REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ADVANCED WORLD SYSTEMS, INC., Petitioner,	**CTA CASE NO. 9984**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 14 2019 8:24 a.m.

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RESOLUTION

For resolution is respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court**, filed on May 31, 2019, without petitioner's comment despite due notice, as per Records Verification Report dated July 11, 2019.

Respondent claims that petitioner alleged in its Petition for Review that its administrative claims for input value-added tax (VAT) tax credit certificate for the second, third and fourth quarters of 2012, as well as for the first quarter of 2013, were filed on March 13, 2014 and that it submitted its supporting documents on even date, while its additional documents were submitted on March 14, 2014 and March 18, 2014, and that a Letter of Authority No. LOA-411-2014-00000033/SN:eLA201000050382 (LOA) was issued against petitioner on March 25, 2014.

Citing Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, in the instant motion, respondent argues that petitioner has thirty (30) days from March 25, 2014, or until April 24, 2014, within which to submit complete documents in support of its application for tax credit, while the Commissioner of Internal Revenue (CIR) has one hundred twenty (120) days from April 24, 2014, or until August 22, 2014, to act on petitioner's claim. Respondent further argues that petitioner has 30 days from the lapse of the 120-day period, or until September 21, 2014, within which to elevate the matter before the Court of Tax Appeals (CTA). Thus, the Petition for Review, filed on December 10, 2018, was allegedly filed beyond the 30-day period.

According to respondent, the subsequent letter of denial is of no moment due to the explicit and clear nature of Section 112(D)[1] of the NIRC of 1997, as amended, and Revenue Memorandum Circular No. 54-2014. Moreover, respondent claims that the denial letter has been rendered long after the lapse of the period within which petitioner could have elevated the matter to this Court.

In view thereof, respondent moves for the resolution of the issue on jurisdiction to save the precious time of this Court, as well as to avoid unnecessary expenditure on the part of the government.

The Court finds the instant motion meritorious.

Pertinent to the resolution of the instant case is Section 112 (A) and (C) of the NIRC of 1997, as amended, which provides:

> "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: xxx.
>
> xxx xxx xxx

[1] Should be Section 112(C).

(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." (*Emphases supplied*)

In the recent case of *San Roque Power Corporation vs. Commissioner of Internal Revenue*[2], the Supreme Court categorically stated that from the effectivity of the 1997 NIRC on January 1, 1998, the 120-day day period under Section 112(C) is mandatory and jurisdictional. Accordingly, a taxpayer can file a judicial claim (1) only within 30 days after the Commissioner partially or fully denies the claim within the 120-day period, or (2) only within 30 days from the expiration of the 120-day period if the Commissioner does not act within such period.

As to what constitute decisions or inaction of the CIR that are appealable to this Court, the 2013 case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[3] is instructive, to wit:

"The charter of the CTA expressly provides that its jurisdiction is to review on appeal 'decisions of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes.' When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no 'decision' of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. **The charter of the CTA also expressly provides that if**

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[2] G.R. No. 203249, July 23, 2018.
[3] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

> **the Commissioner 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 Commissioner's decision, or inaction 'deemed a denial,' that the taxpayer can take to the CTA for review. Without a decision or an 'inaction x x x deemed a denial' of the Commissioner, the CTA has no jurisdiction over a petition for review.**" (*Emphasis supplied*)

Applying the foregoing jurisprudence, the Court observes that regardless of whether the counting of the 120 days is reckoned from (a) the date of the last filing of petitioner's additional document on March 18, 2014[4]; or (b) the date of issuance of the LOA on March 25, 2014[5], whereby petitioner was required by the Bureau of Internal Revenue (BIR) to submit its books of accounts, records, and documents; or (c) expiration of the 15-day[6]; or (d) expiration of the 30-day[7] period to comply with such submission, assuming the LOA was received on March 25 2014; petitioner's judicial claim remains to be filed out of time on December 10, 2018, as shown below:

	Date	**End of 120 days for the CIR to decide**	**End of 30 days to appeal before the CTA**	**Date of Filing of Petition for Review**
Filing of Additional Document	March 18, 2014	July 16, 2014	August 15, 2014	December 10, 2018
Issuance of the LOA	March 25, 2014	July 23, 2014	August 22, 2014	
Expiration of 15-day period	April 9, 2014	August 7, 2014	September 6, 2014 (falls on a Saturday, or until September 8, 2014)	
Expiration of 30-day period	April 24, 2014	August 22, 2014	September 21, 2014 (falls on a Sunday, or until September 22, 2014)	

[4] Par. 19, Petition for Review, docket, vol. I, p. 14.

[5] Par. 22, Petition for Review, docket, vol. I, p. 15.

[6] The lower portion of the LOA (copy of which attached to Petition for Review, docket, vol. I, p. 130) states that the submission/presentation of books of accounts, records and documents should be within **fifteen (15) days** from receipt of the LOA.

[7] In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015, the Supreme Court held that "[u]nder 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." The Supreme Court further held that "[t]hen, 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." These pronouncements were made applicable to claims for input tax credit or refund filed prior to June 11, 2014.

Moreover, petitioner's receipt of respondent's Denial Letter dated October 18, 2018 on November 8, 2018[8], is of no moment since the CIR's inaction after the lapse of the 120-day period is deemed a denial of its administrative claim. This is pursuant to the ruling of the Supreme Court in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[9], to wit:

> "A final note, the taxpayers are reminded that that [*sic*] 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."

Thus, petitioner had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Petitioner's failure to do so rendered the "deemed a denial" decision of the CIR final and inappealable.[10]

It has long been established that the CTA is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction. Hence, 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.[11]

In the instant case involving petitioner's appeal of the BIR Letter dated October 18, 2018 denying its application for tax credit on its excess input tax covering the period April 1, 2012 to March 31, 2013 in the amount of ₱4,144,388.14, the Petition for Review was filed on December 10, 2018.

As shown above, judicial recourse before this Court was availed of beyond the 120+30 day mandatory and jurisdictional periods under Section 112(C) of the NIRC of 1997, as amended. Hence, this Court has no jurisdiction to entertain the instant petition for review.

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[8] Par. 2, Petition for Review, docket, vol. I, p. 10.
[9] G.R. No. 168950, January 14, 2015.
[10] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[11] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.

WHEREFORE, finding merit, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court**, filed on May 31, 2019 is **GRANTED**.

Accordingly, in light of the above findings, the instant **Petition for Review** is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice