REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EMERSON ELECTRIC (ASIA) LIMITED - ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8768

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
NOV 2 4 2017 1:00 pm

x - x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is petitioner's **Motion for Reconsideration**, filed on August 18, 2017, without respondent's comment, as per Records Verification dated October 12, 2017.

Petitioner moves for the reconsideration of the Court's Decision promulgated on August 3, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED**."

Petitioner contends that the third quarterly Value-Added Tax (VAT) return of 2013 is a submission of additional document. It argues that on September 11, 2013, it received a letter from the

Bureau of Internal Revenue (BIR) denying its claim for refund in view of petitioner's failure to indicate the amount it is claiming as tax refund as a deduction from its excess input taxes. On September 24, 2013, petitioner filed request for reconsideration of BIR's denial, attaching thereto a copy of its VAT return for the third quarter of fiscal year 2013 which reflected the deduction of the amount claimed to prove that it did not carry forward the excess input taxes to the succeeding quarters. Therefore, it was only on September 24, 2013 that petitioner has submitted the complete documents in support of its application for refund. As such, the 120-day period shall be reckoned only from the said date. Petitioner, thus, argues that since there was inaction on the part of the BIR, petitioner is given a period of thirty (30) days from the lapse of 120 days on September 24, 2013, or until February 21, 2014, within which to file its Petition for Review. It further asserts that the 120-day period cannot be reckoned from September 11, 2013, the date when the decision of the Revenue District Officer (RDO) No. 41 denying the claim for refund was received by it. It claims that the RDO is not the proper officer who can grant or deny a claim for refund.

It is noteworthy that the issue on lack of jurisdiction was already settled by the Court in the assailed Decision. It bears emphasis that petitioner's letter of application for tax credit or refund dated June 28, 2013 reveals that it already submitted the same VAT return on the same date of the filing of its application. For this reason, petitioner's submission of the said VAT return on September 24, 2013 was merely a reiteration of its previous submission. Accordingly, the 120-day period shall be reckoned from the date petitioner filed its application together with the supporting documents on June 28, 2013. Counting 120 days from June 28, 2013, respondent had until October 26, 2013 within which to act on petitioner's claim for refund.

Moreover, petitioner's claim that the letter dated September 10, 2013 issued by the RDO, denying its claim for refund, does not constitute a final decision on the application for refund considering that the RDO is not the proper officer who can grant or deny a claim for refund, is of no moment. This is because even without respondent's decision on petitioner's claim for refund, the Petition for Review was still filed out of time. If the Court considers that there was inaction on the part of respondent as to petitioner's administrative claim for refund, the thirty (30)-day period to appeal before the Court shall be counted from the lapse of the 120-day period on October 26, 2013. Hence, petitioner had only until November 25, 2013 within which to file its Petition for Review before the Court. Therefore, petitioner's judicial claim for refund filed on February 19, 2014 was still beyond the prescribed thirty (30)-day period to file a Petition for Review with the Court.

It bears stressing that 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. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper.[1]

To reiterate, the 30-day period within which to file an appeal of the denial of the claim or inaction on the part of the CIR is both mandatory and jurisdictional, and noncompliance therewith precludes the CTA from acquiring jurisdiction over the case.

Accordingly, the Court finds no compelling reason to justify the reversal of the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration**, is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

---

[1] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.