REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10163

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:
SEP 27 2019 9:35 am

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RESOLUTION

Records show that the instant Petition for Review was filed on September 9, 2019, as an appeal from the denial of petitioner's claim for refund of input VAT attributable to its zero-rated sales from January 1, 2011 to December 31, 2011 in the amount of Php26,598,394.37.

Petitioner counted thirty (30) days from August 9, 2019[1], which was the date of receipt of the denial of petitioner's application for VAT refund/credit. However, a perusal of the instant petition for review reveals that the same has been filed out of time for the reasons discussed below.

Section 112(C) of the 1997 National Internal Revenue Code, as amended (NIRC), but prior to the amendments of the TRAIN law[2], provides the following periods for the judicial claim for tax credit/refund:

> SEC. 112. *Refund or Tax Credits of Input Tax.* –
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> xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the

[1] Docket, Petition for Review (PFR), pp. 2-3.
[2] Republic Act No. 10963, Tax Reform for Acceleration and Inclusion Act, January 1, 2018.

> Commissioner shall grant a refund or issue a 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.
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> 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.

In *Commissioner of Internal Revenue v. San Roque Power Corporation,*[3] the Supreme Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the BIR Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the BIR Commissioner does not act within that period.

This was further reiterated in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue,*[4] which stated:

> 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.

In this case, petitioner states that it filed its administrative claims on February 1, 2013 and August 1, 2013[5] with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF-OSS). Petitioner also states that it submitted the complete required documents in support of its application on the same dates.[6]

Counting 120 days from February 1, 2013 and August 1, 2013, the CIR had until June 1, 2013 and November 29, 2013 within which to act on petitioner's claim for refund. Considering that respondent CIR/DOF-OSS failed to act thereon within the

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[3] G.R. Nos. 187485, 196113, and 197156, February 12, 2013; also, cited in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[4] G.R. No. 182737, March 2, 2016.
[5] Docket, PFR, p. 2.
[6] Docket, PFR, p. 2.

120-day period, petitioner had thirty (30) days after the lapse of the 120-day period or until July 1, 2013 and December 29, 2013 within which to file its judicial appeals before this Court. It should be noted that a denial of the claim of refund made after the 120+30 day period is not considered in counting the period for judicial appeal. This is because the inaction of the CIR during the 120-day period is "deemed a denial", and without a timely appeal, said inaction which is "deemed a denial" becomes final and unappealable.[7]

Here, petitioner's Petition for Review was filed only on September 9, 2019, clearly, several years after the lapse of the 120+30 day period to file a judicial claim. The receipt of the denial dated July 30, 2019 of the claim for refund on August 9, 2019, which is after the 120-day period is inconsequential, even with the effectivity of the TRAIN law. It should be noted that the "deemed a denial" became final long before the TRAIN law became effective on January 1, 2018.

It has been emphasized repeatedly that compliance with the 120+30 day periods prescribed under Section 112(C) of the NIRC is mandatory and jurisdictional. Accordingly, petitioner's belated filing of its judicial claim rendered the Court devoid of jurisdiction over it. Thus, the dismissal of the instant Petition for Review is in order.

WHEREFORE, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[7] *Chemrez, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 1448, May 30, 2016.