REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

ALLEGRO MICROSYSTEMS PHILIPPINES, INC., *Petitioner,*	**CTA *EB* NO. 1327** *(CTA Case No. 8882)*
-versus-	Present: ***Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban,*** *and* ***Manahan, JJ.***
THE UNDERSECRETARY OF THE DEPARTMENT OF FINANCE AND CHAIRMAN OF THE ONE-STOP-SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER, THE COMMISSIONER OF INTERNAL REVENUE, AND THE COMMISSIONER OF THE BUREAU OF CUSTOMS, *Respondents.*	**Promulgated:** JUN 22 2017 3:32 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is petitioner's Motion for Reconsideration (of the Decision dated 30 January 2017) (the "Motion for Reconsideration") filed on February 16, 2017; with respondent Commissioner of Internal Revenue's ("CIR") Manifestation and Motion filed *via* registered mail on April 18, 2017 and received by the Court on May 9, 2017, and respondents Undersecretary of the Department of Finance ("Undersecretary") and the Commissioner of Customs' ("COC") Manifestation and Motion In Lieu of Comment (To Petitioner's Motion for Reconsideration of the Honorable Court's Decision dated 30 January 2017) filed on April 3, 2017.

On January 30, 2017, the Court *En Banc* promulgated a Decision[1] ("Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the present Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated January 20, 2015 and May 25, 2015, rendered by the First Division, are hereby **AFFIRMED.**
>
> **SO ORDERED.**

In its Motion for Reconsideration, petitioner avers that the determination of whether the Court of Tax Appeals ("CTA") First Division ("Court in Division") has jurisdiction should be limited to the nature of the action alleged in its Petition for Review filed with the Court in Division; thus, said petition should be treated as an appeal of a denial of its claim for refund, and not inaction of respondent CIR.

Petitioner reiterates that respondent CIR has authority to act on a claim for refund beyond the one hundred twenty (120)-day period; hence, it may opt to wait for respondent CIR's decision, even beyond the said 120-day period, before elevating the matter to the CTA. Petitioner avers that the statements cited from *Commissioner of Internal Revenue v. San Roque Power Corporation ("San Roque")*[3] and *Commissioner of Internal Revenue v. Mindanao II Geothermal ("Mindanao II Geothermal")*[4] on the authority of respondent CIR to decide a claim beyond the 120-day period were *obiter dicta* which have no binding force; that instead, *Lascona Land Co., Inc. v. Commissioner of Internal Revenue ("Lascona")*[5] should be applied by analogy considering that *Sections 228* and *112(C) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")* are *in pari materia*; that to rule otherwise would be contrary to the policy and intent behind the 120-day period as expounded by the Supreme Court in *Pilipinas Total Gas v. Commissioner of Internal Revenue ("Total Gas")*[6]; and that *Revenue Memorandum Circular ("RMC") No. 49-2003*[7], *Revenue Regulations*

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[1] *Rollo, CTA EB No. 1327, Vol. 2*, pp. 530-543.
[2] *Id.*, p. 542.
[3] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.
[4] G.R. No. 191498, January 15, 2014, 713 SCRA 645.
[5] G.R. No. 171251, March 5, 2012, 667 SCRA 455.
[6] G.R. No. 207112, December 8, 2015.
[7] Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added

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("RR") No. 1-2017[8], and Supreme Court decisions in *San Roque* and *Commissioner of Internal Revenue v. Nippon Express (Phils.) Corporation ("Nippon Express")*[9] all recognize the authority of CIR to rule on a claim for refund beyond the 120-day period.

Petitioner insists that it is entitled to the refund of, or issuance of a tax credit certificate ("TCC") covering its unutilized input value-added tax ("VAT") in the amount of Php129,770,030.10 pursuant to *Section 112(A) of the 1997 NIRC.*

In its Manifestation and Motion, respondent CIR manifests and moves to adopt the factual findings and legal conclusions of the Court *En Banc* in the Assailed Decision, dismissing the Petition for Review for failure to present evidence to prove respondent CIR's actual denial of petitioner's claim for refund; and for lack of jurisdiction since it was made beyond the 30-day reglementary period to appeal from the lapse of the 120-day period due to inaction of respondent CIR.

Respondent CIR alleges that the Motion for Reconsideration is a *pro forma* motion, considering that the arguments raised therein are mere repetition and reiteration of the arguments already passed and ruled upon by the Court *En Banc*; and that petitioner raises no new and cogent reasons to disturb the factual findings and legal conclusions of the Court *En Banc* in the Assailed Decision, hence, the Motion for Reconsideration should be denied for lack of merit.

Meanwhile, respondents Undersecretary and COC manifested that they are adopting the Comments of the CIR as their comment.

The Court *En Banc* will now resolve.

After a careful review of the grounds raised in the Motion for Reconsideration, as well as the Comments filed by respondents, the Court *En Banc* finds no new matters or arguments which were not

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Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters, August 15, 2003.

[8] Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed Under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014, January 3, 2017.

[9] G.R. No. 212920, September 16, 2015, 771 SCRA 27.

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considered in the Assailed Decision. Petitioner failed to present any new and/or compelling argument to justify the reversal or modification of the Court *En Banc*'s findings in the Assailed Decision. Consequently, the Court *En Banc* finds respondent's Motion for Reconsideration devoid of merit. Nevertheless, the Court *En Banc* will expound on the arguments raised, if only to reinforce the discussion in the Assailed Decision.

Central to the resolution of the issue is *Section 112(C) of the 1997 NIRC* which lays out the procedure to be followed in claims for refund or a TCC on unutilized input VAT, *viz.:*

> SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> xxx xxx xxx
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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.
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> 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 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.

Petitioner argues that the above provision shall be interpreted to mean that taxpayers may opt to wait for the decision of the CIR even beyond the 120-day period before it elevates the same to the CTA; and that CTA is not deprived of its jurisdiction as long as the matter was brought within thirty (30) days from receipt of CIR's decision.

In other words, petitioner is asserting that the 30-day period shall be reckoned as follows: if CIR decides within one hundred twenty (120) days , the 30-day period shall commence from receipt of such decision; otherwise, taxpayers may either: *(1)* elevate the matter to the CTA within thirty (30) days after lapse of the 120-day period;

or *(2)* wait for the final decision of the CIR even beyond the 120-day period, and thereafter elevate the same to the CTA within thirty (30) days from receipt of such decision. According to petitioner, this is applying by analogy *Lascona.*

The Court *En Banc* finds against the petitioner.

The pronouncement of the Supreme Court in *Mindanao II Geothermal*[10] is plain, clear and leaves no room for interpretation. The taxpayer can file an appeal in one of two ways: *(1)* file the judicial claim within thirty (30) days after the CIR denies the claim within the 120-day period, or *(2)* file the judicial claim within thirty (30) days from the expiration of the 120-day period if the CIR does not act within the 120-day period.

In *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue*[11], the Supreme Court emphasized:

> A final note, the taxpayers are reminded that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. 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.[12]

The above is consistent with *Section 3(a)(2), Rule 4 of the Revised Rules of the CTA ("RRCTA")*[13], the pertinent portion of which states:

> SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> xxx xxx xxx
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed

[10] Supra note 4.
[11] G.R. No. 168950, January 14, 2015, 745 SCRA 663.
[12] Underscoring ours.
[13] A.M. No. 05-11-07-CTA, November 22, 2005.

> assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation 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 or other applicable law provides a specific period for action: xxx;[14]

Based on the foregoing, the CIR is given one hundred twenty (120) days to decide on the application for refund or a TCC. If he does not decide within that period, taxpayers must elevate the matter to the CTA within thirty (30) days after the lapse thereof; otherwise, the Court will be deprived of jurisdiction to hear and determine the case.

Petitioner's reliance on the case of *Lascona* is misplaced, if not erroneous. A careful reading of *Lascona* shows that *Section 228 of the 1997 NIRC* was construed in relation to *Section 3(a)(2), Rule 4 of the RRCTA*, particularly on the remedy of the taxpayer in case CIR failed to decide within the 180-day period prescribed under *Section 228 of the 1997 NIRC, viz.:*

> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, xxx, where the National Internal Revenue Code xxx provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to wait the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; xxx;[15]

The above provision is clear. The law limits the option to wait in cases of inaction of CIR only on disputed assessments. In cases of inaction of CIR on claims for refund within one hundred twenty (120) days, no similar option applies. Had the Supreme Court intended to

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[14] Underscoring ours.
[15] Underscoring ours.

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confer with the Court in Division jurisdiction over cases involving claims for refund beyond the 120+30 day period, it would have specifically included the words "refund," "one hundred twenty (120) days," and *"Section 112 of the 1997 NIRC"* in the above *Section 3(a)(2), Rule 4 of the RRCTA.*

Petitioner cannot also take refuge in the case of *San Roque* and *Nippon Express* as well as *RMC No. 49-2003* and *RR No. 1-2017* which it claims all recognize the authority of CIR to rule on a claim for refund beyond the 120-day period.

In *Commissioner of Internal Revenue v. Manulife Data Services, Inc.,*[16] the Court *En Banc* held, to wit:

> However, the continuation of the investigation of the said administrative claim does not prevent this Court from deciding an appeal of a refund claim. In fact, under RMC 49-2003, which has the force and effect of a law, the BIR itself recognizes and addresses the situation where this Court is able to release a decision ahead of the BIR. Said BIR issuance provides:
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> > "<u>In cases where the taxpayer has filed a 'Petition for Review' with the [CTA] involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately</u>. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. <u>In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency</u>.
> >
> > <u>If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the</u>

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[16] CTA EB Case Nos. 1051 (CTA Case Nos. 8054, 8117 & 8139), November 17, 2014.

> other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite of the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office."
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> Hence, it is not correct for the CIR to argue that the pendency of an administrative investigation of Manulife's claim prevents the granting of a refund by the Court in Division.[17]

While it is true that the CIR can still evaluate the administrative claim even after the lapse of the 120-day period and after filing of judicial claim, it bears stressing that such authority is for purposes of opposing or conceding to the judicial claim. This is because after one hundred twenty (120) days, jurisdiction is conferred with the CTA pursuant to *Section 3(a)(2), Rule 4 of the RRCTA*. In fact, the judicial claim stands notwithstanding termination of the processing of the administrative claim unless the taxpayer files a motion to withdraw the claim with the CTA. In which case, the result of the investigation in the BIR will be presented as evidence against the claim of the taxpayer during the proceedings with the CTA.

It must be emphasized that among the ends to which a motion for reconsideration is addressed, one is precisely to convince the Court that its ruling is erroneous and improper, contrary to laws and evidence.[18] Having failed to do so, petitioner's Motion for Reconsideration must necessarily fail.

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[17] Emphases and citations omitted, underscoring ours.
[18] *Coquilla v. Commission on Elections,* G.R. No. 151914, July 31, 2002, 434 Phil. 861.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated January 30, 2017 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice