REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

LEPANTO CONSOLIDATED MINING COMPANY,	**CTA CASE NO. 10153**
Petitioner,	Members:
	UY, *Chairperson,*
-versus-	**RINGPIS-LIBAN,** *and*
	MODESTO-SAN PEDRO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUN 16 2020 4:10 p.m.

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RESOLUTION

For resolution is petitioner's Motion for Reconsideration (of the Honorable Court's Resolution dated 13 December 2019) filed on 20 January 2020 (hereinafter referred to as "Motion"). With the filing of respondent's Opposition (Re: Motion for Reconsideration of the Resolution dated 13 December 2019) filed on 5 February 2020 (hereinafter referred to as "Opposition"), the incident has ripened for resolution.

In its Motion, petitioner contends that the Court erred in dismissing its Petition for Review for lack of jurisdiction. The dispositive portion of the Court's Resolution dated 13 December 2019 (hereinafter referred to as "Resolution")[1] dismissing the Petition for Review is hereby quoted to wit:

> "**WHEREFORE,** premises considered, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court is **GRANTED.** The Petition for Review docketed as CTA Case No. 10153, entitled *Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue* is **DISMISSED** for lack of jurisdiction."

Petitioner insists that the Petition for Review, filed on 20 August 2019, was filed within thirty (30) days from its receipt of the Bureau of Internal Revenue's ("BIR") Letter dated 29 March 2019 denying its VAT Refund Claim on 22 July 2019, in accordance with Section 112 (C) of the National Internal Revenue Code, as amended by Republic Act No. 10963 (hereinafter referred to as "Tax Code").

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[1] Records, pp. 157-162.

Finally, petitioner argues that its VAT Refund Claim could have not been deemed denied considering that the BIR had continuously processed its VAT Refund Claim pursuant to Revenue Regulations No. 1-2017 ("RR 1-17").

Meanwhile, in his Opposition, respondent stresses its argument that the Petition for Review was filed beyond the mandatory and jurisdictional thirty (30) day period from the expiration of the one hundred (120) day period pursuant to Section 112(D) of the Tax Code, and therefore, was rightfully dismissed.

The crux of the controversy is whether the Petition for Review was filed within the period prescribed under the Tax Code. Contrary to petitioner's position, the Court finds that it was filed out of time.

The pertinent provision governing VAT Refund Claims is found under ***Section 112 (C) of the Tax Code***, to wit:

> "SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - **In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) hereof.
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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 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**."[2]

Interpreting the aforementioned provision is the case of ***Rohm Apollo Semiconductor Philippines v. CIR,***[3] to wit:

> 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.**[4]

This was further clarified in ***Silicon Philippines, Inc. vs. CIR,***[5] where the Supreme Court ruled that a judicial claim for VAT refund should be filed within the 30 day period "after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner".

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[2] Emphases and underscoring supplied.
[3] G.R. No. 168950, 14 January 2015.
[4] Emphasis and underscoring supplied.
[5] G.R. No. 182737, 2 March 2016

In this case, petitioner alleges that it filed its administrative VAT refund claim and submitted the complete supporting documents of its application on 22 May 2009. However, the respondent failed to act on the VAT refund claim within the 120-day period. It was only on 22 July 2019 when petitioner received a Letter from the BIR denying its VAT refund claim.

Applying the ruling in ***Rohm Apollo Semiconductor Philippines v. CIR*** and ***Silicon Philippines, Inc. vs. CIR,*** petitioner should have appealed its VAT refund claim within thirty (30) days from the lapse of the one hundred twenty (120) day period or until 19 October 2009. Considering that the petitioner only filed its judicial claim on 20 August 2019 or several years after the lapse of the said period, clearly, the Petition for Review was filed out of time.

As for petitioner's argument that its VAT refund claim cannot be considered as deemed denied by virtue of RR 1-17, the Court finds the contention without merit. The Regulation did not modify the period to appeal judicial claims in the Court of Tax Appeals.

The Court emphasizes time and again that "the right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law".[6] Considering that the petitioner failed to file its judicial claim within the mandatory and jurisdictional 120+30 periods under the Tax Code, this Court is devoid of jurisdiction to entertain the instant Petition for Review.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (of the Honorable Court's Resolution dated 13 December 2019) is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[6] Boardwalk Business Ventures, Inc. v. Villareal, G.R. No. 181182, 10 April 2013