REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

HEDCOR, INC., Petitioner,	**CTA EB No. 1867** (CTA Case No. 8964)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** AUG 07 2019 9:46a.m.

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DECISION

UY, J.:

The instant *Petition for Review*[1] filed on June 19, 2018 by Hedcor, Inc., petitioner, against the Commissioner of Internal Revenue, respondent, assails the Decision dated December 11, 2017[2] and Resolution dated May 16, 2018[3], rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8964, entitled *"Hedcor, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read as follows:

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[1] EB Docket, pp. 6 to 36.
[2] EB Docket, pp. 44 to 65.
[3] EB Docket, pp. 66 to 86.

<u>Decision dated December 11, 2017</u>:

> "**WHEREFORE,** in view of the foregoing, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
> **SO ORDERED.**"

<u>Resolution dated May 16, 2018</u>:

> "**WHEREFORE,** finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's **Motion for Reconsideration (Re: Decision dated December 11, 2017)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Hedcor, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at No. 214 Ambuclao Road, Obulan, Beckel, La Trinidad, Benguet Province, Philippines. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. (TIN) 001-946-873-000, as evidenced by its Certificate of Registration No. 4RC0000670842.

Petitioner is primarily engaged in the business of owning, developing, constructing, operating, repairing, and maintaining of hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating and/or owning power generation plants and/or converting stations.

Respondent, on the other hand, is the duly appointed Commissioner of the BIR, who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed on June 22, 2011 its applications for tax credit or refund of unutilized input taxes incurred in the four quarters of calendar year 2010 in the total amount of ₱22,610,505.01 with BIR Revenue District Office (RDO) No. 09.

On November 26, 2014, Christine M. Cardona, Revenue District Officer of RDO No. 09, informed petitioner that the processing of its four claims could not be pursued in line with the issuance of Revenue Memorandum Circular (RMC) No. 54-2014.

Petitioner thereafter filed a *Petition for Review* before the Court in Division on January 7, 2015. The case was docketed as CTA Case No. 8931.

Respondent filed an *Answer* in CTA Case No. 8931 on April 6, 2015, interposing, *inter alia*, certain special and affirmative defenses, summarized as follows:

> (1) in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor;
> (2) to support its claim, it is imperative for petitioner to prove certain facts;
> (3) petitioner must prove that the aggregate amount of ₱21,121,702.96 allegedly representing excess and unutilized input VAT for the 1st to 4th quarters of taxable year 2012 are properly documented;
> (4) in Revenue Memorandum Circular (RMC) No. 54-2014, the administrative claim for VAT refund or TCC must be filed within two (2) years from the close of the taxable quarter when the zero-rated sales and/or effectively zero-rated sales were made, and the application for VAT refund must be accompanied by complete supporting documents as specifically enumerated in Annex "A" of the RMC;
> (5) the taxpayer should attach a sworn statement/affidavit (i) attesting to the completeness of the submitted documents; (ii) stating that the attached supporting documents are the only documents which the taxpayer will present to support the claim; and, additionally, (iii) in the case of corporations or other juridical persons, there should be a sworn statement that the officer signing the affidavit (which should at the very least be the Chief Finance Officer) has been authorized by the company's Board of Directors;
> (6) the application for tax refund must be filed within two (2) years after the close of the taxable quarter when the sales

were made and the CIR has a 120-day period within which to decide whether to grant the claim;
(7) petitioner in this case failed to elevate the claim for refund within the period prescribed by law;
(8) even without the issuance of Revenue Memorandum Circular No. 54-2014, the law is clear that in case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the respondent to act on the application within the period prescribed, 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; and
(9) the burden of proof is on the taxpayer to establish its right to a refund.

After the pre-trial conference held on May 28, 2015, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on July 29, 2015. On August 10, 2015, the Court issued a Pre-Trial Order approving the parties' JSFI, thereby terminating pre-trial proceedings.

On August 24, 2015, upon motion of petitioner, Emmanuel Y. Mendoza was commissioned as an Independent Certified Public Accountant (ICPA).

During trial, petitioner presented (1) Arazeli Malapad, AVP-Controller of petitioner; (2) Emmanuel Y. Mendoza, the ICPA; and (3) Ada Santiago-Aquino, petitioner's tax supervisor, as its witnesses.

Petitioner filed its *Formal Offer of Documentary Exhibits* on June 1, 2016 and an *Amended Formal Offer of Documentary Exhibits* on August 22, 2016. Except for Exhibits "P-53-1", "P-54-1 to P-54-2", "P-55-1 to P-55-20", "P-56-1 to P-56-6", "P-57-1 to P-57-3", "P-58-1 to P-58-18", "P-59-1 to P-59-43", "P-60-1 to P-60-17", "P-61-1 to P-61-38", "P-62-1 to P-62-14", "P-63-1 to P-63-2", "P-64-1 to P-64-4", "P-65-1 to P-65-4", "P-66-1 to P-66-14", "P-73-1 to P-73-13", "P-74-1 to P-74-5", "P-75-1 to P-75-17", "P-76-1 to P-76-3", "P-77-1", "P-78-1 to P-78-6", "P-79-1 to P-79-4", "P-80-1 to P-80-4", "P-81-1 to P-81-4", "P-82-1 to P-82-2", "P-83-1 to P-83-2", "P-84-1 to P-84-2", "P-85-1 to P-85-74", "P-86-1 to P-86-105", "P-114-1 to P-114-5", "P-115-1 to P-115-32", "P-118-1 to P-118-14", "P-119-1 to P-119-28", "P-120-1 to P-120-2," "P-121-1", "P-122-1", "P-123-1 to P-123-3", and "P-112-1", the Court in Division admitted the rest of petitioner's formally offered exhibits in the Resolutions dated July 26, 2016 and October 20, 2016.

On the other hand, respondent manifested that he has no witness to present in CTA Case No. 8964. Hence, said case was submitted for decision on December 27, 2016, considering petitioner's *Memorandum* filed on December 5, 2016. On the other hand, respondent failed to file a memorandum.

In the assailed Decision dated December 11, 2017, the Court in Division dismissed petitioner's *Petition for Review* for lack of jurisdiction.[4]

Petitioner then filed its *Motion for Reconsideration (Re: Decision dated December 11, 2017)* on December 27, 2017,[5] to which respondent filed his *Opposition Re: Petitioner's Motion for Reconsideration* filed on February 2, 2018.[6] Thereafter, petitioner filed its *Reply (To: Opposition dated February 2, 2018)* on February 28, 2018.[7]

In the assailed Resolution dated May 16, 2018,[8] the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit, with a Concurring and Dissenting Opinion, penned by Justice Catherine T. Manahan.

Undaunted, petitioner filed with the Court *En Banc* a *Motion for Extension to File Petition for Review* on June 4, 2018.[9] In the Minute Resolution dated June 5, 2018,[10] petitioner was granted a final and non-extendible period of fifteen (15) days from June 5, 2018, or until June 20, 2018, within which to file its *Petition for Review*.

Thereafter, petitioner filed the instant *Petition for Review* with the Court *En Banc* on June 19, 2018.[11]

In the Resolution dated July 24, 2018,[12] respondent was ordered by the Court *En Banc* to file his comment to the instant *Petition for Review* within ten (10) days from receipt thereof. Thus,

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[4] EB Docket, pp. 44 to 65; Division Docket (CTA Case No. 8964) – Vol. II, pp. 668 to 689.
[5] Division Docket (CTA Case No. 8964) – Vol. II, pp. 690 to 706.
[6] Division Docket (CTA Case No. 8964) – Vol. II, pp. 714 to 722.
[7] Division Docket (CTA Case No. 8964) – Vol. II, pp. 727 to 735.
[8] EB Docket, pp. 66 to 86; Division Docket (CTA Case No. 8964) – Vol. II, pp. 744 to 764.
[9] EB Docket, pp. 1 to 4.
[10] EB Docket, p. 5.
[11] EB Docket, pp. 6 to 36.
[12] EB Docket, pp. 90 to 91.

respondent filed his *Comment/Opposition* on August 7, 2018.[13]

The instant case was submitted for decision in the Court *En Banc*'s Resolution dated August 23, 2018.[14] However, petitioner filed a *Motion for Extension of Time to File Reply* on August 28, 2018,[15] as well as a *Reply (Re: Opposition/Comment dated August 7, 2018)* on September 5, 2018.[16]

In the Resolution dated September 19, 2018,[17] petitioner's *Motion for Extension of Time to File Reply* was deemed granted, in the interest of substantial justice, and the *Reply (Re: Opposition/Comment dated August 7, 2018)* was admitted and will be considered in the resolution of this case.

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for resolution, to wit:

"I
Whether or not the Second Division erred when it ruled that it has no jurisdiction over the Petition for Review

II
Whether or not RMC 54-2014 can be applied retroactively

III
Whether or not Hedcor has legal bases to claim for input VAT refund or tax credit"[18]

Petitioner's arguments:

Petitioner contends that the Court in Division has jurisdiction over the *Petition for Review* in CTA Case No. 8964. Its claim was acted upon and expressly denied, precluding the application of the "deemed denied" doctrine. Petitioner had thirty (30) days from the

[13] EB Docket, p. 92 to 100.
[14] EB Docket, pp. 103 to 104.
[15] EB Docket, pp. 105 to 108.
[16] EB Docket, pp. 109 to 118.
[17] EB Docket, pp. 120 to 121.
[18] EB Docket, p. 14.

issuance of the respondent's Decision denying the claim to file its *Petition for Review.*

According to petitioner, the Court in Division erred when it applied the provisions of RMC No. 54-2014 retroactively. Petitioner submits that the retroactive application of RMC No. 54-2014 resulted in the deprivation of due process because the procedure for the processing of administrative claims was changed during the pendency of the claims; that respondent continued to have jurisdiction to act on petitioner's administrative claim for tax refund/credit after the lapse of the 120+30-day period as confirmed by RR No. 1-2017; and that the interpretation of the 120+30-day period should be consistent with the legislative intent behind the amendment to Section 112(C) of the Tax Code.

Finally, petitioner argues that it has legal and factual bases to claim for input VAT refund; and that it is legally entitled to claim input VAT credit/refund.

Respondent's counter-arguments:

Respondent counters that the Court in Division correctly ruled that it has no jurisdiction over the case.

In addition, respondent argues that RMC No. 54-2014 merely called for the application of the provisions of the Tax Code in the advent of the decisions of the Supreme Court.

Finally, respondent submits that petitioner's reliance on RMC No. 49-03 and RR No. 1-2017 is erroneous and misplaced.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The Court in Division has no jurisdiction to entertain petitioner's **Petition for Review in CTA Case No. 8964.** ***The "deemed denied" doctrine applies to this case.***

In arguing that the Court in Division has jurisdiction over its *Petition for Review* in CTA Case No. 8964, petitioner contends that its claim was acted upon and expressly denied, precluding the application of the "deemed denied" doctrine.

We do not agree.

Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337,[19] states:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> 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 <u>within one hundred twenty (120) days</u> 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, <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</u>, appeal the decision or the unacted claim with the Court of Tax Appeals.**" *(Emphases and underscoring supplied)*

The foregoing provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for respondent to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with this Court.[20] It has been held that one of the

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[19] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

[20] *ROHM Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

conditions for a judicial claim of refund or credit under the VAT System is compliance with the said 120+30-day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30-day periods is necessary for such a claim to prosper.[21]

Furthermore, in *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[22] the Supreme Court clarified as to when the 30-day period should commence, to wit:

> "**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.**
>
> xxx xxx xxx
>
> **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.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law,[23] **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA**." *(Emphases and underscoring supplied)*

Based on the foregoing, the 30-day period provided by law should be reckoned from the receipt of respondent's decision/ruling or after the expiration of the 120-day period, **whichever is sooner**. Furthermore, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day periods is outside the jurisdiction of this Court.

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[21] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. No. 187485, 196113, 197156, February 12, 2013.

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

[23] In *CIR vs. San Roque Power Corporation, etseq.* (G.R. Nos. 187485, 196113 & 197156, February 12, 2013, the Supreme Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal in *CIR vs. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823) on October 6, 2010 need not wait for the lapse of the 120+30-day period.

Moreover, in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*,[24] the Supreme Court reminded taxpayers that when the one hundred and twenty (120)-day period lapses and there is inaction on the part of the respondent within the said period, the taxpayer must no longer wait for the respondent to come up with a decision, to wit:

> "A final note, the taxpayers are reminded that 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**. **<u>The CIR's inaction is the decision itself. It is already a denial of the refund claim.</u>** Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period." (*Emphasis supplied)*

Based on the foregoing jurisprudential pronouncements, in case respondent fails to act on the taxpayer's administrative claim for tax credit or refund within the 120-day prescribed period, the taxpayer may treat such inaction as a denial of its claim. Thus, the taxpayer must no longer wait for respondent to come up with a decision before it files an appeal to this Court. Consequently, the taxpayer must file an appeal within thirty (30) days from the lapse of the 120-day waiting period.

In this case, petitioner waited for respondent's supposed decision denying its claim for refund, in the letter dated November 26, 2014, which came after the lapse of the mandatory and jurisdictional 120+30-day periods under Section 112(C) of the NIRC of 1997, as amended by RA No. 9337. In other words, the expiration of the 120-day period in this case, came sooner than the date of receipt of respondent's decision/ruling allegedly on December 9, 2014.

Thus, as correctly held by the Court in Division, the 30-day period should have been reckoned from the expiration of the said 120-day period, not on any other later date. Since the filing of petitioner's judicial claim on January 7, 2015 was made beyond the said 120+30-day periods, the same is outside the jurisdiction of the Court in Division.

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[24] G.R. No. 168950, January 14, 2015.

The "deemed denied" concept is a concept established by law and not by RMC No. 54-2014.

According to petitioner, the "deemed denied" concept was merely introduced by RMC No. 54-2014 on June 11, 2014, and the said administrative issuance should not be given retroactive application.

Petitioner is clearly in error.

Section 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282, provides:

> "SEC. 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 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 relation 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 for action, in which case the inaction shall be deemed a denial**;"

The charter of this Court expressly provides that its jurisdiction is to review on appeal *"decisions of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes."*[25] However, the same charter also expressly provides that if respondent fails to decide within *"a specific period"* required by law, such *"inaction shall be deemed a denial"* of the application for tax refund or credit. It

[25] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013

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is the respondent's decision, or inaction *"deemed a denial"*, that the taxpayer can take to this Court for review. Without a decision or an *"inaction x x x deemed a denial"* of the respondent, this Court has no jurisdiction over a petition for review.[26]

Thus, the *"deemed denied"* concept is **not** an administrative invention created via RMC No. 54-2014. Rather, it is one engrained in the law, or is a concept established by statute. Such being the case, with or without RMC No. 54-2014, there can be "deemed a denial" of an administrative refund claim. Correspondingly, the issue as to whether or not there was a retroactive application of RMC No. 54-2014 has no bearing in this case.

Nevertheless, it must be emphasized that the right to appeal to this Court from a decision or *"deemed a denial"* decision of respondent is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise.[27] Pertinently, the CTA law expressly provides that when the respondent fails to take action on the administrative claim, the *"inaction shall be deemed a denial"* of the application for tax refund or credit. The taxpayer-claimant must strictly comply with the mandatory period by filing an appeal with this Court within thirty days from such inaction, otherwise, the court cannot validly acquire jurisdiction over it.[28]

One of the provisions of the NIRC of 1997 which provides *"a specific period for action"* is the earlier quoted Section 112(C) of the NIRC of 1997, as amended by RA No. 9337.[29]

Based on the said Section 112(C), respondent is given a period of 120-days from the submission of complete documents in support of the application to either grant or deny the claim. If the claim is denied by respondent, or the latter has not acted on it within the 120-day period, the taxpayer-claimant is then given a period of 30 days to file a judicial claim *via* petition for review with this Court.[30]

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[26] *Ibid.*
[27] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, supra.
[28] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[29] The other being Section 228 of the NIRC of 1997.
[30] *Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue*, G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018.

As such, **the law provides for two (2) scenarios before a judicial claim for refund may be filed with this Court: (1) the full or partial denial of the claim <u>within the 120-day period</u>, or (2) the lapse of the 120-day period without the respondent having acted on the claim.** It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT.[31]

In this case, the said first scenario did not happen. No full or partial denial of the claim transpired within the 120-day period. Rather, only the said second scenario happened, *i.e.*, the 120-day period lapse without the respondent having acted on the claim. However, as already intimated, petitioner failed to file a judicial claim by way of a Petition for Review with this Court, within 30 days from the lapse of the said 120-day period.

In this connection, it is well-settled that a judicial claim for refund which does not comply with the 120-day mandatory waiting period renders the same void. As such, no right can be claimed or acquired from it.[32] Thus, although petitioner was able to file a *Petition for Review* on January 7, 2015 with the Court in Division or beyond the 120+30-day periods, the same is of no moment, for being void.

Petitioner cannot find solace in RR No. 1-2017.

Petitioner contends that respondent continued to have jurisdiction to act on its claim for tax refund/credit after the lapse of the 120+30-day periods as confirmed by RR No. 1-2017.

We disagree.

Pertinent portions of RR No. 1-2017[33] provide as follows:

"SECTION 1. BACKGROUND. – xxx

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[31] *Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue*, supra.
[32] *Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue*, supra.
[33] SUBJECT: Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed Under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014.

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It appears that RMC No. 54-2014 was being given retroactive effect because pending claims were deemed denied upon expiration of the 120-day period from the date the claims were filed even though the taxpayers-claimants are still in the process of submitting the complete documents which was allowed under RMC No. 49-2003. It presumed that the pending claims had been filed with complete documents and the same have remained unacted upon beyond the 120-day period.

On December 8, 2016, the Supreme Court, in the case *Pilipinas Total Gas, Inc. vs. The Commissioner of Internal Revenue* (G.R. No. 207112), decreed that taxpayers 'have every right to pursue their claims in the manner provided by existing regulations at the time it was filed,' and, therefore, RMC No. 54-2014 cannot be applied retroactively as this would prejudice taxpayer whose claims for tax credit or tax refund were filed and pending before June 11, 2014, the date RMC No. 54-2014 took effect. This judicial declaration compels the need to clarify the tax treatment and processing of applications for VAT tax credit/refund filed and pending prior to RMC 54-2014.

SEC. 2. SCOPE. – Pursuant to the provisions of Section 244, in relation to Section 246 and Section 112 of the Tax Code, as amended, **these Regulations are issued to give effect to the doctrinal rule laid down in the aforecited *Pilipinas Total Gas* case and to afford fair and adequate relief to taxpayer-claimants whose claims were 'deemed denied' as a result of the retroactive application of RMC No. 54-2014.** For this purpose, and consistent with the judicial 'summation of rules' decreed to be 'made applicable to claims of tax credit/refund filed before June 11, 2014,' such claims filed prior to RMC No. 54-2014 shall continue to be processed administratively.

SEC. 3. PROCESSING OF ADMINISTRATIVE CLAIMS. – VAT claims filed and pending prior to the effectivity of RMC 54-2014, the claims solely covered by these Regulations, shall be processed and approved in accordance with the following rules:

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1. The claimant-taxpayer, under Section 112(A) of the Tax Code, as amended, 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, <u>before the administrative claim is barred by prescription, the taxpayer must have submitted his complete documents in support of the application filed</u>. This is because, <u>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 clarified under RMC No. 49-2003</u>.**

2. **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 Tax Code, as amended, and <u>the Commissioner, or his duly authorized representative, should have decided on the claim for tax credit or refund within 120 days from the date of submission of complete documents</u>**, or from the date filing of the application, if the claimant-taxpayer did not submit additional documents.

   Hence, pending administrative claims prior to the effectivity of RMC No. 54-2014 shall be processed by the concerned offices based on available documents submitted by the claimant-taxpayer within the aforesaid statutory two-year period. For this purpose, the result shall be communicated in writing by the concerned revenue official.

SEC. 4. CLAIMS NOT COVERED. – **The following claims filed and pending before the effectivity of RMC 54-2014 are <u>not covered</u> by these Regulations:**

1. **Those claims filed beyond the two-year statutory prescriptive period under Section 112(A) of the Tax Code, <u>as explained in Sec. 3 hereof</u>;**

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2. Those denied in writing by the approving authority;
3. Those approved or granted fully or partially by the approving authority; and
4. Those already appealed to and pending with the CTA unless there is proof of withdrawal of the case filed with the CTA." *(Emphases and underscoring supplied)*

While the foregoing administrative issuance confirms that RMC No. 54-2014 should not be given retroactive application, it never stated that respondent continued to have jurisdiction to act on petitioner's claim after the lapse of the 120+30-day periods. In fact, pursuant to above-quoted Section 3(2) of RR No. 1-2017, it is required that respondent, or his duly authorized representative, **<u>should have decided</u> on the claim for tax credit or refund within 120 days** from the date of submission of complete documents, or from the date of filing of the application (if the claimant-taxpayer did not submit additional documents), thereby implying that the failure to do so, would call for the commencement of the running of the mandatory and jurisdictional 30-day appeal period, after the lapse of the said 120-day period. Simply put, RR No. 1-2017 even recognizes the mandatory and jurisdictional nature of the 120+30-day periods.

Moreover, it must be emphasized that petitioner's claim is beyond the coverage of RR No. 1-2017. Under Section 4(1) thereof, those claims filed beyond the two-year statutory prescriptive period under Section 112(A) of the NIRC, although pending before the effectivity of RMC No. 54-2014, are not covered. As explained in Section 3(1) of RR No. 1-2017, *"before the administrative claim is barred by prescription, the taxpayer must have submitted his complete documents in support of the application filed"*, based on the reason that *"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 clarified under RMC No. 49-2003."*

It must be remembered that in this case, since the periods of the subject claims cover the four (4) quarters of the year 2010, the end of the two-year prescriptive periods for the 1st quarter is March 31, 2012; for the 2nd quarter is June 30, 2012; for the 3rd quarter is September 30, 2012; and for the 4th quarter is December 31, 2012. However, despite the lapse of such prescriptive periods, petitioner continued to submit additional documents via the *Transmittal Letter (dated July 14, 2014) of the Additional Supporting Documents for the*

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First to Fourth Quarters of 2010[34] and the *Transmittal Letter (dated December 16, 2014) of the Additional Supporting Documents for the First to Fourth Quarters of 2010*[35] which both signify that the submitted documents, as of the end of the said two-year prescriptive periods, are not yet complete.

Thus, even under RMC No. 49-2003 [as stated under Section 3(1) of RR No. 1-2017], which clarifies that the application is "officially received" only upon the submission of complete documents, petitioner's claims for refund, are already barred by prescription, for its failure to submit complete documents in support his application within the two-year prescriptive period under Section 112(A) of the NIRC of 1997, as amended.

Clearly, RR No. 1-2017 does not support petitioner's stand.

Finding that petitioner's *Petition for Review* in CTA Case No. 8964 was not timely filed and therefore, the Court in Division acquired no jurisdiction over the same, there is no need to look into the issue of whether or not petitioner has legal and factual bases to claim for the subject input VAT refund.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated December 11, 2017 and the Resolution dated May 16, 2018 rendered by the Court in Division, in CTA Case No. 8964, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[34] Exhibit "P-42".
[35] Exhibit "P-41".

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I reiterate my Concurring and Dissenting Opinion dated 5/16/18 in CTA Case No. 8964)
CATHERINE T. MANAHAN
Associate Justice

(no part)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(no part)
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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice