REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ADVANCED WORLD SYSTEMS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2509
(CTA Case No. 9767)

Present:

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

Promulgated:
MAY 3 0 2022 2:45pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a Petition for Review[1] filed on September 2, 2021 by petitioner Advanced World Systems, Inc., praying to vacate and set aside the Resolutions dated August 26, 2020[2] and March 9, 2021[3] promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 9767, entitled "Advanced World Systems, Inc. vs. Commissioner of Internal Revenue". The dispositive portions of the assailed Resolutions read:

August 26, 2020 Resolution (First Assailed Resolution):

[1] En Banc (EB) Docket, pp. 37-78.
[2] EB Docket, pp. 69-77; Third Division (Division) Docket, Vol. 2, pp. 715-723.
[3] EB Docket, pp. 60-67; Division Docket, Vol. 2, pp. 745-752.

> "**WHEREFORE**, premises considered, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court is **GRANTED**. The instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."

March 9, 2021 Resolution (Second Assailed Resolution):

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration [Re: Resolution dated August 26, 2020]** is hereby denied for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner Advanced World Systems, Inc. is a corporation duly organized and existing under the laws of the Philippines. It is a software development company established in 1993 and registered to engage primarily in developing, manufacturing, buying, selling, distributing, and marketing software, computers, peripherals and other related products and parts. It also engages in computer consultancy, advisory and other related auxiliary services. It is represented by its Senior Vice President and Chief Financial Officer, Lizabeth Ong-Coro, and may be served with notices, pleadings, and other court processes at its counsel's office address RS Gallardo Law Office, Unit 300 Valero Plaza, 124 Valero Street, Salcedo Village, Makati City.[4]

Respondent Commissioner of Internal Revenue (respondent or CIR) is sued in his official capacity, having been duly appointed to exercise the powers and perform the duties of his office, including *inter alia*, the power to decide disputed assessments, application for refunds or tax credits of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended. He may be served with summons, notices and other processes of this Honorable Court at his office on the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[5]

[4] EB Docket, p. 38.
[5] *Id.*

THE FACTS

On March 16, 2012, petitioner filed with the BIR an administrative claim for tax credit of its excess input tax in the aggregate amount of P4,494,279.36 for the period April 1, 2010 to March 31, 2011,[6] which is broken down as follows:

Application for TCC submitted to DOF One Stop Shop with the following stub numbers and covered period:	**Amount**
Stub No. 65459 (April 1, 2010 and June 30, 2010 documents)	733,066.08
Stub No. 65458 (July 1, 2010 to September 30, 2010 documents)	1,936,485.93
Stub No. 65460 (October 1, 2010 to December 31, 2010 documents)	1,012,101.67
Stub No. 65461 (January 1, 2011 to March 31, 2011 documents)	812,625.68
Total TCC Claim	**P4,494,279.36**

Petitioner filed the said administrative claim within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made, to wit:

Taxable Quarter	**Close of the Taxable Quarter**	**End of the 2-year Period to file Administrative Claim**	**Filing of the Administrative Claim**
2nd Quarter 2010	30 June 2010	30 June 2012	16 March 2012
3rd Quarter 2010	30 September 2010	30 September 2012	
4th Quarter 2010	31 December 2010	31 December 2012	
1st Quarter 2011	31 March 2011	31 March 2013	

Petitioner further alleged that it submitted the complete documentary requirements in support of its application during the period required.

[6] Division Docket, Vol. 1, p. 10.

On June 11, 2014, Revenue Memorandum Circular (RMC) No. 54-2014[7] was issued. Thereafter, on January 3, 2017, Revenue Regulations (RR) No. 1-2017[8] was issued.

On January 11, 2018, petitioner allegedly received respondent's Denial Letter dated December 14, 2017.[9]

On February 12, 2018, petitioner filed a Petition for Review with the Court in Division praying that its claim for tax credit for the period covering April 1, 2010 to March 31, 2011be granted.

On June 26, 2018, respondent filed his Answer[10] and raised as his Special and Affirmative Defenses: that (1) in action for refund, the burden of proof is on the taxpayer to establish its right thereto, and failure to sustain said burden is fatal to its claim; (2) petitioner must show that it has complied with Section 112 of the NIRC of 1997, as amended, on the prescriptive period for claiming tax refund/credit. The present claim should be denied for petitioner's failure to comply with the mandatory invoicing requirements under Section 113, in relation to Section 110 of the NIRC of 1997, as amended.

The Pre-Trial Conference was set on October 9, 2018.[11] On October 5, 2018, petitioner and respondent filed their respective Pre-Trial Briefs.[12]

On October 8, 2018, respondent filed his Offer of Testimonial Evidence with the attached Judicial Affidavit of Mary Ann Estacio. On the other hand, on November 8, 2018, petitioner filed its Urgent *Ex Parte* Motion for Extension of Time to File Judicial Affidavit,[13] which the Court in Division granted on November 15, 2018.[14]

On November 20, 2018, petitioner filed the Judicial Affidavit of its Finance Manager, Cherry Raymundo Catarata.[15]

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[7] Clarifying Issues Relative to the Application of Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended, June 11, 2014.
[8] Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Refund/Credit Filed Under Section 112 of the Tax Code, as Amended, Prior to Memorandum Circular No. 54-2014 dated June 11, 2014, January 3, 2017.
[9] Division Docket – Vol. I, p. 10 and pp. 285-289.
[10] *Id.*, pp. 310-316.
[11] *Id.*, p. 327.
[12] *Id.*, pp. 329-336 and pp. 337-342.
[13] *Id.*, pp. 358-374.
[14] *Id.*, pp. 377-378.
[15] *Id.*, pp. 379-394.

On November 27, 2018, it also filed an Urgent *Ex Parte* Motion for Extension of Time to File Joint Stipulation of Facts and Issues (JSFI)[16] which the Court in Division granted on December 3, 2018.[17]

On December 10, 2018, the parties filed their Joint Manifestation[18] stating their JSFI. On even date, petitioner filed an Urgent *Ex Parte* Motion for Extension of Time[19] to file its Motion to Commission Independent Certified Public Accountant (ICPA), which the Court in Division granted on December 13, 2018.[20]

On January 21, 2019, petitioner filed its Omnibus Motion: (1) Motion for Additional Dates for Marking of Exhibits; and, (2) Urgent Motion to Reset Hearing [Set on 31 January 2019],[21] which the Court in Division granted on January 25, 2019.[22]

On February 13, 2019, petitioner filed anew its Urgent *Ex Parte* Motion for Extension of Time to file its Motion to Commission ICPA,[23] which was granted on February 19, 2019.[24] On February 21, 2019, petitioner filed another Urgent *Ex Parte* Motion for Extension of Time with Motion to Reset Hearing,[25] which was granted on March 4, 2019.[26]

Trial then ensued.

On March 7, 2019, petitioner presented the testimony of Cherry Raymundo Catarata, its Finance Manager.[27]

On April 1, 2019, petitioner filed its Motion to Commission ICPA with attached judicial affidavit of Nestor Mario S. Cabauatan,[28] which the Court in Division granted on September 10, 2019.[29]

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[16] *Id.*, pp. 397-401.
[17] *Id.*, p. 404.
[18] *Id.*, pp. 405-411.
[19] *Id.*, pp. 412-415.
[20] *Id.*, pp. 417-418.
[21] *Id.*, pp. 449-453.
[22] *Id.*, p. 458.
[23] *Id.*, pp. 462-465.
[24] *Id.*, p. 473.
[25] *Id.*, pp. 479-485.
[26] *Id.*, p. 494.
[27] *Id.*, pp. 495-497.
[28] Division Docket, Vol. 2, pp. 498-532.
[29] *Id.*, pp. 539-540.

On October 25, 2019, petitioner filed its Compliance with attached ICPA Report.[30] On February 10, 2020, it filed the Judicial Affidavit of Nestor Mario S. Cabauatan.[31]

On February 26, 2020, respondent filed a Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court,[32] praying for the dismissal of the petition for being time-barred and/or lack of jurisdiction.

On June 30, 2020, petitioner filed its Comment to the Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated 21 February 2020.[33]

On August 26, 2020, the Court in Division rendered the questioned Resolution[34] dismissing the case for lack of jurisdiction.

On October 21, 2020, petitioner filed a Motion for Reconsideration of the Resolution dated August 26, 2020.[35]

On November 18, 2020, respondent filed an Opposition to the Motion for Reconsideration of the Resolution dated August 26, 2020.[36]

In the Resolution[37] dated March 9, 2021, the Court in Division denied petitioner's Motion for Reconsideration of the Resolution dated August 26, 2020, for lack of merit.

On July 19, 2021, petitioner filed a Motion for Extension of Time to File Petition for Review, asking for a fifteen (15)-day extension from July 17, 2021, or until August 1, 2021, within which to file its petition and paid on even date the corresponding docket and lawful fees.[38] In a Minute Resolution, this Court granted said extension on July 23, 2021.[39]

Considering that August 1, 2021 fell on a Sunday, petitioner filed by registered mail the instant Petition for

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[30] *Id.*, pp. 615-677.
[31] *Id.*, pp. 619-678.
[32] *Id.*, pp. 680-689.
[33] *Id.*, pp. 698-711.
[34] EB Docket, pp. 69-77; Division Docket, Vol. 2, pp. 715-723.
[35] Division Docket, Vol. 2, pp. 724-732.
[36] *Id.*, pp. 736-741.
[37] EB Docket, pp. 60-67; Division Docket, Vol. 2, pp. 745-752.
[38] EB Docket, pp. 1-35; Division Docket, Vol. 2, pp. 753-787.
[39] EB Docket, pp. 81-82.

Review[40] on August 2, 2021, which by this Court received on September 2, 2021.

On October 28, 2021, respondent filed his Comment on the Petition for Review.[41]

On November 23, 2021, petitioner filed a Motion for Leave to File Reply[42] with attached Reply to respondent's Comment dated October 28, 2021.[43]

In the Resolution dated February 16, 2022, petitioner's Motion for Leave to File Reply and its Reply to respondent's Comment were denied admission for having no actionable document attached to it, contrary to Section 10, Rule 6 of the Rules of Court. Thus, the instant Petition for Review was submitted for decision *sans* petitioner's Reply.

Hence, this Decision.

THE PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner argues that the commencement of the thirty (30)-day period to file the judicial claim should be counted from its receipt of the Denial Letter on January 11, 2018, and not after the expiration of the one hundred twenty (120)-day period. Petitioner submits that there are special circumstances surrounding its judicial claim, which do not obtain in the prevailing jurisprudence on the 120+30-day rule but which should be considered by this Court, to wit: (a) RMC No. 54-2014; (b) RR No. 1-2017; and (c) the CIR's Denial Letter dated December 17, 2017.

Petitioner alleges that its administrative claim was deemed denied, not because of the lapse of the 120+30-day period, but due to the retroactive application of RMC No. 54-2014.

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[40] EB Docket, pp. 37-78.
[41] EB Docket, pp. 83-88; Division Docket, Vol 2, pp. 788-793.
[42] Division Docket, Vol. 2, pp. 794-796.
[43] Division Docket. Vol. 2, pp. 797-801.

Petitioner maintains that the processing of its claim pursuant to Section 4 of RR No. 1-2017 was justified.[44] Petitioner claims that the CIR issued RR No. 1-2017 to rectify the erroneous retroactive application of RMC No. 54-2014. Petitioner further contends that when the CIR still processed its claims pursuant to RR No. 1-2017, despite the lapse of the period to decide, this meant that the CIR, in effect, *vacated* the "deemed denied" ruling and *waived* the applicability of the 120+30-day period in this case.[45]

Petitioner further adds that in the case of *Visayas Geothermal Power Company vs. CIR*[46] *(Visayas Geothermal Power),* taxpayers acting in good faith should not be made to suffer for adhering to interpretations of the CIR since the latter has the exclusive and original jurisdiction to interpret tax laws. It opines that Section 246 or the Non-Retroactivity of Rulings of the Tax Code, in harmony with the doctrine of equitable estoppel, expressly provides that a reversal of a BIR regulation or ruling cannot prejudice a taxpayer who, in good faith, relied on the said BIR regulation or ruling prior to its reversal. Thus, its appeal on the Denial Letter is warranted.

Respondent's arguments

Respondent points out that petitioner has 30 days from the lapse of 120 days after its administrative claim, or until August 16, 2012, within which to elevate the matter before this Court; however, respondent's Petition for Review was filed only on February 12, 2018, or beyond the mandatory and jurisdictional 30-day period from the expiration of the 120-day period pursuant to Section 112 (D) of the Tax Code.

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[44] SECTION 4. *Claims Not Covered.* — The following claims filed and pending before the effectivity of RMC 54-2014 are not covered by these Regulations:

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

[45] EB Docket, par. 35, p. 45 and par. 52, p. 60.

[46] G.R. No. 197525, June 4, 2014.

THE ISSUE

The Court *En Banc* notes that the instant petition for review does not contain a statement of the issues involved in the case. However, based on the discussion in the Petition for Review, the main question presented before this Court is:

> WHETHER THE THIRD DIVISION OF THIS COURT ERRED IN DISMISSING THE PETITION FOR REVIEW ON THE GROUND THAT IT HAS NO JURISDICTION TO RULE ON THE BIR'S DENIAL LETTER APPEALED BY THE PETITIONER WITHIN THIRTY (30) DAYS FROM RECEIPT THEREOF.

THE COURT *EN BANC'S* RULING

Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that an appeal from a decision or resolution of the Court in Division on a motion for reconsideration shall be taken to the Court *En Banc* by petition for review as provided in Rule 43 of the Revised Rules of Court. Sections 6 and 7, Rule 43 of the Revised Rules of Court, in turn, respectively prescribe the format to be followed by petitioner in its petition, and that the failure to comply therewith justifies the dismissal of the petition, to wit:

> Section 6. *Contents of the petition.* — **The petition for review shall** (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) **contain a** concise **statement of** the facts and **issues involved and the grounds relied upon for the review**; ...
>
> Section 7. *Effect of failure to comply with requirements.* — **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and **the contents of** and the documents which should accompany **the petition shall be sufficient ground for the dismissal thereof.** *(Emphasis supplied)*

In relation thereto, Section 2, Rule 6 of the RRCTA also provides that the petition must contain a statement of issues:

RULE 6
PLEADINGS FILED WITH THE COURT

> SEC. 2. *Petition for review; contents.* – **The petition for review shall contain** allegations showing the jurisdiction of the Court, a concise statement of the complete facts and **a summary statement of the issues involved in the case**, as well as the reasons relied upon for the review of the challenged decision. ... *(Emphasis supplied)*

In the case of *De Liano vs. Court of Appeals*,[47] the Supreme Court held that the rules governing the contents of the pleadings are devised in a way to facilitate the Court's administration of justice, *viz.:*

> The premise that underlies **all appeals** is that they are merely rights which arise from statute; therefore, they **must be exercised in the manner prescribed by law. It is to this end that rules governing pleadings** and practice **before appellate courts** were imposed. These rules **were designed to assist the appellate court in the accomplishment of its tasks, and overall, to enhance the orderly administration of justice**.
>
> ... ...
>
> ...**It has its logic, which is to present to the appellate court in the most helpful light, the factual and legal antecedents of a case on appeal.**
>
> ... ...
>
> When the appellant has given an account of the case and of the facts, he is required to **<u>state the issues to be considered by the appellate court</u>**. ...**The statement of issues puts forth the questions of fact or law to be resolved by the appellate court**.
>
> ... ...
>
> Some may argue that adherence to these formal requirements serves but a meaningless purpose, that these may be ignored with little risk in the smug certainty that liberality in the application of procedural rules can always be relied upon to remedy the infirmities. This misses the point. We are not martinets; in appropriate instances, we are prepared to listen to reason, and to give relief as the circumstances may warrant. However, **when the error relates to something so elementary as to be inexcusable,**

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[47] G.R. No. 142316, November 22, 2001.

> **our discretion becomes nothing more than an exercise in frustration.**
>
> ... ...
>
> **We remind members of the bar that their first duty is to comply with the rules, not to seek exceptions.** ... *(Emphasis supplied)*

In this case, petitioner failed to **state the issues to be considered by the Court *En Banc*.** Thus, the Court has to sift through the various repetitive arguments of the petitioner to determine the issues to be resolved. Instead of assisting the Court in arriving at a proper conclusion by presenting in concise form its questions in controversy, the petition confounded it as no question of fact or law was put forth by the petitioner.

Notwithstanding that the petitioner could have been more circumspect in drafting its petition, the Court remains diligent in the examination of the petition, and the pleadings submitted by the parties for that matter, despite the procedural lapse, in order to dispose this case in a just and speedy manner.[48]

We shall now determine the timeliness of the petition.

The instant Petition for Review was timely filed.

Section 18 of Republic Act (RA) No. 1125, as amended, in relation to Section 3 (b), Rule 8 of the RRCTA, provides that a party adversely affected by a decision or a resolution of a Division of the Court on a motion for reconsideration or new trial, may file a petition for review with the Court *En Banc* within fifteen (15) days from receipt of the questioned decision or resolution.

In this case, the First Assailed Resolution of the Third Division dated August 26, 2020 was received by the petitioner on September 24, 2020.[49] On October 9, 2020, within fifteen (15) days from receipt of the First Assailed Resolution, petitioner filed its Motion for Reconsideration.[50] The Motion for Reconsideration was denied in the Second Assailed Resolution

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[48] RRCTA, Rule 1-Title and Construction, Section 2. *Liberal construction.*- The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.
[49] Division Docket, Vol. 2, p. 724.
[50] Division Docket, Vol. 2, pp. 724-733.

dated March 9, 2021, which was received by the petitioner on July 2, 2021.[51]

Petitioner had 15 days from July 2, 2021, or until July 17, 2021 (Saturday), within which to file its appeal with the Court *En Banc.*

On July 19, 2021 (Monday), petitioner filed a Motion for Extension of Time to File Petition for Review with the Court *En Banc*,[52] which was granted in the Minute Resolution dated July 23, 2021, giving it a non-extendible period of 15 days from July 17, 2021, or until August 1, 2021 (Sunday), to file its Petition for Review.

The instant Petition for Review was timely filed on the next working day, August 2, 2021.

Now, poring over the arguments presented by the petitioner, the Court finds them unmeritorious, as will be discussed hereunder.

Petitioner's judicial claim with the Third Division of this Court was filed out of time.

Section 112 (A) and (C) of the NIRC of 1997, as amended, provides for the time periods for the filing and processing of administrative claim[53] and judicial claim[54] for tax refund or credit:

> SECTION. 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, ...

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[51] Division Docket, Vol. 2, p. 753; EB Docket, p. 39.
[52] EB Docket, pp. 1-35.
[53] In *CIR vs. Mindanao II Geothermal Partnership* (G.R. No. 189440, June 18, 2014) citing *CIR vs. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823, October 6, 2010), the Supreme Court clarified the mandatory and jurisdictional nature of the 120+30-day period provided under Section 112 of the NIRC. The 2-year prescriptive period under Section 112(A) of the NIRC refers to the filing of an administrative claim with the BIR.
[54] *Id.* Section 112(C) of the NIRC pertains to judicial claim that must be filed within a mandatory and jurisdictional period of 30 days from the date of receipt of the decision denying the claim, or within 30 days from the expiration of the 120-day period for deciding the claim.

> (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 **within one hundred twenty (120) days 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, **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**. (*Emphasis supplied.*)

As for the timeline for filing of judicial claim, reference may be made to Section 11 of RA No. 1125,[55] as amended by RA 9282:[56]

> Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... may file an appeal with the CTA **within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action** as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** A Division of the CTA shall hear the appeal: ... (*Emphasis supplied*)

Moreover, Section 3(a), Rule 8 of the RRCTA, which implements the above provision, states:

> SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or **claims for refund of internal revenue taxes**,

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[55] An Act Creating the Court of Tax Appeals, June 16, 1954.
[56] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

> ... may appeal to the Court by petition for review filed **within thirty days** after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. ... *(Emphasis supplied)*

From the foregoing, it is clear that the administrative claim for tax refund or credit must be filed with the BIR within **two (2) years** after the close of the taxable quarter when the sales were made.[57]

In case of an adverse decision or ruling, or inaction of the CIR, the taxpayer is given a period of **thirty (30) days** from receipt of the decision or ruling, or the expiration of the 120-day period fixed by law, to file a Petition for Review with the CTA.

Said rules, as laid down in *CIR vs. San Roque Power Corporation (San Roque),*[58] have now become a hornbook doctrine:

> Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at anytime within the **two-year prescriptive period**. ... The Commissioner will have 120 days from such filing to decide the claim. **If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA**. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C). *(Emphasis supplied)*

In *CIR vs. Taganito Mining Corp.,* citing the case of *CIR vs. Mindanao II Geothermal Partnership,*[59] the Supreme Court provides a summary of the rules on prescriptive periods for claiming tax refund/credit under Section 112 of the NIRC of 1997, as amended, as follows:

> **A. *Two-Year Prescriptive Period***
>
> ... ...
>
> **B. *120+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 period, or (2) file the judicial claim **within thirty days**

[57] *CIR vs. Team Sual Corporation,* G.R. No. 194105, February 5, 2014.
[58] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[59] G.R. No. 191498, January 15, 2014.

> **from the expiration of the 120-day period** if the Commissioner <u>does not act within the 120-day period</u>.
>
> 2. **The 30-day period always applies, whether there is a <u>denial</u> or <u>inaction</u> 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 exception 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. **<u>Late filing is absolutely prohibited</u>**, even during the time when BIR Ruling No. DA-489-03 was in force. (San Roque) *(Emphasis supplied)*

In the instant case, there is no dispute with regard to the timeliness of petitioner's administrative claim for tax credit of its excess input tax in the aggregate amount of P4,494,279.36 for the period April 1, 2010 to March 31, 2011. The claim was filed on March 16, 2012, which is well within the 2-year reglementary period.

The crux of the controversy lies on *when* the 30-day period for filing a judicial claim shall be reckoned.

Petitioner asserts that the 30-day period should be counted from January 11, 2018, the date of its receipt of the Denial Letter dated December 14, 2017, and not from the lapse of the 120-day period reckoned from the filing of its administrative claim on March 16, 2012.

We disagree.

In the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. CIR*,[60] it was emphasized that the **<u>30-day period</u>** commences after the receipt of respondent's decision or ruling **<u>or</u>** after the expiration of the 120-day period, **<u>whichever is sooner</u>**. Thus:

> 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

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

> complete documents, the taxpayer may resort to a judicial claim before the CTA. ...
>
> 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, **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**. *(Emphasis supplied)*

Stated otherwise, the 30-day period provided by law is counted from the receipt of the CIR's decision/ruling, **or** from the lapse of the 120-day period, **whichever is sooner**. Thus, a judicial claim filed in a period *less than* or *beyond* the said 120+30-day period, is *outside the jurisdiction of the CTA.*

In *Lapanday Foods Corporation vs. CIR (Lapanday),*[61] citing *Rohm Apollo Semiconductor Philippines vs. CIR,*[62] 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 him to come up with a decision** before filing a judicial claim. 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 waiting period.

Based on the foregoing pronouncement, the CIR's inaction is "deemed a denial" of the claim. The taxpayer's failure to appeal within 30 days renders the "deemed a denial" decision of the CIR final and unappealable.[63]

In the instant case, petitioner filed its administrative claim for tax credit for all four quarters (last three quarters of 2010 and first quarter of 2011) on March 16, 2012. As found by the Court in Division,[64] nowhere in the Petition did it state that: (a) it asked for further extension from the BIR to submit additional documents; (b) it filed additional documents after March 16, 2012; or (c) respondent asked or required for the submission of additional documents after March 16, 2012.

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[61] Notice, G.R. No. 252821, September 2, 2020.
[62] G.R. No. 168950, January 14, 2015.
[63] *CIR vs. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[64] Page 7 of the assailed Resolution dated March 9, 2021.

Thus, it is deemed to have submitted the complete documents when it filed the administrative claim.

The following table provides the relevant dates in this case:

Taxable Quarter	**Filing of Admin. Claim**	**End of 120 days for the CIR to decide**	**End of 30 days to appeal with the CTA**	**Filing of Judicial claim-Petition for Review**	**Remarks**
2nd Quarter 2010	March 16, 2012	July 16, 2012	August 15, 2012	February 12, 2018	Late
3rd Quarter 2010	March 16, 2012	July 16, 2012	August 15, 2012	February 12, 2018	Late
4th Quarter 2010	March 16, 2012	July 16, 2012	August 15, 2012	February 12, 2018	Late
1st Quarter 2011	March 16, 2012	July 16, 2012	August 15, 2012	February 12, 2018	Late

As reflected above, the 120-day period for the respondent to act on the administrative claim of the petitioner commenced to run on **March 16, 2012**, and expired on July 14, 2012. Considering that July 14, 2012 fell on a Saturday, the due date of the respondent to resolve the administrative claim was extended to **July 16, 2012**. Given the inaction of the respondent by the end of the 120-day period, petitioner had 30 days from July 16, 2012, or until **August 15, 2012**, to file its judicial claim with the CTA. However, petitioner only filed its judicial claim on **February 12, 2018**, or more than five (5) years after the lapse of the period. For petitioner's failure to comply with the 120+30-day mandatory period, this Court finds that the Court in Division correctly dismissed the case for lack of jurisdiction.

Accordingly, we quote with approval the findings of the Court in Division in the First Assailed Resolution, as follows:

> As stated in the Petition for Review, petitioner filed its administrative claim, together with the supporting documentary requirements on 16 March 2012. Nowhere in the instant Petition did it state that the petitioner filed additional documents after 16 March 2012.

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> Therefore, assuming that the administrative claim was timely filed, respondent had 120 days counted from 16 March 2012 or until 14 July 2012 to resolve the administrative claim. Considering that 14 July 2012 fell on a Saturday, the due date of the respondent to resolve the administrative claim was extended to 16 July 2012.
>
> However, in this case, respondent failed to rule on the administrative claim within the said period. Considering this, the administrative claim is deemed denied and the recourse of the petitioner was to file its judicial claim within 30 days after 16 July 2012 or until 15 August 2012. **Since the Petition for Review was filed only on 12 February 2018, the same was clearly filed out of time.**
>
> Even assuming *arguendo* that petitioner made use of the 30-day period and filed additional documents to support its administrative claim, the fact still remains that the instant Petition was filed beyond the mandatory 120+30 days periods since in this scenario, the petitioner is mandated to have filed its Petition for Review on 12 September 2012, which is years before the filing of the instant Petition.
>
> ... [65]

With respect to petitioner's claim that 30-day period should be counted from its receipt of the Denial Letter on January 11, 2018, and not from the lapse of the 120-day period from the filing the claim on March 16, 2012, this Court reiterates the discussion of the Court in Division in the First Assailed Resolution, *viz.*:

> The contention of the petitioner that the 30-day period to file the judicial claim should be counted from its receipt of the Denial Letter on 11 January 2018, is **without merit**. As ruled by the supreme Court in *CIR vs. San Roque Power Corporation*, **the receipt of the Denial Letter after the lapse of the 120-day period is inconsequential**, because the VAT refund/credit claim, by this time, is already deemed denied, and had become final and unappealable after the lapse of 30 days, to wit: ... [66]

Indubitably, when petitioner's judicial claim was filed before the Third Division of this Court on February 12, 2018, or more than five (5) years after the lapse of the 120+30-day mandatory and jurisdictional periods, *i.e.*, July 16, 2012, and August 15, 2012, respectively, the denial of petitioner's claim for tax credit had long attained finality.

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[65] Page 6 of the Resolution dated August 26, 2020.
[66] *Id.*

Hence, petitioner's judicial claim was filed out of time, and the Court in Division could not validly exercise jurisdiction over its Petition for Review.

RMC No. 54-2014 and RR No. 1-2017 do not cover petitioner's administrative claim.

Petitioner submits that its reliance on the CIR's issuances justifies the filing of the instant Petition;[67] that RR No. 1-2017 and the Denial Letter treated petitioner's claim as still pending at the time RMC No. 54-2014 was issued;[68] that the fact that the CIR still processed its claim despite the lapse of the period to decide, can only mean that the CIR *waived* the application of the 120+30 day period and *vacated* the "inaction deemed denied" rule;[69] and that its administrative claim was deemed denied, not because of the lapse of the 120+30-day period, but due to the retroactive application of RMC No. 54-2014.

This Court finds the arguments of the petitioner without merit.

To reiterate, petitioner filed its administrative claim, together with the supporting documentary requirements on March 16, 2012. Respondent had 120 days counted from March 16, 2012 or until July 16, 2012 to resolve the administrative claim, since the 120th day, July 14, 2012, fell on a Saturday. Respondent failed to rule on the administrative claim within the said period. Such inaction was "deemed a denial" of petitioner's administrative claim as of July 16, 2012 and its recourse was to file a judicial claim within 30 days from July 16, 2012 or until August 15, 2012. Petitioner's failure to appeal the "deemed a denial" decision of the CIR with the CTA, renders the same final and unappealable as of **August 15, 2012.**

Accordingly, when RMC No. 54-2014 and RR No. 1-2017 were issued by the respondent on **June 11, 2014** and **June 3, 2017**, respectively, petitioner's administrative claim for tax credit was no longer *pending,* and the "deemed a denial" decision of the respondent had already attained finality. Clearly, petitioner's administrative claim was "deemed denied" not by virtue of RMC No. 54-2014.

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[67] Par. 23, Petition for Review, CTA EB No. 2509 (CTA Case No. 9767).
[68] Pars. 32 and 33, *Id.*
[69] Pars. 35 and 36, *Id.*

Further, the processing of its claim and its receipt of the Denial Letter five (5) years after the said inaction of the respondent, did not cure its failure to seek judicial recourse within the prescribed period. The ruling of the Supreme Court in *Lapanday* case[70] is instructive, *viz.*:

> It must be noted that Lapanday Foods Corporation (petitioner) filed its administrative claim on September 23, 2008. The 120-day period expired on January 21, 2009... However, petitioner filed its petition for review only on September 28, 2018 or **more than nine (9) years, from the time it should have filed its appeal with the CTA.**
>
> ... ...
>
> The words of the law are clear and need no interpretation. It provides that the taxpayer may appeal the denial or the inaction of the Commissioner of Internal Revenue (CIR) **only within 30 days** from receipt of the decision denying the claim or the expiration of the 120-day period given to the CIR to decide the claim.
>
> Petitioner claims that the petition for review was filed on time since it received the letter from the Assistant Commissioner of Internal Revenue Assessment Service denying its claim for refund only on August 31, 2018. It also ascribed estoppel against the CIR, allegedly for taking cognizance of its claim albeit the lapse of the 30-day period after the expiration of the 120-day period.
>
> We emphasize that the periods provided in Section 112 (C) of the NIRC are mandatory and jurisdictional. Its strict compliance must be observed for a claim for refund or tax credit to prosper. Moreover, jurisdiction cannot be **waived** because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them. Therefore, the fact that petitioner allegedly received a letter from the Assistant Commissioner of Internal Revenue Assessment Service **in 2018 was of no moment a cure to petitioner's failure to seek recourse within the time prescribed in Section 112 (C)**. *(Emphasis supplied)*

RMC No. 54-2014 and RR No. 1-2017 could not amend the 120+30-day rule.

Neither RMC No. 54-2014 nor RR No. 1-2017 could amend Section 112 of the NIRC of 1997, as amended, and disregard the 120+30-day mandatory period.

[70] *Supra* at note 62.

The Supreme Court, in a catena of cases,[71] has consistently applied the clear and unequivocal provisions of Section 112 of the NIRC of 1997, as amended, and held that the 120+30-day period is mandatory and jurisdictional. Its strict compliance must be observed for a claim for refund or tax credit to prosper.[72] Moreover, jurisdiction cannot be *waived* because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[73]

Courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.[74] While administrative rules and regulations have the force of law and are entitled to great weight and respect, they must not override, supplant, or modify the law but must remain consistent with the law they intend to implement. **It is only Congress which has the power to repeal or amend the law.**[75]

It is well-established that refunds are in the nature of exemptions, and thus, strictly construed against the claimant.[76] Hence, it is petitioner's burden to show that it has fully complied with the conditions for the grant of the tax refund or credit since non-compliance with the mandatory periods and non-observance of the prescriptive periods shall bar its judicial claim for tax refund or credit.[77]

For petitioner's failure to comply with the 120+30-day mandatory period, this Court finds that the Court in Division did not err in concluding that the judicial claim was belatedly filed and in dismissing the case for lack of jurisdiction.

Accordingly, this Court finds no cogent reason to deviate from the assailed Resolutions of the Court in Division.

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[71] *CIR v. San Roque Power Corporation* (G.R. No. 187485), *Taganito Mining Corporation v. CIR* (G.R. No. 196113), and *Philex Mining Corporation v. CIR* (G.R. No. 197156), February 12, 2013; *Mindanao II Geothermal Partnership v. CIR, and Mindanao I Geothermal Partnership v. CIR,* G.R. Nos. 193301 and 194637, March 11, 2013; *Rohm Apollo Semiconductor Philippines v. CIR*, G.R. No. 168950, January 14, 2015; *CIR v. Team Sual Corporation*, G.R. No. 194105, February 5, 2014; *Marubeni Philippines Corporation v. CIR*, G.R. No. 198485, June 5, 2017; *CIR v. Mindanao I Geothermal Partnership,* G.R. No. 192006. November 14, 2018; *Procter & Gamble Asia, Pte. Ltd. vs. CIR*, G.R. No. 207587, April 28, 2021 (Notice); *Energy Development Corp. vs. CIR*, G.R. No. 203367, March 17, 2021; *Lapanday Foods Corp. vs. CIR*, G.R. No. 252821, September 2, 2020; *Carmen Copper Corp. vs. CIR*, G.R. No. 245282, June 19, 2019.
[72] *Supra* at note 62.
[73] *Id.*
[74] *Philippine Bank of Communications v. CIR*, G.R. No. 112024, January 28, 1999.
[75] *Secretary of Finance Cesar V. Purisima, et al. v. Philippine Tobacco Institute, Inc.*, G.R. No. 210251, April 17, 2017.
[76] *CIR v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, G.R. No. 209776, December 7, 2016.
[77] *CIR v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The assailed Resolutions dated August 26, 2020 and March 9, 2021, both rendered by the Third Division of this Court in CTA Case No. 9767, are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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