REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HEDCOR SIBULAN, INC., Petitioner,	**CTA CASE NO. 9009**
	Members:
-versus-	**Castañeda, Jr.,** *Chairperson,* **Casanova,** *and* **Manahan,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 21 2017 11:15 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

Before this Court is a Petition for Review[1] filed by Hedcor Sibulan, Inc. on March 13, 2015, praying that judgment be rendered ordering respondent Commissioner of Internal Revenue (CIR) to refund or in the alternative, issue a tax credit certificate in favor of petitioner in the amount of ELEVEN MILLION SIX HUNDRED SIXTEEN THOUSAND SEVEN HUNDRED SIX AND 74/100 PESOS (₱11,616,706.74), representing petitioner's excess and unutilized input Value-Added Tax (VAT) on domestic purchases of goods and services, importation of goods, purchases of capital goods not exceeding one million pesos, and creditable input VAT for calendar year (CY) 2010.

[1] Docket, pp. 6-33.

THE FACTS

Petitioner Hedcor Sibulan, Inc. is a domestic company duly organized and existing in accordance with the laws of the Republic of the Philippines, with address at Darong, Sta. Cruz, Davao del Sur, Philippines.[2] As stated in its Articles of Incorporation, petitioner is primarily engaged in the business of power generation through hydropower.[3]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue ("BIR"), vested by law with authority to collect all taxes, grant refunds, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the National Internal Revenue Code (NIRC) of 1997, as amended.[4]

In 2008, a Certificate of Endorsement was issued by the Department of Energy (DOE) stating that the 42-Megawatt (MW) Sibulan Hydro Electric Power Plant, owned and operated by petitioner, and located in Barangay Sibulan, Municipality of Santa Cruz, Province of Davao del Sur is consistent with the Power Development Plan (PDP) of the government, pursuant to the Implementing Rules and Regulations of RA 9136. Hence, according to the certificate, petitioner shall be entitled to all rights and privileges consistent with the laws, rules and regulations pertinent thereto, subject to compliance to the requirements of the Energy Regulatory Commission (ERC), Philippine Grid Code, Wholesale Electricity Spot Market and the DOE's PDP preparation.[5]

Moreover, petitioner is duly authorized by the ERC to operate facilities used in the generation of electricity as evidenced by Certificate of Compliance No. 15-05-M-56M issued on May 18, 2015 covering Plant A and Certificate of Compliance No. 15-05-M-54M issued on May 18, 2015 covering Plant B. Petitioner was duly issued Certificates of Compliance for said plants by the ERC.[6] Furthermore, petitioner is registered with the BIR as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code of 1997, as amended, with Taxpayer Identification No. 005-633-984-VAT.[7]

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[2] Item No. 1, Joint Stipulation of Facts (JSF), docket, p. 451.
[3] Exhibit "P-1".
[4] Item No. 2, JSF, docket p. 451.
[5] Exhibit "P-2".
[6] Exhibits "P-3-a" and "P-3-b".
[7] Exhibit "P-4".

On the following dates, petitioner filed with the BIR its Original and Amended Quarterly VAT Returns[8] for the period covering the 1st quarter to the 4th quarter of calendar year 2011:

Quarter	BIR Form	Period Covered	Date Filed
4th	2550Q (Original)	October to December 2011	January 10, 2012
4th	2550Q (Amended)	October to December 2011	February 2, 2012
3rd	2550Q (Original)	July to September 2011	October 25, 2011
3rd	2550Q (Amended)	July to September 2011	April 3, 2012
2nd	2550Q (Original)	April to June 2011	July 19, 2011
2nd	2550Q (Amended)	April to June 2011	February 20, 2012
1st	2550Q (Original)	January to March 2011	April 20, 2011
1st	2550Q (Amended)	January to March 2011	February 20, 2012

On December 12, 2012, petitioner filed with BIR Revenue District Office (RDO) No. 115, an administrative claim for the refund of its alleged excess and unutilized input VAT for CY 2011 in the amount of ₱11,616,706.74.[9]

On the same date, petitioner also transmitted "complete supporting documents pursuant to Section 112(D) of the 1997 NIRC and RMO No. 53-98 in relation to [the] VAT refund claim for the first (1st) to fourth (4th) quarter of 2011".[10]

In response to the administrative claim,[11] on February 11, 2013, OIC Regional Director Glen A. Geraldino of Revenue Region No. 19 issued the following Letters of Authority (LOA), which authorized Group Supervisor Mary Urduja Ong and Revenue Officer Lucilyn Lacdao of RDO No. 115 to examine petitioner's books of accounts and other accounting records for CY 2011:

1. LOA SN eLA201000075407 / LOA-115-2013-00000009[12] for the examination of petitioner's financial records for all internal revenue taxes **except VAT**; and,

2. LOA SN eLA201000075406 / LOA-115-2013-00000008[13] for the examination of financial records relating to petitioner's **VAT**.

On March 1, 2013, petitioner received a Checklist of Requirements / Access to Records Request pursuant to the LOAs dated February 11, 2013.[14]

[8] Exhibits "P-5-a" to "P-5-g".
[9] Exhibit "P-8".
[10] Exhibit "P-7".
[11] Q24, Judicial Affidavit of Arazeli. L. Malapad, Assistant Vice President for Finance, Exhibit "P-22", docket, pp. 284-285.
[12] Exhibit "P-9-a".
[13] Exhibit "P-10-a".
[14] Exhibits "9-b" and "10-b".

On July 30, 2013, BIR RDO No. 115 sent a Fifteen-Day Notice to petitioner which computed the input VAT credit or refund claim in the amount of ₱11,157,536.37 based on the investigation made and requested it to appear for an informal conference.[15]

On August 12, 2013, petitioner again received a Fifteen-Day Notice (Amended) which revised the amount of input VAT claim to ₱11,517,943.06 and reiterated the request for an informal conference.[16]

During trial, petitioner's witness explicitly admitted that it "was made to understand that the evaluation of the amount of the VAT claim to which it is entitled has been completed with the issuance of the Amended 15-day Notice and that no additional documents were required to be further submitted."[17]

However, in a letter dated August 27, 2013, petitioner nonetheless responded to the fifteen-day notices by requesting for the reduction of the input tax disallowance of ₱98,760.68 to ₱89,195.67 and submitting documents in support of its position.[18]

Thereafter, on December 13, 2013,[19] an undated Closing Agreement was signed by petitioner's Assistant Vice President for Finance Arazeli L. Malapad and respondent's Revenue District Officer Josie Lourdes C. Tang, Group Supervisor Mary Urduja A. Ong and Revenue Officer Lucilyn R. Lacdao. The Closing Agreement concluded the audit of CY 2011 triggered by the filing of petitioner's administrative claim.[20] Furthermore, both parties agreed that, "after a complete and thorough investigation" the petitioner' total deficiency tax amounted to ₱445,894.21 and that the determination of the tax liabilities shall be "final and exclusive."

The Closing Agreement is reproduced entirely for ready reference:[21]

[15] Exhibit "P-12-a".
[16] Exhibit "P-12-b".
[17] Q61, Judicial Affidavit of Arazeli. L. Malapad, Assistant Vice President for Finance, Exhibit "P-22", docket, p. 298.
[18] Exhibit "P-13"; Q35, Judicial Affidavit of Arazeli. L. Malapad, Assistant Vice President for Finance, Exhibit "P-22", docket, p. 290.
[19] Q40, Judicial Affidavit of Arazeli. L. Malapad, Assistant Vice President for Finance, Exhibit "P-22", docket, p. 291.
[20] Q39, Judicial Affidavit of Arazeli. L. Malapad, Assistant Vice President for Finance, Exhibit "P-22", docket, p. 290.
[21] Exhibit "P-14".

"CLOSING AGREEMENT

This agreement, made in duplicate under and in pursuance to Section 7 of the National Internal Revenue Code as amended under R.A. 8424 or the Tax Reform Act by and between__ and The Commissioner of Internal Revenue.

WITNESSETH

WHEREAS, as it has been finally determined after a complete and thorough investigation, that the 2011 Income & Other Internal Revenue Tax Liabilities of **HEDCOR SIBULAN, INC.**, including increments itemized as follows:

Income Tax Deficiency	P
Withholding Tax Deficiency	424,516.64
Value Added Tax Deficiency	
Other Taxes – Final Tax	21,377.57
TOTAL DEFICIENCY TAX	P 445,894.21

Payment of the above amount shall be made; (Check appropriate box):
_____ Upon receipt of the corresponding Assessment Notice
_____ Upon issuance of Payment Order in order to stop the running of interest incident to delinquency.

I understand that the report of verification submitted by the Revenue Officer is subject to review and approval by higher authorities which may result in further changes in the amount of my tax liability.

WHEREAS, the above determination is hereby agreed by the said taxpayer after all discrepancies found have been fully explained to his entire satisfaction.

MOREOVER, I agree that any discrepancy later on arising from Letter Notices, Third Party Information and any Cross matching of data are not covered by this investigation and were not disclosed during conduct of audit, hence remain to be my accountability.

NOW, THEREFORE, for and in consideration of the foregoing, the said taxpayer and the Commissioner of Internal Revenue hereby mutually agreed that the determination of the tax liabilities as set forth above shall be final and exclusive, and the taxpayer hereby waives the statute of limitation prescribed in Section 203 and other relevant provisions of the National Internal Revenue Code as amended by R.A. 8424 of the Tax Reform Act and consents to the Assessment and Collection of the tax found due as above computed and waives his/her right to claim pay or refund of the amount which may be paid in accordance with this agreement.

PROVIDED, however, that any change or modification of applicable statutes will render this agreement ineffective to the extent that it is dependent upon such statutes.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents.

SIGNED THIS _____________ Aurora 3rd, Digos City Davao del Sur Philippines.

Taxpayer's Name
(signed)

A. L. Malapad
HEDCOR SIBULAN, INC.
Taxpayer

WITNESS TO SIGNATURE OF TAXPAYER:

(signed)
LUCILYN R. LACDAO
Investigating Agent Revenue Officer

(signed)
MARY URDUJA A. ONG
Group Supervisor

Noted by:
(signed)
JOSIE LOURDES C. TANG
Revenue District Officer" (underscoring supplied)

On the same day, December 13, 2013, petitioner filed BIR Forms 0605 and paid ₱445,894.21 through the EFPS Payment System, detailed as follows:[22]

Income Tax Deficiency	₱---------------
Withholding Tax Deficiency	424,516.64
Value-Added Tax Deficiency	---------------
Other Taxes – Final tax	21,377.57
Total Deficiency Tax	**₱ 445,894.21**

Also on December 13, 2013, petitioner transmitted copies of the payment forms to RDO No. 115.[23]

Accordingly, in a letter also dated December 13, 2013,[24] Revenue District Officer Tang confirmed petitioner's payment of ₱445,894.21. It reads:

"December 13, 2013

THE PRESIDENT
HEDCOR SIBULAN, INC.
Sta. Cruz, Davao del Sur

Sir/Madam:

Please be informed that the Letter Authority 115-2013-00000009 / 115-2013-00000008 issued to HEDCOR SIBULAN, INC. with address at Sibulan Sta. Cruz Davao del Sur for verification of all its tax liabilities for taxable year 2011 has already been paid thru electronic filing and payment system (EFPS) on December 13, 2013 in the amount of P445,894.21. *gr*

[22] Exhibits "P-14", "P-15-a" and "P-16-a".
[23] Exhibits "P-15-bj"and "P-16-b".
[24] Exhibit "P-17".

In view thereof, the entire internal revenue docket of 2011 under the above cited letter of authority will be forwarded to the Regional Office for review and approval of the report **with recommendation that the same will be considered closed and terminated**.

Very truly yours,

(signed)
JOSIE LOURDES C. TANG
Revenue District Officer"
(underscoring and emphasis supplied)

However, in a letter dated March 24, 2014,[25] more than three months after the Closing Agreement and despite the December 13, 2013 letter concluding the audit, petitioner submitted additional sets of documents to RDO No. 115 in support of its claim. The submission was allegedly prompted by request for additional documents through a telephone call by the revenue officer.[26]

Subsequently, in a letter dated April 3, 2014, petitioner again transmitted additional documents such as certified copies of billing statements, statements of accounts, invoices and official receipts.[27]

For several months since this last submission of documents, petitioner "failed to receive any communication from the BIR until December 29, 2014".[28]

Through a letter dated December 29, 2014, Commissioner Kim S. Jacinto-Henares notified petitioner that effective January 1, 2015, it will be classified as a large taxpayer pursuant to Revenue Regulations (RR) No. 17-2010 and will be under the jurisdiction of RDO No. 121, the Excise Large Taxpayers Audit Division 1.[29]

On February 12, 2015, petitioner received a letter from Regional Director Glen A. Geraldino, denying its input VAT refund or credit claim allegedly due to its failure to submit supporting documents within the period provided by law.[30]

[25] Exhibit "P-18".
[26] Q53, Judicial Affidavit of Arazeli. L. Malapad, Assistant Vice President for Finance, Exhibit "P-22", docket, p. 295.
[27] Exhibit "P-19".
[28] Q58, Judicial Affidavit of Arazeli. L. Malapad, Assistant Vice President for Finance, Exhibit "P-22", docket, p. 297; See also Q30, Judicial Affidavit of Sonny Boy N. Salvador, Tax Compliance and VAT Recovery Specialist, Exhibit "P-24", docket, p. 861.
[29] Exhibit "P-20".
[30] Exhibit "P-21".

Accordingly, on March 13, 2015, petitioner lodged its judicial claim by filing the instant Petition for Review before the Court.[31]

On May 25, 2015, respondent filed his Answer.[32]

Meanwhile, on June 19, 2015, petitioner filed its Reply through registered mail.[33]

Respondent[34] and petitioner[35] filed their Pre-Trial Briefs on June 22, 2015 and July 3, 2015, respectively.

The case was then set for pre-trial conference on July 9, 2015.[36]

On July 27, 2015, the parties filed their Joint Stipulation of Facts[37], which was adopted by the Court in the Pre-Trial Order[38] dated August 3, 2015.

During trial, petitioner presented the following witnesses: (1) Mr. Richard S. Querido[39] – Independent Certified Public Accountant (ICPA); (2) Ms. Arazeli Malapad[40] – Assistant Vice President for Finance of Hedcor, Inc., an affiliate of petitioner; (3) Mr. Sonny Boy N. Salvador – member of petitioner's VAT Recovery staff.[41]

On October 30, 2015, petitioner formally offered its documentary evidence.[42]

On November 27, 2015, the Court issued a Resolution,[43] admitting, as petitioner's evidence, Exhibits "P-1", "P-2", "P-3-a and P-3-b", "P-4", "P-5-a to P-5-g", "P-6", "P-7", "P-8", "P-8-a to P-8-b", "P-9-a to P-9-c", "P-10-a to P-10-c", "P-11-a", "P-11-b", "P-11-d", "P-11-e", "P-11-g", "P-11-h", "P-11-j", "P-11-k", "P-12-a to P-12-b", "P-13", "P-14", "P-14-a", "P-14-b", "P-14-c", "P-14-d", "P-15-a and P-15-b", "P-16-a and P-16-b", "P-17", "P-17-a", "P-18", "P-19", "P-22", "P-22-a", "P-23-a and P-23-b", "P-23-c and P-23-d", "P-24", and "P-26".

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[31] Docket, p. 6.
[32] Docket, p. 195.
[33] Docket, p. 219.
[34] Docket, pp. 214-233.
[35] Docket, pp. 245-271.
[36] Docket, p. 243.
[37] Docket, pp. 451-458.
[38] Docket, pp. 461-466.
[39] Minutes of the Hearing dated July 9, 2015, docket, p. 449; Minutes of the Hearing dated August 24, 2015, docket, p. 561.
[40] Minutes of the Hearing dated September 16, 2015, docket, p. 578; dated October 5, 2015, docket, p. 584.
[41] Minutes of the Hearing dated September 16, 2015, docket, p. 578.
[42] Formal Offer of Evidence, docket, p. 594.
[43] Docket, pp. 891-892.

Upon petitioner's motion for reconsideration[44], the Court also admitted Exhibits "P-20", "P-21", and "P-25". However, the Court denied the admission of Exhibit "P-5-h" for not being found in the records of the case.[45]

Respondent manifested that he will not present any witness and that he is waiving his right to present evidence.[46]

Hence, as directed by the Court,[47] petitioner filed its Memorandum[48] on March 2, 2016.

On January 8, 2016, respondent filed a Manifestation[49] adopting his Answer as his memorandum.

Finally, on March 7, 2016, the case was considered submitted for decision.[50]

THE ISSUE

The parties submitted the following issue[51] for the Court's disposition:

"Whether petitioner is entitled to a refund in the aggregate amount of ₱11,616,706.74, allegedly representing unutilized input VAT for calendar year 2011."

PETITIONER'S ARGUMENTS

Petitioner insists that it filed its judicial claim within the prescribed period. Petitioner argues that the authorized officers of the BIR acted upon its claim and categorically denied the same, hence, the 120-day period prescribed under Section 112(C) of the 1997 NIRC, as amended, and the requirement to appeal an "unacted claim" within 30 days from the lapse of said 120-day period does not apply.[52] It further states that the respondent has retained jurisdiction over the administrative claim even beyond the 120+30 period, thus, it is not

[44] Motion for Reconsideration on the Resolution dated November 27, 2015.
[45] Resolution dated February 5, 2016, docket, pp. 927-928.
[46] Resolution dated November 27, 2015, docket, p. 892.
[47] *Id.*
[48] Docket, pp. 929-968.
[49] Docket, p. 916.
[50] Resolution dated March 7, 2016, docket, p. 970.
[51] III. Proposed Issue, JSF, docket, p. 452.
[52] Memorandum, docket, p. 941.

precluded from waiting for a decision on the administrative level.[53] Petitioner avers that, therefore, it has thirty (30) days from receipt of respondent's decision denying the claim to appeal with the CTA.[54]

Petitioner submits that the retroactive application of Revenue Memorandum Circular (RMC) No. 54-2014 is unconstitutional and causes prejudice through an outright deprivation of its pending claim without due process of law.[55] It asserts that the BIR has in fact already declared in the amended 15-day notice that it still has input VAT amounting to ₱11,517,943.06.[56]

Petitioner finally concludes by stating that it has factual and legal bases for the claim because it is a VAT-registered hydropower generation company and, by complying with the BIR's audit requirements, it has established through the administrative claim that it has creditable input VAT attributable to its zero-rated sales of generated power.[57]

RESPONDENT'S ARGUMENTS

In his Answer,[58] which the respondent adopted as his Memorandum, he interposed the following special and affirmative defenses:

> **"PETITIONER FAILED TO FILE THE INSTANT PETITION WITHIN THE PERIOD PRESCRIBED BY LAW. THUS, THE HONORABLE COURT NEVER ACQUIRED JURISDICTION.**
>
> 6. Section 112 (C) of the Tax Code of 1997 provides as follows, *to wit*: fr

[53] Memorandum, docket, p. 944.
[54] Memorandum, docket, pp. 949-950.
[55] Memorandum, docket, p. 951.
[56] Memorandum, docket, p. 958.
[57] Memorandum, docket, p. 962.
[58] Docket, pp. 195-205.

> '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.
>
> **(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.**' (Emphasis and underscoring supplied)

7. This is clarified under Revenue Memorandum Circular No. 54-2014 which states, to wit:

> III. Mandatory 120 + 30 Day Period
>
> xxx xxx xxx
>
> In sum, the taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty

> days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

8. In relation thereto, petitioner's belated filing of its Petition for Review is duly admitted on its very own. These judicial admission is bolstered under paragraph 30 under the heading 'IV. ADMINISTRATIVE CLAIM FOR REFUND', to wit:

> 8.1 '**On April 3, 2014**, Petitioner sent a letter to Revenue District Officer Tang **transmitting the additional requirements** xxx'

9. Assuming without admitting that the counting is reckoned on 12 December 2012, the lapse of the 120-day period would be on **11 April 2013** and the lapse of the thirty day [sic] period within which to file the judicial claim would be on **11 May 2013**. However, petitioner only filed its judicial claim on **13 March 2015**.

10. Also, even assuming that the counting of the 120-day period is reckoned from the alleged submission of additional documents on **April 03, 2014**; the 120-day period counted from April 03, 2014 has lapsed on **August 01 2014**. Thereafter, petitioner has 30 days from August 01, 2014 or until **August 31, 2014** within which to file its Petition for Review. It is clear then that **344** days had already lapsed from the purported submission of the additional documents vis a vis [sic] the filing of its Petition for Review on **13 March 2015**.

11. Based on the foregoing, it is apparent that the judicial claim was filed way beyond the period provided for in Section 112(C) of the Tax Code as clarified under RMC No. 54-2014 and the action had already prescribed.

12. In the case of CIR vs. Aichi Forging Company of Asia, Inc. (GR No. 184823, October 6, 2010), the Supreme Court had decided that the filing of the administrative claim and judicial claim within 30 days after the 120 day [sic] period is mandatory, thus failure to comply by Aichi was deemed fatal. The Supreme Court states:

'There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two 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.' The phrase 'within two (2) years x x x apply for the issuance of a tax credit certificate or refund' refers to applications for refund/ credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: **<u>(1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA</u>**. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

13. In the case at bar, petitioner failed to file its judicial claim within thirty days after the expiration of the 120-day period when no decision was made. Thus, the instant petition should not be given due course for lack of jurisdiction.

14. Anent petitioner's asseveration pertaining to the counting of the 30 day [sic] period from the alleged receipt of the Denial; it should be pointed out that the basis of the denial is its failure to comply with Section 112 (C) of the 1997 NIRC in relation to RMC 54-2014 which supports

respondents position that petitioner indeed failed to file its Petition for Review within the period prescribed by law.

RESPONDENT CORRECTLY INTERPRETED SECTION 112 (C) OF THE TAX CODE IN RELATION TO RMC 54-2014.

15. The BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain. It is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce have the force of law and are entitled to great respect **(Español vs. Philippine Veterans Administration, 137 SCRA 314).**

16. The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.

17. In **Asturias Sugar Central, Inc. vs. Commissioner of Customs**, it was stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to contemporaneous construction because of the respect due the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret **(Nestle Philippines vs. Court of Appeals, et al., 203 SCRA 504 citing Abejo, et al. vs. Hon. Dela Cruz, etc., et al., 149 SCRA 654; Asturias Sugar Central, Inc. vs. Commissioner of Customs, 29 SCRA 617; Ramos vs. Court of Industrial Relations, 21**

SCRA 218 [sic][59] and Santiago vs. Deputy Executive Secretary, 192 SCRA 199).

18. Thus, as the government agency charged with the enforcement of tax laws, the interpretation made by the Commissioner of Internal Revenue should be given great weight by this Honourable Court.

19. The BIR, as the administrative agency responsible for revenue collection and enforcement, is duty-bound to raise revenues through proper collection of taxes and, as such, it is given a special mandate to issue the necessary regulations in implementing the provisions of the Tax Code of 1997. The growth of society has ramified the government's activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems in present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them **(Eastern Shipping Lines, Inc. vs. POEA, et al., 166 SCRA 533).**

ASSUMING ARGUENDO THAT THE INSTANT PETITION WAS TIMELY FILED, PETITIONER MUST PROVE THAT IT COMPLIED WITH ALL THE STATUTORY AND ADMINISTRATIVE REQUIREMENT TO BE ENTITLED TO TAX REFUND.

20. Taxes collected are presumed to be in accordance with laws and regulations.

21. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the

[59] 21 SCRA 1282.

Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

22. Taxes are essential to government's very existence; hence, the dictum that "taxes are the lifeblood of the government." For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions therefore, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption.

23. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

24. To support its claim, it is imperative for petitioner to prove the following, viz:

> a. The registration requirements of a VAT taxpayer in compliance with Revenue Regulations No. 7-2012 in relation to Section 236(A),(B),(C) and (D) of the Tax Code, as amended;
>
> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;
>
> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98 and Revenue Memorandum Circular No. 54-2014, otherwise, there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. This requires the submission of complete documents in

support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner [sic] for review;

d. That the input VAT of P11,616,706.74 allegedly incurred by petitioner for calendar year 2011 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the periods provided in Sections 112(A) and (C) of the Tax Code, as amended;

f. That petitioner's purchases of capital goods and domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.110-7 of Revenue Regulations No. 14-2005.

20. Petitioner must prove that the aggregate amount of P11,616,706.74 being claimed by petitioner arising from excess and unutilized input VAT for calendar year 2011 is properly documented.

21. Accordingly, without proper documentation showing full compliance with all the requirements for claiming unutilized Input VAT by generation companies selling electricity from renewable sources of energy, then the instant claim for refund or credit must fail."

DISCUSSION/RULING

The Petition lacks merit.

Pertinent to the resolution of the present case are the provisions of Section 112 of the 1997 NIRC, as amended, which governs the recovery of unutilized input VAT.[60] It provides in pertinent part:

> "**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: *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 sale 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."
>
> 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

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[60] *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014.

> 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."

Based on the foregoing tax code provisions, the Supreme Court in ***Luzon Hydro Corporation v. Commissioner of Internal Revenue***[61] summarized the requisites for a successful claim for tax refund or credit of excess input VAT attributable to zero-rated or effectively zero-rated sales. Thus:

1. The taxpayer is VAT-registered;

2. The taxpayer is engaged in zero-rated or effectively zero-rated sales;

3. The input taxes are due or paid;

4. The input taxes are not transitional input taxes;

5. The input taxes have not been applied against output taxes during and in the succeeding quarters;

6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

7. For zero-rated sales under Sections 106(A)(2)(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 the rules and regulations of the Bangko Sentral ng Pilipinas;

8. 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

[61] G.R. No. 188260, November 13, 2013.

input taxes shall be proportionately allocated on the basis of sales volume; and,

9. The claim is filed within two years after the close of the taxable quarter when such sales were made.

From among the requisites enumerated, we address first the issue of the timeliness of petitioner's filing of both the administrative and judicial claims insofar as it determines whether the Court can take cognizance of this case.

In ***Nippon Express (Philippines) Corp. v. CIR***,[62] also involving a tax credit or refund claim of input VAT attributable to zero-rated sales, the Supreme Court held that because the Court of Tax Appeals (CTA) is a court of special jurisdiction it can only take cognizance of such matters as are clearly within its jurisdiction. It ruled further that the timeliness of the administrative and judicial claims is jurisdictional in nature, thus:

> "While it is true that the substantiation requirements in establishing a refund claim is a valid issue, <u>the Court finds it imperative to first and foremost determine whether or not the CTA properly acquired jurisdiction over petitioner's claim covering taxable year 2000, taking into consideration the timeliness of the filing of its judicial claim pursuant to Section 112 of the NIRC of 1997, as amended, and consistent with the pronouncements made in the *San Roque* case</u>. <u>Clearly, the claim of petitioner for the TCC can proceed only upon compliance with the aforesaid **jurisdictional requirement**</u>." (underscoring and emphasis supplied)

<u>Petitioner's Administrative Claim was Timely Filed</u>

With respect to the administrative claim, in the consolidated cases of ***Commissioner of Internal Revenue v. San Roque Power Corporation***,[63] the Supreme Court *En Banc* has settled the rule that it should be filed within two (2) years after the close of the taxable quarters when the sales were made, pursuant to Section 112(A) of the 1997 NIRC.

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[62] G.R. No. 185666, February 4, 2015.
[63] G.R. No. 187485, February 12, 2013.

Applying this rule, the counting of the two-year prescriptive periods for the filing of petitioner's administrative claim is, thus, reckoned from the end[64] of the four taxable quarters of CY 2011. Hence, petitioner's last day for filing of its administrative claim fell on the following dates:

Quarters	Period Covered	Close of Taxable Quarters	Last Day of the Two-Year Prescriptive Periods Counted from the Close of the Taxable Quarters
1st	January to March 2011	March 31, 2011	April 1, 2013[65]
2nd	April to June 2011	June 30, 2011	July 1, 2013[66]
3rd	July to September 2011	September 30, 2011	September 30, 2013
4th	October to December 2011	December 31, 2011	December 31, 2013

Clearly then, petitioner *timely* filed its administrative claim on December 12, 2012[67] since the date falls well within the prescriptive periods in the table above.

The Judicial Claim is Barred by Prescription

As to the timeliness of its judicial claim, Section 112(C) decrees that the CIR has 120 days from the date of the submission of the complete documents in support of the administrative claim within which to decide on the administrative claim. Thereafter, the taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from receipt of the decision or from the expiration of the 120-day period.[68]

Based on the holding in ***Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership,*** the taxpayer clearly had two options in which to file its appeal of the administrative claim:

"(1) file the judicial claim within thirty days after the CIR denies the claim **within the 120-day period**, or

[64] The Shorter Oxford English Dictionary, 6th Edition (2007), defines the word close as "an end" or a "conclusion."
[65] March 31, 2013 being a Sunday.
[66] June 30, 2013 being a Sunday.
[67] Exhibits "P-7" and "P-8", Docket, Volume 2, pp. 642-644.
[68] *Hedcor, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207575, July 15, 2015.

(2) file the judicial claim within thirty days from the expiration of the 120-day period <u>if the CIR does not act **within the 120-day period**</u>."[69] (underscoring and emphases supplied)

In short, in order for the judicial claim to be considered timely filed, the taxpayer should strictly follow the "120+30" rule under Section 112(C).

The records show that when petitioner filed its administrative claim, on December 12, 2012, it filed the same with "complete supporting documents." To quote its transmittal letter, marked as Exhibit P-7:

> "December 12, 2012
>
> **Ms. Herma G. Escudero**
> The Revenue District Officer
> **Bureau of Internal Revenue**
> Digos, Davao del Sur
>
> Dear Ms. Escudero,
>
> <u>We transmit herewith the **complete supporting documents** pursuant to Section 112(D) of the 1997 NIRC and RMO No. 53-98 in relation to Hedcor Sibulan Inc.'s VAT refund claim</u> for the first (1st) to fourth (4th) quarter of 2011, as follows:
>
> 1. Three (3) Copies of Application for Tax Credit (Form 1914)
>
> xxx xxx xxx
>
> 23. Certified true copy of VAT Invoices & VAT Official Receipts for purchase of goods & services.
>
> Please notify us within five (5) days from receipt hereof regarding the additional documentary requirements not listed above. <u>Otherwise, we will deem it that your office considered that the above submitted documents **constitute as the complete supporting documents** required for the processing of HEDCOR SIBULAN, INC.'s VAT claim</u> pursuant to Section 112(D) of the 1997 NIRC and RMO No. 53-98." (underscoring and emphases supplied)

As to the determination of the complete submission of documents, the Supreme Court *En Banc* has held that the taxpayer ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. Nevertheless, whether these documents are *actually*

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[69] *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014.

complete as required by law is for the CIR and the courts to determine.[70]

Furthermore, in ***Hedcor, Inc. v. Commissioner of Internal Revenue***,[71] the Supreme Court explained that it is logical to assume that in order to discharge the burden of proving entitlement to a tax refund, the law intends the filing of the administrative application to necessarily include the filing of complete supporting documents:

> It is worth emphasizing at this point that the burden of proving entitlement to a tax refund is on the taxpayer. <u>It is logical to assume that in order to discharge this burden, the law intends the filing of an application for a refund to necessarily include the filing of complete supporting documents to prove entitlement for the refund. Otherwise, the mere filing of an application without any supporting document would be as good as filing a mere scrap of paper</u>. Besides, the taxpayer was already given two (2) years to determine its refundable taxes and complete the documents necessary to prove its claim. The alleged completion of supporting documents after the filing of an application for an administrative claim — and worse, after the filing of a judicial claim — is tantamount to legal maneuvering, which this Court will not tolerate." (underscoring supplied)

Thus, if We rely upon the representation of the petitioner and count the "120+30"-day period from the "complete submission" of documents on December 12, 2012, petitioner had only until May 14, 2013, a Tuesday, to file its judicial claim.[72]

Wednesday, December 12, 2012	Transmittal Letter, complete documents, Exhibit "P-7"
120	Days for CIR to decide
30	Days for the taxpayer to appeal to CTA
Saturday, May 11, 2013	Deadline for the filing of judicial claim

The March 13, 2015 judicial claim was, therefore, filed out of time. Jr

[70] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[71] G.R. No. 207575, July 15, 2015.
[72] May 13, 2013, Monday, was declared a special non-working day by then President Benigno S. Aquino III, Official Gazette, http://www.gov.ph/2013/04/25/list-of-nationwide-holidays-for-2013/, last accessed February 13, 2017.

Even assuming further that We reckon the "120+30"-day period from the execution of the Closing Agreement on December 13, 2013, which explicitly closed and terminated the BIR CY 2011 audit of all internal revenue taxes triggered by the filing of the administrative claim and resulted in a deficiency tax assessment settled by the petitioner, petitioner only had until January 13, 2014 to appeal to the CTA:

Friday, December 13, 2013	Closing Agreement executed between the BIR and Hedcor
30	Days for the taxpayer to appeal to the CTA
Sunday, January 12, 2014	Deadline for the filing of the judicial claim

The LOAs, received on February 20, 2013 after the filing of the administrative claim, stated that the respondent's audit covered all the internal revenue taxes of CY 2011. Accordingly, We believe that the execution of the Closing Agreement should not have been construed otherwise but as an unequivocal *denial* insofar as it led to a deficiency tax assessment *instead of* a credit or refund.

A denial simply means "a refusal"[73] or "a refusal of something asked."[74] It is unclear how the petitioner could have misjudged the tenor of the Closing Agreement when it resulted in the payment of ₱445,894.21 instead of a credit or refund of ₱11,616,706.74, as it originally intended.

From the December 13, 2013 denial, therefore, petitioner only had thirty days or until January 13, 2014[75] within which to file an appeal with the CTA. Again, based on this method, the March 13, 2015 judicial claim was still filed beyond the prescription.

Nevertheless, even if We were to accommodate the view that the later submissions on March 24, 2014[76] and April 3, 2014,[77] subsequent to the Closing Agreement, allegedly prompted by a telephone request from the examiner, were justified and well-founded, the judicial claim is still *barred* by prescription.

If We count the "120+30"-day mandatory period from the last submission on April 3, 2014, petitioner should have filed its judicial claim on September 1, 2014, at the latest:

[73] Black's Law Dictionary (Eighth Edition).
[74] The Shorter Oxford English Dictionary, 6th Edition (2007).
[75] January 12, 2014 being a Sunday.
[76] Exhibit "P-18".
[77] Exhibit "P-19".

Thursday, April 3, 2014	Last submission of documents, Exhibit "P-19"
120	Days for CIR to decide
30	Days for the taxpayer to appeal to the CTA
Sunday, August 31, 2014	Deadline for the filing of the judicial claim

Again, the March 13, 2015 Petition for Review was still filed out of time. It was filed only 193 days after the lapse of the "120+30"-day period on September 1, 2014.

As the petitioner itself admitted during trial, for several months since its last submission on April 3, 2014, it "failed to receive any communication from the BIR until December 29, 2014" when it was transferred as a large taxpayer to RDO No. 121.[78]

Petitioner cannot ignore that, *by December 29, 2014*, there had undoubtedly been a lapse of *more than* 120 days, or to be exact *270 days*, without hearing anything from the respondent.

There is *inaction* when there is a "lack of action"[79] or "absence of action."[80] A lack of communication for 270 days, as acknowledged by the petitioner, is unmistakably a case of inaction.

It bears emphasis that the following circumstances should have been compelling enough to dispel any doubt from the petitioner that the credit or refund was *not* forthcoming from the BIR:

First, since December 12, 2012 when the administrative claim was filed, there had been almost a year of audit in connection with the administrative claim until its conclusion with the December 13, 2013 Closing Agreement.

Second, the Closing Agreement did *not* grant petitioner's claim at all. Instead, it resulted in deficiency assessment which the petitioner paid.

Third, there was respondent's inaction for about two (3) months between the December 13, 2013 Closing Agreement and the March 24,

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[78] Q58, Judicial Affidavit of Arazeli. L. Malapad, Assistant Vice President for Finance, Exhibit "P-22", docket, p. 297; See also Q30, Judicial Affidavit of Sonny Boy N. Salvador, Tax Compliance and VAT Recovery Specialist, Exhibit "P-24", docket, p. 861-862.
[79] Words and Phrases Permanent Edition (1940).
[80] The Shorter Oxford English Dictionary, 6th Edition (2007).

2014 and April 3, 2014 submissions, allegedly prompted by a telephone call from the revenue officer.

Fourth and most significantly, petitioner cannot deny that there was the 120-day inaction *after* the April 3, 2014 submission. Accordingly, these prior events should have prompted petitioner to realize early on that any credit or refund was highly unlikely.

