REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

STEFANINI PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11189

Members:

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

Promulgated:

JUL 18 2023 10:30 a.m.

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RESOLUTION

Upon persual of the the Petition for Review filed on June 14, 2023, the Court notes that it has no jurisdiction to take cognizance of the case.

The facts, as alleged in the Petition for Review, are as follows:

> "III
> THE FACTS
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> 3. During the 4th quarter of CY 2020, Petitioner rendered business process outsource solutions and contact or call center services in the Philippines in favor of its non-resident foreign affiliate entities which are engaged in business conducted outside the Philippines, the payments for which were made in acceptable foreign currency (USD, EUR, CAD, and GBP) and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas,* and to its PEZA-registered client which is entitled to VAT zero-rating on its purchases from local suppliers of goods and services.
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> 4. During the same period, Petitioner incurred and/or paid input VAT from domestic purchases of goods and services attributable to the above-described sale of services to its non-resident foreign affiliates and PEZA-registered client.
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> 5. On January 25, 2021, Petitioner filed its amended Quarterly VAT Return for the 4th quarter of CY 2020 with the BIR. Petitioner's accumulated excess input tax attributable to zero-rated sales amounted to P57,120,869.75. A copy of Petitioner's amended Quarterly VAT Return

for the 4th quarter of CY 2020 is attached and made integral part of this Petition as ***Annex "C"***.

6. On November 28, 2022, Petitioner filed an amended Quarterly VAT return for the 3rd quarter of CY 2022 thereby deducting accumulated and unutilized input VAT claimed for refund or issuance of TCC (Box 23D) in the amount of P1,764,157.51, representing input VAT attributable to its zero-rated sale of services for the 4th quarter of CY 2020.

7. Thus, Petitioner's excess input tax attributable to its zero-rated sales for the 4th quarter of CY 2020 amounting to P1,764,157.51, has remained unutilized and/or unapplied against petitioner's output tax liability. A copy of Petitioner's amended Quarterly VAT Return for the 3rd quarter of CY 2022 is attached and made integral part of this Petition as ***Annex "D"***.

IV
ADMINISTRATIVE CLAIM FOR REFUND

8. On December 21, 2022, Petitioner filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914), with supporting documents, of its excess and unutilized input VAT for the 4th quarter of CY 2020 in the amount of P1,764,157.51. A copy of Petitioner's Application for Tax Credits/Refunds (BIR Form No. 1914) is attached and made an integral part of this Petition as ***Annex "E"***.

9. On May 16, 2023, Petitioner received from the BIR a VAT Refund Notice with Annexes "A", "A.1", "A.2", "A.3" and "A.4" dated February 23, 2023 partially granting its Application for Tax Credits/Refunds of excess and unutilized input VAT for the 4th quarter of CY 2020 to the extent of P176,651.08 and denying the same to the extent of P1,587,506.43. The original of said VAT Refund Notice, as received by Petitioner, is made an integral part of this Petition as ***Annex "F"***."

In claiming for the refund of excess and unutilized input value-added tax (VAT) attributable to zero-rated sales, the taxpayer must file its administrative and judicial claims within the period prescribed under Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by the TRAIN Law,[1] to quote:

"*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

[1] Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Law.

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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(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the **Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed** in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial."

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code." (Boldfacing supplied)

The Supreme Court summarized the rules regarding the prescriptive periods for filing of the administrative and judicial claims for refund or tax credit of input VAT in the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*,[2] in this wise:

"SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. *(Aichi)*

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. *(San Roque)*

3. The only other rule is the *Atlas* ruling, which applied only from 8 June 2007 to 12 September 2008. *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT

[2] G.R. No. 191498, January 15, 2014.

payments should be counted from the date of filing of the VAT return and payment of the tax. *(San Roque)*

B. 120 [now 90] + 30-Day Period

1. 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 [now 90-day period], or (2) file the judicial claim within thirty days from the expiration of the 120-day [now 90- day] period if the Commissioner does not act within the 120-day [now 90-day] period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi* and *San Roque)*

4. As an exemption to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque)*

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *(San Roque)*"

Since the subject matter of the case pertains to refund of input VAT attributable to zero-rated sales made in the 4th quarter of calendar year (CY) 2020, the date of reckoning of the administrative two-year prescriptive period is the close of the fourth quarter of CY 2020, which is December 31, 2020. Counting two years from December 31, 2020, petitioner has until December 31, 2022 to file its administrative claim for refund.

In paragraph 8 of the Petition for Review, petitioner alleges that its Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the 4th quarter CY 2020 was filed with the Bureau of Internal Revenue (BIR) on December 21, 2022; thus, the application for administrative claim for refund was timely filed.

As regards the judicial claim for refund, this Court finds that the same was filed outside the period allowed under Section 112(C) of the NIRC of 1997, as amended.

Based on Section112(C) of the 1997 NIRC, as amended, and as elucidated in the afore-quoted *Mindanao II Geothermal case*,[3] there are two periods which must be considered in filing a judicial claim for the refund or tax credit of excess or unutilized input VAT, namely: (1) the period of ninety (90) days which serves as a period for the CIR to act on the administrative claim for refund or credit; and, (2) the period of thirty (30) days within which

[3] *Ibid.*

the taxpayer may file its judicial claim with the CTA. The filing of judicial claim for refund must be done either: (1) within thirty (30) days after the CIR denies the claim within the ninety (90)-day period; or, (2) within thirty (30) days from the expiration of the ninety (90)-day period if the CIR does not act within the ninety (90)-day period.

Revenue Memorandum Circular (RMC) No. 54-2014 requires that the application for VAT refund/credit must be accompanied by complete supporting documents and the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents. It is further required that the taxpayer shall state that the said documents are the only documents which the taxpayer will present to support the claim.

Based on the foregoing, the taxpayer is now required to submit complete documents upon its filing of an administrative claim for VAT refund/tax credit, as no other documents shall be accepted thereafter. For this purpose, the taxpayer shall also execute a statement under oath attesting to the completeness of said documents which shall also be submitted upon such filing. Thus, under the auspices of RMC No. 54-2014, there is no more need to delineate between verbal or written requests for additional documents because the submission thereof is not anymore allowed. To reiterate, the prevailing rule now is that all complete documents are to be submitted upon the filing of the taxpayer's administrative claim for refund.[4]

Applying the above rule in the case at bar, from the filing of petitioner's administrative application with the BIR on December 21, 2022, the CIR has ninety (90) days from petitioner's administrative claim, or until March 21, 2023, to act on the claim. Should the CIR fail to act on the application within the ninety (90)-day period, petitioner has thirty (30) days from such expiration to file its judicial claim, or until April 20, 2023. The instant Petition for Review was only filed on June 14, 2023, or beyond the prescribed period.

In paragraph 9 of the Petition for Review, petitioner avers that it received on May 16, 2023 the VAT Refund Notice from the BIR, dated February 23, 2023, granting partially its Application for Tax Credits/Refunds of excess and unutilized input VAT for the 4th quarter of CY 2020 in the amount of ₱176,651.08 and denying its input VAT to the extent of ₱1,587,506.43.

This Court, however, notes that the receipt of petitioner of the VAT Refund Notice on May 16, 2023 was already beyond the 90-day period, which ended on March 21, 2023. It is a settled ruled that judicial claim shall be filed

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[4] *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ vs. Commissioner of Internal Revenue*, G.R. No. 244154, July 15, 2020.

within a period of thirty (30) days after the receipt of respondent's decision or ruling; or, after the expiration of the 120-day [now ninety (90)-day] period, **whichever is sooner**.[5]

The petitioner's receipt of the BIR VAT Refund Notice on May 16, 2023, which was already beyond the ninety (90)-day period, does not alter the jurisdictional period within which to appeal to the CTA due to the inaction of the CIR, which ended on March 21, 2023. In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[6] the Supreme Court pronounced:

> "A final note, the taxpayers are reminded that when the 120-day [now 90-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 [now 90-day] waiting period."

The Supreme Court has also stated that *"any claim filed in a period less than or beyond the 120+30 [now 90+30] days provided by the NIRC is outside the jurisdiction of the CTA"*.[7]

The claims for tax credit or refund, just like tax exemptions, are strictly construed against the taxpayers.[8] Strict compliance with the 90+30-day period is, therefore, necessary for such claim for refund to prosper. The Court, therefore, has no jurisdiction over the judicial claim filed.

WHEREFORE, premises considered, the instant Petition for Review filed on June 14, 2023 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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5 *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

6 G.R. No. 168950, January 14, 2015, see also Lapanday Foods Corporation vs. Commissioner of Internal Revenue, G.R. No. 252821, September 2, 2020.

7 *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016, *supra.*.

8 *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219; *Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corp.*, G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549; *La Carlota Sugar Central vs. Jimenez*, 112 Phil. 232 (1961).

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice