REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

RIOFIL CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1741
(CTA Case No. 9031)

Present:

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

Promulgated:

JAN 29 2020 2:36 p.m.

x- x

RESOLUTION

MANAHAN, J.:

For resolution is petitioner's *Motion for Reconsideration (of the Decision dated July 09, 2019)*[1] filed on July 31, 2019, praying that the Court give due course to its claim for refund and to grant its claim for refund amounting to Php91,994,521.20 representing petitioner's unutilized excess input VAT for the period covering the January 1, 2012 to June 30, 2012.

Despite notice,[2] respondent failed to file his comment/ opposition on petitioner's *Motion for Reconsideration.*[3]

In its *Motion*, petitioner argues that the 120-day period to decide the administrative claim commenced from its last submission of documents, and not from the filing of its

[1] *Rollo*, pp. 171-198.
[2] *Rollo*, Resolution dated August 27, 2019, pp. 206-207.
[3] *Rollo*, Records Verification dated November 27, 2019, p. 208.

administrative claim. Petitioner also insists that there was no inaction on the part of the CIR because there were favorable actions/recommendations relating to its claim for refund. Finally, petitioner asserts that its judicial claim was timely filed within thirty (30) days from receipt of the denial of its claim.

These arguments have already been discussed and resolved in the Decision dated July 9, 2019, which we reiterate below:

> In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*,[4] the Supreme Court explained that the taxpayer may only: (1) file the judicial claim within thirty (30) days from receipt of the denial by the Commissioner of 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 Commissioner does not act within the 120-day period.
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> Thus, it is important to determine when the submission of complete documents occurs such that the reckoning point of the 120-day period may be established.
>
> As stated above, it is undisputed that Riofil timely filed its administrative claim on May 20, 2013.
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> In *Pilipinas Total Gas v. Commissioner of Internal Revenue*,[5] the Supreme Court clarified the reckoning point of the 120-day period for the CIR to decide a refund claim, as follows:
>
> > To summarize, for the just disposition of the subject controversy, the rule is from the date of 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

[4] G.R. No. 191498, January 15, 2014.
[5] G.R. No. 207112, December 8, 2015.

> wishes to submit any other addition[al] documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.

Riofil submitted supporting documents together with its claim for refund on May 20, 2013.[6] Riofil did not submit any other supporting documents within thirty (30) days from its submission of the claim for refund. Thus, the 120-day period shall be counted from the date of filing of the administrative claim for refund on May 20, 2013.

Counting 120 days from May 20, 2013, the CIR had until September 17, 2013 within which to act upon Riofil's administrative claim for refund. Prior to the expiration of the 120-day period on September 17, 2013, Riofil received an LOA on August 16, 2013 authorizing the mandatory audit of petitioner's VAT for the period January 1, 2012 to June 30, 2012 in relation to its claim for refund. However, it does not appear that the BIR requested additional documents from the petitioner and that petitioner was given an extension of the period to submit additional supporting documents. Riofil also did not file additional supporting documents within thirty (30) days from receipt of the LOA.

Thus, the period for the CIR to act on Riofil's administrative claim for refund lapsed on September 17, 2013. Clearly, the submission of Riofil's additional documents on October 1, 2013, November 8, 2013, November 27, 2013, and November 29, 2013 were made beyond the 120-day period. Further, the supposed decision partially approving petitioner's claim for refund, subject to the review of higher authorities, signed on December 10, 2013, was also made beyond the lapse of the 120-day period.

Considering the foregoing, there was an inaction on the part of the CIR when the 120-day period lapsed on September 17, 2013. Such inaction should have been appealed by petitioner to the Court of Tax Appeals, within thirty days from September 17, 2013, or until October 17, 2013. Unfortunately, records show that

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[6] Docket, CTA Case No. 9031, Vol. III, Exhibit "P-13", p. 1110.

> Riofil belatedly filed its Petition for Review only on April 15, 2015 before the Court in Division.[7]

As stated above, petitioner had thirty (30) days from May 20, 2013, the filing of its administrative claim, within which to file its supporting documents, however, it did not file any documents within this period. On August 16, 2013, it received the Letter of Authority, which may have been treated as a request for additional documents made by the BIR, and as such, grants petitioner another thirty days, or until September 15, 2013, within which to file its supporting documents. Again, petitioner failed to submit its complete documents within said period. Because no supporting documents were filed within these periods, the 120-day period commenced from the filing of the administrative claim on May 20, 2013, and lapsed on September 17, 2013.

Petitioner's submission of documents on October 1, 2013, November 8, 2013, November 27, 2013, and November 29, 2013 were submitted after the 120-day period to decide on the claim has lapsed, and were not submitted in relation to any request from the BIR for additional documents during the course of the investigation.

Further, the supposed action on petitioner's claim for refund were made on December 2, 2013, or after the lapse of the 120-day period, and were mere internal recommendations within the BIR and did not consist of the decision which granted or denied petitioner's claim for refund.

Based on the foregoing, the Court *En Banc* finds no compelling reason to grant the subject *Motion for Reconsideration.*

WHEREFORE, the instant *Motion for Reconsideration (of the Decision dated July 09, 2019)* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[7] *Rollo*, Decision dated July 9, 2019, pp. 164-166.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice