**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SECOND DIVISION**

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| **SMCC PHILIPPINES, INC. (Formerly: Sumicon Phil. Corp.),** Petitioner, | **CTA CASE NO. 9082** |
| | Members: |
| -versus- | **CASTAÑEDA, JR.**, *Chairperson, and* **BACORRO-VILLENA**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | **Promulgated:** JAN 12 2021 2:10 p.m. |

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**DECISION**

**CASTAÑEDA, JR., *J.*:**

Submitted for decision is a Petition for Review filed by SMCC Philippines, Inc. (SMCC) on July 6, 2015 under Section 112(C) of the National Internal Revenue Code of 1997, as amended (1997 NIRC) praying for the refund of Seventy Million One Hundred Ten Thousand Three and 90/100 Pesos (₱70,110,003.90) allegedly representing unutilized input VAT for the first and second quarters of Calendar Year (CY) 2012.

**THE PARTIES**

Petitioner SMCC, is a corporation duly organized and existing under the laws of the Philippines. It is engaged in general construction business, manufacturing, acquiring, and furnishing all building and other tools and equipment connected therewith or required therefore, as well as manufacturing things incidental to or used in connection with any of such activities as shown in its Securities and Exchange

Commission Certificate of Registration numbered AS 095-09484. It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer with Tax Identification Number 004-813-382-000 with principal office address at 2nd Floor Pioneer House, 108 Paseo de Roxas, Legaspi Village, Makati City 1229. Petitioner may be served with notices, summonses and other court processes through its counsel at Unit 1100, 88 Corporate Center, Sedeño Street corner Valero Street, Salcedo Village, Makati City.[1]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is duly appointed and empowered to perform the duties of the office at the Bureau of Internal Revenue National Office Building, Agham Road, Diliman, Quezon City, including the power to deny or grant tax refunds pursuant to Section 112(C) of the 1997 NIRC, as amended.[2]

## THE FACTS

### *Antecedent Facts*

On April 25, 2012, petitioner SMCC filed with the BIR Revenue District Office No. (RDO) 47 its VAT Return for the First Quarter of CY 2012.[3] On November 26, 2012, petitioner filed an amended Quarterly VAT Return for the same period.[4] The table below summarizes the changes made in the returns:

| **Document** | **Period Covered** | **Date Filed** | **Total Input VAT (Item 22)** | **VAT Refund /TCC Claimed (Item 23D)** |
|---|---|---|---|---|
| Original Quarterly VAT Return | January – March 2012 | April 25, 2012 | ₱48,576,469.52 | - |
| Amended Quarterly VAT Return | January – March 2012 | November 26, 2012 | ₱48,576,469.52 | ₱42,788,190.35 |

On July 25, 2012, petitioner filed its VAT Return for the Second Quarter of 2012.[5] It amended the same and filed the amended return *Jc*

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[1] Admission, Answer, Division Docket, Vol. I, p. 96.
[2] Admission, *Id.*
[3] Exhibit P-6, Division Docket, Vol. II, p. 879.
[4] Exhibit P-6-2, Division Docket, Vol. II, p. 882.
[5] Exhibit P-7, Division Docket, Vol. II, p. 883.

on November 13, 2013.[6] The table below summarizes the changes made in the returns:

| Document | Period Covered | Date Filed | Total Input VAT (Item 22) | VAT Refund /TCC Claimed (Item 23D) |
|---|---|---|---|---|
| Original Quarterly VAT Return | April – June 2012 | July 25, 2012 | ₱80,767,816.97 | - |
| Amended Quarterly VAT Return | April – June 2012 | November 26, 2012 | ₱37,978,237.87 | ₱27,321,813.55 |

On March 22, 2013, petitioner filed its administrative claim for refund and/or issuance of tax credit certificate (TCC) for its unutilized input VAT of ₱70,110,003.90 for the first two quarters of CY 2012 (January to June 2012) with the BIR RDO 47 together with supporting documents.[7]

On July 11, 2013, petitioner received a Letter of Authority (LOA) No. 047-2013-00000070 (SN: eLA201100017066) dated April 18, 2013 authorizing Revenue Officer (RO) Vicente Gudani and Group Supervisor (GS) Joe Soriano of RDO 47 to examine the books of account and other accounting records for VAT for January to June 2012 pursuant to "Mandatory Audit – Claim for VAT Credit Certificate".[8]

On March 27, 2014, petitioner submitted additional documents in support of its administrative claim.[9]

On August 1, 2014, petitioner also submitted documents relevant to its administrative claim.[10]

On June 5, 2015, however, petitioner received a letter from respondent CIR dated May 29, 2015 denying the administrative claim.[11] Je

[6] Exhibit P-7-1, Division Docket, Vol. II, p. 884.
[7] Exhibits P-1 and P-8, Division Docket, Vol. II, pp. 856 and 885.
[8] Exhibit P-9, Division Docket, Vol. II, p. 886.
[9] Exhibit P-10, Division Docket, Vol. II, p. 887.
[10] Exhibit P-11, Division Docket, Vol. II, p. 888.
[11] Exhibit P-2, Division Docket, Vol. I, p. 26.

***Proceedings Before the Court***

On July 6, 2015, petitioner filed a Petition for Review with the Court praying for the refund of ₱70,110,003.90 allegedly representing unutilized input VAT for the first and second quarters of CY 2012.[12]

On July 22, 2015, Summons was served on the respondent.[13]

On August 3, 2015, respondent filed his Answer by registered mail.[14]

On August 27, 2015, after an extension was granted, petitioner filed its Reply (to Respondent's Answer).[15]

In a Resolution dated September 15, 2015, Pre-Trial Conference was set on October 29, 2015.[16]

On November 23, 2015, petitioner filed a Motion to Admit Motion for Appointment of an Independent Certified Public Accountant (ICPA) with the Judicial Affidavit of Atty. Ma. Cecilia C. Katigbak, a partner of Cabaniero, Katigbak, Clemente & Co., as the testimony of ICPA, attached as Annex A.[17]

On February 4, 2016, petitioner filed a Manifestation of Submission of the Judicial Affidavit of Dhalmedhanissankaarachchige Don Felix Anton Dishantha.[18]

On February 9, 2016, the Court granted petitioner's Motion for Appointment of an Independent Certified Public Accountant.[19] Accordingly, Atty. Ma. Cecilia C. Katigbak was commissioned as ICPA.[20]

On February 26, 2016, the parties filed their Joint Stipulation of Facts and Issues by registered mail,[21] which was approved by the court in its March 15, 2016 Resolution.[22]

On April 14, 2016, the Court noted the filing of the ICPA Report.[23]

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[12] Division Docket, Vol. I, pp. 10-23.
[13] July 28, 2015 Notification, Division Docket, Vol. I, p. 95
[14] Division Docket, Vol. I, pp. 96-99.
[15] Division Docket, Vol. I, pp. 106-113.
[16] Division Docket, Vol. I, p. 115.
[17] Division Docket, Vol. I, pp. 149-164.
[18] Division Docket, Vol. I, pp. 191-205.
[19] February 9, 2016 Resolution, Division Docket, Vol. I, pp. 216-217.
[20] Oath of Commission, Division Docket, Vol. I, p. 214.
[21] Division Docket, Vol. I, pp. 224-229.
[22] Division Docket, Vol. I, p. 233.
[23] April 14, 2016 Minute Resolution, Division Docket, Vol. I, p. 248.

On May 5, 2016, the court issued its Pre-Trial Order which summarized the stipulations of the parties, the evidence to be presented and the resetting of the trial dates to August 9 and August 30, 2016.[24]

In a Resolution dated November 24, 2016, the Court granted petitioner's Urgent Omnibus Motion to: 1. Allow the Temporary Retrieval of the ICPA Report dated May 26, 2016 with its Supporting Documents/Exhibits for Purposes of Pre-Marking by the ICPA as Exhibits for the Instant Case; 2. Allow the Submission of a Supplemental ICPA Report; 3. Allow the Filing of an Amended Judicial Affidavit of Atty. Ma. Cecilia C. Katigbak; and 4. Reset the August 30, 2016 hearing to September 20, 2016 or at any subsequent date convenient to the Honorable Court.[25]

In a Minute Resolution dated December 20, 2016, the Court noted the filing of the ICPA Amended Final Report on December 19, 2016.[26]

In a January 4, 2017 Order, the Court noted the filing of Manifestation of Submission of the Judicial Affidavit of Atty. Ma. Cecilia C. Katigbak with attached Judicial Affidavit (Atty. Ma. Cecilia C. Katigbak, C.P.A.).[27]

On January 17, 2017, the ICPA was recalled to testify on direct examination by way of Amended Judicial Affidavit executed on December 21, 2016 (Exhibit P-55-1), no cross examination was conducted, thereafter, the case was reset to June 13, 2017.[28]

In a July 17, 2017 Resolution, the Court granted petitioner's Urgent Motion to Defer the Filing/Submission of Formal Offer of Evidence and to Allow Presentation of Additional Evidence.[29]

On September 13, 2017, petitioner filed its Manifestation of Submission of the Supplemental Judicial Affidavit of Dhalmedhanissankaarachchige Don Felix Anton Dishantha (Supplementing his Amended Judicial Affidavit dated August 2, 2016).[30]

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[24] Division Docket, Vol. I, pp. 251-261.
[25] Division Docket, Vol. I, pp. 404-406.
[26] Division Docket, Vol. I, p. 410.
[27] Division Docket, Vol. I, p. 434.
[28] January 17, 2017 Order, Division Docket, Vol. I, pp. 466-468.
[29] Division Docket, Vol. I, pp. 489-490.
[30] Division Docket, Vol. I, pp. 497-504.

On September 14, 2017, during the continuation of the petitioner's presentation of evidence, witness Dhalmedhanissankaarachchige Don Felix Anton Dishantha was recalled to testify on direct examination by way of his Supplemental Judicial Affidavit marked as Exhibit P-55. He was cross-examined by counsel for respondent. No re-direct examination followed; hence, the testimony was deemed completed and terminated.[31]

On October 9, 2017, petitioner SMCC filed an Urgent Motion for the Issuance of Subpoena Duces Tecum requesting the Court to order the Office of the Director General of the Philippines Economic Zone Authority (PEZA) to produce the original or certified true copies of the 2012 PEZA Certificates of VAT-Zero Rating issued to various companies for the purpose of comparison with the provisionally marked exhibits.[32]

On December 15, 2017, the Court granted petitioner's Urgent Motion for Issuance of Subpoena Duces Tecum and Urgent Omnibus Motion to: 1. Defer the Filing/Submission of Formal Offer of Evidence; 2. Grant the Urgent Motion for the Issuance of Subpoena Duces Tecum filed on October 6, 2017; and 3. Set a Commissioner's Hearing.[33]

On January 15, 2018, the Court issued a Subpoena Duces Tecum which ordered the Office of the Director General of the Philippines Economic Zone Authority (PEZA) to produce the original or certified true copies of the 2012 PEZA Certificates of VAT-Zero Rating issued to various companies.[34]

In a Resolution dated July 31, 2018, the Court granted petitioner's Motion for Extension of Time to File Formal Offer of Evidence (For the Petitioner) and Omnibus Motion to: 1. Defer the Filing/Submission of Formal Offer of Evidence for the Last Time; 2. Issue Subpoena Duces Tecum; and 3. Set a Commissioner's Hearing.[35]

On August 8, 2018, the Court once again issued Subpoenas Duces Tecum which ordered the Administrator of JGC Philippines, Inc. and the President of Imasen Philippines Manufacturing Corporation to produce the original or certified true copies of the 2012 PEZA Certificates of VAT-Zero Rating for the purpose of comparison with the provisionally marked exhibits.[36]

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[31] September 14, 2017 Order, Division Docket, Vol. I, pp. 523-524.
[32] Division Docket, Vol. I, pp. 526-531.
[33] Division Docket, Vol. I, pp. 549-553.
[34] Division Docket, Vol. I, p. 556.
[35] Division Docket, Vol. II, pp. 585-590.
[36] Division Docket, Vol. II, pp. 591-592.

Pursuant to the Order dated September 27, 2018, the trial of the case was transferred to the Second Division.[37]

In a Resolution dated November 23, 2018, the Court granted petitioner's Urgent Omnibus Motion to: 1. Defer the Filing/Submission of Formal Offer of Evidence for the Last Time; 2. Reopen Trial for Purposes of Presenting Additional Witness/Evidence; and 3. To be Allowed the Use of Secondary Evidence. Accordingly, the case was set for the recall of Dhalmedhanissankaarachchige Don Felix Anton Dishantha on January 23, 2019 to lay the basis for the presentation of Exhibit P-13-2 as secondary evidence.[38]

On January 18, 2019, petitioner filed a Manifestation of Submission of the Judicial Affidavit (For Further Testimony of Dhalmedhanissankaarachchige Don Felix Anton Dishantha) for the purpose of identifying and authenticating the 2012 PEZA Certificates of VAT-Zero Rating issued to JGC Philippines, Inc. provisionally marked as Exhibit P-13-2 and of proving the unavailability of the original copy of the document and that petitioner exercised good faith and reasonable diligence to produce the same before the Court.[39]

On February 11, 2019, within the extension granted by the court, petitioner filed its Formal Offer of Exhibits with Motion to be Allowed to Present Secondary Evidence by registered mail.[40]

Thereafter, on February 27, 2019, petitioner filed an Omnibus Motion: 1. For the Correction of the Case Number and Transfer of the Formal Offer of Evidence dated February 11, 2019 with Attached Originally Marked Exhibits; 2. To Admit Formal Offer of Exhibits with Motion to be Allowed to Present Secondary Evidence dated February 11, 2019; or in the Alternative, To Admit the Attached Amended Formal Offer of Evidence; 3. To Admit Exhibits "P-56", "P-57" and "P-58".[41]

The resolution of the February 27, 2019 Omnibus Motion was deferred by the Court.[42]

In a Resolution dated September 24, 2019, the Court admitted petitioner's Exhibits except for Exhibits P-13-4 and P-18, for failure to present their originals for comparison, and Exhibits P-18-17, P-48, ICPA Exhibits P-35-56.1 to P-35-56.6, P-35-234, P-35-235, P-36-301,

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[37] Division Docket, Vol. II, p. 608.
[38] Division Docket, Vol. II, pp. 611-613.
[39] Division Docket, Vol. II, pp. 614-622.
[40] Division Docket, Vol. II, pp. 830-854.
[41] Division Docket, Vol. II, pp. 657-686.
[42] July 18, 2019 Resolution, Division Docket, Vol. II, pp. 956-958.

P-36-301.1, P-36-357, P-36-362 and P-36-363, for not being found in the records. The Court also granted the petitioner's Motions to be Allowed the Use/Present Secondary Evidence and the Motion to Admit Exhibits P-56, P-57 and P-58. Finally, considering respondent's manifestation during the January 23, 2019 hearing that he will not be presenting any witness, the parties were given thirty (30) days to file their memoranda.[43]

On November 7, 2019, respondent filed his Memorandum for Respondent by registered mail.[44]

On January 17, 2020, after requesting for extensions, petitioner filed its Memorandum [For the Petitioner].[45]

This case was considered submitted for decision in a Resolution dated January 31, 2020.[46]

## ISSUE

As stipulated by the parties, the issue for this Court's consideration is whether petitioner is entitled to its refund claim of Seventy Million One Hundred Ten Thousand Three and 90/100 Pesos (₱70,110,003.90) allegedly representing unutilized input VAT for the first and second quarters of CY 2012.[47]

## THE COURT'S RULING

### *Requisites under Section 112(A) of the 1997 NIRC, as amended*

Petitioner anchors its claim on Section 112(A) of the 1997 NIRC, as amended, which provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-

[43] Division Docket, Vol. II, pp. 961-972.
[44] Division Docket, Vol. II, pp. 973-981.
[45] Division Docket, Vol. II, pp. 1005-1030.
[46] Division Docket, Vol. II, p. 1033.
[47] Joint Stipulation of Facts and Issues, Division Docket, Vol. I, p. 224.

> 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 sales and also in taxable or exempt sale of goods or 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 nonzero-rated sales."

Based on a reading of the foregoing provision, to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must comply with the following requisites:[48]

1. The taxpayer is VAT-registered;

2. The taxpayer is engaged in zero-rated or effectively zero-rated sales;

3. The input taxes are due or paid;

4. The input taxes are not transitional input taxes;

5. The input taxes have not been applied against output taxes during and in the succeeding quarters;

6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

7. For zero-rated sales under Section 106(A)(1) and (2); 106(B); and 106(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

[48] *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011, citing *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.

8. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and,

9. The claim is filed within two years after the close of the taxable quarter when such sales were made.

***Timeliness of the Claim and the Court's Jurisdiction***

Counting from the close of the taxable quarters covered in the claim, petitioner had until the following dates to file its administrative claim for refund with the respondent based on Section 112(A) of the 1997 NIRC, as amended:

| Period | End of Quarter | End of 2-Year Prescriptive Period |
|---|---|---|
| 1st Quarter 2012 | March 31, 2012 | March 31, 2014 |
| 2nd Quarter 2012 | June 30, 2012 | June 30, 2014 |

Records show that petitioner filed an Application for Tax Credits/Refunds (BIR Form No. 1914) on March 22, 2013,[49] which is well *within* the periods shown above.

In addition, Section 112(C) of the NIRC of 1997, as amended, also provides for specific periods when the refund claims shall be made by the taxpayer:

> "(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper case, 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

[49] Exhibit P-1, Docket, Vol. II, p. 856.

> 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."

On June 5, 2015, it appears that petitioner received a letter from respondent dated May 29, 2015 denying petitioner's claim for VAT refund/issuance of tax credit on the ground of alleged failure to submit complete documentary evidence pursuant to Revenue Memorandum Order (RMO) No. 53-98 and Revenue Memorandum Circular (RMC) No. 54-14.[50] Counting thirty (30) days from the date of receipt of respondent's letter, petitioner filed this Petition for Review on July 6, 2015,[51] inasmuch as the last day, July 5, 2015, fell on a Sunday.

In connection with the timeliness of the judicial claim, respondent raised the following arguments early on in his Answer:[52]

> "7) Petitioner failed to comply with the provisions of Section 112 of the NIRC. <u>The judicial appeal was filed beyond the period prescribed by law. The Petition for Review should have been filed within thirty (30) days from the failure of the Commissioner to make a decision within 120 days from the submission of documents and in case of full or partial denial of the claim for tax refund, or the failure on the part of the Commissioner to act on the application within the period prescribed</u>, the taxpayer affected may, within 30 days from the receipt of the decision denying the claim or <u>after the expiration of the 120 day period, appeal the unacted claim with the Court of Tax Appeals</u>. <u>The Petitioner's claim that it has thirty (30) days from June 5, 2015 to file its Petition for Review is misplaced</u>. <u>The reckoning period within which petitioner should have filed its appeal must be within thirty (30) days after the expiration of the 120-day period from the time it submitted the documents to support its application for refund</u>. The reckoning period of the 120 days prescribed by law should be August 1, 2014, the date the petitioner submitted its last set of documents. <u>The 120+30-day period under Sec. 112 is mandatory and jurisdictional</u> (Commissioner of Internal Revenue vs. Dash Engineering Philippines, Inc., G.R. No. 184145, December 11, 2013);" (*Underscoring supplied*)

On this important point, therefore, the Court finds for the respondent. *ju*

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[50] Exhibit "P-2", Docket, Vol. I, p. 26.
[51] Docket, Vol. I, pp. 10-23.
[52] Special and Affirmative Defenses, Answer, Docket, Vol. I, pp. 97-98.

In the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[53] the Supreme Court *En Banc* ruled:

> "The charter of the CTA expressly provides that its jurisdiction is to review on appeal '**decisions** of the Commissioner of Internal Revenue in cases involving xxx refunds of internal revenue taxes.' When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no 'decision' of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within '**a specific period**' required by law, such '**inaction shall be deemed a denial**' of the application for tax refund or credit. It is the Commissioner's decision, or inaction 'deemed a denial,' that the taxpayer can take to the CTA for review. Without a decision or an 'inaction x x x deemed a denial' of the Commissioner, the CTA has no jurisdiction over a petition for review."

The same holding is subsequently reiterated in the case of *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*,[54] thus:

> "The landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation* has interpreted Section 112 (D). The Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period.
>
> In this case, the facts are not up for debate. On 11 December 2000, petitioner filed with the BIR an application for the refund or credit of accumulated unutilized creditable input taxes. Thus, the CIR had a period of 120 days from 11 December 2000, or until 10 April 2001, to act on the claim. It failed to do so, however. Rohm Apollo should then have treated the CIR's inaction as a denial of its claim. Petitioner would then have had 30 days, or until 10 May 2001, to file a judicial claim with the CTA. But Rohm Apollo filed a Petition for Review with the CTA only on 11 September 2002. The judicial claim was thus filed late.
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> xxx xxx xxx

[53] G.R. No. 187485, February 12, 2013.
[54] G.R. No. 168950, January 14, 2015.

> A final note, the taxpayers are reminded that 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." *(Emphasis supplied.)*

In the respondent's denial letter dated May 29, 2015, the same reminder in *Rohm Apollo* was quoted by Revenue District Officer Isabel A. Paulino, thus:[55]

> "Please be informed that your application for cash refund from excess input taxes for the period January 1 to June 30, 2012, inclusive, is hereby denied for failure to submit complete documentary evidence to support your claim pursuant to Revenue Memorandum Order No. 53-98 dated June 1, 1998 and Revenue Memorandum Circular (RMC) No. 54-2014 dated June 11, 2014 and in the recent case decided by the Supreme Court held that:
>
>> 'A final note, the taxpayers are reminded that 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' (*ROHM APOLLO SEMICONDUCTOR PHILIPPINES vs. Commissioner of Internal Revenue, GR 168950 Jan. 14, 2015*)"

Petitioner proved that after it received an LOA on July 11, 2013,[56] it submitted additional documents to support its claim upon the *verbal* request of the BIR. To comply, it submitted documents on March 27, 2014[57] and on August 1, 2014.[58]

Reckoned from August 1, 2014, the date of submission of complete documents in support of the application filed, respondent had *120 days* or until November 29, 2014, within which to act on petitioner's claim for refund. Respondent's inaction as of November 29, 2014, therefore, is *deemed a denial* of petitioner's claim.

[55] Exhibit P-2, Docket, Vol. I, p. 26.
[56] Exhibit P-9, Docket, Vol. II, p. 886.
[57] Exhibit P-10, Docket, Vol. II, p. 887.
[58] Exhibit P-11, Docket, Vol. II, p. 888.

After the lapse of the 120-day period, petitioner had 30 days from November 29, 2014, or until December 29, 2014, to elevate its claim before the Court. However, the instant Petition for Review was filed only on July 6, 2015, which is 189 days late.

Petitioner's erroneously believe that it can wait until it received respondent's decision, even *after* the 120-day waiting period, before it could file a judicial claim for refund with the CTA. However, the Supreme Court clearly interpreted Section 112(C) of the NIRC of 1997, as amended, that the law prescribes a waiting period of *only* 120 days and respondent's inaction within the said period is *deemed a denial* of the claim.

In view of the foregoing Supreme Court pronouncements, petitioner's judicial claim in the amount of ₱70,110,003.90 allegedly representing unutilized input VAT for the first and second quarters of 2012 was clearly filed *beyond* the period prescribed by law.

The Court reiterates that the 120+30-day periods to appeal are both mandatory and jurisdictional.[59] Consequently, there is no need to discuss petitioner's compliance with the other requisites that have been previously mentioned.

Finally, tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[60]

**WHEREFORE**, in light of the foregoing, the Petition for Review is **DISMISSED** for lack of jurisdiction.

**SO ORDERED.**

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

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[59] *Commissioner of Internal Revenue v. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013 and *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

[60] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

*I CONCUR:*

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

## ATTESTATION

I attest 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's Division.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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