REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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LUZON HYDRO CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9187

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

NOV 06 2020
3:20 p.m.

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DECISION

UY, *J.*:

Before this Court is a *Petition for Review*[1] filed by Luzon Hydro Corporation against the Commissioner of Internal Revenue, praying for the refund and/or the issuance of a tax credit certificate for unutilized input VAT for the First, Second (except June 2006) and Fourth quarters of calendar year 2006 in the aggregate amount of Eight Million Four Hundred Seventy Seven Thousand Seven Hundred Sixty Nine and 18/100 (₱8,477,769.18).

THE FACTS

Petitioner Luzon Hydro Corporation (LHC) is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Amilongan, Alilem, Ilocos Sur. It is authorized by the Securities and Exchange Commission (SEC) to transact business in the Philippines under SEC Registration No. CS094-000509.[2]

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[1] Docket (Vol. 1), pp. 14 to 87.
[2] JSFI, Stipulation of Facts, par. 2, Docket (Vol. 1), p. 425.

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed Chief of the Bureau of Internal Revenue (BIR). Respondent is vested by law with power to decide, approve and grant refund of internal revenue taxes or issue tax credit certificates of input tax due or paid, by a VAT-registered person, whose sales are zero-rated or effectively zero-rated, as provided by law. The CIR may be served with summons, pleadings and other processes at his office at BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

LHC filed its VAT returns for the first, second (except June) and fourth quarters of CY 2006 on the following dates:

Period	VAT Return	VAT Amount	Exhibit
1st Qtr.	Amended Quarterly VAT Return	2,620,260.49	"P-5"
Apr '06	Monthly VAT Declaration	540,228.73	"P-760"
May '06	Monthly VAT Declaration	603,488.46	"P-761"
4th Qtr.	Amended Quarterly VAT Return	4,713,791.50	"P-8"
	TOTAL	**8,477,769.18**	

On April 30, 2007, LHC filed its claim[4] for VAT refund dated April 19, 2007, with attached BIR Form 1914,[5] with the BIR, Revenue District Office No. 2, in the aggregate amount of ₱8,477,769.18, broken down as follows:

Period	VAT Claimed	Date Filed
January 2006	₱492,008.58	April 30, 2007
February 2006	530,393.88	
March 2006	1,597,858.03	
April 2006	540,228.73	
May 2006	603,488.46	
October 2006	2,760,186.00	
November 2006	943,493.15	
December 2006	1,010,112.35	
TOTAL	**8,477,769.18**	

On September 23, 2015, BIR Revenue Region No. 01 issued a Resolution,[6] stating that LHC's application for refund of unutilized

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[3] JSFI, Summary of Admitted Facts, par. 1, Docket (Vol. 1), p. 424.
[4] Exhibits "P-13", "P-15", "P-17", "P-19", "P-21", "P-23", "P-25", "P-27," Docket (Vol. 2), pp 789 to 790, 792 to 793, 795 to 796, 798 to 799, 801 to 802, 804 to 805, 807 to 808, and 810 to 811.
[5] Exhibits "P-14", "P-16", "P-18", "P-20", "P-22", "P-24", "P-26", "P28," Docket (Vol. 2), pp 791, 794, 797, 800, 803, 806, 809, and 812.
[6] Exhibit "P-29," Docket (Vol. 2), p. 813.

input taxes filed on April 30, 2007 could no longer be processed, pursuant to Revenue Memorandum Circular (RMC) No. 54-2014.[7]

On November 9, 2015, petitioner filed the instant *Petition for Review*[8] before this Court, praying for the refund and/or the issuance of a tax credit certificate for unutilized input VAT for the First, Second (except June 2006) and Fourth quarters of calendar year 2006 in the aggregate amount of Eight Million Four Hundred Seventy Seven Thousand Seven Hundred Sixty Nine and 18/100 (₱8,477,769.18).

Respondent filed his *Answer* on January 21, 2016,[9] interposing the following special and affirmative defenses:

1) the Court has no jurisdiction over the instant petition;
2) the petition for review should be dismissed for being filed out of time;
3) LHC cannot invoke the exception to the mandatory and jurisdictional 120+30 day period;
4) the question on the legality and validity of RMC No. 54-2014 is not within the jurisdiction of the Honorable Court;
5) RMC No. 54-2014 calls for the strict application of Section 112 of the Tax Code;
6) Section 112 of the Tax Code is the mandatory provision of law on input VAT refund/tax credit;
7) the 30 day period to file a judicial claim is counted from the "express denial" made within the 120 day period to decide, or from the "deemed a denial" after the lapse of the said 120 day period; and
8) it is incumbent upon LHC to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon the filing of the claim.

The Pre-Trial Conference was held on October 4, 2016[10] and the parties filed their *Joint Stipulation of Facts and Issues*[11] on October 19, 2016. On the basis thereof, the Court issued the *Pre-Trial Order*[12] dated November 15, 2016 and Pre-Trial was deemed terminated.

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[7] Re: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended, dated June 11, 2014.
[8] Docket (Vol. 1), pp. 14 to 87.
[9] Docket (Vol. 1), pp. 91 to 107.

[10] Docket (Vol. 1), pp. 419 to 420.
[11] Docket (Vol. 1), pp. 424 to 430.
[12] Docket (Vol. 1), pp. 436 to 443.

During trial, LHC presented the following witnesses: 1) Arazeli L. Malapad,[13] former Assistant Vice-President for Finance of LHC from January 2005 to April 2011, and 2) court commissioned Independent CPA Richard S. Querido.[14]

On June 18, 2018, LHC filed its *Formal Offer of Documentary Exhibits*,[15] to which the CIR filed his *Comment Re: Petitioner's Formal Offer of Documentary Exhibits*[16] on June 28, 2018. The Court admitted most of LHC's documentary evidence in the Resolutions dated August 6, 2018[17] and October 24, 2018.[18]

During the hearing on October 17, 2019, the CIR, through counsel, manifested that he will not be presenting any evidence for the respondent.[19] With the filing of the CIR's *Memorandum*[20] on November 18, 2019, and LHC's *Memorandum*[21] on December 2, 2019, the case was submitted for decision on December 13, 2019.[22]

Hence, this Decision.

THE ISSUES

The parties presented the following issues[23] for resolution, to wit:

> "1. Whether the Honorable Court has jurisdiction over the instant petition;
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> 2. In the alternative that the Honorable Court will assume jurisdiction, whether petitioner is entitled to a refund or tax credit of its alleged unutilized input value-added tax for the first, second (except for the month of

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[13] Exhibit "P-31," Docket (Vol.1), pp. 343 to 364.
[14] Exhibit "P-32-a," Docket (Vol. 1), pp. 370 to 374; Exhibit "P-48," Docket (Vol. 2), pp. 598 to 605.
[15] Docket (Vol. 2), pp. 746 to 757.
[16] Docket (Vol. 4), pp. 1722 to 1725.
[17] Docket (Vol. 4), pp. 1729 to 1731.
[18] Docket (Vol. 4), pp. 1747 to 1748.
[19] Docket (Vol. 4), p. 1757.
[20] Docket (Vol. 4), pp. 1761 to 1776.
[21] Docket (Vol. 4), pp. 1780 to 1798.
[22] Docket (Vol. 4), p. 1801.
[23] JSFI, Issues to be Tried or Resolved, Docket (Vol. 1), p. 425.

June), and fourth quarters of 2006 in the amount of ₱8,477,769.18."[24]

Petitioner's arguments:

Petitioner LHC argues that its judicial claim was filed within the prescribed period.

LHC also contends that the action upon its claim precludes the application of the "deemed denial" doctrine. In addition, LHC maintains that the CIR continues to retain jurisdiction over the administrative claim even beyond 120+30 days, as confirmed by RR No. 1-2017, and the taxpayer is not precluded from waiting for a decision from the administrative level. Thus, the applicable rule in this case is that LHC has 30 days to appeal from the issuance of a decision denying its claim.

Finally, LHC asserts that it has legal and factual bases to claim for input VAT refund.

Respondent's counter-arguments:

Respondent counters that this Court has no jurisdiction over the instant Petition for Review, as it was filed out of time.

The CIR maintains that LHC cannot invoke the exception to the mandatory and jurisdictional 120 + 30-day period.

Moreover, the CIR states that the question on the legality and validity of RMC No. 54-2014 is not within the jurisdiction of the Honorable Court; and that RMC No. 54-2014 calls for the strict application of Section 112 of the Tax Code.

According to the CIR, Section 112 of the Tax Code is the mandatory provision of the law with regard to input VAT refund/tax credit. In addition, the 30-day period to file a judicial claim is counted from the "express denial" made within the 120-day period to decide, or from the "deemed a denial" after the lapse of the said 120-day period.

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[24] Docket (Vol. 1), p. 425.

Finally, the CIR avers that it is incumbent upon LHC to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon the filing of a claim.

THE COURT'S RULING

In an action claiming for the refund or issuance of a tax credit certificate for input taxes, reference must be made to Section 112 (A) and (C) of the NIRC of 1997, as amended, which provides:

> **"SEC. 112. *Refunds or Tax Credits of Input Tax.* –**
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> *(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: *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 non-zero rated sales.
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> xxx xxx xxx
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> (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."

Requisites for the grant of refund or issuance of tax credit certificate under the law.

Pursuant to the foregoing provisions, the Supreme Court established certain requisites which a taxpayer must comply with, in order to obtain a credit/refund of input VAT. Said requisites may be classified into the following categories, to wit:

Timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[25]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the CIR to act on the said claim within a period of 120 days, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[26]

[25] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[26] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14,2015.

Taxpayer's registration with the BIR:

3. the taxpayer is VAT registered;[27]

Nature of taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[28]

5. for zero-rated sales under Section 106(A)(2)(a)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[29]

Incidents of taxpayer's refund claim for input VAT:

6. the input taxes are due or paid;[30]

7. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, 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;[31] and

8. the input taxes have not been applied against output taxes during and in the succeeding quarters.[32]

LHC's judicial claim was filed out of time.

LHC argues that its judicial claim was filed within the prescribed period.

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[27] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra; San Roque Power Corporation vs. Commissioner of Internal Revenue, supra;* and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, supra.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra;* and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*
[32] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra; San Roque Power Corporation vs. Commissioner of Internal Revenue, supra; and AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, supra.*

We disagree.

As earlier stated, the law requires compliance with two (2) mandatory periods under Section 112 of the NIRC of 1997, as amended, with regard to the filing of the taxpayer's administrative and judicial claim for refund.

To be specific, Section 112 (A) of the NIRC of 1997, as amended, states that the *administrative claim* for the refund must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

In this case, the last day for the filing of LHC's administrative claim for the First Quarter (January, February, March), Second Quarter (April, May, except June), and the Fourth Quarter (October, November, December) of CY 2006 fell on the following dates:

Taxable Quarter	Close of Taxable Quarter	Last Day of Filing of Administrative Claim	Administrative Claim Filed
1st Quarter (Jan. to Mar. 2006)	Mar. 31, 2006	Mar. 31, 2008	Apr. 30, 2007
2nd Quarter (Apr. to Jun. 2006)	Jun. 30, 2006	Jun. 30, 2008	Apr. 30, 2007
4th Quarter (Oct. to Dec. 2006)	Dec. 31, 2006	Dec. 31, 2008	Apr. 30, 2007

Evidently, LHC's administrative claim[33] for refund was timely filed on April 30, 2007.

Anent the timeliness of LHC's *judicial claim*, however, reference is made to Section 112 (C) of the NIRC of 1997, as amended, which provides that the CIR has one hundred twenty (120) days from the date of submission of the complete documents in support of the application for refund or tax credit certificate, within which to grant or deny the claim.

Thereafter, upon receipt of the adverse decision, or from the lapse of the 120-day period for the CIR to act on the claim, the taxpayer has 30 days within which to file its judicial claim, through a

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[33] Exhibits "P-13", "P-15", "P-17", "P-19", "P-21", "P-23", "P-25", "P-27," Docket (Vol. 2), pp 789 to 790, 792 to 793, 795 to 796, 798 to 799, 801 to 802, 804 to 805, 807 to 808, and 810 to 811.

Petition for Review before this Court. Strict compliance with the 120+30 day periods is necessary for such a claim to prosper.[34]

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,*[35] it was held that the 30-day period commences after the receipt of respondent's decision or ruling, or after the expiration of the 120-day period, whichever is sooner, to wit:

> "Whether respondent rules in favor of or against the taxpayer - or does not act at all on the administrative claim - within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.
>
> xxx xxx xxx
>
> The judicial claim shall 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**.
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law, **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA**." *(Emphases and underscoring supplied)*

It is clear, therefore, that the 30-day period provided by law should be reckoned from the receipt of respondent's **decision/ruling**, or after the expiration of the 120-day period from the submission of complete documents, **whichever is sooner**. Consequently, any judicial claim filed in a period less than or beyond the said 120+30-day periods, is outside the jurisdiction of this Court.

Moreover, in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,*[36] taxpayers were reminded that when the 120-day period lapses and there is no decision/ruling from the CIR within the said period, the taxpayer must no longer wait for the CIR to come up with a decision, to wit:

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[34] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.,* G.R. No. 187485, 196113, 197156, February 12, 2013.
[35] G.R. No. 182737, March 2, 2016.
[36] G.R. No. 168950, January 14, 2015.

"A final note, the taxpayers are reminded 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)*

It is therefore settled that the inaction, *i.e.,* failure of the CIR to render a decision/ruling on the taxpayer's administrative claim for refund, ***within*** the 120-day period from the submission of complete documents, shall be deemed a denial of its refund claim by the CIR.

Being so, the taxpayer must *no longer wait* for respondent to render a decision before filing an appeal to this Court. More importantly, the taxpayer must file its judicial appeal within thirty (30) days from the lapse of the 120-day waiting period.

In this case, from the filing of LHC's administrative claim on April 30, 2007, the CIR had one hundred twenty (120) days, or until August 28, 2007, within which to render a decision on the said claim. Considering that the CIR did not act on LHC's claim on or before August 28, 2007, LHC had thirty (30) days, or until September 27, 2007, within which to file its judicial claim before this Court.

For easy reference, the relevant dates in this case are summarized as follows:

Date of Filing of Administrative Claim	End of the 120-day period for CIR to render decision on the claim	End of the 30-day period within which to file judicial claim	Date of Filing of Judicial Claim
April 30, 2007	August 28, 2007	September 27, 2007	November 9, 2015

Considering that the instant *Petition for Review*[37] was filed on November 9, 2015, or beyond the thirty (30) day period to appeal, LHC's judicial claim was filed out of time.

[37] Docket (Vol. 1), pp. 14 to 87.

The "deemed denied" doctrine is a concept established by law, and not by RMC No. 54-2014.

LHC claims that prior to the issuance of RMC No. 54-2014, there was no rule, express or implied, which states that the CIR will lose his jurisdiction over the administrative claim if he fails to render a decision before the lapse of the 120-day period. Thus, the said administrative issuance should not allegedly be given retroactive application.

We are not swayed.

Section 7(a) (1) and (2) of RA No. 1125, as amended by RA No. 9282, provides:

> "**SEC. 7. Jurisdiction**.-The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **<u>Decisions</u> 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 Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **<u>Inaction</u> by 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 Code or other laws administered by the Bureau of Internal Revenue, **<u>where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial</u>**;" *(Emphases and underscoring supplied.)*

The CTA charter expressly provides that its jurisdiction is to review on appeal "*decisions of the Commissioner of Internal Revenue* *in cases involving xxx xxx xxx refunds of internal revenue taxes.*"[38] However, the same charter also expressly provides that if respondent 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 CIR's decision, or inaction "*deemed a denial,*" that the taxpayer can take to this Court for review. Without a decision or an "*inaction xxx xxx xxx deemed a denial*" of the CIR, this Court has no jurisdiction over a petition for review.[39]

Thus, there is no truth to LHC's claims that the "deemed denied" concept did not exist prior to the issuance of RMC No. 54-2014. Rather, it is one engrained in the law, or is a concept established by statute. Such being the case, with or without RMC No. 54-2014, there can be "deemed a denial" of an administrative refund claim. Correspondingly, the issue as to whether or not there was a retroactive application of RMC No. 54-2014 has no bearing in this case.

It must be emphasized that the right to appeal to this Court from a decision or "*deemed a denial*" decision of the CIR is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise.[40] Pertinently, the CTA law expressly provides that when the CIR fails to take action on the administrative claim, the "*inaction shall be deemed a denial*" of the application for tax refund or credit. The taxpayer-claimant must then strictly comply with the mandatory period by filing an appeal with this Court within thirty days from such inaction, otherwise, the court cannot validly acquire jurisdiction over it.[41]

Corollary thereto, Section 112 (C) of the NIRC of 1997, as amended, is a provision of law that stipulates "*a specific period for action, in which case the inaction shall be deemed a denial.*" Under the said provision, the CIR is given a period of 120-days from the submission of complete documents in support of the application to either grant or deny the claim. If the claim is denied, or the CIR has not acted on it within the 120-day period, the taxpayer-claimant is

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[38] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. No. 187485, 196113, 197156, February 12, 2013.
[39] *Id.*
[40] *Id.*
[41] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018

then given a period of 30 days to file a judicial claim via petition for review with this Court.[42]

As such, the law provides for two (2) scenarios before a judicial claim for refund may be filed with this Court: (1) the full or partial denial of the claim ***within*** the 120-day period, or (2) the lapse of the 120-day period without the respondent having acted on the claim. It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT.[43]

In this case, there was no full or partial denial of the claim *within* the 120-day period. Rather, the 120-day period lapsed without a decision or ruling from the CIR. As previously discussed, however, LHC filed its *Petition for Review*[44] before this Court only on November 9, 2015, or beyond 30 days from the lapse of the said 120-day period. Thus, this Court has no jurisdiction over the instant case.

LHC's reliance on RR No. 1-2017 is misplaced.

LHC also maintains that the CIR continues to retain jurisdiction over the administrative claim even beyond 120+30 days, as confirmed by RR No. 1-2017, and the taxpayer is not precluded from waiting for a decision from the administrative level. Thus, the applicable rule in this case is that LHC has 30 days to appeal from the issuance of a decision denying its claim.

Petitioner is mistaken.

The pertinent portions of RR No. 1-2017,[45] provides as follows:

"**SECTION 1. BACKGROUND.** – xxx xxx xxx

xxx xxx xxx

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[42] Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue, G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018.
[43] Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue, supra.
[44] Docket (Vol. 1), pp. 14 to 87.
[45] SUBJECT: 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.

It appears that RMC No. 54-2014 was being given retroactive effect because pending claims were deemed denied upon expiration of the 120-day period from the date the claims were filed even though the taxpayers-claimants are still in the process of submitting the complete documents which was allowed under RMC No. 49-2003. It presumed that the pending claims had been filed with complete documents and the same have remained unacted upon beyond the 120-day period.

On December 8, 2016, the Supreme Court, in the case *Pilipinas Total Gas, Inc. vs. The Commissioner of Internal Revenue (G.R. No. 207112)*, decreed that taxpayers 'have every right to pursue their claims in the manner provided by existing regulations at the time it was filed,' and, therefore, RMC No. 54-2014 cannot be applied retroactively as this would prejudice taxpayer whose claims for tax credit or tax refund were filed and pending before June 11, 2014, the date RMC No. 54-2014 took effect. This judicial declaration compels the need to clarify the tax treatment and processing of applications for VAT tax credit/refund filed and pending prior to RMC 54-2014.

SEC. 2. SCOPE. - Pursuant to the provisions of Section 244, in relation to Section 246 and Section 112 of the Tax Code, as amended, **these Regulations are issued to give effect to the doctrinal rule laid down in the aforecited Pilipinas Total Gas case and to afford fair and adequate relief to taxpayer-claimants whose claims were 'deemed denied' as a result of the retroactive application of RMC No. 54-2014**. For this purpose, and consistent with the judicial 'summation of rules' decreed to be 'made applicable to claims of tax credit/refund filed before June 11, 2014,' such claims filed prior to RMC No. 54-2014 shall continue to be processed administratively.

SEC. 3. PROCESSING OF ADMINISTRATIVE CLAIMS. -VAT claims filed and pending prior to the effectivity of RMC 54-2014, the claims solely covered by these Regulations, shall be processed and approved in accordance with the following rules:

1. The claimant-taxpayer, under Section 112(A) of the Tax Code, as amended, 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 have submitted 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 clarified under RMC No. 49-2003**.

2. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the Tax Code, as amended, and the Commissioner, or his duly authorized representative, should have decided on the claim for tax credit or refund within 120 days from the date of submission of complete documents, or from the date filing of the application, if the claimant-taxpayer did not submit additional documents.

Hence, pending administrative claims prior to the effectivity of RMC No. 54-2014 shall be processed by the concerned offices based on available documents submitted by the claimant-taxpayer within the aforesaid statutory two-year period. For this purpose, the result shall be communicated in writing by the concerned revenue official.

SEC. 4. CLAIMS NOT COVERED. -**The following claims filed and pending before the effectivity of RMC 54-2014 are not covered by these Regulations:**

1. Those claims filed beyond the two-year statutory prescriptive period under Section 112(A) of the Tax Code, as explained in Sec. 3 hereof;

2. Those denied in writing by the approving authority;

3. Those approved or granted fully or partially by the approving authority; and

4. Those already appealed to and pending with the CTA unless there is proof of withdrawal of the case filed with the CTA." (Emphases and underscoring supplied)

While the foregoing administrative issuance confirms that RMC No. 54-2014 should not be given retroactive application, it never stated that the CIR continued to have jurisdiction to act on a taxpayer's claim after the lapse of the 120+30 day periods. In fact, pursuant to above-quoted Section 3 (2) of RR No. 1-2017, it is required that the CIR, or his duly authorized representative, **should have decided on the claim for tax credit or refund within 120 days** from the date of submission of complete documents, or from the date of filing of the application (if the claimant-taxpayer did not submit additional documents), thereby implying that the failure to do so, would call for the commencement of the running of the mandatory and jurisdictional 30-day appeal period, after the lapse of the said 120-day period. Simply put, RR No. 1-2017 even recognizes the mandatory and jurisdictional nature of the 120+30-day periods. Clearly, the foregoing administrative issuance does not support LHC's arguments.

In view of the foregoing, this Court finds that the instant *Petition for* Review was filed out of time. Hence, this Court acquired no jurisdiction over the same. Accordingly, it is no longer necessary to determine whether LHC had factual and legal bases for the subject input VAT refund.

It bears stressing that a claim for unutilized input VAT is in the nature of a tax exemption. Thus, strict adherence to the conditions prescribed by the law is required of the taxpayer. Refunds need to be proven and their application raised in the right manner as required by law. Here, non-compliance with the 120+30 day periods is fatal to the taxpayer's judicial claim.[46]

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[46] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019.

WE CONCUR:

Ma. Belen -

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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