REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

LAPANDAY FOODS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9950

Members:

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

Promulgated:
AUG 08 2019
12:30 p.m.

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RESOLUTION

For resolution is Respondent's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court"[1] filed on May 31, 2019, with Petitioner's "Comment/Opposition" filed on July 15, 2019.

In his motion, Respondent prays that the instant Petition for Review be dismissed for being time-barred and/or lack of jurisdiction. Respondent claims that the issue of jurisdiction will not require trial to be resolved as the question of jurisdiction may easily be resolved from the fact of petition alone. Respondent submits that the petition was filed beyond the mandatory and jurisdictional 30-day period from the expiration of the 120-day period decreed by Section 112(D) of the National Internal Revenue Code ("NIRC") of 1997, as amended, in relation to Revenue Memorandum Circular (RMC) No. 54-2014.

Respondent argues that this Court no longer had jurisdiction over the petition when it was filed. This is because from the time Petitioner filed its administrative claim for value-added tax ("VAT") refund/tax credit for the first quarter of taxable year 2006 on March 31, 2008, it only had until August 28, 2008, the lapse of the

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1 Docket, pp. 396-403.

"120+30 day period" within which to elevate the matter before this Court. The present Petition for Review[2] was filed on October 15, 2018.

In its "Comment/Opposition", Petitioner refutes Respondent's assertions stating that Section 112(C) of the NIRC of 1997, as amended, provides two (2) remedies for the taxpayer in a VAT refund/tax credit claim: (a) to appeal to the Court of Tax Appeals ("CTA") the decision of the Commissioner of Internal Revenue ("CIR") denying his claim within thirty (30) days from receipt, or (b) after the expiration of the 120-day period, appeal the unacted claim to the CTA within the same period. The Petitioner chose the first option and waited for the denial by the CIR of its administrative claim, after which it filed the instant petition.

Petitioner likewise contends that there is a distinction between "claim processing rules" and rules governing "subject-matter jurisdiction". The "120+30 day period" under Section 112(C) of the NIRC of 1997, as amended, is a claim-processing rule which does not restrict the subject-matter jurisdiction of the CTA. The taxpayer's failure to comply with the "120+30 day period" does not deprive the CTA of its jurisdiction to adjudicate on the assailed Letter Denial[3] dated February 13, 2018 issued by the BIR denying Petitioner's claim for VAT refund/tax credit.

After considering the arguments of the parties, We find Respondent's arguments persuasive.

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 NIRC of 1997, as amended, are reproduced below:

> "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, **<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 output tax:** *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b)

[2] *Id.*, pp. 12-27.
[3] *Id.*, Joint Stipulation of Facts and Issues, Summary of Admitted Facts, par. 3, p. 389.

> 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 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.
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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 Subsections (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, <u>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.</u>**"[4]

As categorically stated above, the administrative claim 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. The CIR shall have one hundred twenty (120) days from the date of submission of complete documents to decide whether or not to grant the claim.

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

1) file the judicial claim within thirty (30) days after the CIR denies the claim within the 120-day period, counted from the date of submission of complete documents; or

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[4] *Emphasis and underscoring supplied.*

2) file the judicial claim within thirty (30) days from the expiration of the 120-day period if the CIR does not act within the 120-day period.[5]

In a long line of cases, the rule mandating the taxpayer to file a judicial claim within thirty (30) days from the expiration of the 120-day period from the time of filing an administrative claim, which has been unacted upon, has been **mandatory and jurisdictional**, since the effectivity of the NIRC of 1997, as amended.[6]

The only exception to this rule has been when premature filing was allowed and when such filing was done pursuant to BIR Ruling No. DA-489-03. The filing of the judicial claim need not await the expiration of the 120-day period, if such was filed from December 10, 2003 (issuance of BIR Ruling No. DA-489-03) to October 06, 2010 (the promulgation of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[7]). This exception has been allowed on the basis of equitable estoppel and doctrine of operative fact.[8]

However, in any case, exception included, **late filing is absolutely prohibited** even during the time when BIR Ruling No. DA-489-03 was in force.[9]

If the claim for VAT refund/tax credit is not acted upon by the CIR within the 120-day period as required by law, such "inaction shall be deemed a denial" of

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5 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.

6 Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 191495, July 23, 2018; Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue, G.R. Nos. 197663 and 197770, March 14, 2018; Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation), G.R. No. 194105, February 05, 2014; Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue, G.R. No. 184266, November 11, 2013; Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

7 G.R. No. 183421, October 22, 2014.

8 Kepco Ilijan Corporation v. Commissioner of Internal Revenue, G.R. No. 20518, September 26, 2018; Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue, G.R. No. 201326, February 08, 2017; Commissioner of Internal Revenue v. Deutsche Knowledge Services, PTE. LTD., G.R. No. 211072, November 07, 2016; Cargill Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 203774, March 11, 2015; Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 183421, October 22, 2014; CBK Power Company Limited v. Commissioner of Internal Revenue, G.R. Nos. 198729-30, January 15, 2014; Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

9 Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue, G.R. Nos. 197663 and 197770, March 14, 2018; Takenaka Corporation-Philippine Branch v. Commissioner of Internal Revenue, G.R. No. 193321, October 19, 2016; Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue, G.R. No. 173241, March 25, 2015; Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014.

the application for refund/tax credit.[10] Thus, In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[11], taxpayers were reminded that the lapse of the 120-day period constitutes a denial by the BIR, and an appeal within thirty (30) days therefrom must already be made:

> "**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."[12]

To reiterate, **the rule**, as pronounced by the decisions of the Supreme Court, **is that an appeal to a denial of a taxpayer's administrative claim may only be made if such denial was issued within the 120-day period. And when the 120-day period lapses without any decision issued by Respondent, only an appeal to the inaction of Respondent may be made.**[13]

Hence, Petitioner's reliance in *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[14] is misplaced. In *Lascona*, the Supreme Court discussed at length the options given to a taxpayer in case the BIR failed to act on a disputed assessment within the 180-day period as provided for in Section 228 of the NIRC of 1997, as amended. Here, the issue involves the interpretation of Section 112 of the NIRC of 1997, as amended. In other words, *Lascona* pertains to disputed assessments. The rule on claims of refund, as in the instant case, is different.

Time and again, it has been held that decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[15] 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 1997 NIRC.[16]

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10 Aichi Forging Company of Asia, Inc. v. Court of Tax Appeals - En Banc and Commissioner of Internal Revenue, G.R. No. 193625, August 30, 2017.

11 G.R. No. 168950, January 14, 2015.

12 *Emphasis and underscoring supplied.*

13 Silicon Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182737, March 02, 2016; Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014; Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

14 G.R. No. 171251, March 05, 2012.

15 Visayas Geothermal Power Company v. Commissioner of Internal Revenue, G.R. No. 197525, June 4, 2014.

16 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. Brigida V. Segundo, G.R. No. L-51570, August 15, 1988.

Applying the jurisprudential authorities cited above to the case at bar, the expiration of the 120-day period of the administrative claim filed by Petitioner on March 18, 2008[17] for refund of the first quarter of 2006 fell on **July 16, 2008**. Petitioner then had until August 15, 2008 to file its judicial claim with this Court. However, the Petition for Review was belatedly filed on **October 15, 2018**.

Considering all of the foregoing, the Court no longer has jurisdiction over this action.

WHEREFORE, Respondent's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court" is **GRANTED**. The Petition for Review docketed as CTA Case No. 9950, entitled *Lapanday Foods Corporation v. Commissioner of Internal Revenue* is **DISMISSED** for lack of jurisdiction.

In view of the dismissal, all proceedings in the instant case as well as the hearings set in the Pre-Trial Order dated June 17, 2019 are cancelled.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[17] *Id.*, Joint Stipulation of Facts and Issues, Summary of Admitted Facts, par. 4, p. 389.