Finally, as borne out by petitioner's admission, it was only in December 29, 2014 that petitioner heard again from the respondent. By this time, *more than* two (2) years have passed since the filing of the administrative claim on December 12, 2012 and certainly *more than* 120 days since April 3, 2014. These gaps stretch indisputably beyond the 120 days granted for the respondent to act on the claim in Section 112.

At the latest, petitioner's prudent measure and response should have been to elevate its claim to the Court within 30 days from the lapse of 120-days, on or before September 1, 2014.

In another input VAT refund case involving late filing of judicial claims, ***Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*** [81] interpreted Section 112, as follows:

> "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:
> >
> > 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

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

> 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 be 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, **whichever is sooner**." (underscoring and emphases supplied)

The case before us is clearly one example of *late filing* of judicial claim which is absolutely prohibited[82] and, unfortunately, the Court cannot venture to surmise petitioner's reason for failing to file its petition sooner.

One more point before we conclude.

In relying on Section 228 of the 1997 NIRC and the case of *Lascona*,[83] petitioner argues that, since the respondent did not lose jurisdiction over the administrative claim upon the expiration of the 120-day period, it had the option to wait for respondent's decision.[84] Petitioner, as the records bear out, waited for a written denial which came only on February 12, 2015.[85]

Silicon addresses this point when it interpreted Section 112 by fixing the filing of the judicial claims at the *earlier* of two events (1)

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[82] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,* G.R. No. 173241, March 25, 2015.
[83] *Lascona Land Co., Inc. v. Commissioner of Internal Revenue,* G.R. No. 171251, March 5, 2012.
[84] Petitioner's Memorandum, docket, pp. 944-949.
[85] Exhibit "P-21".

receipt of the decision, or (2) expiration of the 120-day period. Moreover, Section 228 and *Lascona* both refer to the procedures in an assessment, which involve policy considerations *unlike* those in refund cases under Section 112. Tax credits or refunds, like tax exemptions, are strictly construed against the taxpayer.[86]

Recently, in ***Allegro Microsystems Philippines, Inc. v. The Undersecretary of the Department of Finance, et al.***,[87] the CTA *En Banc* denied the claim of the taxpayer and stated that the claimant had no reason to rely on the *Lascona* ruling and, thus, elect to wait for the respondent's decision:

> "Considering that petitioner's claim was not denied within the one hundred and twenty (120)-day period, **the second option applies to petitioner**, such that petitioner **should have filed its judicial claim within thirty (30) days from the expiration of the one hundred and twenty (120)-day period**.
>
> Petitioner claims that due to the alleged similarities in Section 228 and Section 112(C), the ruling in *Lascona Land Co., Inc. v. Commissioner of Internal Revenue* ("Lascona"), should also apply to claims for refund under Section 112 of the 1997 NIRC. In *Lascona*, the Supreme Court, interpreting Section 228 of the 1997 NIRC, held that the taxpayer may await the final decision [to the protest] of the CIR and appeal the same within thirty (30) days after receipt of the copy of the decision, despite the expiration of the one hundred and eighty (180)-day period.
>
> Petitioner's reliance on *Lascona* is misplaced. *Lascona* refers to the judicial appeal of a disputed assessment pursuant to Section 228 of the 1997 NIRC. Here, what is involved is the timeliness of the judicial appeal with respect to a claim for refund of unutilized input VAT under Section 112 of the 1997 NIRC.
>
> Petitioner also cannot allege that it became aware of the "deemed denial" provision only when the BIR issued RMC No. 54-14 on June 11, 2014, considering that *San Roque* and *Mindanao II Geothermal* were promulgated on **February 12, 2013** and **January 15, 2014**, respectively. In fact, a perusal of *RMC No. 54-14* readily

[86] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[87] CTA EB No. 1327 (CTA Case No. 8882), January 30, 2017.

> shows that it is a mere application of the said Supreme Court rulings.
>
> A comparison of the dates of petitioner's claim for refund and judicial appeal *vis-a-vis* the promulgation of San *Roque* and *Mindanao II Geothermal* shows that petitioner had no reason to rely on *Lascona*; and that petitioner failed to timely appeal the inaction of respondents to the CTA.
>
> xxx xxx xxx
>
> Starting from the promulgation of *San Roque* in 2013, petitioner's options for appealing to the CTA with respect to a claim for refund or issuance of TCC for unutilized input VAT pursuant to *Section 112 of the 1997 NIRC* has been clearly stated, viz.:
>
> > The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.
>
> Therefore, petitioner had no reason to rely on the *Lascona* ruling and had no basis to await respondents' decision on its claim for refund beyond the one hundred and twenty (120)-day period." (underscoring supplied and emphases supplied)

As early as April 3, 2014, when petitioner allegedly submitted its final set of documents, *and within 120 days thereafter*, when respondent could have acted but sent no communication thereon, the *San Roque (February 12, 2013)* and *Mindanao II Geothermal (January 15, 2014)* holdings were already part of the jurisprudence on input VAT credit or refund claims. Petitioner should have taken heed of these holdings for guidance.

To repeat, after its submission on April 3, 2014, petitioner should have waited only until the expiry of 120 days. From the end of this mandated 120-day period, it should have appealed the inaction on the administrative claim within thirty days, or on or before September 1,

2014. Evidently, by March 13, 2015, when the judicial claim was filed, it was already barred by prescription.

WHEREFORE, the instant Petition for Review filed by Hedcor Sibulan, Inc. is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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