REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

CTA EB NO. 2184
(CTA Case No. 10163)

Present:

DEL ROSARIO, ***P.J.*,**
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, ***JJ.***

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 2 4 2021 3:40pm

x - x

DECISION

***BACORRO-VILLENA, J.*:**

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Lepanto Consolidated Mining Company (**petitioner/LCMC**), pursuant to Rule 8, Section 3(b)[2] of the Revised

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1 Filed on 13 December 2019, *Rollo*, pp. 16-112, with annexes.

2 **SEC. 3**. *Who may appeal; period to file petition.* —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper

Rules of the Court of Tax Appeals (**RRCTA**). It seeks to reverse and set aside the resolutions of the Court's First Division[3] in CTA Case No. 10163, entitled *Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue*, to wit:

1. Resolution dated 27 September 2019[4] dismissing *motu proprio* CTA Case No. 10163 for lack of jurisdiction; and,

2. Resolution dated 07 November 2019[5] denying petitioner's Motion for Reconsideration [**MR**] (of the Honorable Court's Resolution dated 27 September 2019) for lack of merit.

The antecedent facts follow.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (**SEC**). It is engaged in mining of gold and other precious metals at its mine site in Mankayan, Benguet. It is also a Value-Added Tax (**VAT**)-registered[6] and Board of Investments (**BOI**)-registered[7] entity as a new export producer of gold bullion, copper concentrate, gold and silver.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) vested with authority to carry out the functions and duties of said office, including, among others, the duty to act on and approve claims for refund or tax credit certificate (**TCC**), as provided by law.

On 01 February 2013 and 01 August 2013, respectively, petitioner allegedly filed with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (**DOF-OSS**) its

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motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

3 The First Division is composed of Hon. Presiding Justice Roman G. Del Rosario, as Chairperson, Hon. Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Hon. Associate Justice Catherine T. Manahan, as Members.

4 Division Docket, pp. 83-85.

5 Id., pp. 96-98.

6 BIR Certificate of Registration, Annex "I" attached to LCMC's Petition for Review, id., p. 47.

7 BOI Certificate of Registration Nos. EP2004-001, EP96-334 and 2006-144, Annexes "J", "K" and "L" attached to LCMC's Petition for Review, id., pp. 48-63.

application for tax credit or refund of excess and unutilized input VAT arising from importation of consumable goods and purchases of capital goods attributable to zero-rated sales covering the four (4) quarters of taxable year (**TY**) 2011 in the aggregate amount of ₱26,598,394.37, broken down as follows:

Period Covered (2011)	**Amount of Claim**
1st Quarter (January to March)	₱12,718,376.79
2nd Quarter (April to June)	7,412,480.79
3rd Quarter (July to September)	1,260,537.57
4th Quarter (October to December)	5,206,999.22
Total Amount of Claim	**₱26,598,394.37**

Petitioner further claimed that, on even dates, it submitted the complete documentary requirements in support of its application during the required period, as evidenced by the accomplished Checklist of Mandatory Requirements for VAT Credit Claims[8] (**Checklist**) from the Tax and Revenue Group of the DOF-OSS.

Respondent did not act upon petitioner's application for tax credit or refund until more than six (6) years later. On 09 August 2019, petitioner received a copy of the Letter dated 30 July 2019[9] (**Denial Letter**), denying said application purportedly because it failed to prove its claim's validity. The Denial Letter was signed by then Officer-in-Charge-Assistant Commissioner for Assessment Service, Maria Luisa I. Belen (**OIC-ACIR Belen**).

On 09 September 2019, petitioner filed a Petition for Review before the Court in Division to appeal the denial of its application for tax credit or refund. The same was raffled to the Court's First Division and docketed as CTA Case No. 10163.[10]

In the Resolution dated 27 September 2019[11], the First Division dismissed *motu proprio* petitioner's Petition for Review for lack of jurisdiction.

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8 Annex "E" attached to LCMC's Petition for Review, id., p. 21.
9 Annex "F" attached to LCMC's Petition for Review, id., p. 22.
10 Id., pp. 6-16.
11 Supra at note 4.

Aggrieved, petitioner filed an MR[12] on 23 October 2019, praying that the Resolution dated 27 September 2019 be reversed and set aside.

The Court's First Division then issued the assailed Resolution dated 07 November 2019,[13] wherein it denied petitioner's MR and upheld its 27 September 2019 Resolution. The Court pointed out that petitioner's reliance on Revenue Regulations (**RR**) No. 1-2017[14] is misplaced because nothing therein modified the periods to appeal to the Court of Tax Appeals (**CTA**). In particular, RR 1-2017 merely stated the respective jurisdictions of the CTA and the Bureau of Internal Revenue (**BIR**) in evaluating claims for refund.

On 13 December 2019, petitioner filed the instant Petition for Review.[15] Thereafter, the Court *En Banc* directed respondent to file his comment within ten (10) days from notice.[16] After respondent filed his Comment[17] on 21 February 2020, the case was deemed submitted for decision on 05 June 2020.[18]

In the instant Petition for Review, petitioner assigns the following errors to the First Division's actions[19]:

> I.
> THE COURT OF TAX APPEALS – FIRST DIVISION ERRED WHEN IT DISMISSED THE PETITION FOR REVIEW FOR LACK OF JURISDICTION PURPORTEDLY FOR HAVING BEEN FILED OUT OF TIME.
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> II.
> THE COURT OF TAX APPEALS – FIRST DIVISION ERRED IN RULING THAT THE VALUE-ADDED TAX REFUND CLAIM OF PETITIONER LEPANTO CONSOLIDATED MINING COMPANY HAS BEEN DEEMED DENIED.

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12 Division Docket, pp. 86-93.
13 Supra at note 5.
14 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.
15 Supra at note 1.
16 Resolution dated 03 February 2020, *Rollo*, pp. 114-115.
17 Id., pp. 116-127.
18 Id., pp. 129-130.
19 Grounds and Arguments, Petition for Review, id., pp. 22-23.

III.
PETITIONER LEPANTO CONSOLIDATED MINING COMPANY IS ENTITLED TO A TAX CREDIT OF ITS INPUT VALUE-ADDED TAX FOR THE FIRST, SECOND, THIRD AND FOURTH QUARTERS OF 2011 ARISING FROM IMPORTATIONS OF CAPITAL AND CONSUMABLE GOODS AMOUNTING TO ₱26,598,394.37.

IV.
THE COURT OF TAX APPEALS - FIRST DIVISION ERRED IN DISMISSING THE PETITION OUTRIGHT WHICH IS TANTAMOUNT TO A DENIAL OF THE RIGHT TO APPEAL AND A VIOLATION OF PETITIONER LEPANTO CONSOLIDATED MINING COMPANY'S CONSTITUTIONAL RIGHT TO DUE PROCESS.

In support of the above, petitioner insists that the deadline for filing of the Petition for Review must be reckoned from the receipt of the BIR's Denial Letter pursuant to RR 1-2017[20], which covers claims for tax refund or credit filed before the effectivity of Revenue Memorandum Circular (**RMC**) No. 54-2014.[21]

Contrary to the First Division's finding, petitioner contends that its VAT refund claim was not "deemed denied" given the actual denial thereof through the BIR's Denial Letter. Since the Denial Letter stated categorically that the BIR had continuously processed its VAT refund claim based on RR 1-2017 and the denial thereof was solely due to the purported non-submission of mandatory requirements, it could not have been "deemed denied". Otherwise, the BIR would have wasted time and resources examining a "deemed denied" VAT refund claim.

Petitioner further argues that it complied with all the requisites for the grant of tax credit of input VAT attributable to zero-rated sales, namely: (**a**) it is a VAT-registered entity as shown by its BIR Certificate of Registration[22]; (**b**) it is engaged in automatically zero-rated sales as 100% of its sales in 2011 (the period covered by the claim for tax credit) were exported as evidenced by its BOI Certificates of Registration[23]; (**c**) it filed the administrative claim for refund with the BIR on 28 March 2011[24] well within the two-year period from the close of the first,

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20 Supra at note 14.

21 Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

22 Supra at note 6.

23 Supra at note 7.

24 There is nothing in the records of this case which indicates that petitioner submitted its administrative claim for refund on 28 March 2011. On the contrary, under "Statement of Facts and

second, third and fourth quarters of 2011 when the pertinent importations were made; and, **(d)** the ₱26,598,394.37 input VAT arose from importations of consumable goods and capital goods that were all indispensable and used directly in its mining operations and such amount has not been applied against any output VAT.

Finally, petitioner argues that under Section 112(C)[25] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, read in conjunction with RR 1-2017, it has the right to appeal from the denial of its administrative claim for tax credit or refund and this is part of the Contitutional guarantee of due process of law. Therefore, the dismissal of its Petition for Review resulted in the violation of its Constitutional right to due process.

