CIR)**, praying for the reversal of the Resolution dated May 14, 2024 (**assailed Resolution**)[2] rendered by the Special First Division[3] of this Court (**Court in Division**) in CTA Case No. 10036 entitled "*Orica Philippines, Inc. vs. Commissioner of Internal Revenue*". Petitioner also prays for the Court to grant its claim for refund in the aggregate amount of **₱25,780,077.47** representing excess or unutilized input value-added tax (VAT) for the fourth quarter of fiscal year (FY) ended September 30, 2016.

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1 *Rollo*, pp. 17 to 38.
2 *Rollo*, pp. 70 to 75.
3 Penned by Associate Justice Catherine T. Manahan and concurred in by Associate Justice Marian Ivy F. Reyes-Fajardo.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at 11/F Tower 2, Rockwell Business Center, Ortigas Avenue, Ugong, Pasig City.[4] It is registered with the Bureau of Internal Revenue (BIR) and assigned with Taxpayer's Identification Number (TIN) 000-059-661-000.[5]

Respondent is vested with the power and authority, among others, to decide, approve, and grant applications for refund on excess or unutilized input VAT. He may be served with summons and other court processes at the BIR, National Office Building, Agham Road, Diliman, Quezon City.[6]

FACTUAL ANTECEDENTS

The factual antecedents, as narrated in the Decision dated December 19, 2023 rendered by the Court in Division, are as follows:[7]

> Petitioner filed an application with the BIR requesting the refund of its excess input VAT on September 25, 2018, amounting to ₱38,189,958.33 for the period covering July 1, 2016 to September 30, 2016.
>
> On January 16, 2019, petitioner received the letter dated December 7, 2018 from the Assessment Service, partly denying petitioner's request for refund. xxx
>
> xxx xxx xxx
>
> Petitioner posted the [present] Petition for Review on February 15, 2019, assailing the disallowed portion in the aggregate amount of ₱25,780,077.47.
>
> On May 22, 2019, respondent filed his Answer to the Petition for Review.
>
> The Pre-Trial Conference was set and held on July 4, 2019. Prior thereto, respondent's Pre-Trial Brief was submitted on June 27, 2019, while Pre-Trial Brief (of Petitioner Orica Philippines, Inc.) was filed on June 28, 2019.
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> Respondent submitted the BIR Records for the present case on July 4, 2019.
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> On August 5, 2019, the parties filed their Joint Stipulation of Facts and Issues, which was approved in the Resolution dated August 15, 2019,

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4 Paragraph 1, The Parties, Petition for Review, *Rollo*, p. 17.
5 Paragraph 12, Statement of Facts, *Rollo*, p. 20.
6 Paragraph 2, The Parties, Petition for Review, *Rollo*, p. 18.
7 *Rollo*, pp. 50 to 68.

thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on October 28, 2019.

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following witnesses, namely: (1) Ms. Teresa S. Gonzales, petitioner's Tax Specialist; and (2) Ms. Krista V. Bambao, the Court-commissioned Independent Certified Public Accountant Report (ICPA). The latter submitted her Report on August 5, 2019.

On November 18, 2020, petitioner filed its Formal Offer of Evidence. Respondent then submitted his Comment (on Petitioner's Formal Offer of Evidence dated 18 November 2020) on November 24, 2020. In the Resolution dated January 21, 2021, the Court admitted petitioner's Exhibits, except for the following:

1. Exhibits "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-38", "P-39 to P-42", "P-44 to P-62", "P-43", "P-97", "P-98 to P-125", "P-126 to P-290", "P-291 to P-302", "P-303 to P-311", "P-312 to P-463", "P-464 to P-516", "P-517 to P-558", "P-559 to P-582", "P-583", "P-584 to P-670", "P-758 to P-846", "P-1406 to P-1632", "P-1633 to P-1720", "P-1721 to P-1850", "P-1851" and "P-1852", for not being found in the records; and

2. Exhibits "P-36", "P-37", "P-63 to P-79", "P-80 to P-96", "P-671 to P-757", "P-847" to "P-1263", "P-1264 to P-1275", "P-1276 to P-1284", "P-1285 to P-1286", "P-1287 to P-1328", "P-1329 to P-1330", "P-1331 to P-1336", "P-1337 to P-1393" and "P-1394 to P-1405", for not being found in the records and for being ascertained as photocopies by the ICPA.

On February 16, 2021, petitioner filed a Motion for Reconsideration (RE: Resolution on the Formal Offer of Evidence dated 18 November 2020), praying that this Court render judgment:

1. Giving due course to the instant Motion for Reconsideration (RE: Resolution on the Formal Offer of Evidence dated 18 November 2020);

2. Admitting as evidence Exhibits "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-38", "P-39 to P-42", "P-44 to P-62", "P-43", "P-97", "P-98 to P-125", "P-126 to P-290", "P-291 to P-302", "P-303 to P-311", "P-312 to P-463", "P-464 to P-516", "P-517 to P-558", "P-559 to P-582", "P-583", "P-584 to P-670", "P-758 to P-846", "P-1406 to P-1632", "P-1633 to P-1720", "P-1721 to P-1850", "P-1851" and "P-1852", as part of the voluminous documents examined, marked, and identified by the ICPA;

3. Correcting the records as regards Exhibits "P-16" and "P-27-4" as noted by the Court.

Respondent, however, failed to file his comment thereon.

In the Resolution dated June 17, 2021, the Court granted petitioner's Motion for Reconsideration; and admitted the exhibits mentioned therein.

On February 15, 2022, petitioner filed a Motion with Leave of Court to Reopen the Case for Presentation of Additional Evidence with Motion for Leave to Allow Conditional Recall of Independent CPA (of Orica Philippines, Inc.). Respondent submitted his Opposition (Re: Motion with Leave of Court to Reopen the Case for the Presentation of Additional Evidence with Motion for Leave to Allow Conditional Recall of Independent CPA) on March 14, 2022. In the Resolution dated March 29, 2022, the Court: (1) granted petitioner's Motion with Leave of Court to Reopen the Case; (2) set the recall of the ICPA to testify on the certified true copies of the export declarations and apostilled bills of lading on April 28, 2022.

Thereafter, petitioner filed its Supplemental Independent Certified Public Accountant Report and its Supplemental Judicial Affidavit of Krista V. Bambao on April 21, 2022 and April 22, 2022, respectively. Said witness was recalled to the witness stand on April 28, 2022.

Subsequently, the Supplemental Formal Offer of Evidence (of Petitioner Orica Philippines, Inc.) was filed on May 4, 2022. No comment was filed thereon by respondent. In the Resolution dated July 1, 2022, the Court resolved to admit petitioner's exhibits.

For his part, respondent offered the testimony of Revenue Officer Daniel Carlo C. Perez.

On August 17, 2022, respondent filed his Formal Offer of Evidence. [Petitioner] submitted [its] Comment on the Respondent's Formal Offer of Exhibits on August 25, 2022. In the Resolution dated October 6, 2022, the Court admitted respondent's exhibits.

Respondent filed his Memorandum on November 10, 2022, while petitioner submitted its Memorandum on November 11, 2022.

The present case was submitted for decision on December 15, 2022.

On December 19, 2023, the Court in Division rendered its Decision denying petitioner's claim for refund, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**

Dissatisfied with the ruling, petitioner filed a *Motion for Reconsideration (Re: 19 December 2023 Decision of the Honorable Court of Tax Appeals – Special First Division)* on January 18, 2024. The assailed

Resolution denied the *Motion* for lack of merit. The *fallo* of assailed Resolution reads:

> **WHEREFORE**, in light of the foregoing considerations, petitioner's Motion for Reconsideration (Re: 19 December 2023 Decision of the Honorable Court of Tax Appeals-Special First Division) filed on January 18, 2024 is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Hence, the present *Petition for Review*.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On May 31, 2024, petitioner posted a *Motion for Extension of Time to File Petition for Review under Rule 8 of the Revised Rules of Court of Tax Appeals*, seeking an additional period of 30 days from May 31, 2024, or until June 30, 2024, within which to file its petition.[8] The Court *En Banc*, in a Minute Resolution dated June 18, 2024,[9] deemed the said *Motion* as granted.

Meanwhile, on June 14. 2024, petitioner filed the present *Petition for Review* before the Court *En Banc*, praying that the same be given due course; that the Resolution dated May 14, 2024 be reversed; and, that petitioner's claim for refund in the aggregate amount of ₱25,780,077.47, representing its excess or unutilized input VAT for the fourth quarter of FY 2016, be granted.[10]

In a Resolution dated July 17, 2024,[11] the Court directed respondent to file a Comment on the *Petition for Review* within 10 days from notice. On July 31, 2024, respondent filed his *Comment and Opposition (Re: Petition for Review dated 14 June 2024)*.

Thereafter, the case was deemed submitted for decision on August 8, 2024.[12]

THE ISSUE

The sole issue raised by petitioner is whether the Court in Division erred in dismissing its claim for refund of excess or unutilized input VAT for the fourth quarter of FY ending September 30, 2016, in the amount of ₱25,780,077.47, on the grounds of lack of jurisdiction and lack of merit.

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8 *Rollo*, pp. 1 to 4.
9 *Rollo*, p. 81.
10 *Rollo*, p. 37.
11 *Rollo*, p. 82.
12 *Rollo*, p. 94.

Petitioner's arguments

Petitioner argues that the judicial appeal for the VAT refund for the fourth quarter of FY 2016 was filed within the prescriptive period under the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing rules and regulations. Petitioner opines that the applicable law at the time of the filing of both the administrative and judicial claims for refund is Section 112(C) of the NIRC of 1997, as amended by the Tax Reform for Acceleration and Inclusion (TRAIN) Law. Hence, the jurisprudential basis relied upon by the Court in Division are not in all fours with the present case. To construe respondent's inaction as a deemed denial contravenes the intention of the lawmakers in deleting the "deemed denied" provision under the NIRC of 1997, as amended by the TRAIN Law. Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, being a special law, shall prevail over Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282, which is a general law.

Respondents' arguments

Respondent, on the other hand, avers that the Court has no jurisdiction over the instant *Petition* for being filed out of time; thus, there is no reason to disturb the Decision dated December 19, 2023 and the Resolution dated May 14, 2024, dismissing the case for lack of jurisdiction.

THE RULING OF THE COURT *EN BANC*

The instant *Petition for Review* lacks merit.

Timeliness of the Petition for Review.

Before proceeding to the merits of the arguments of the parties, the Court *En Banc* deems it necessary to delve on the timeliness of the instant *Petition for Review*.

Records show that on January 3, 2024, petitioner received a copy of the Decision dated December 19, 2023, rendered by the Court in Division. Thereafter, on January 18, 2024, petitioner timely filed a *Motion for Reconsideration*.

On May 14, 2024, the Court in Division issued the assailed Resolution denying petitioner's *Motion for Reconsideration*, which petitioner received on May 16, 2024. Consequently, petitioner had 15 days from such receipt, or until May 31, 2024, within which to file a petition for review before the Court *En Banc*.

On May 31, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review under Rule 8 of the Revised Rules of Court of Tax Appeals*, which was deemed granted in the Minute Resolution dated June 18, 2024.

On June 14. 2024, petitioner timely filed the instant *Petition for Review.*

Proceeding now to the merits of the case, while the Court in Division has exhaustively discussed the points raised by petitioner, the Court finds it prudent to address the same in order to reinforce the ruling of this Court.

The judicial appeal for the subject VAT refund was not timely filed; thus, the Court in Division had no jurisdiction over the present case.

Petitioner contends that it filed its judicial claim for refund within the period prescribed under Section 112(C) of the NIRC of 1997, as amended by RA No. 10963 or the TRAIN Law, which took effect on January 1, 2018. It argues that the said provision, as amended by the TRAIN Law, does not give the taxpayer the privilege to appeal the inaction of the CIR within the prescribed period, considering that the phrase "*or the failure on the part of the Commissioner to act on the application within the period prescribed above*" was deleted by the TRAIN Law.

Petitioner is mistaken.

While the Court agrees that Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, is the applicable law in the present case, considering that petitioner filed its administrative claim for refund on September 25, 2018 and its judicial claim for refund on February 15, 2019, both after the TRAIN Law's effectivity on January 1, 2018, the Court still finds no cogent reason to reverse or modify the assailed Resolution of the Court in Division.

Prior to January 1, 2018, Section 112(C) of the NIRC of 1997, as amended, provides:

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

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 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. *(Emphasis ours)*

Upon the effectivity of the TRAIN Law on January 1, 2018, Section 112(C) now provides:

Section 112. Refunds or Tax Credits of Input Tax. –

xxx xxx xxx

(C) Period within which Refund of Input Taxes shall be Made.— In proper cases, **the Commissioner shall grant a refund for creditable input taxes <u>within ninety (90) days</u> from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.**

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, **<u>within thirty (30) days</u> from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: Provided, however, that failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code. (*Emphasis and underscoring added*)

Based on the above-quoted provision, it is clear that respondent is now mandated to act on a taxpayer's application for refund **<u>within 90 days</u>** from the date of submission of documents in support of the said application. In the NIRC of 1997, as amended, the taxpayer may appeal the decision on the refund or the inaction of respondent within 30 days from the expiration of the 120-day period to decide with the CTA. In the TRAIN Law, in case of full or partial denial, the taxpayer may appeal the decision with this Court within 30 days from receipt of the decision denying the claim.

A holistic reading of the provision shows that the 30-day period to file a judicial appeal is triggered when the respondent renders a decision either granting or denying, in whole or in part, the claim for tax refund within the prescribed 90-day period. In such instance, the taxpayer has 30 days from receipt of said decision to elevate the matter before this Court. The question that thus arises is: When does the 30-day period begin to run if no decision is issued within the 90-day period?

Sections 7(a)(2) and 11 of RA No. 1125,[13] as amended by RA No. 9282,[14] are instructive. These provisions expressly confer upon this Court jurisdiction over instances of inactions by the respondent in cases involving claims for refund of internal revenue taxes, *viz.*:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**; (*Emphasis added)*
>
> xxx xxx xxx
>
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**. (*Emphasis added)*

Contrary to petitioner's claim, there is no inconsistency between Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, and Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282. Rather, these provisions are complementary.

Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, mandates that applications for tax refund must be acted upon by the respondent within a 90-day period, and imposes a penalty on the part of any official, agent, or employee of the BIR should they fail to act on the

[13] An Act Creating the Court of Tax Appeals.
[14] An Act Expanding the Jurisdiction of the Court of Tax Appeals, Amending for the Purpose Certain Section of the Law Creating the Court of Tax Appeals, and for Other Purposes.

application within the prescribed period. Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, on the other hand, provides for a judicial remedy when the respondent fails to act within the prescribed period, by treating such action as a deemed denial that is appealable to this Court under Section 11 of RA No. 1125, as amended by RA No. 9282.

Thus, upon the lapse of the 90-day period without action by the respondent, the taxpayer need not await an express denial. The inaction is deemed a denial, subject to judicial appeal to this Court within 30 days, consistent with prevailing jurisprudence.[15] To hold otherwise would provide the respondent the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with this Court.

In the present case, petitioner submitted its administrative claim on September 25, 2018. Counting 90 days therefrom, respondent had until December 24, 2018 to act on the said claim. As no action was taken within the said period, petitioner had until January 23, 2019, or 30 days thereafter, to file a judicial claim before this Court.

Petitioner, however, only received a letter partially granting its application for refund on January 16, 2019, well beyond the lapse of the 90-day period. Given that no decision was communicated to the petitioner within the 90-day period, petitioner's recourse was to file its judicial claim on or before January 23, 2019. As correctly ruled by the Court in Division, the *Petition for Review* filed on February 15, 2019 was filed out of time and, therefore, beyond the jurisdiction of the Court.

The jurisprudential basis cited by the Court in Division is still applicable in interpreting Section 112(C) of the NIRC OF 1997, as amended by TRAIN Law.

Prescinding from the foregoing discussion, the Court finds that *Silicon Philippines Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue (Silicon case)*[16] and *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[17] both of which were cited by the Court in Division, which confirmed the mandatory and jurisdictional nature of the periods for filing judicial claims for refund of

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[15] *Commissioner of Internal Revenue vs. Dohle Shipmanagement Philippines Corporation*, G.R. No. 246379, August 19, 2024; *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

[16] G.R. No. 182737, March 2, 2016.

[17] G.R. No. 168950, January 14, 2015.

input VAT under Section 112(C) of the NIRC, as amended, remain to be a good case law.

The Court thus concurs with the Court in Division that the ruling in the *Silicon case* is in accord with the provisions of Section 7(a)(2) of RA No. 1125 as amended by RA No. 9282, where the jurisdiction of the Court over the inaction of respondent is clear and categorical.

Thus, any taxpayer seeking a refund or tax credit of unutilized input VAT from zero-rated or effectively zero-rated sales should first file an initial administrative claim with the BIR, which claim should be filed within two years after the close of the taxable quarter when the sales were made. If the claim is denied by the BIR or the latter has not acted on it within the 90-day period, the taxpayer is then given a period of 30 days, reckoned from the receipt of the decision or the expiration of the period to act on the claim for refund, within which to file a judicial claim with this Court.

There being no reversible error committed by the Court in Division, the Court *En Banc* finds no cogent reason to reverse and set aside the assailed Resolution dated May 14, 2024 in CTA Case No. 10036 entitled "*Orica Philippines, Inc. vs. Commissioner of Internal Revenue*".

WHEREFORE, in light of the foregoing considerations, the instant **Petition for Review (Re: Honorable Court of Tax Appeals – Special First Division's Resolution dated 14 May 2024)** is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision dated December 19, 2023 and Resolution dated May 14, 2024 in CTA Case No. 10036 are hereby **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

With due respect, see Dissenting Opinion.
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

w/ due respect, I join PJ's DO except for the 2nd paragraph.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

With due respect, I join PJ's DO.
LANEE S. CUI-DAVID
Associate Justice

With due respect, I join PJ's DO.
HENRY S. ANGELES
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ORICA PHILIPPINES, INC., Petitioner,	**CTA EB No. 2926**
	(CTA Case No. 10036)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.***, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 01 2025 3:25 PM

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia*.

In a number of cases, I have taken the position that a taxpayer has two (2) options as to when he can interpose an appeal on his administrative claim for refund: (1) await the decision or ruling of the CIR and file a petition for review within thirty (30) days upon receipt of such decision or ruling; or, (2) appeal the inaction within thirty (30) days upon the lapse of the ninety (90)-day period.

In my Dissenting Opinion in *Kurimoto (Philippines) Corporation vs. Commissioner of Internal Revenue*,[1] I elucidated my point, *viz.*:

[1] CTA Case No. 10156, July 18, 2023

"Prior to the enactment of Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, reads:

> "Sec. 112. *Refunds or Tax Credits of Input Tax.* - 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 Subsection (A).
>
> 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**." *(Boldfacing and underscoring supplied)*

In construing the aforequoted provision, the Supreme Court opined that the thirty (30)-day period within which an appeal may be made commences either from receipt of the **denial** of the claim for refund or tax credit **OR** after the **expiration** of the 120-day period within which the Commissioner of Internal Revenue (CIR) is mandated to act on the claim, whichever comes first. Said the Supreme Court:

> "The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling[,] or after the expiration of the 120-day period, **whichever is sooner**."[2] *(Boldfacing supplied)*

With the enactment of the TRAIN Law, Section 112(C) of the NIRC of 1997, as amended, now reads:

> "Sec. 112. Refunds or Tax Credits of Input Tax. - xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.*— In proper cases, the Commissioner shall grant a refund for creditable input taxes within **ninety (90) days** from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

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[2] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the **receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within [the ninety (90)-day period] shall be punishable under Section 269 of this Code." *(Boldfacing and underscoring supplied)*

At once glaring is the fact that under the TRAIN Law, the reckoning of the thirty (30)-day period within which an appeal to the Court of Tax Appeals (CTA) may be made specifies **only *one circumstance***, that is-from receipt of the decision of the CIR denying the claim for tax refund. **The provision, as worded, does not give the taxpayer the privilege to appeal the inaction of the CIR to act on the administrative claim within the prescribed period.**

xxx xxx xxx

I am not unaware of Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, which reads as follows:

> "Sec. 7. *Jurisdiction*. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**; x x x" (*Boldfacing and underscoring supplied*)

The above-cited provision of RA No. 1125, as amended, grants jurisdiction to the CTA when: (i) there is a "specific period of action" given to the CIR within which to decide an administrative claim for refund; **and**, (ii) the CIR fails to act on the refund claim within the said period. The inaction of the CIR shall be deemed a denial of the refund claim, and the taxpayer may appeal said inaction within the thirty (30)-day period reckoned from the lapse of the specific period.

Section 7(a)(2) of RA No. 1125, as amended, is a **general provision** on modes of appeal applicable to inactions of the CIR, including: (a) refunds of taxes, fees and charges, as provided in Section 229 of the NIRC of 1997, as amended; (b) assessment cases under Section 228 of the NIRC of 1997, as amended; and, (c) "other matters" arising from the NIRC of 1997, as amended, and laws administered by the BIR.

> On the other hand, the procedure on appeal under **Section 112(C) of the NIRC of 1997**, as amended, is confined solely to cases involving claims for refund of unutilized input VAT attributable to **zero-rated sales**.
>
> In *Department of Energy vs. Court of Tax Appeals*,[3] the Supreme Court elucidated on the difference between a special law and general law, and the interpretative rule when faced with such statutes, *viz.*:
>
>> "The Court has defined a **general law** as 'a law which applies to all of the people of the state or to **all of a particular class** of persons in the state, with equal force and obligation.' x x x [I]t was also described as 'one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class.' On the other hand, a **special law** is one which 'applies to particular individuals in the state or to a **particular section** or portion of the state only' and which 'relates to particular persons or things of a class.' As the Court has consistently held, where there are two laws which appear to apply to the same subject and where one law is general and the other special, the law specially designed for the particular subject must prevail over the other. Stated more simply, the special law prevails over the general law. *Generalia specialibus non derogant.*" *(Boldfacing supplied)*
>
> At any rate, even assuming that an appeal upon the expiration of the ninety (90)-day period may be allowed, still, **such legal scenario does not preclude a taxpayer from interposing an appeal from receipt of the decision of the CIR, which is <u>clearly consistent with Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law</u>**." *(Boldfacing and underscoring supplied)*

In the present case, petitioner's administrative claim for refund was filed on **September 25, 2018**.[4] From the filing of petitioner's administrative claim, the CIR had ninety (90) days therefrom, or until **December 24, 2018** within which to decide the refund claim. Records reveal that petitioner's administrative claim for refund was denied by the BIR, through Assistant Commissioner Erlinda A, Simple, in a VAT Refund/Credit Notice dated December 7, 2018, which was received by petitioner only on **January 16, 2019**.[5]

Considering that the Petition for Review in the Court in Division was posted on **February 15, 2019**, I submit that petitioner's judicial claim for refund was filed within the thirty (30)-day prescriptive period to appeal and the Court in Division had jurisdiction to take cognizance of the case.

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[3] G.R. No. 260192, August 17, 2022.
[4] Exhibits "P-16", Docket, Vol. II, pp. 582 to 585.
[5] Exhibit "P-19", Docket, Vol. II, p. 589.

All told, I VOTE to: (1) **GRANT** the Petition for Review (*Re*: Honorable Court of Tax Appeals – *Special First Division's* Resolution dated 14 May 2024); and, (2) **REMAND** the case to the CTA Special First Division for the determination of the amount to be refunded to petitioner, if any.

ROMAN G. DEL ROSARIO
Presiding Justice