REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MD RIO VISTA AGRI-VENTURES, INC., Petitioner,	**CTA CASE NO. 11247**
	Members:
- versus -	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 24 2023

x---x 4:10 p.m.

RESOLUTION

Before this Court is the Petition for Review posted through registered mail on August 3, 2023 and received by the Court on August 8, 2023. Upon perusal of the allegations thereof, 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:

"IV
STATEMENT OF FACTS AND OF THE CASE

10. Petitioner was established on 15 July 1999 primarily to engage in the business of developing and operating agricultural lands, particularly in planting and cultivating Cavendish bananas for export.

11. Petitioner is also a registered exporter with the Bureau of Customs ("BOC"), as evidenced by its BOC Certificate of Renewal of Export License dated 18 July 2023. It is likewise registered with the Board of Investments ("BOI") as an export producer of Cavendish bananas, as evidenced by its BOI Certificate of Registration No. 2019-263 dated 2 December 2019.

12. Petitioner is registered with the BIR as a VAT taxpayer with Taxpayer Identification Number 005-210-007, as evidenced by its BIR Certificate of Registration No. OCN-99-112-001451 issued on 18 July 1999.

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33. On 31 March 2023, pursuant to RMO No. 47-2020 in relation to Section 112(A) of the Tax Code, Petitioner filed with the VAT Credit Audit Division of the BIR National Office its application for VAT refund for the period covering 1 January to 31 December 2021 claiming excess unutilized input VAT in the amount of **Five Million One Hundred Eleven Thousand One Hundred Twenty and 23/100 Pesos (PhP5,111,120.23)**.

34. In support of its claim for VAT refund, Petitioner submitted the following supporting documents pursuant to RMO No. 47-2020:

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35. On 4 July 2023, in response to its claim for VAT refund, Petitioner received VAT Refund Notice dated 15 June 2023 issued by the CIR, through ACIR Maria Luisa I. Belen, DENYING IN FULL Petitioner's claim for VAT refund based on the following:

xxx xxx xxx."
(Footnotes omitted)

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

(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 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.

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

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 export sales from January 1, 2021 to December 31, 2021 pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the date of reckoning of the administrative two-year prescriptive period is the close of the respective taxable calendar quarter of the year 2021. Petitioner, therefore, should file its administrative claim for refund within the following two-year periods:

Calendar Quarter of Year 2021	**Two Years from the End of Calendar Quarter**
1st Quarter 2021	March 31, 2023
2nd Quarter 2021	June 30, 2023
3rd Quarter 2021	September 30, 2023
4th Quarter 2021	December 31, 2023

In paragraph 33 of the Petition for Review, petitioner alleges that its application for VAT refund covering the period January 1 to December 31, 2021 was filed with the VAT Credit Division of the Bureau of Internal Revenue (BIR) on March 31, 2023; thus, petitioner's application for administrative claim for refund for all quarters of taxable year (TY) 2021 was timely filed.

As regards the judicial claim for refund, however, this Court finds that the same was filed outside the prescriptive 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 Commissioner of Internal Revenue (CIR) to act on the administrative claim for refund or credit; and, (2) the period of thirty (30) days within which the taxpayer may file its

[3] *Ibid.*

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, whichever is earlier.

Applying the above rule in the case at bar, from the filing of petitioner's administrative application with the BIR on March 31, 2023, the CIR has ninety (90) days, or until June 29, 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 July 29, 2023.

In paragraph 35 of the Petition for Review, petitioner avers that it received on July 4, 2023 the VAT Refund Notice from the BIR, dated June 5, 2023, which completely denied its claim for refund; and, thereafter, filed its Petition for Review on August 3, 2023. Such action of petitioner demonstrates its mistaken notion that the counting of the thirty (30)-day period, within which to file a judicial action, is reckoned from the date of its receipt of CIR's denial of its claim for refund despite the fact that the ninety (90)-day period has prescribed earlier than the receipt of the CIR's denial letter, to wit:

Taxable Year 2021	Two Years from the end of the Calendar Quarter	Date filed with the BIR	Receipt of CIR's Denial Letter	Last day of Judicial filing (90 + 30 days)	Actual Filing with the CTA
1st Quarter	March 31, 2023	March 31, 2023	July 4,2023	July 29,2023	August 3,2023
2nd Quarter	June 30, 2023	March 31, 2023	July 4,2023	July 29,2023	August 3,2023
3rd Quarter	September 30, 2023	March 31, 2023	July 4,2023	July 29,2023	August 3,2023
4th Quarter	December 31, 2023	March 31, 2023	July 4,2023	July 29,2023	August 3,2023

The Court clarifies that when petitioner received the VAT Refund Notice on July 4, 2023 denying entirely its claim for refund, the same was already beyond the ninety (90)-day period for the CIR to act, which ended on June 29, 2023. It is a settled ruled that judicial claim shall be filed 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 90-day] period, **whichever is sooner.**[4] The petitioner's receipt of the BIR VAT Refund Notice on July 4, 2023, which was already beyond the 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 July 29, 2023.

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

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[5] 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"*.[6]

We reiterate that jurisdiction is conferred by law and the lack of it affects the very authority of the Court to take cognizance of and to render judgment on the action; otherwise, the inevitable consequence would make the Court's discretion a 'lawless' thing.[7]

Rule 9, Section 1 of the Rules of Court provides:

> "SECTION 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **when it appears from the pleadings** or the evidence on record **that the court has no jurisdiction over the subject matter**, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, **the court shall dismiss the claim**." (Emphasis supplied)

Pursuant to the above provision, there are four instances when the court may *motu proprio* dismiss the claim, namely: (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription of action.[8] The dismissal of the instant case falls within the prescription of action. The Court, therefore, may *motu proprio* dismiss the case as it appears from the petition that lack of jurisdiction exists.

Settled is the rule that claims for tax credit or refund, just like tax exemptions, are strictly construed against the taxpayers.[9] Strict compliance with the 90+30-day period is, therefore, necessary for such claim for refund to prosper.

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[5] G.R. No. 168950, January 14, 2015, see also Lapanday Foods Corporation vs. Commissioner of Internal Revenue, G.R. No. 252821, September 2, 2020.
[6] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016, *supra*..
[7] *Municipality of Sta. Fe vs. Municipality of Aritao*, G.R. No. 140474, September 21, 2007.
[8] Moya II, Salvador N. (2020 Edition). *Remedial Law (Civil Procedure), Volume I, Part I*, p. 594.
[9] *Sitel Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017.

WHEREFORE, premises considered, the instant Petition for Review filed on August 3, 2023 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice