REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CARMEN COPPER CORPORATION, Petitioner,	**CTA Case No. 8834**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** NOV 03 2017 :2:40 pm

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DECISION

UY, J.:

Before this Court is a *Petition for Review* filed on June 13, 2014 by Carmen Copper Corporation, petitioner, against the Commissioner of Internal Revenue, respondent, seeking the refund or issuance of a tax credit certificate in the aggregate amount of ₱163,762,720.72, allegedly representing excess and unapplied input value-added tax (VAT) payments which are directly attributable to its zero-rated sales for taxable year (TY) 2009.

THE FACTS

Petitioner Carmen Copper Corporation is a domestic corporation duly organized and existing under Philippine laws, and its primary purpose is as follows:

> "To carry on, either solely or in co-venture with others, the business of searching, prospecting, exploration and location of ores and mineral resources and to conduct all ground and airborne geophysical

surveys, geochemical surveys, and other works or means commonly regarded as exploration work for the purpose of determining the existence of mineral resources, extent, quality and quantity and the feasibility of mining them for profit; or applying for exploration permit, and mineral production sharing agreement and other mineral agreements; and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all kinds of ores, metals, minerals, hydrocarbons, acids and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to purchase, lease, option, locate or otherwise acquire, own, exchange, sell, or otherwise dispose of, pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral lands, coal lands, timber lands, water and water rights, shares of stocks of mining companies with interest in mines in the same area, and other property, both real and personal, and generally to do everything necessary, suitable or proper for the accomplishment of any of the purpose stated herein, or which shall at any time appear conducive to or expedient for the protection or benefit of the Corporation under the provisions of the relevant mining laws."[1]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Taxpayer Identification Number (TIN) 233-903-100-000.[2] It is also registered with the Board of Investments as a New Producer of Copper Concentrate under Certificate of Registration Number 2006-158.[3]

On the other hand, respondent is the head of the Bureau of Internal Revenue (BIR), the government agency official responsible for the assessment and collection of all national and internal revenue taxes and he is vested with the power and authority to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected with authority, or of any sum alleged to have been excessively or in any manner wrongfully

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[1] Exhibit "P-2".
[2] Exhibit "P-1".
[3] Exhibit "P-3".

collected or of input VAT attributable to zero-rated sales.[4]

Petitioner filed its Quarterly VAT Returns for Taxable Year 2009 on the following dates:

Period	VAT Return	Date of Filing
1st Quarter 2009	Original Quarterly VAT Return[5]	April 27, 2009
	Amended Quarterly VAT Return[6]	November 18, 2009
2nd Quarter 2009	Original Quarterly VAT Return[7]	July 27, 2009
	Amended Quarterly VAT Return[8]	November 18, 2009
3rd Quarter 2009	Original Quarterly VAT Return[9]	October 26, 2009
	Amended Quarterly VAT Return[10]	February 9, 2010
4th Quarter 2009	Original Quarterly VAT Return[11]	January 25, 2010
	Amended Quarterly VAT Return[12]	August 3, 2010

Moreover, petitioner filed its Applications for Tax Credits/Refunds (BIR Form No. 1914) for its alleged excess and unutilized input VAT credits for TY 2009 in the aggregate amount of ₱391,731,754.39, on the following dates,:

Period	Amount of Claim	Date of Filing
1st Quarter 2009	₱ 158,224,008.30	December 4, 2009[13]
2nd Quarter 2009	₱ 97,445,353.97	
3rd Quarter 2009	₱ 77,857,798.09	August 6, 2010[14]
4th Quarter 2009	₱ 58,204,594.03	
Total	**₱ 391,731,754.39**	

In response to the said Applications, respondent, through the Revenue District Officer of Revenue District Office No. 41, Corazon M. Montes, issued the Notice dated May 12, 2014, which was received by petitioner on May 13, 2014, partially denying petitioner's

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4 Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket—Vol. VI, pp. 4282 to 4283.
5 Exhibit "P-6".
6 Exhibit "P-7".
7 Exhibit "P-8".
8 Exhibit "P-9".
9 Exhibit "P-10"
10 Exhibit "P-11".
11 Exhibit "P-12".
12 Exhibit "P-13".
13 Exhibits "P-32" and "P-33".
14 Exhibits "P-34" and "P-35".

claim for refund of its accumulated excess input VAT for TY 2009.[15] Through the said Notice, the BIR informed petitioner that only the amount of ₱227,969,033.67 was properly supported and was recommended for issuance of a tax credit certificate.[16]

Subsequently, on June 13, 2014, petitioner filed the instant *Petition for Review*, praying that this Court: (1) declare petitioner entitled to a refund in the amount of ₱163,762,720.72, allegedly representing excess and unapplied input VAT payments which are directly attributable to its zero-rated sales for TY 2009; and (2) order respondent to immediately refund to, or issue a tax credit certificate in favor of, petitioner in the amount of ₱163,762,720.72.

On August 11, 2014, respondent filed his *Answer*,[17] interposing the following special and affirmative defenses, to wit:

> "3.1. Petitioner's claim for issuance of tax refund/ tax credit certificate is subject to administrative investigation/ examination by Respondent's Bureau;
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> 3.2. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
>
> 3.3. It is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, particularly Sections 112, 113, and 114 to validly claim for tax a credit/refund;
>
> 3.4. Taxpayer must establish by sufficient and competent evidence that it is entitled to a tax refund/credit.
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> 3.5. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;
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> 3.6. The Petitioner should prove its legal basis for claiming the amount to be refunded.

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[15] Par. 4, Facts, Pre-Trial Order dated December 1, 2014, Docket—Vol. VI, p. 4309; Exhibit "P-36".
[16] Par. 5, Facts, Pre-Trial Order dated December 1, 2014, Docket—Vol. VI, p. 4309.
[17] Docket—Vol. III, pp. 1382 to 1385.

SPECIAL AND AFFIRMATIVE DEFENSES

(S)he reiterates and re-pleads the foregoing paragraphs of this Answer as part of her Special and Affirmative Defenses;

4. The Honorable Court has no jurisdiction on the Petition. Herein Petitioner failed to establish by convincing evidence that the instant Petition for Review was filed on time.

   Paragraph 112 (C) of the National Internal Revenue Code provides:

   > 'SEC. 112 Refunds of Tax Credits of Input Tax. —
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   > (C) Period within which Refund or tax Credit on Input Taxes shall be made. – In proper case, the Commissioner shall grant a refund or issue a 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 days (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 unacted claim with the Court of Tax Appeals.'

   As admitted by the Petitioner, it received the BIR's decision partially denying the claim for refund of its excess input VAT on May 13, 2014. Petitioner filed the instant Petition for Review on June 13, 2014. Thus, Petitioner filed the instant Petition on the 31st day from receipt of the decision since the month of May has 31 days. In short, the Petition was filed beyond the thirty day

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period granted by law within which to file the instant appeal.

5. In the alternative, the instant case was prematurely filed. The Notice it received on May 13, 2014 is but a mere notice to inform and to guide the taxpayer. It does not partake of the nature of a final and official decision pertinent to Petitioner's claim for refund. In fact, the findings of the Revenue Officer's concerned, as of the present, is still undergoing review by the authorized offices."

After the Pre-Trial Conference on October 2, 2014,[18] the parties filed their *Joint Stipulation of Facts and Issues* (or JSFI) on November 13, 2014,[19] which was approved by the Court in its Resolution dated November 27 2014.[20] Subsequently, the Court issued the Pre-trial Order on December 1, 2014.[21]

During trial, petitioner presented the following witnesses: (1) Atty. Carmen Rose A. Bassalo-Estampador;[22] (2) Jesus B. Caparida,[23] and the Independent Certified Public Accountant, Annalyn B. Artuz.[24]

On April 30, 2015, petitioner filed its *Formal Offer of Evidence*,[25] offering its documentary evidence, some of which were denied and admitted by the Court in the Resolutions dated September 2, 2015[26] and April 18, 2016[27], and Order dated June 28, 2016.[28]

At the hearing held on June 28, 2016 for the initial presentation of respondent's evidence, the latter's counsel moved for the resetting

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[18] Notice of Pre-Trial Conference, Docket—Vol. III, p. 1386.
[19] Docket—Vol. VI, pp. 4282 to 4301.
[20] Docket—Vol. VI, p. 4306.
[21] Docket—Vol. VI, pp. 4308 to 4321.
[22] Minutes of the hearing held on December 9, 2014 and Resolution dated December 9, 2014, Docket—Vol. VI, pp. 4326 to 4329, and 4331 to 4332, respectively.
[23] Minutes of the hearings held on January 13, 2015 and March 17, 2015, and Resolutions dated January 13, 2015 and March 17, 2015, Docket—Vol. VII, pp. 5222 to 5226, 5228 to 5229, 5281 to 5282, and 5284, respectively.
[24] Minutes of the hearing held on March 31, 2015, and Resolution dated March 31, 2015, Docket—Vol. VII, pp. 5285 to 5289, and 5291 to 5292, respectively.
[25] Docket—Vol. VII, pp. 5293 to 5322.
[26] Docket—Vol. VII, pp. 5331 to 5343.
[27] Docket—Vol. VII, pp. 5382 to 5388.
[28] Docket—Vol. VII, pp. 5405 to 5406.

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thereof, as the intended witness, Revenue Officer Ana Lealee G. Lucila, was not available. The Court granted the motion and the hearing therefor was reset to September 6, 2016.[29]

However, at the hearing held on September 6, 2016, respondent's counsels of record were absent. Thus, upon motion of petitioner's counsel, respondent was deemed to have waived the presentation of his evidence. In the same hearing, the Court directed the parties to submit their memoranda on or before October 6, 2016.[30]

On October 6, 2016, petitioner filed its *Memorandum*.[31] Respondent, however, failed to file his memorandum.[32] In the Resolution dated November 28, 2016,[33] the instant case was submitted for decision.

Hence, this Decision.

THE ISSUES

The parties presented the following issue for this Court's resolution, to wit:

> "Whether or not the petitioner is entitled to a refund or issuance of a tax credit certificate representing its excess and unapplied input VAT payments for TY 2009, in the amount of One Hundred Sixty-Three Million Seven Hundred Sixty-Two Thousand Seven Hundred Twenty and 72/100 Pesos (Php163,762,720.72), which are directly attributable to its zero-rated revenues for the same period".[34]

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[29] Minutes of the hearing held on June 28, 2016, and Order dated June 28, 2016, Docket—Vol. VII, pp. 5402 to 5404, and 5405 to 5406, respectively.
[30] Minutes of the hearing held on September 26, 2016 and Order dated September 26, 2016, Docket—Vol. VII, pp. 5421 to 5423.
[31] Docket—Vol. VII, pp. 5425 to 5473.
[32] Records Verification dated November 8, 2016 issued by the Judicial Records Division of this Court, Docket—Vol. VII, p. 5476.
[33] Docket—Vol. VII, p. 5484.
[34] Pre-Trial Order dated December 1, 2014, Docket—Vol. VI, p. 4310; Issues, JSFI, Docket—Vol. VI, p. 4238.

Petitioner's arguments:

Petitioner argues that it is engaged in zero-rated sales and the acceptable foreign currency exchange proceeds have been duly been accounted for in accordance with the BSP Rules and Regulations; that it is a VAT-registered taxpayer; that it timely filed its administrative and judicial claims for refund; that its excess and unutilized input VAT is attributable to its zero-rated sales and duly substantiated with evidence; and that its excess and unutilized input VAT for TY 2009 remains unutilized and unapplied against its output VAT.

Respondent's counter-arguments:

Respondent counter-argues that petitioner's claim for issuance of tax refund/ tax credit certificate is subject to administrative investigation/examination by Respondent's Bureau; that taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable; that it is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, particularly Sections 112, 113, and 114 to validly claim for tax a credit/refund; that the taxpayer must establish by sufficient and competent evidence that it is entitled to a tax refund/credit; that claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption; and that the Petitioner should prove its legal basis for claiming the amount to be refunded.

Moreover, respondent contends that the Court has no jurisdiction on the Petition; that Petitioner failed to establish by convincing evidence that the instant *Petition for Review* was filed on time; that as admitted by petitioner, it received the BIR's decision, partially denying the claim for refund of its excess input VAT, on May 13, 2014; that petitioner filed the instant *Petition for Review* on June 13, 2014, and thus, petitioner filed the said *Petition for Review* on the 31st day from receipt of the decision, since the month of May has 31 days; and that in short, the said *Petition* was filed beyond the thirty day-period granted by law within which to file the instant appeal.

As an alternative argument, respondent avers that the instant case was prematurely filed. According to respondent, the Notice it received on May 13, 2014 is a mere notice to inform and to guide the taxpayer, and does not partake of the nature of a final and official decision pertinent to petitioner's claim for refund. Respondent points out that the findings of the Revenue Officer concerned, as of the present, is still undergoing review by the authorized offices."

THE COURT'S RULING

Considering that respondent raised the issue on the jurisdiction of this Court, We shall primarily address the same.

In this connection, it bears emphasis 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.[35]

As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[36] More so as it has long been established that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[37]

Section 112 of the National Internal Revenue Code (NIRC) of 1997[38], as amended by Republic Act (RA) No. 9337[39], speaks about the jurisdiction of this Court in relation to claims for refund or issuance of tax credit certificate representing input VAT. It reads:

> "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, may within two (2) years after the close of the**

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[35] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.

[36] *Supra.*

[37] *Supra.*

[38] As embodied in Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997".

[39] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> **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 the 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 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 on 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.
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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.
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> **In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**" *(Emphases supplied)*

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[40] the Supreme Court said:

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[40] G.R. No. 182737, March 2, 2016.

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"Under the foregoing provision, the administrative claim of a VAT-registered person for the issuance by respondent of tax credit certificates or the refund of input taxes paid on zero-rated sales or capital goods imported may be made within two years after the close of the taxable quarter when the sales or importation/purchase was made.

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Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.

Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit – or actually submitted – additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.

Considering that there is no evidence in this case showing that petitioner made later submissions of documents in support of its administrative claims, the 120-day period within which respondent is allowed to act on the claims shall be reckoned from 16 October 2001 and 4 September 2002.

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.

Section 7 of Republic Act No. (R.A.) 1125 (An Act Creating the Court of Tax Appeals), as amended, provides:

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> SECTION 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 Code 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 deemed a denial**; (Emphasis supplied)

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, <u>whichever is sooner</u>.

Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law,[41] **<u>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.</u>**" *(Emphases and underscoring supplied)*

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[41] In *CIR v. San Roque Power Corporation* (G.R. Nos. 187485, 196113 & 197156, 12 February 2013), the Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 up to its reversal in *CIR v. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823) on 6 October 2010 need not wait for the lapse of the 120+30 days period.

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In this case, it is undisputed that petitioner's administrative claims were timely filed.

As already stated, the present claim covers the four quarters of TY 2009 which closed on March 31, 2009, June 30, 2009, September 30, 2009 and December 31, 2009, respectively. Counting two years from the said dates, petitioner had until March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011, respectively, within which to file its administrative claims for refund or tax credit certificate for the said quarters. Thus, petitioner's Applications for Tax Credits/Refunds (BIR Forms No. 1914) filed with the BIR on December 4, 2009 and August 6, 2010 for the 1st to 2nd quarters and 3rd to 4th quarters, respectively, all of TY 2009, fell within the two-year prescriptive period, as shown below:

Quarter	Quarter End	Last Day to File Administrative Claim	Date of Filing of Administrative Claim	Amount of Claim	Exhibit[42]
1st	March 31, 2009	March 31, 2011	December 4, 2009	₱158,224,008.30	P-32
2nd	June 30, 2009	June 30, 2011		₱ 97,445,353.97	P-33
3rd	September 30, 2009	September 30, 2011	August 6, 2010	₱ 77,857,798.09	P-34
4th	December 31, 2009	December 31, 2011		₱ 58,204,594.03	P-35

However, petitioner's judicial claim is barred by prescription.

In the present case, We find nothing in the records showing that petitioner submitted, or was requested by the BIR to submit, additional documents during the 120-day period under the aforequoted Section 112. Hence, petitioner is deemed to have submitted its complete documents on December 4, 2009 and August 6, 2010, the dates when it filed its administrative claims for refund/TCC for the First to Second quarters and Third to Fourth quarters, respectively, for TY 2009.

Counting 120 days from December 4, 2009 and August 6, 2010, respondent had until April 3, 2010 and December 4, 2010, within which to act on petitioner's claims for the First to Second

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[42] Docket, Vol. IV, pp. 3251, 3256, 3261, and 3266.

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quarters and Third to Fourth quarters, respectively, of TY 2009, as shown below:

Quarter	End of Quarter	Date of filing of administrative claim	End of the 120-day period for the BIR to act on the claim
1st	March 31, 2009	December 4, 2009	April 3, 2010
2nd	June 30, 2009		
3rd	September 30, 2009	August 6, 2010	December 4, 2010
4th	December 31, 2009		

The inaction of respondent within the above 120-day periods require petitioner to respectively appeal the same within thirty (30) days from the lapse of the respective 120-day period. Hence, petitioner only had until May 3, 2010 and January 3, 2011, respectively, to file its appeals before this Court, as shown below:

Quarter	Date of filing of administrative claim	End of the 120-day period for the BIR to act on the claim	End of the 30-day period to file appeal before this Court
1st	December 4, 2009	April 3, 2010	May 3, 2010
2nd			
3rd	August 6, 2010	December 4, 2010	January 3, 2011
4th			

However, petitioner waited until June 13, 2014, or 30 days after it received (*i.e.*, on May 13, 2014) the Notice dated May 12, 2014 from respondent, through Revenue District Officer Corazon M. Montes, partially denying its claim for refund of excess input VAT for TY 2009,[43] before it filed the instant *Petition for Review*. Thus, said *Petition* is belatedly filed.

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[44] the Supreme Court made the following conclusion and reminds all taxpayers as follows:

> "In fine, our finding is that the judicial claim for the refund or credit of unutilized input VAT was belatedly

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[43] Par. 4, Facts, Pre-Trial Order dated December 1, 2014, Docket—Vol. VI, p. 4309; Exhibit "P-36".

[44] G.R. No. 168950, January 14, 2015.

> filed. Hence, the CTA lost jurisdiction over Rohm Apollo's claim for a refund or credit.
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> The foregoing considered, there is no need to go into the merits of this case.
>
> **A final note, the taxpayers are reminded that that when the 120-day period lapses and there is inaction on the part of the CIR, <u>they must no longer wait for it to come up with a decision thereafter</u>. The CIR's inaction is the decision itself. <u>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.</u>**" *(Emphasis and underscoring supplied)*

Correspondingly, the belated filing of petitioner's judicial claim on June 13, 2014, or way beyond the 30-day period to appeal, is fatal to its claim for refund or issuance of a tax credit certificate, for failure to observe the mandatory and jurisdictional 120+30-day period, and has rendered the Court devoid of jurisdiction over the instant *Petition for Review*.

WHEREFORE, premises considered, the *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division