In his Comment[26], respondent maintains that the First Division was correct in ruling that it has no jurisdiction over the case as the Petition for Review filed before it was filed beyond the mandatory and jurisdictional 120+30-day period provided by law.

Respondent likewise submits that petitioner mistakenly relied on Section 112(C) of the NIRC of 1997, as amended by Republic Act (**RA**) No. 10963 (**TRAIN Law**), in arguing that the provision relating to respondent's "deemed a denial" decision (in case of failure to act on the claim for refund within the 120-day period) has been removed and thus, the taxpayer concerned may wait for respondent's decision and appeal the same to the CTA within thirty (30) days from receipt thereof.

Given that petitioner filed the subject administrative claim for tax credit or refund in 2013 and that the TRAIN Law took effect only in 2018, respondent thus insists that, pursuant to the principle of prospective application of statutes, the TRAIN Law amendment to Section 112(C) of the NIRC of 1997, as amended, cannot justify the

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Proceedings" of the instant Petition for Review, petitioner claims to have filed with the DOF-OSS its application for tax credit on 01 February 2013 and 01 August 2013.

25 **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —

...

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — ...

...

26 Supra at note 17.

belated filing of the original Petition for Review before the Court in Division.

Respondent also contends that RR 26-2018 specifically provides that the TRAIN Law amendment to Section 112(C) of the NIRC of 1997, as amended, (*i.e.*, the 90-day period to process and pay the VAT refund claim), applies only to administrative claims for refund filed after the effectivity of the said regulation. Thus, the mandatory and jurisdictional 120+30-day prescriptive period still applies to petitioner's administrative claim for refund which was filed in 2013.

Lastly, respondent argues that RR 1-2017 does not modify the rule that the CIR's inaction on a claim for tax credit or refund is "deemed a denial." Further, the Denial Letter was issued long after the lapse of the 120-day period under Section 112(C) of the NIRC of 1997, as amended. As such, the filing of the original Petition for Review within 30 days from receipt of the Denial Letter does not confer jurisdiction upon the Court in Division over the instant case.

We rule below.

After a judicious review of the case and the parties' contrasting arguments, the Court *En Banc* is constrained to deny this petition.

The pivotal issue in this case is whether the Court's First Division has jurisdiction to take cognizance of the Petition for Review in CTA Case No. 10163, filed by petitioner on 09 September 2019, to appeal respondent's Denial Letter dated 30 July 2019.

Section 112 of the NIRC of 1997, as amended, provides the procedure for filing a claim for VAT refund or credit, and prescribes the corresponding periods therefor. Prior to the TRAIN Law amendment, the provision states, in part:

> ...
>
> **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-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: ...
>
> ...
>
> (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.**[27]
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> ...

Section 112(C) of the NIRC of 1997, as amended, speaks of two (2) periods: (1) the 120-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for a tax credit or refund; and, (2) the 30-day period, which refers to the period for filing a judicial claim with the CTA.[28]

In a long line of cases, the Supreme Court has consistently interpreted the 120+30-day period in refund or tax credit cases, pursuant to Section 112(C) of the NIRC of 1997, as amended, as both mandatory and jurisdictional.[29]

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27 Emphasis supplied.

28 *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, 14 January 2015.

29 Some of these cases are: *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, 08 February 2017; *Deutsche Knowledge Services Pte Ltd. v. Commissioner of Internal Revenue*, G.R. No. 197980, 01 December 2016; *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, 13 June 2016; *Procter and Gamble Asia Pte Ltd. v. Commissioner of Internal Revenue*, G.R. No. 204277, 30 May 2016; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 182737, 02 March 2016; *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, 08 December 2015; *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. No. 204745, 08 December 2014; *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013; *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*,

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[30] (**Aichi**), the Supreme Court unequivocally ruled that the 120+30-day period under Section 112(C) of the NIRC of 1997, as amended, is mandatory and jurisdictional, such that judicial claims filed before the denial of the taxpayer's administrative claim or the lapse of the 120-day period in case of the CIR's inaction would be deemed premature, while judicial claims filed beyond the 30-day period after such denial or lapse would be deemed filed out of time.

However, in *Commissioner of Internal Revenue v. San Roque Power Corporation*[31] (**San Roque**), the Supreme Court recognized an exception to the mandatory and jurisdictional nature of the 120-day period. It ruled that BIR Ruling No. DA-489-03, dated 10 December 2003, provided a valid claim for equitable estoppel under Section 246[32] of the NIRC of 1997, as amended. In essence, the aforesaid BIR Ruling stated that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the Court by way of Petition for Review.

Thereafter, in *Taganito Mining Corporation v. Commissioner of Internal Revenue*[33], the Supreme Court reconciled the pronouncements in *Aichi* and *San Roque*, thus:

> ...
> Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that during the period December 10, 2003 (when BIR Ruling No. DA-489-03 was issued) to October 6, 2010 (when the *Aichi* case was promulgated), taxpayers-claimants need not observe the 120-day period before it could file a judicial claim for refund of excess input VAT before the CTA. **Before and after the aforementioned period (*i.e.*, December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim.**
> ...

G.R. No. 196907, 13 March 2013; *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, 06 October 2010.

30 G.R. No. 184823, 06 October 2010.

31 G.R. No. 187485, 12 February 2013.

32 **Sec. 246.** *Non-Retroactivity of Rulings.* — ...

33 G.R. No. 197591, 18 June 2014; Italics in the original text and emphasis supplied.

Relevantly, in *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[34], the Supreme Court explained that, while the general interpretative rule (*i.e.*, BIR Ruling No. DA-489-03), allowed the premature filing of judicial claims within the period 10 December 2003 up to 06 December 2010 (by providing that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review"), the said rule certainly did not allow the filing of a judicial claim long *after* the expiration of the 120+30-day period.

Complementing Section 112 of the NIRC of 1997, as amended, is Section 7 of RA 1125[35], as amended by RA 9282[36], conferring unto the CTA exclusive appellate jurisdiction to review on appeal the CIR's decision or inaction in cases involving refunds of internal revenue taxes, *viz*:

> ...
>
> Sec. 7. *Jurisdiction*. — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> 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[.]
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> ...

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34 G.R. No. 182737, 02 March 2016.

35 AN ACT CREATING THE COURT OF TAX APPEALS.

36 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

Section 11 of RA 1125, as amended by RA 9282, categorically states that a party adversely affected by the CIR's decision or inaction may file an appeal before the CTA within 30 days after the receipt of such decision or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) above.

It is thus settled that the taxpayer may file the appeal within 30 days after the CIR denies the administrative claim within the 120-day waiting period, **or** it may file the appeal within 30 days from the expiration of the 120-day period if there is inaction on the part of the CIR.[37] However, it must be emphasized that the judicial claim has to 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**.[38]

The Supreme Court categorically held in *Team Energy Corporation (formerly: Mirant Pagbilao Corporation, et al.) v. Commissioner of Internal Revenue*[39] that the CIR's inaction on an administrative claim for tax credit or refund during the 120-day period is "deemed a denial", pursuant to Section 7(a)(2) of RA 1125, as amended by Section 7 of RA 9282, and the taxpayer has 30 days from the expiration of the 120-day period to file its judicial claim with the CTA; otherwise, its failure to do so renders the "deemed a denial" decision of the CIR final and inappealable.

Conversely put, when the 120-day period lapses and there is inaction on the part of the CIR, **the taxpayer must no longer wait for the CIR to come up with a decision as his inaction is the decision itself.**[40] By operation of law, the refund claim is deemed denied by the CIR's inaction. The taxpayer must then file an appeal within 30 days from the lapse of the 120-day waiting period.[41] Any claim filed in a period beyond the 120+30-day period provided by

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37 *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, supra at note 28, citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, supra at note 31.

38 *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, supra at note 34.

39 G.R No. 197663, 14 March 2018.

40 *Lapanday Agricultural & Development Corporation v. Commissioner of Internal Revenue*, CTA EB No. 2174 (CTA Case No. 9965), 22 September 2020.

41 *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, supra at note 28.

Section 112(C) of the NIRC of 1997, as amended, is outside the jurisdiction of the CTA.[42]

Based on the foregoing, We rule against petitioner's contention that the deadline for filing of the Petition for Review should be reckoned from receipt of the Denial Letter. Instead, the said deadline should be reckoned from the lapse of the 120-day waiting period.

The records disclose the following relevant dates showing the time when the VAT returns and administrative claims were filed, as well as the end of the two-year period to file said administrative claims:

Period Covered (2011)	End of the Quarter	Date of Filing of Return	Date of Filing of Administrative Claim	End of two-year period to file claim
1st Quarter	31 March 2011	30 August 2012[43]	01 February 2013 / 01 August 2013	31 March 2013
2nd Quarter	30 June 2011	30 August 2012[44]	01 February 2013 / 01 August 2013	30 June 2013
3rd Quarter	30 September 2011	30 August 2012[45]	01 February 2013 / 01 August 2013	30 September 2013
4th Quarter	31 December 2011	30 August 2012[46]	01 February 2013 / 01 August 2013	31 December 2013

As shown in the table above, petitioner had until 31 March 2013, 30 June 2013, 30 September 2013, and 31 December 2013 to file its administrative claims for the 1st, second, third, and fourth quarters of 2011, respectively, reckoned from the end of each quarter.

As alleged, petitioner filed with the DOF-OSS its application for tax credit or refund on 01 February 2013 and 01 August 2013 for the four (4) quarters of TY 2011. However, copies of the claim stubs[47] issued by the DOF-OSS (to acknowledge receipt of petitioner's application) do not indicate as to which period the claim pertains and either of the

[42] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, supra at note 34.
[43] Annex "O" attached to LCMC's Petition for Review, Division Docket, pp. 73-74.
[44] Annex "P" attached to LCMC's Petition for Review, Division Docket, pp. 75-76.
[45] Annex "Q" attached to LCMC's Petition for Review, Division Docket, pp. 77-78.
[46] Annex "R" attached to LCMC's Petition for Review, Division Docket, pp. 79-80.
[47] Claim Stub Nos. 66834, 66835, 66836 and 66837, Annexes "A", "B", "C" and "D" attached to LCMC's Petition for Review, Division Docket, pp. 17-20.

claimed filing dates of its application. Apart from petitioner's bare allegation, there is no evidence on record proving such filing dates.

With respect to the timeliness of the judicial claim, the Court must ascertain when the 120-day period lapses as the said period is crucial in filing an appeal with the CTA.[48] The running of the 120-day period is reckoned from the date of submission of complete documents in support of the application for tax credit or refund pursuant to the first paragraph of Section 112(C) of the NIRC of 1997, as amended.

As established in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[49] (**Total Gas**), a taxpayer has 30 days from request of the investigating/processing office within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR, and upon complete submission thereof or the expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund, *viz*:

> ...
>
> With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining ***when*** the supporting documents have been completed — *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.
>
> The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

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48 *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, supra at note 30.

49 G.R. No. 207112, 08 December 2015; Citation omitted; emphasis and italics in the original text; emphasis and underscoring supplied.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund – it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

...

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

<u>Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, "officially received" as provided under RMC No. 49-2003.</u>

To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120[-]day period allowed to the CIR begins to run from the date of filing.

...

Absent any showing that petitioner was required to submit or that it actually submitted additional documents after the filing of the application for tax credit or refund, and considering that, in the "Remarks" portion of the Checklist dated 21 March 2013, DOF-OSS' reviewing officer marked petitioner's application as "Complete as to Requirements", the 120-day period is reckoned from the filing date of petitioner's application.

As can be deduced from the table below, petitioner's judicial claim was filed way *beyond* the 120+30-day mandatory and jurisdictional period:

Taxable Quarter of 2011	Date of Filing of Administrative Claim	End of 120-day Period	End of 30-day Period from Lapse of 120-day Period	Date of Filing of Judicial Claim	Number of Years Late
1st Quarter	01 February 2013	01 June 2013	01 July 2013	09 September 2019	6.28
2nd Quarter	01 February 2013	01 June 2013	01 July 2013	09 September 2019	6.28
3rd Quarter	01 February 2013 / 01 August 2013	01 June 2013 / 29 November 2013	01 July 2013 / 29 December 2013	09 September 2019	6.28 / 5.78
4th Quarter	01 February 2013 / 01 August 2013	01 June 2013 / 29 November 2013	01 July 2013 / 29 December 2013	09 September 2019	6.28 / 5.78

Given the lapse of the 120-day period from the filing of petitioner's application for tax credit or refund without a formal decision from the CIR — "deemed a denial" decision, petitioner should have filed its Petition for Review not later than **01 July 2013** for the first and second quarters and **01 July 2013** or **29 December 2013** for the third and fourth quarters, as the case may be.

Assuming respondent had allowed petitioner an extension of time to submit complete supporting documents and petitioner submitted such documents until 31 March 2013, 30 June 2013, 30 September 2013 and 31 December 2013 (*i.e.*, on the last day of the two-year prescriptive period in line with the ruling in *Total Gas*) in relation to its claims for the first, second, third and fourth quarters of TY 2011, the 120-day period should end on 29 July 2013, 28 October 2013, 28 January 2014 and 30 April 2014, respectively; petitioner, therefore, had only until 28 August 2013, 27 November 2013, 27 February 2014 and 30 May 2014, respectively, to elevate its claims before the Court in Division.

Since the Petition for Review covering the four (4) quarters of TY 2011 was filed with the Court's First Division only on 09 September 2019, *more than six (6) years thereafter*, the Court could no longer entertain petitioner's judicial claim. Accordingly, respondent's "deemed a denial" decision became final and executory.

We also find no merit in petitioner's claim that the tenor of the Denial Letter would lead to the indubitable conclusion that, before such letter was issued, the BIR had not yet denied the VAT refund claim as it was still being processed pursuant to RR 1-2017.

As established earlier, upon the lapse of the 120-day waiting period from the filing of petitioner's application for tax credit or refund without a formal decision from the CIR, petitioner's application has already been deemed denied. Contrary to petitioner's supposition, there is no need to expressly state in the Denial Letter that petitioner's application was "deemed denied" for it to be considered as such (as distinguished from an actual denial).

Notwithstanding that the Denial Letter laid out the findings on the BIR's evaluation of petitioner's claim, nothing therein could have misled petitioner to believe that it can still appeal respondent's "deemed a denial" decision. If anything, in issuing the Denial Letter, respondent merely affirmed the "deemed a denial" decision. Likewise, respondent did so under the assumption that such issuance (albeit long overdue) was necessary when RR 01-2017 exempted from RMC 54-2014 (which considered unacted administrative claims as deemed denied) VAT credit/refund applications filed before the effectivity of said RMC.

As regards the TRAIN Law amendment[50] to Section 112(C) of the NIRC of 1997, as amended, petitioner theorizes that it still has a right

[50] **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —

...

(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.

to appeal to the CTA within 30 days from receipt of the Denial Letter as the lapse of the 120-day period (now, 90-day period under the TRAIN Law) does not automatically mean that the BIR has denied the application for tax credit or refund because the TRAIN Law had removed the phrase "or failure on the part of the Commissioner to act on the application within the period prescribed above."

We are not convinced.

The TRAIN Law took effect only on 01 January 2018[51], which was long after the lapse of the 120+30-day mandatory and jurisdicational period as discussed above. The principle is well-entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[52] Accordingly, there being no clear legislative intent to retroactively apply the TRAIN Law, the same should only be applied prospectively. As such, petitioner's reliance on the aforesaid TRAIN Law amendment is clearly misplaced.

It must also be emphasized that a tax credit or refund, like a tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that it is entitled to the refund by showing that it has strictly complied with the conditions for the grant of the tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper.[53]

The 120+30-day period is not a mere procedural technicality that can simply be disregarded if the claim is otherwise meritorious, but a

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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.

...

[51] Section 87, RA 10963.

[52] *BPI Leasing Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 127624, 18 November 2003.

[53] *Silicon Philippines, Inc., (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. Nos. 184360 & 184361, 19 February 2014.

mandatory and jurisdictional condition imposed by law. Failure to comply with the 120+30-day period is fatal because no action for the recovery of a tax paid can be maintained without strictly complying with all of the conditions required by the law to that effect.[54]

In *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*[55], the Supreme Court has held that if any court particularly the CTA determines that it has no jurisdiction to hear the case, such case must be dismissed outright, to wit:

> ...
> It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.
>
> The CTA, even if vested with special jurisdiction, is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority. Relative thereto, **when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.**
> ...

To reiterate, petitioner only filed its Petition for Review on 09 September 2019 or *more than six (6) years* after the lapse of the 120+30-day mandatory and jurisdictional period. Thus, the First Division of this Court had no other recourse but to dismiss the case outright for lack of jurisdiction.

WHEREFORE, premises considered, the instant Petition for Review dated 13 December 2019 filed by petitioner Lepanto Consolidated Mining Company is hereby **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated 27 September 2019 and

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54 See Separate Concurring and Dissenting Opinion of Justice Leonen in *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 08 October 2013.

55 G.R. No. 185666, 04 February 2015; Citations omitted and emphasis supplied.

07 November 2019, respectively, in CTA Case No. 10163, entitled *Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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