REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CHEMREZ, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1448
(CTA Case No. 9247)

Members:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Ringpis-Liban, *JJ.*

Promulgated:
OCT 21 2016 1:48 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioner Chemrez, Inc.'s **Motion for Reconsideration (of the Resolution dated May 30, 2016)** filed through registered mail on July 4, 2016, which the Court received on July 14, 2016, with Comment thereon filed by respondent Commissioner of Internal Revenue (CIR) on September 13, 2016.

The present Motion seeks reconsideration of the May 30, 2016 Resolution which dismissed the Petition for Review for being time-barred and for lack of merit. The dispositive part of the assailed Resolution reads:

> **"WHEREFORE**, the Petition for Review is **DISMISSED**.
>
> **SO ORDERED**."

In seeking reconsideration of the assailed Resolution, petitioner presents the following grounds:

A. The Court *En Banc* erred when it ruled that the Court in Division correctly counted the 120-day period from the date of filing of petitioner's administrative claim;

B. The Court *En Banc* erred when it ruled that the inaction of the CIR during the 120-day period counted from the date of filing of petitioner's administrative claim is "deemed a denial decision"; and

C. In the interest of substantial justice, petitioner should be afforded the amplest opportunity for the proper and just determination of its cause, free from constraints of procedural technicalities. Such rigid application of the procedural rules will cause grave miscarriage of justice to the petitioner.

Petitioner argues that the 120-day period within which the CIR should act on a claim for refund of unutilized input VAT must be reckoned from the submission of complete documents supporting the claim and not from the time the administrative claim for refund was filed. Petitioner claims that it submitted additional documents subsequent to the filing of the administrative claim for refund as shown in the copy of its transmittal letters dated November 25, 2008, December 3, 2008 and October 13, 2015, which were attached as Annexes "K", "L" and "M" to its Petition for Review filed before the Court in Division, and attached as Annexes "A", "B" and "C" to the present Motion.

Petitioner also asserts that the "deemed a denial decision" of a claim for VAT refund did not set-in since the 120-day period has not lapsed in the case; and that the 30-day period within which to appeal the denied claim subject of this case should be reckoned from the date of receipt of the BIR's letter denying petitioner's administrative claim.

In his Comment, respondent states that the principle of "*stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established)" applies in the present case. Respondent argues that before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law, they have an initial burden to discharge in proving that they complied with all the administrative requirements. Accordingly, before trial *de novo* proceeds and for the Court to dispose the issue of refund entitlement under substantive law, it must first be proved that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings.

The Motion for Reconsideration of petitioner must fail.

To begin with, this Court *En Banc* need not pass upon the merits of the case since the Petition for Review assailing the Court in Division's Resolutions dated February 10, 2016 and March 22, 2016 was filed out of time. Parenthetically, the aforestated Resolutions of the Court in Division have become final, executory and unappealable. The Court En Banc is bereft of jurisdiction to review said Resolutions and it is thus left with no recourse but to dismiss the Petition for Review outright.

Contrary to petitioner's proposition, the failure to timely perfect an appeal cannot simply be regarded as a mere technicality, for it is, in truth, jurisdictional. The pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corp.*[1] is enligthening, *viz.*:

> "It has been ruled that **perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case**. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.
>
> Xxx xxx xxx.
>
> It need not be overemphasized that it is the responsibility of the counsel to check and keep track of the period of time left to file an appeal. He cannot escape from the inflexible observance of this rule which is jurisdictional. **The rules, particularly on the statutory requirement for perfecting an appeal within the reglementary period provided, must be strictly followed. If an appeal is not taken within the period prescribed therefor, the judgment becomes final and the court loses all jurisdiction over the case**." (Boldfacing supplied)

[1] G.R. No. 167606, August 11, 2010.

This Court is not unaware of the case of *Anita C. Vianzon, Heir of the Late Lucila Candelaria Gonzales vs. Minople Macaraeg*[2] cited by petitioner wherein the Supreme Court gave due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a miscarriage of justice. Here, there is no compelling reason for the Court *En Banc* to apply the *Vianzon case* considering that, as extensively discussed in the assailed Resolution, the Petition for Review is found to be patently without merit.

Anent the other arguments presented by petitioner in the present Motion, specifically on the recknoning of the 120-day period, the Court *En Banc* finds that they are mere reiteration or amplification of arguments raised in its Petition for Review which have been thoroughly tackled in the assailed Resolution, particularly on *pages 5 to 11* thereof.

All told, the Court *En Banc* finds no compelling reason or substantial justification to modify its findings much less reverse the assailed Resolution.

WHEREFORE, the Motion for Reconsideration filed by petitioner on July 4, 2016 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[2] G.R. No. 171107, September 5, 2012.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice