REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

CARMEN COPPER CORPORATION,
Petitioner,

CTA EB NO. 1846
(CTA Case No. 8834)

- versus -

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 0 2 2020 2:39 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *en banc* is a Petition for Review[1] filed by petitioner Carmen Copper Corporation (Carmen Copper) against the respondent Commissioner of Internal Revenue (CIR) seeking the reversal of the Decision dated November 3, 2017[2] (Assailed Decision) rendered by the First Division of this Court in CTA Case No. 8834, as well as the Resolution dated April 2, 2018[3] (Assailed Resolution) denying its motion for reconsideration.

In the Petition, Carmen Copper prays that both the Assailed Decision and Resolution be reversed and set aside; that judgment be rendered granting its claim for refund in the total amount of ₱163,762,720.72, representing its excess and

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[1] *Rollo*, pp. 1-18, with Annexes "A" and "B", pp. 19-44.
[2] *Id.*, pp. 21-36.
[3] *Id.*, pp. 37-44.

unutilized input VAT which are directly attributable to its zero-rated sales for the taxable year (TY) 2009.

The Parties

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."[4]

It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Taxpayer Identification Number (TIN) 233-903-100-000.[5] It is also registered with the Board of Investments as a New Producer of Copper Concentrate under Certificate of Registration Number 2006-158.[6]

On the other hand, respondent is the head of the BIR, the government agency official responsible for the assessment and collection of all national and

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[4] Exhibit "P-2".
[5] Exhibit "P-1".
[6] Exhibit "P-3".

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 collected or of input VAT attributable to zero-rated sales.[7]

The Facts[8]

Carmen Copper 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[9]	April 27, 2009
	Amended Quarterly VAT Return[10]	November 18, 2009
2nd Quarter 2009	Original Quarterly VAT Return[11]	July 27, 2009
	Amended Quarterly VAT Return[12]	November 18, 2009
3rd Quarter 2009	Original Quarterly VAT Return[13]	October 26, 2009
	Amended Quarterly VAT Return[14]	February 9, 2010
4th Quarter 2009	Original Quarterly VAT Return[15]	January 25, 2010
	Amended Quarterly VAT Return[16]	August 3, 2010

Carmen Copper also 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[17]
2nd Quarter 2009	₱ 97,445,353.97	
3rd Quarter 2009	₱ 7,857,798.09	August 6, 2010[18]
4th Quarter 2009	₱ 58,204,594.03	
Total	**₱ 391,731,754.39**	

[7] Docket, CTA Case No. 8834, pp. 4282 to 4283, Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, par. 2.
[8] As found by the First Division and as culled from the records of the case.
[9] Exhibit "P-6".
[10] Exhibit "P-7".
[11] Exhibit "P-8".
[12] Exhibit "P-9".
[13] Exhibit "P-10".
[14] Exhibit "P-11".
[15] Exhibit "P-12".
[16] Exhibit "P-13".
[17] Exhibits "P-32" and "P-33".
[18] Exhibits "P-34" and "P-35".

In response to the said Applications, the CIR, through the Revenue District Officer of Revenue District Office No. 41, Corazon M. Montes, partially denied Carmen Copper's claim for refund of its accumulated excess input VAT for TY 2009 through a Notice dated May 12, 2014, which was received by petitioner on May 13, 2014.[19] The Notice informed Carmen Copper that only the amount of ₱227,969,033.67 was properly supported and was recommended for issuance of a tax credit certificate.[20]

Subsequently, on June 13, 2014, Carmen Copper filed a Petition for Review, praying that the Court in Division: (1) declare it 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 the CIR to immediately refund to, or issue a tax credit certificate in its favor in the amount of ₱163,762,720.72.

The CIR filed his Answer[21] on August 11, 2014, interposing the special and affirmative defenses that Carmen Copper's claim for issuance of tax refund/tax credit certificate is subject to administrative investigation/examination; 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 Carmen Copper must establish by sufficient and competent evidence that it is entitled to a tax refund/credit; that tax refunds are strictly construed against the taxpayer as the same partakes the nature of a tax exemption; and that it should prove its legal basis for claiming the amount to be refunded.

As part of the Special and Affirmative Defenses of the CIR, he also alleged that the Court has no jurisdiction over the Petition since Carmen Copper failed to establish by convincing evidence that it filed its Petition for Review on time. Specifically, the CIR alleged that Carmen Copper filed its Petition on the 31st day from receipt of the decision since the month of May has 31 days, and, therefore, the Petition was filed beyond the thirty day period granted by law within which to file its appeal before the CTA.

Alternatively, the CIR also argued that the Petition for Review was prematurely filed as the Notice that Carmen Copper received on May 13, 2014 was only a notice to inform and to guide the taxpayer. It was not the final and official decision on its claim for refund that could be the proper subject of an appeal.

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[19] *Id.* at Note 7, p. 4309; Exhibit "P-36".
[20] *Id.*, p. 4309.
[21] *Id.*, pp. 1382 to 1385.

The Pre-Trial Conference was held on October 2, 2014.[22] The parties filed their Joint Stipulation of Facts and Issues (or JSFI) thereafter on November 13, 2014,[23] which the Court in Division approved in its Resolution dated November 27 2014.[24] Subsequently, the Pre-trial Order was issued on December 1, 2014.[25]

During trial, Carmen Copper presented the following witnesses: (1) Atty. Carmen Rose A. Bassalo-Estampador;[26] (2) Jesus B. Caparida,[27] and the Independent Certified Public Accountant, Annalyn B. Artuz.[28]

Carmen Copper filed its Formal Offer of Evidence[29] on April 30, 2015, offering its documentary evidence, some of which were denied and admitted by the Court in Division in the Resolutions dated September 2, 2015[30] and April 18, 2016[31], and Order dated June 28, 2016.[32]

At the hearing held on June 28, 2016, the CIR's counsel moved for the resetting of the initial presentation of its evidence as the intended witness, Revenue Officer Ana Lealee G. Lucila, was unavailable. The Court in Division granted the motion and the hearing was then reset to September 6, 2016.[33]

On the rescheduled date, however, the CIR's counsels of record were absent. Carmen Copper's counsel then moved to declare the CIR as having waived the presentation of his evidence. In the same hearing, the Court in Division directed the parties to submit their memoranda on or before October 6, 2016.[34]

On October 6, 2016, Carmen Copper filed its Memorandum.[35] The CIR, however, failed to file his memorandum.[36] In the Resolution dated November 28, 2016,[37] the case was submitted for decision.

On November 3, 2017, the Court in Division promulgated the Assailed

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[22] *Id.*, p. 1386.
[23] *Id.*, pp. 4282 to 4301.
[24] *Id.*, p. 4306.
[25] *Id.*, pp. 4308 to 4321.
[26] *Id.*, pp. 4326 to 4329, and 4331 to 4332, respectively.
[27] *Id.*, pp. 5222 to 5226, 5228 to 5229, 5281 to 5282, and 5284, respectively.
[28] *Id.*, pp. 5285 to 5289, and 5291 to 5292, respectively.
[29] *Id.*, pp. 5293 to 5322.
[30] *Id.*, pp. 5331 to 5343.
[31] *Id.*, pp. 5382 to 5388.
[32] *Id.*, pp. 5405 to 5406.
[33] *Id.*, pp. 5402 to 5404, and 5405 to 5406, respectively.
[34] *Id.*, pp. 5421 to 5423.
[35] *Id.*, pp. 5425 to 5473.
[36] *Id.*, p. 5476.
[37] *Id.*, p. 5484.

Decision dismissing Carmen Copper's Petition for lack of jurisdiction. The dispositive portion of the Assailed Decision reads, as follows:

> "**WHEREFORE,** premises considered, the Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"[38]

On November 22, 2017, Carmen Copper filed its Motion for Reconsideration thereof through registered mail, praying for the reversal of the Assailed Decision. The CIR failed to submit his Comment thereto despite due notice.

On April 2, 2018, the Court in Division issued the Assailed Resolution denying the motion for lack of merit.[39] The dispositive portion of the Assailed Resolution reads, as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[40]

On April 27, 2018, Carmen Copper timely filed its appeal via Petition for Review.[41]

On May 28, 2018, the CIR was directed to file Comment thereto.[42]

On August 8, 2018, the Court *en banc* issued a Resolution stating that the CIR failed to file his Comment and ordering the parties to file their respective memoranda.[43] However, both parties failed to file their respective memoranda.[44]

On January 11, 2019, the Court *en banc* issued a Resolution submitting the case for decision.[45]

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[38] *Id.* at Note 2, p. 35.
[39] *Id.* at Note 3.
[40] *Id.*, p. 39.
[41] *Id.* at Note 1.
[42] *Id.*, pp. 46-47.
[43] *Id.*, pp. 50-51.
[44] *Id.*, p. 52.
[45] *Id.*, pp. 54-55.

On January 17, 2019, Carmen Copper filed its "Motion to Admit Memorandum" which the Court *en banc* denied in a Resolution dated February 21, 2019.

On March 20, 2019, Carmen Copper posted its "Motion for Reconsideration (of the Resolution dated 21 February 2019)" through registered mail which the Court *en banc* received on March 26, 2019.

The CIR was ordered to file Comment on the motion in a Resolution dated April 22, 2019. However, the CIR failed to file his Comment despite due notice, as verified by the Judicial Records Division in a Records Verification Report dated June 10, 2019.

On September 17, 2019, the Court *en banc* issued a resolution denying Carmen Copper's motion for reconsideration for lack of merit.

The Assignments of Errors

Carmen Copper did not indicate in its Petition the assignment of errors it attributes to the Court in Division in the assailed Decision and Resolution.

The Arguments of the Parties

Carmen Copper argues that it timely filed its judicial claim for refund within the 30-day period after receipt of the denial by the CIR of its administrative claim. It further argues that since Section 122(c) of the NIRC does not state that the decision denying the claim must be made within the period prescribed to decide, if the CIR acts on the decision after the prescribed period to decide, Carmen Copper then has thirty (30) days from the receipt of such denial to file its judicial claim. As the CIR issued a decision on its administrative claim beyond the 120-day period, its judicial claim that it filed within thirty (30) days from receipt of the notice was timely filed and the Court has jurisdiction to resolve the claim.

On the other hand, in failing to file his Comment or Memorandum to the instant Petition, the CIR is deemed to fully acquiesce with the Court in Division's rulings in the Assailed Decision and Resolution.

The Ruling of the Court

We deny the Petition for lack of compelling ground to merit the reversal of the assailed Decision and Resolution.

At the outset, Carmen Copper presents no new argument to persuade Us that it has a meritorious case. It merely reiterates the arguments it raised in its Motion for Reconsideration which have been extensively addressed by the Court in Division in the Assailed Resolution. Needless to state, the issue of jurisdiction over Carmen Copper's judicial claim for input VAT refund has already been laid to rest in the Assailed Decision and Assailed Resolution. Nevertheless, we will discuss at length, once again, the demerits of Carmen Copper's arguments which may serve as a guidepostin deciding issues of similar nature in the future.

Under the law, a taxpayer is given the remedy of refund in case of unutilized input VAT. The filing of a claim however, is subject to two (2) time requirements: (a) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT *(i.e.,* administrative claim); and (b) the 30-day period for filing an appeal with this Court *(i.e.,* judicial claim).

For clarity and reference, Sections 112(A) and (C) of the National Internal Revenue Code ("NIRC") of 1997, as amended, are reproduced below:

> "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, **<u>within two (2) years after the close of the taxable quarter when the sales were made</u>, 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 <u>output tax:</u>** *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(l) 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 sale and also in taxable or exempt sale of goods of 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.
>
> xxx xxx xxx

> (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 Subsections (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 ."**[46]

Pursuant to the above-quoted Section 112(A), the administrative claim for the issuance of TCC or refund of input VAT 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. As found by the Court in Division, Carmen Copper's Applications for Tax Credits/Refunds (BIR Forms No. 1914) filed with the BIR on December 4, 2009 and August 6, 2010 for all the four quarters of TY 2009, fell within the two-year prescriptive period, to wit:

Quarter	Quarter End	Last Day to File Administrative Claim	Date of Filing of Administrative Claim	Amount of Claim	Exhibit[47]
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

This finding of fact by the Court in Division shall remain undisturbed. Carmen Copper's administrative claims for refund for the subject period were indeed timely filed.

Anent the timeliness of the judicial appeal, the rule is that the taxpayer can file the appeal in one of two (2) ways:

[46] Emphasis and underscoring supplied.
[47] *Id.* at Note 7, pp. 3251, 3256, 3261, and 3266.

1) file the judicial claim within thirty days after the Commissioner denies the claim within the one hundred twenty-day period (120-day period), counted from the date of submission of complete documents, or

2) file the judicial claim within thirty (30) days from the expiration of the 120-day period (120 + 30 days) if the Commissioner does not act within the one hundred twenty-day period.[48]

The 120-day period is said to be crucial in filing a judicial appeal. In order for the Court to conclude that there is an administrative "denial due to inaction" of the CIR during the 120-day period, the correct reckoning point of the 120-day period is imperative. In this regard, the pronouncement of the Supreme Court in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[49] *(Pilipinas Total Gas)* is relevant for purposes of determining when the running of the 120-day period commences and when it ends for purposes of counting the thirty (30) days within which to appeal to this Court.

In *Pilipinas Total Gas*, the Supreme Court emphatically ruled as follows:

> "Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: ***Under present law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?***
>
> xxx xxx xxx
>
> If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential.** It is only upon the submission of these documents that the 120-day period would begin to run.

[48] *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[49] G.R. No. 207112, December 29, 2015.

xxx xxx xxx

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.**

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.

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 additional documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.

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 NIRC. The 30-day period from denial of the claim or from the expiration of the 120- day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

It bears mentioning at this point that the foregoing summation of the rules *should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014. such as the claim at bench* ..."[50]

Pursuant to *Pilipinas Total Gas* above, for claims filed before June 11, 2014, or prior to the effectivity of Revenue Memorandum Circular (RMC) No. 54-14, the rules provided under RMC No. 49-2003 in relation to Section 112 of the NIRC of 1997, as amended, shall apply. Thus, Carmen Copper had thirty (30) days from the time of filing of its administrative claim for tax credit or refund to submit all the required supporting documents. **If in the course of the investigation, additional documents are required, the BIR must inform Carmen Copper of the need to submit additional documents through a notice, and Carmen Copper shall have thirty (30) days to comply. Upon completion of all required documents, the 120-day period shall commence;** but in all cases, all filings and submissions must be completed within the two-year period under Section 112(A) of the NIRC of 1997, as amended.

In this regard, *We* uphold the finding of the Court in Division that there is no showing in the records of the case that Carmen Copper submitted, or was requested by the BIR to submit, additional documents during the 120-day period under the aforequoted Section 112. Carmen Copper is therefore deemed to have submitted its complete documents on December 4, 2009 and August 6, 2010, the dates when it filed its administrative claim for the taxes subject of the instant claim for refund.

The Court in Division also found that counting 120 days from December 4, 2009 and August 6, 2010, the CIR had until April 3, 2010 and December 4, 2010, within which to act on petitioner's claims for the First to Second quarters and Third to Fourth quarters, respectively, of TY 2009, to wit:

Quarter	End of 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 with the CTA
1st	March 31, 2009	December 4, 2009	April 3, 2010	**May 3, 2010**
2nd	June 30, 2009			
3rd	September 30, 2009	August 6, 2010	December 4, 2010	**January 3, 2011**
4th	December 31, 2009			

Counting thirty (30) days from the end of the 120-day period for the BIR to act on its claims, Carmen Copper had only until May 3, 2010 and January 3, 2011 within which to file its judicial claims before this Court. However, **Carmen Copper belatedly filed its judicial claims for refund before this Court on**

[50] Emphasis supplied in the original.

June 13, 2014, under the mistaken assumption that it had a fresh 30-day period to file its judicial claims from the time that it received the Notice dated May 12, 2014 from the CIR, through Revenue District Officer Corazon M. Montes, partially denying its claim for refund of excess input VAT for TY 2009.[51]

Carmen Copper's misappreciation of the law and jurisprudence relative to its claim for refund of its unutilized input VAT is fatal to its case. The Supreme Court, in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,*[52] already exhorted taxpayers to be doubly vigilant in discerning the periods within which it could appeal the denial of its administrative claims before this court, thus:

> "In fine, our finding is that the judicial claim for the refund or credit of unutilized input VAT was belatedly filed. Hence, the CTA lost jurisdiction over Rohm Apollo's claim for a refund or credit.
>
> 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. 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."</u>** *(Emphasis and underscoring supplied)*

Evidently, Carmen Copper belatedly filed its Petition for Review with the Court in Division on June 13, 2014. The Court in Division did not acquire jurisdiction.

Time and again, it has been held that decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[53] In this regard, this Court can only apply the law as ruled upon and/or interpreted by the High Court. *We* have no other option but to abide by the ruling of the Supreme Court in the cases above-mentioned regarding the interpretation of Section 112(C) of the NIRC of 1997, as amended.[54]

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[51] *Id.* at Note 7, p. 4309, Pre-Trial Order, Facts, par. 4; Exhibit "P-36".
[52] G.R. No. 168950, January 14, 2015.
[53] *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014.
[54] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013 citing *The Philippine Veterans Affairs Office v. Brigido V. Segundo*, G.R. No. L-51570, August 15, 1988.

Jurisdiction over the subject matter is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.[55] Consequently, questions of jurisdiction may be raised at any stage of the proceedings, even for the first time on appeal.[56]

Considering all these pronouncements, Carmen Copper's judicial claim for the subject quarters was filed way beyond the mandatory 120 + 30 days to seek judicial recourse. A claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. Strict compliance with the 120 + 30 day periods is necessary for such a claim to prosper.[57]

Such non-compliance with the said mandatory period of 120 + 30 days is fatal to Carmen Copper's claim of refund on the ground of prescription, resulting in the First Division's lack of jurisdiction over the said judicial claim. With the foregoing findings, the Court deems it unnecessary to resolve other matters raised.

WHEREFORE, premises considered, the Petition for Review is **DISMISSED** for lack of jurisdiction. The Decision dated November 3, 2017 and the Resolution dated April 2, 2018 of the Second Division in CTA Case No. 8834 are **AFFIRMED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[55] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 759 SCRA 311, 312.
[56] *Republic v. Bantigue Point Development Corporation*, G.R. No. 162322, March 14, 2012, 668 SCRA 163, 164.
[57] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice