REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ALLEGRO MICROSYSTEMS PHILIPPINES, INC.,
Petitioner,

- versus -

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.

CTA CASE NO. 8882

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAY 25 2015 ; 9:19a.m.

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RESOLUTION

For this Court's resolution is petitioner's **Motion for Reconsideration (Of the Resolution dated 20 January 2015)** filed on February 13, 2015, with respondent Commissioner of Internal Revenue's (CIR) **Comment/Opposition (To Petitioner's Motion for Reconsideration)** filed through registered mail on March 27, 2015 and received by the Court on April 8, 2015, and without respondents' Undersecretary of the Department of Finance (DOF) and Bureau of Customs (BOC) comment despite notice.

The dispositive portion of the assailed Resolution reads:

"**WHEREFORE**, premises considered, respondent's 'Motion to Dismiss' is **GRANTED**. Accordingly, the Petition for Review filed by Allegro Microsystems Philippines, Inc. on 29 August 2014 is hereby **DISMISSED**.

SO ORDERED."

In its Motion for Reconsideration, petitioner claims that the dismissal of its Petition for Review dated August 29, 2014, due to its purported failure to present evidence to prove respondent CIR actual denial of the claim for refund, is premature. According to petitioner, it was not accorded the opportunity to present all its evidence since the case has not reached the trial stage yet.

Petitioner also claims that there was an actual denial of respondent CIR through the Office of Assistant Commissioner Simple on July 30, 2014. Therefore, considering there was an actual denial of AMPI's claim for refund by respondent CIR, petitioner concludes that the applicable rule in determining this Court's jurisdiction is Section 3(a)(1) of Rule 4, in relation to Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals. Petitioner claims that the rule which provides that the inaction by the CIR within "a specific period" required by law shall be considered a denial, is only relevant where the taxpayer appeals from such inaction. Petitioner claims that it does not preclude an appeal from a decision of respondent CIR under Section 7(a)(1) of Republic Act No. 1125.

Petitioner also contends that Section 112(C) of the National Internal Revenue Code, (NIRC) as amended expressly grants the taxpayer an option to wait for the decision of respondents even after the lapse of the 120-day period. Petitioner further contends that the cases of *Commissioner of Internal Revenue, vs. Aichi Forging Company of Asia, Inc.*[1], *San Roque vs. Commissioner of Internal Revenue*[2] and *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[3], as discussed in the assailed Resolution, are inapplicable as they involved different sets of facts.

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[1] G.R. No. 184823, October 6, 2010.
[2] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[3] G.R. No. 191498, January 15, 2014.

Petitioner then asserts that taxpayers should be given the option to wait for the decision of respondent CIR even after the lapse of the 120-day period in light of practical considerations. The option to wait for the decision of respondent CIR even after the lapse of the 120-day period is consistent with the judicial policy of declogging the courts. Petitioner stresses that depriving taxpayers of the option to wait for the decision of respondent CIR will result in injustice.

Finally, petitioner maintains that AMPI is entitled to a refund or credit for its unutilized input VAT attributable to its zero-rated export sales for FY 2013 in the aggregate amount of ₱129,770,030.10, for having satisfied all the legal requirements thereto.

On the other hand, respondent CIR claims, in its Comment/Opposition, that the Court was correct in dismissing the Petition for Review considering that the judicial claim was filed beyond the 30-day reglementary period to appeal from the expiration of the 120-day period as provided by law. Respondent CIR further contends that the right to appeal is a statutory privilege and must therefore be strictly complied with.

The Court finds merit in the arguments of respondent CIR.

A perusal of the arguments of petitioner in its Motion for Reconsideration reveals that such are a mere rehash or reiteration of the issues that have been thoroughly examined, discussed and passed upon by the Court in the assailed Resolution.

The pertinent provision in this case is Section 112(C) of the NIRC, as amended, which provides the following:

"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) 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 supplied.*)

In the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue,*[4] the Supreme Court made the following clarification:

> "**According to the Court in San Roque (2013), the prescriptive periods under Section 112 of the NIRC of 1997, as amended, shall be interpreted as follows: Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language.** The taxpayer can file his administrative claim for refund or credit at anytime within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. **If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C). The Court emphasized in San Roque (2013) that a claim for refund or tax credit, like a claim for tax exemption, is construed strictly against the taxpayer. It cited Aichi and pointed out that one of the conditions for a judicial claim for refund or tax credit under the VAT system is compliance with**

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[4] G.R. No. 205543, June 30, 2014.

> **the 120+30 day mandatory and jurisdictional periods under Section 112(C) of the NIRC of 1997, as amended**." (*Emphasis supplied.*)

As already ruled in the assailed Resolution, Section 112(C) provides a specific period for the CIR to decide, and as such, upon the lapse of the said period, the inaction shall be considered a denial.[5]

Therefore, petitioner's interpretation that Section 112(C) of the NIRC expressly grants the taxpayer an option to wait for the decision of respondents even after the lapse of the 120-day period cannot be countenanced. The law is clear as to the reglementary period with regard to the filing of the judicial claim before this Court.

Moreover, petitioner's assertion that there was an actual denial of respondent CIR through the Office of Assistant Commissioner Simple on July 30, 2014 cannot be given weight. The Judicial Affidavit of Mr. Edwald B. De Leon, which was attached to petitioner's Motion for Reconsideration, provides the following:

> "27. Q: What happened during your follow-up with Ms. Jimenez on 30 July 2014, if any?
>
> A: I asked about the status of the examination of AMPI's claim for refund, and Ms. Jimenez told me "*Ay, denied na ata yan. Dun tayo sa office ni Assistant Commissioner Simple para malinaw na denied na yan.*" (Ah, I think it [AMPI's claim for refund] is already denied. Let's go to the office of Assistant Commissioner Simple to clarify whether the claim is truly denied.)
>
> 28. Q: What happened next, if any?
>
> A: I was brought by Ms. Jimenez to the office of Hon. Erlinda A. Simple ("ACIR Simple"), Assistant Commissioner of Internal Revenue.

[5] Resolution dated January 20, 2015, p. 5.

29. Q: What happened next, if any?

A: Instead of ACIR Simple, I met with Ms. Castillo. Her office was assigned to review the reports coming from VCAD.

30. Q: What happened next, if any?

A: I asked her whether AMPI's claim could still be processed and she replied "the claim is deemed denied because of RMC No. 54-2014."

31. Q: What happened next, if any?

A: I clarified that it was the BOC which issues the TCC for AMPI and not the BIR, hence, RMC 54-14 did not apply to AMPI. However, she responded "the claim is deemed denied, we cannot act on it anymore." She also said that it was the stand of her bosses, specifically Nelson M. Aspe, Deputy Commissioner – Operations Group and ACIR Simple."

32. Q: What happened next, if any?

A: I reported this to AMPI by calling Mr. Dela Rosa and informing him of the status of AMPI's application."

The aforementioned follow-up made by Mr. Edwald B. De Leon and the subsequent verbal denial by Ms. Castillo on July 30, 2014 or more than 10 months after the filing of petitioner's administrative claim, cannot be considered as the CIR's denial contemplated by Section 112(C) of the NIRC that would justify the late filing of the appeal before the CTA. In this case, it was not even a written decision of the alleged denial of the administrative claim for refund, but rather, a mere verbal reply.

Records show that petitioner filed its administrative claim and supporting documents on September 26, 2013 and after more than

11 months, filed its judicial claim on August 29, 2014, which was already beyond the prescribed period to appeal.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Resolution, petitioner's **Motion for Reconsideration (of the Resolution dated 20 January 2015)** is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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