

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

LEAD EXPORT AND AGRO- CTA EB NO. 2398
DEVELOPMENT CORPORATION, (CTA Case No. 10161)
Petitioner,

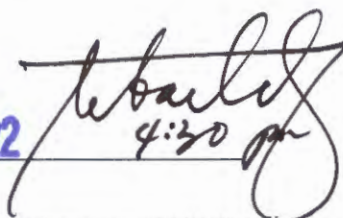
-versus-

Present:
DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

COMMISSIONER OF INTERNAL Promulgated:
REVENUE,

Respondent.

JUL 21 2022


4:30 pm

x

x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,¹ filed by petitioner Lead Export and Agro-Development Corporation, assailing the Resolution, dated 12 March 2020,² and Resolution, dated 11 December 2020,³ both rendered by the Court in Division,⁴ dismissing the Petition for Review filed before it for lack of jurisdiction.

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¹ *EB* Records, pp. 13- 105, with annexes.

² Division Records, pp. 386-391.

³ *Id.*, pp. 435-439.

⁴ Court of Tax Appeals - Second Division.

The Parties

Petitioner Lead Export and Agro-Development Corporation is a corporation organized and existing under the laws of the Philippines with principal place of business at La Libertad Sto. Tomas, Davao Del Norte. Petitioner is primarily engaged in the production and export of fruits and other agricultural products.

Respondent is the duly appointed Commissioner of Internal Revenue who is tasked to assess and collect all national internal revenue taxes, fees, and charges, and enforce all forfeitures, penalties, and fines connected therewith.

The Facts

For the third and fourth quarters of taxable year 2008, petitioner filed with the Bureau of Internal Revenue (BIR) its amended Quarterly VAT Returns (BIR Form No. 2550Q) as follows:

Period Covered	Date Return Filed
3 rd Quarter - 2008	23 September 2009
4 th Quarter - 2008	26 November 2009

Thereafter, it filed applications for tax credit of its excess and unutilized input VAT from zero-rated sales for the third and fourth quarters of 2008. The total amount it claimed was ₱14,989,045.45, as follows:

Claimant Sheets for taxable year 2008	Date filed	Amount Claimed
3 rd Quarter	8 October 2009	₱5,286,722.97
4 th Quarter	16 December 2009	₱9,702,322.48
Total		₱14,989,045.45

In his letter, dated 13 February 2019, respondent denied with finality the applications for tax credit filed by petitioner on the ground that the zero-rated sales claimed by petitioner were not substantiated with Export Declaration and Bills of Lading/Airway Bills.

After receiving a copy of said letter on 26 March 2019, petitioner filed a Petition for Review with this Court on 5 September 2019,⁵ which was raffled off to the Second Division.

⁵ CTA Case No. 10161; Division Records, pp. 10-133.

Respondent filed his Answer on 8 October 2019.⁶

Following Pre-Trial held on 7 November 2019 and before presentation of any witnesses, respondent filed a Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court.⁷

In his Motion, respondent pointed out that as alleged by petitioner, it filed its application for tax credit of its excess and unutilized input VAT for the 3rd and 4th quarters of 2008 on 8 October 2009 and 16 December 2009, respectively. Assuming that the administrative claims were filed on time, respondent had 120 days, or until 5 February 2010 and 15 April 2010, respectively, within which to decide whether or not the administrative claim should be granted. If the administrative claim was not acted upon within said 120 days, such action would be deemed a denial. Petitioner, then, had 30 days from the lapse of such 120 days, or until 7 March 2010 and 15 May 2010, respectively, within which to elevate the matter before this Court. Since the Petition for Review was filed only on 5 September 2019, citing **Section 112(D) of the Tax Code, as amended**, petitioner argued that the same was filed beyond the mandatory and jurisdictional 30-day period from the expiration of the 120-day period.

With the filing of petitioner's Comment/Opposition to the said Motion on 13 February 2020,⁸ the matter was submitted for resolution.

On 12 March 2020, the Second Division issued its Resolution granting the Motion and dismissing the Petition for Review before it for lack of jurisdiction.⁹

On 3 July 2020, petitioner filed its Motion for Reconsideration,¹⁰ which was met by an Opposition from respondent, filed on 26 August 2020.¹¹

Finally, on 11 December 2020, the Second Division issued its Resolution denying petitioner's Motion for Reconsideration for lack of merit.¹²

As earlier stated, petitioner then filed the present Petition for Review with this Court En Banc on 18 January 2021. ✓

⁶ *Id.*, pp. 140-147.

⁷ *Id.*, pp. 326-335.

⁸ *Id.*, pp. 361-384.

⁹ *Id.*, pp. 386-391.

¹⁰ *Id.*, pp. 399-424.

¹¹ *Id.*, pp. 427-432.

¹² *Id.*, pp. 435-439.

With the filing of respondent's Comment on 7 June 2021,¹³ the Petition for Review was given due course and submitted for Decision on 7 July 2021.¹⁴

Hence, this Decision.

Issues

Whether or not the Court in Division erred in deciding that it had no jurisdiction over the Petition for Review filed before it.

Whether or not the Court in Division erroneously denied petitioner's entitlement to its claim for tax credit when such claim can be fully supported.

Arguments of the Parties

Petitioner's Arguments¹⁵

While petitioner acknowledges the period for filing of a judicial claim as contained in *Section 112(c) of the National Internal Revenue Code of 1997*, it posits that the same provides taxpayers with two (2) alternative remedies, to wit:

- "a) Filing a judicial claim within the 30-day filing period from the denial or partial denial of the administrative claim; **or**
 - b) Filing a judicial claim within a 30-day filing period from the end of the 120-day waiting period, after which the inaction of the CIR **may** be deemed (a) denial."¹⁶
- (Emphasis in the original.)

Petitioner goes to on to argue that "(w)hen the 120+30-day period was called mandatory and jurisdictional, its meaning was that, in the case of inaction, the taxpayer must wait for the 120-day waiting period to lapse before filing a judicial claim, but the law did not exclude the available remedy of going to the CTA should the CIR decide to issue a decision after the lapse of the 120-day period."¹⁷

¹³ *EB Records*, pp. 128-133.

¹⁴ *Id.*, pp. 136-137.

¹⁵ *See* Summary of Arguments and Discussion, Petition for Review, *id.*, pp. 19-45.

¹⁶ Petition for Review, p. 8; *EB Records*, p. 20.

¹⁷ *Id.*

Respondent's Arguments¹⁸

Citing *Section 112 of the National Internal Revenue Code*, and the Decision appealed from, respondent insists that the Petition filed below was filed out of time.

The Ruling of the Court *En Banc*

The Court *En Banc* finds the Petition unmeritorious.

In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*¹⁹, the Supreme Court already ruled with clarity on the 120+30 day period provided for in *Section 112*. Its disquisition is as follows:

“The applicable provision of the NIRC, as amended, is Section 112, which provides:

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.**

(B) *Capital Goods.* — **A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.** ✓

¹⁸ See Comment (Re: Petition for Review), *id.*, pp. 128-130.

¹⁹ G.R. No. 182737, 2 March 2016.

(C) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

(D) *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) [and (B)] 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.

(E) *Manner of Giving Refund.* — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit. (Emphases supplied)

Under the foregoing provision, the administrative claim of a VAT-registered person for the issuance by respondent of tax credit certificates or the refund of input taxes paid on zero-rated sales or capital goods imported may be made within two years after the close of the taxable quarter when the sale or importation/purchase was made.

In the case of petitioner, its administrative claim for the 2nd quarter of the year 2001 was filed on 16 October 2001, well within the two-year period provided by law. The same is true with regard to the administrative claims for the 3rd and the 4th quarters of 2001, both of which were filed on 4 September 2002.

Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.

Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit- or actually✓

submitted - additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.

Considering that there is no evidence in this case showing that petitioner made later submissions of documents in support of its administrative claims, the 120-day period within which respondent is allowed to act on the claims shall be reckoned from 16 October 2001 and 4 September 2002.

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 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.

Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, 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."

In view of the clear pronouncement above, petitioner's insistence that it could very well have filed its judicial claim within thirty days from its receipt of the Decision of the respondent, even if this was issued beyond the 120 day period for him to decide the administrative claim before him, is decidedly futile.✓

To stress, 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.

As shown by the table below, the judicial claims of petitioner were filed beyond the 120+30-day period:

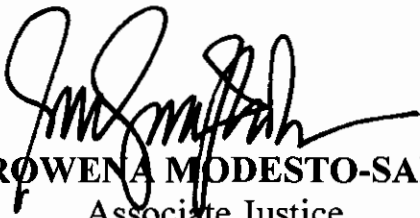
Taxable Quarter of 2008	Administrative Claim Filed	End of the 120-day Period	End of the 30-day Period	Judicial Claim Filed	Number of Days Late
3rd	8 October 2009	5 February 2010	7 March 2010	5 September 2019	3,469
4th	16 December 2009	15 April 2021	15 May 2010	5 September 2019	3,400

The judicial claims having been filed an astounding 3,469 and 3,400 days, respectively, from the date when they should have been filed, there can be no denying that these were belatedly filed.

Accordingly, the Court in Division was correct in dismissing the Petition before it for lack of jurisdiction.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by Lead Export and Agro-Development Corporation is hereby **DENIED** for lack of merit. Accordingly, the assailed Resolutions, dated 12 March 2020 and 11 December 2020, both rendered by the Court in Division, are hereby **AFFIRMED**.

SO ORDERED.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

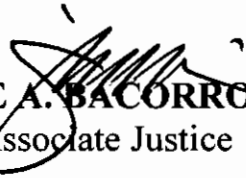

ERLINDA P. UY
Associate Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE

CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
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 ✓