REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ADVANCED WORLD SYSTEMS, INC., Petitioner,	**CTA CASE NO. 9864**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVEN UE, Respondent.	Promulgated: JAN 17 2019 4:30 p.m.

x---x

RESOLUTION

For resolution is respondent's **Motion to Dismiss** incorporated in respondent's **Answer** filed by registered mail on August 15, 2018, and received by the Court on August 28, 2018, with petitioner's **Comment/Opposition [Re: Respondent's *Answer with Motion to Dismiss* dated 15 August 2018]**, filed by registered mail on October 15, 2018 and received by the Court on October 22, 2018.

In his Motion to Dismiss, respondent avers that the Court has no jurisdiction over the case since the judicial claim for refund/TCC was belatedly filed by petitioner. According to respondent, there is no question that the administrative claim was filed within the time allowed by law. However, respondent argues that the judicial claim was filed beyond the thirty (30)-day period following the lapse of the one-hundred twenty (120)-days without any decision on the part of the BIR.

On the other hand, petitioner insists that its judicial claim was filed within the period prescribed by law pursuant to Section 112(A) and (C) of the Tax Code and Revenue Regulations (RR) No. 1-2017. Petitioner posits that Section 112 (C) provides that a 30-day period, from either the receipt of the adverse decision of respondent or the lapse of the 120-day period for respondent to act on a claim, within which to file a Petition for Review with the CTA.[1]

Moreover, petitioner argues that it relied on RR No. 1-2017 which clarifies the treatment and processing of applications pending prior to the effectivity of Revenue Memorandum Circular (RMC) No. 54-2014. According to petitioner, the import of RMC No. 54-2014 is that petitioner's failure to file a judicial claim within 30 days from the expiration of the 120-day period rendered the Commissioner's inaction "deemed denial" final and unappealable. Petitioner opines that with the RR No. 1-2017 stating that the provisions of RMC No. 54-2014 cannot be applied retroactively to petitioner's pending claim, the effect of the said RMC was lifted from and no longer attaches to it from the time of issuance of the said RR No. 1-2017.

The Court shall consider the allegations in the Petition for Review in order to determine whether the instant Petition for Review was timely filed.

As alleged in the Petition for Review, petitioner filed with the Bureau of Internal Revenue (BIR) its administrative claim for refund and/or issuance of a tax credit certificate (TCC) on March 11, 2011 in the aggregate amount of ₱3,181,710.17, representing its alleged unutilized input value-added tax (VAT) for the period covering April 1, 2009 to March 31, 2010. According to petitioner, it had submitted the complete documentary requirements in support of its application during the period required.[2]

Thereafter, on May 29, 2018, petitioner allegedly received a letter dated March 16, 2018 from the respondent denying its

---

[1] Par. 31, p. 9, Petition for Review.
[2] Pars. 11 and 19, pp. 4 & 5 of the Petition for Review.

administrative claim for refund. Petitioner filed its Petition for Review before the Court on June 28, 2018.

In this regard, it must be noted that in the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[3], the Supreme Court summarized the rules on the 120+30 day period for claiming refund or credit of input VAT:

"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+30 Day Period

1. <u>The taxpayer can file an appeal in one of two ways:</u> (1) file the judicial claim <u>within thirty days after the Commissioner denies the claim within the 120-day period</u>, or (2) file the judicial claim <u>within thirty days from the</u>

[3] *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership,* G.R. No 191498, January 15, 2014.

expiration of the 120-day period if the Commissioner does not act within the 120-day period.

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 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. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (San Roque)"

Notably, Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that the 120-day period is reckoned from the date of submission of complete documents in support of the application.

In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[4], the Supreme Court further clarifies the counting of the 120-day period given to act on the administrative claim for refund:

"Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:

Q-18: *For pending claims with in complete documents, what is the period within which to submit the*

[4] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.

supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?

A-18: **For pending claims** which have not been acted upon by the investigating/processing office due to incomplete documentation, **the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.**

For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be **officially received** only upon submission of complete documents.

For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents **<u>within thirty (30) days from request</u> of the investigating/processing office, <u>which shall be construed as within the one hundred twenty (120) day period.</u>**

[Emphases Supplied]

Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential. It is only upon the submission of these documents that the 120-day period would begin to run.

Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112(B) of the NIRC, Section 112 (D) was amended and renamed 112(C). Thus:

> (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.

With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining ***when*** the supporting documents have been completed – *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, **he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003**. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

xxx xxx xxx" (*Emphasis supplied*)

Further, in *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internal Revenue*[5], the Supreme Court emphasized:

"A final note, the 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 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 waiting period." (*Emphasis supplied*)

Applying the foregoing, and taking into consideration the allegation of petitioner that it submitted the complete documentary

[5] *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

requirement in support of the application during the required period, the 120-day period for the CIR to act on petitioner's claim ended on July 9, 2011, counting from the time petitioner filed its administrative claim on March 11, 2011. Thus, petitioner's 30-day period to appeal ended on August 8, 2011.

However, petitioner filed its Petition for Review only on June 28, 2018, which is clearly beyond the prescribed 30-day period to appeal.

Even assuming that petitioner filed additional documents after filing the administrative claim but within the 30-day period given for the submission of supporting documents, the last day of the 30-day period would be on April 10, 2011. Counting the 120-day period from such date, the last day of the 30-day period to appeal would be on September 7, 2011. Thus, the Petition for Review would still have been filed out of time.

Clearly, petitioner's failure to comply with this mandatory and jurisdictional requirement warrants the dismissal of its petition.

WHEREFORE, premises considered, respondent's **Motion to Dismiss** is **GRANTED**. Accordingly, the instant **Petition for Review** filed by Advanced World Systems, Inc. on August 28, 2018 is hereby **DISMISSED**.

SO ORDERED.

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice