REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

PILIPINAS KYOHRITSU INC., *Petitioner,*	**CTA Case No. 9581**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 08 2022 11:27 am

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DECISION

MANAHAN, *J.:*

This is a *Petition for Review*[1] filed by petitioner Pilipinas Kyohritsu Inc. (PKI) against respondent Commissioner of Internal Revenue (CIR) on April 21, 2017, praying for this Court to render judgment ordering the cash refund of the unutilized, unused and/or unapplied input value-added tax (VAT) for the period covering January 1, 2012 to December 31, 2012 amounting to ₱38,684,751.56 in its favor.[2]

THE PARTIES

Petitioner PKI is a corporation duly organized and existing under and by virtue of the laws of the Philippines. It is engaged in the business of manufacturing and exporting parts and accessories, specifically wiring harness, weld cap and engineering design activity. Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with tax identification number (TIN) 000-269-082-00000 and with the Board of Investments (BOI) as an export producer of automotive wiring harness and weld cap for automotive application with BOI Registration numbers 2003-046, 2005-

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[1] Docket, CTA Case No. 9581, Vol. 1, pp. 10-32.
[2] *Id.*, Statement of the Case, Pre-Trial Order dated October 9, 2017, p. 398.

177, and 2007-060. Petitioner has its principal address at Lm. 75 Laurel Highway Bo. Inosloban, Lipa City, Batangas.[3]

On the other hand, respondent CIR, is the duly appointed head of the BIR who is empowered to perform the duties of his office, including the power to deny or grant tax refunds pursuant to Section 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 8424, otherwise known as the "Tax Reform Act" of 1997. Her Office is located at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

THE FACTS

On December 13, 2013, petitioner PKI filed an application for refund of its unutilized and/or unused input VAT covering the periods from January 1, 2012 to December 31, 2012 amounting to Php53,865,617.38.[5]

On March 23, 2017, petitioner PKI received a copy of the BIR's Letter dated February 28, 2017, signed by Teresita M. Angeles, OIC, Assistant Commissioner of Large Taxpayers Service, denying said application for refund.[6]

Hence, petitioner PKI filed the instant petition on April 21, 2017.

On June 23, 2017, respondent filed her Answer[7] with an affirmative defense that this Court has no jurisdiction over the instant petition because the period to appeal has already prescribed.

On June 27, 2017, the Pre-Trial Conference was set and the parties were directed to submit their respective pre-trial briefs. Petitioner filed its Pre-Trial Brief[8] on August 31, 2017 while respondent filed hers[9] on August 31, 2017.

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[3] Docket, Vol. 1, Petition for Review, p. 11.
[4] *Id.*, Vol. 1, Petition for Review, pp. 11-12, as admitted in respondent's Answer, p. 133; Docket, Vol. 1, Pre-Trial Order dated October 9, 2017, p. 398.
[5] *Id.*, Vol. 1, Petition for Review, pp. 13 & 17; Docket, Vol. III, Exhibits "P-6" an "P-7", pp. 999-1000 and p. 1001, respectively.
[6] *Id.*, Vol. 1, Petition for Review, p. 14; Docket, Vol. I, Exhibit "P-10", pp. 36-37.
[7] *Id.*, Vol. 1, pp. 133-142.
[8] *Id.*, Vol. 1, pp. 155-164.
[9] *Id.*, Vol. 1, Respondent's Pre-Trial Brief, pp. 368-370.

After the Pre-Trial Conference held on September 5, 2017,[10] the Pre-Trial Order[11] was issued on October 9, 2017.

Then trial ensued.

After the presentation of its evidence, petitioner filed its Formal Offer of Evidence[12] on August 15, 2018, of which several exhibits offered were denied.[13] Hence, petitioner moved[14] for reconsideration on March 26, 2019 which eventually was partially granted[15] by the Court. Petitioner filed a Supplemental Formal Offer of Evidence on January 9, 2020[16] relative to Exhibits P-29 and P-29-1 which were also admitted in the Court's Resolution dated June 11. 2020.

On July 29, 2020, petitioner filed a Reiterative Motion to Direct Independent Certified Public Accountant (ICPA) to Complete its Report and Submit Complete Documents with Motion for Reconsideration.[17] Acting on the said motion, the Court ordered[18] the ICPA to show cause why it should not be cited in contempt for its failure to comply with the Court Resolution dated August 30, 2019[19] which ordered the ICPA to submit the marked copies of those cited exhibits.

On December 7, 2020, the ICPA filed a Show Cause Reply submitting the marked copies of those cited exhibits under Resolution dated August 30, 2019.

Thus, the Court acting on petitioner's Motion for Reconsideration which was incorporated in its Reiterative Motion to Direct ICPA to Complete its Report and Submit Complete Documents, admitted the exhibits subject of said motion except Exhibit "P-46.188.82" for not being found in the records.[20]

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[10] Docket, Vol. 1, Minutes of the Hearing dated September 5, 2017, p. 372.
[11] *Id.*, Vol. 1, pp. 398-406.
[12] *Id.*, Vol. 2, Motion to Admit Attached Formal Offer of Evidence, pp. 780-793.
[13] *Id.*, Vol. 2, Resolution dated March 5, 2019, pp. 960-963.
[14] *Id.*, Vol. III, Motion for Reconsideration, pp. 970-977.
[15] *Id.*, Vol. III, Resolution dated June 11, 2020, pp. 1202-1204.
[16] *Id.*, Vol. III, pp. 1191-1193.
[17] *Id.*, Vol. III, pp. 1205-1208.
[18] *Id.*, Vol. III, Resolution dated September 7, 2020, p. 1217.
[19] *Id.*, Vol. III, pp. 1166-1169.
[20] *Id.*, Vol. III, Resolution dated March 8, 2021, pp. 1616-1617. *om*

Respondent then presented her evidence and afterwards filed her Formal Offer of Evidence[21] on May 10, 2021. Respondent's exhibits were admitted[22] by the Court except Exhibit "R-2" for not being found in the records of the case. The Court also directed the parties to submit their respective memoranda.[23]

Respondent filed her Memorandum[24] on July 29, 2021 while the Memorandum (for Petitioner Pilipinas Kyohritsu, Inc.)[25] was filed on October 20, 2021. Thus, the case was submitted for decision on December 7, 2021.[26]

ISSUE

Whether petitioner is entitled to the refund/tax credit in the total amount of Php38,684,751.56, representing its unutilized input VAT arising from its zero-rated export sales for the quarters ending March 31, 2012, June 30, 2012, September 30, 2012, and December 31, 2012.[27]

Petitioner's Arguments[28]

Petitioner avers that the petition was timely filed.

Petitioner insists that its zero-rated sales amounting to Two Billion Nine Hundred Seventy-Eight Million Ninety-Five Thousand Five Hundred Eight and 15/100 (Php2,978,095,508.15) have proof of inward remittance.

Petitioner also argues that its payment of input tax from importation amounting to Nineteen Million Two Hundred Seventy-Eight Thousand Three Hundred Forty (Php19,278,340.00) is supported with Bureau of Customs Official Receipts.

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[21] Docket, Vol. III, pp. 1630-1633.
[22] *Id.*, Vol. III, Resolution dated June 22, 2021, pp. 1656-1657.
[23] *Id.*
[24] *Id.*, Vol. III, pp. 1658-1666.
[25] *Id.*, Vol. III, pp. 1668-1703.
[26] *Id.*, Vol. III, Resolution dated December 7, 2021, p. 1705.
[27] *Id.*, Vol. 1, Joint Stipulation of Facts and Issues, p. 377; Docket, Vol. 1, Pre-Trial Order, p. 399.
[28] *Supra*, Note 25.

Respondent's Arguments[29]

Respondent contends that the petition is filed out of time, thus, the Court has no jurisdiction.

Respondent also avers that the petition must be dismissed for petitioner's failure to comply with documentary requirements for VAT refund.

RULING OF THE COURT

The petition was not filed on time.

Sections 7(a) and 11 of RA No. 1125[30], as amended by RA No. 9282[31], provides as follows:

> "SEC. 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 relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> xxx xxx xxx
>
> SEC. 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 xxx 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 actions** 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**

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[29] *Supra*, Note 24.
[30] AN ACT CREATING THE COURT OF TAX APPEALS.
[31] 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> **thirty (30) days from 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. xxx." *(Emphasis supplied)*

Based on the foregoing provisions, this Court has exclusive appellate jurisdiction, *inter alia*, to take cognizance of decisions involving claims for refund of any internal revenue taxes and the concerned taxpayer or party adversely affected by said decision of respondent may file an appeal with this Court within thirty (30) days after the receipt of such decision or after the expiration of the period fixed by law for actions.

In consonance with the aforequoted legal provision, Section 112(C) of the 1997 NIRC, as amended, likewise provides for the period when the respondent should act on taxpayer's claim for input VAT refund/credit as well as the period when the latter may appeal the action or inaction of the former on such claim, to wit:

> SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> (A) xxx xxx xxx
>
> (B) xxx xxx xxx
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - <u>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</u> filed in accordance with Subsections (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**, <u>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</u>.
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> xxx xxx xxx" (*Emphasis and underscore ours*)

Based on the foregoing, respondent has 120 days from the date of submission of the complete supporting documents of such application to take action on the same.

In sum, the law provides for two scenarios before a judicial claim for refund may be filed with the Court of Tax

Appeals (CTA): (1) there was a full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the CIR having acted on the claim. It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT. Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.[32]

In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[33] the Supreme Court ruled that the reckoning point in the counting of the 120+30-day period prior to the promulgation of Revenue Memorandum Circular No. 54-2014[34] was at the time the taxpayer had submitted its complete supporting documents, to wit:

> "To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. **Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing**.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.
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> It bears mentioning at this point that the foregoing summation of the rules *should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014*, such as the claim at bench. ..." (*Emphasis supplied*)

Considering that there was no subsequent filing of other supporting documents by petitioner from the time of the filing of the administrative claim for refund on December 13, 2013,

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[32] *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue*, G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018.
[33] G.R. No. 207112, December 08, 2015.
[34] SUBJECT: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended. *gm*

the 120-day period for the particular quarters had lapsed on the following dates, to wit:

Quarter 2012	Date of Filing of Administrative Claim	Last day of the 120-day period
1st	December 13, 2013	April 12, 2014
2nd	December 13, 2013	April 12, 2014
3rd	December 13, 2013	April 12, 2014
4th	December 13, 2013	April 12, 2014

Moreover, since respondent did not act on petitioner's claim for refund or credit within the 120-day period abovementioned, the latter had thirty (30) days from the lapse of the 120-day period without action on the part of the former to appeal its claim before the CTA, to wit:

Quarter 2012	Last day of the 120-day period	Last day of the 30-day period
1st	April 12, 2014	May 12, 2014
2nd	April 12, 2014	May 12, 2014
3rd	April 12, 2014	May 12, 2014
4th	April 12, 2014	May 12, 2014

Now the question is: whether petitioner can opt to wait for the respondent to issue a ruling on the said claims for input VAT refund or credit even after the lapse of the 120+30-day period before it can elevate its claim to this Court?

We rule in the negative.

In *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue,* and *Philex Mining Corporation v. Commissioner of Internal Revenue*[35], the Supreme Court ruled that the thirty (30)-day period of filing an appeal is mandatory and jurisdictional after the expiration of the 120-day period if the applicant/claimant will opt to file an appeal, to wit:

> "When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from 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," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that

[35] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

> the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, ...
>
> xxx xxx xxx
>
> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods..."

The doctrine on the mandatory and jurisdictional nature of the 120+30-day period has been reiterated in a catena of Supreme Court cases.[36]

Furthermore, in clear and categorical language, the Supreme Court ruled in the case of *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,*[37] as follows:

> "xxx when the 120-day period lapses and there is inaction on the part of the Commissioner of Internal Revenue, 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 xxx."

Applying now the foregoing legal and jurisprudential doctrines, petitioner's judicial claim for refund or credit was filed out of time. Since there was an inaction on the part of respondent, petitioner should have filed its petition for review with the CTA not later than May 12, 2014, as earlier tabulated. By awaiting the decision of the respondent on its administrative claim for refund which was dated February 28, 2017 and received by petitioner on March 23, 2017, the filing of the petition for review on April 21, 2017 was already beyond the 120+30-day period under Section 112(C) of the 1997 NIRC, as amended. Prescription has set in at the time of its filing,

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[36] *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue,* G.R. Nos. 193301 and 194637, March 11, 2013; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,* G.R. No. 173241, March 25, 2015; *Commissioner of Internal Revenue v. Toledo Power Company,* G.R. Nos. 196415 and 196451, December 02, 2015; *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue,* G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018.

[37] G.R. No. 168950, January 14, 2015.

thus, depriving the Court of any jurisdiction to act on the case.[38]

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[39]

In fine, this Court will no longer discuss the other issues raised by petitioner for the reason above-cited.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

[38] *Nickelbase, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 2268, December 16, 2021.
[39] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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