REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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PHILIPPINE AIRPORT GROUND SUPPORT SOLUTIONS, INC. (FORMERLY PHILIPPINE AIRPORT AND GROUND SERVICES GLOBEGROUND, INC.), Petitioner,	**CTA CASE NO. 9861**
	Members:
- versus -	**UY,** *Chairperson, and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 27 2019 11:57 a.m.

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RESOLUTION

For resolution is respondent's ***Answer (with Motion to Dismiss)***, filed through registered mail on August 24, 2018 and received by the Court on September 4, 2018, with *petitioner's* ***Reply [Re: Answer with Motion to Dismiss]***, filed on September 14, 2018.

On June 25, 2018, petitioner filed the instant *Petition for Review*[1], praying that the Court render a judgment ordering respondent to refund or issue a tax credit certificate (TCC) to petitioner in the amount of ₱8,451,171.96 representing the latter's excess and unutilized input value added tax (VAT) arising from its zero-rated sales for taxable year (TY) 2008.

On July 6, 2018, the Court issued a Summons ordering respondent to file an Answer to the *Petition for Review* within fifteen (15) days from notice and the latter through BIR-NOB-Litigation Division received the same on July 10, 2018.[2]

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[1] Petition for Review, Docket, pp. 10-36.
[2] Summons, Docket, p. 128.

In the Order dated August 2, 2018[3], the Court granted respondent's *Motion for Additional Time to File Answer*[4]. Thereafter, respondent filed through registered mail on August 24, 2018 the *Answer (with Motion to Dismiss).* Subsequently, petitioner filed its *Reply [Re: Answer with Motion to Dismiss]* on September 14, 2018.

On December 20, 2018, the Court set the instant case for hearing to allow the parties to present their respective claims and defenses.[5] As such, the hearing on the motion to dismiss was held on January 15, 2019, and thereafter, submitted the said motion for resolution.[6]

In the motion, respondent contends that petitioner must prove its compliance with the provisions of Section 204 (c) of the Tax Code; otherwise, failure to prove the same is fatal to a claim for refund. Respondent avers that the judicial claim for refund or issuance of TCC of petitioner's unutilized input VAT was filed beyond the period allowed by law.

According to respondent, the 120+30 day period is mandatory and jurisdictional. Respondent stands that petitioner can file an appeal to this Court in one of the two ways: (1) file the judicial claim within 30 days after the 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 Commissioner does not act within that period. Also, respondent states the ruling of the Supreme Court in the case of *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue (CIR)* that when the 120-day period has lapsed and there is inaction on the part of the CIR, the taxpayer must no longer wait for it to come up with a decision thereafter, and the CIR's inaction is the decision itself.

Respondent alleges that petitioner filed the administrative claim for refund on March 30, 2010 for the alleged unutilized input VAT for taxable period of January 1, 2018 to December 31, 2018. Respondent argues that petitioner filed the judicial claim only on June 25, 2018 or 30 days after the latter's receipt on May 24, 2018 of the letter denying the administrative claim with the Bureau of Internal Revenue (BIR).

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[3] Docket, p. 136.
[4] Docket, pp. 132-134.
[5] Resolution, Docket, pp. 165-166.
[6] Order, Docket, p. 168.

Allegedly, all the supporting documents should be filed together with the filing of the administrative claim for refund; however, instance occurs that additional documents were being required to be submitted after the filing of the said administrative claim. Respondent claims that even if he required petitioner to submit additional documents for argument's sake, the 120-day period should be reckoned from the time of the submission of complete documents. In this case, respondent points out that petitioner submitted the supporting documents on April 20, 2012, thus, the 120 days began therefrom. Then, respondent had allegedly until August 18, 2012 to act on the administrative claim. Respondent explains that since no action was taken on the said claim, petitioner should have filed the judicial claim for refund within 30 days from August 18, 2012. Respondent expresses that petitioner only filed the judicial claim on June 25, 2018 or more than 5 years from the lapse of the 120 days; thus, the instant Petition for Review is allegedly filed beyond the prescriptive period.

As such, respondent prays for the dismissal of the instant case on the ground that this Court lacks jurisdiction to entertain the same.

On the other hand, petitioner opposes respondent's *Motion to Dismiss* on the grounds that the former was entitled to the refund or tax credit of its excess input tax credit and the judicial claim was timely filed and has not prescribed.

Petitioner cites the case of the *Supreme Court in the case of CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue* where the latter pronounced that Section 112 (C) of the Tax Code provides two possible scenarios, such as (1) when the CIR denies the administrative claim for refund within 120 days, and (2) when the CIR fails to act within 120 days. In the same, it is allegedly held that in the second scenario, taxpayer must await either for the decision of the CIR or the lapse of 120 days before filing judicial claims with the Court of Tax Appeals.

According to petitioner, it filed an application for refund of excess input VAT on March 30, 2010 and submitted the supporting documents on April 20, 2012. Petitioner likewise states that respondent rendered a decision denying the former's claim for refund on May 2, 2018. Hence, petitioner allegedly filed its judicial claim on June 25, 2018, which was within the 30-day period from receipt of such denial, pursuant to section 112(C) of the Tax Code.

Petitioner further insists that it opted to wait the decision of the Commissioner before filing the judicial claim with this Court. Hence, petitioner had allegedly thirty (30) days from receipt of the letter denying its administrative claim to file a petition for review. Petitioner states that if the 120+30 day period strictly applied in this case, the ruling in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* and the provision of Revenue Regulations (RR) No. 01-2017 stating that pending administrative claims prior to the effectivity of Revenue Memorandum Circular (RMC) No. 54-2014 should be processed on available documents, shall be rendered nugatory.

Based on the *Petition for Review*, the material dates pertinent to the resolution of respondent's *Motion to Dismiss* are stated hereunder:

> On March 30, 2010, petitioner filed with the Bureau of Internal Revenue (BIR) a claim for refund or issuance of tax credit certificate (TCC) for excess input taxes in the amount of ₱8,451,171.96 for TY 2008.[7]
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> On October 28, 2010, respondent issued a letter to petitioner, informing the latter to submit supporting documents for its claim.[8] Thus, petitioner sent a letter to respondent on November 4, 2010 to advise the latter that the former was ready to submit the said documents.[9]
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> On November 9, 2010, respondent requested anew petitioner to submit documents enumerated in the List of Requirements.[10]
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> On April 20, 2012, petitioner submitted to the BIR its supporting documents.[11]
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> On May 24, 2018, petitioner received a letter dated May 2, 2018 from respondent denying the former's application for VAT refund in the amount of ₱8,451,171.96 for petitioner's alleged failure to submit supporting documents.[12]
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> On June 25, 2018, petitioner then filed the instant *Petition for Review* before this Court.[13]

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[7] Paragraph 46, *Petition for Review*, Docket, p. 26.
[8] Paragraph 48, *Petition for Review*, Docket, p. 26.
[9] Paragraph 49, *Petition for Review*, Docket, p. 26.
[10] Paragraph 50, *Petition for Review*, Docket, p. 27.
[11] Paragraph 51, *Petition for Review*, Docket, p. 27.
[12] Paragraph 53, *Petition for Review*, Docket, p. 27.
[13] *Petition for Review*, Docket, p. 10.

The crux of the issue is whether petitioner may appeal the adverse decision of respondent on the administrative claim beyond the 120+30 day periods provided by law.

THE COURT'S RULING

Petitioner's judicial claim was filed out of time.

Section 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, governs the filing of administrative and judicial claims for refund or tax credit of excess and unutilized input tax attributable to zero-rated or effectively zero-rated sales. The said provision reads:

> "SEC. 112. Refunds or Tax Credits of Input Tax. —
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> (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, to the extent that such input tax has not been applied against output tax**: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx

> (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.**
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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**." *(Emphases supplied.)*

Based on the foregoing, an administrative claim for refund must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Thereafter, the taxpayer is given a 30-day period, either from the receipt of the adverse decision of respondent or from the lapse of the 120-day period for respondent to act on the claim, within which to file its judicial claim, through a Petition for Review with this Court.

In the present case, petitioner's claim for issuance of TCC or refund of input VAT covers the four quarters of TY 2008 which closed on March 31, 2008, June 30, 2008, September 30, 2008 and December 31, 2008, respectively.

Applying Section 112 (A) of the NIRC of 1997, as amended, petitioner had two (2) years from the said dates or until March 31, June 30, September 30, and December 31 of 2010 respectively, within which to file its administrative claim for tax refund or tax credit.

Thus, the filing of the administrative claim for refund or tax credit for the four quarters of TY 2008 with the BIR on March 30, 2010, fell within the two-year prescriptive period to file its administrative claims for refund for the four (4) quarters of year 2008.

However, petitioner's judicial claim was belatedly filed.

The afore-quoted Section 112(C) specifies the time requirement for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with the CTA.[14]

In this case, since the administrative claim for refund was filed on March 30, 2010, the CIR had 120 days or until July 28, 2010, to resolve the claim. There being no action taken by respondent within the said period, petitioner had 30 days or until August 27, 2010, to file judicial claim via a Petition for Review with this Court.

Clearly, the filing of the instant Petition on June 25, 2018, or eight years after the prescribed period, was filed out of time.

Moreover, even if the Court would reckon the period of 120 days from the date of submission of additional supporting documents on November 4, 2010[15] and April 20, 2012,[16] the 30-day period within which to appeal the inaction of the CIR to this Court had already lapsed, to wit:

Date of the submission of supporting documents	***Expiration of the 120 days***	***Last day to file a judicial claim***
November 4, 2010	March 4, 2011	April 3, 2011
April 20, 2012	August 18, 2012	September 17, 2012

Therefore, even if this Court considers the date of submission of additional supporting documents, still petitioner's judicial claim was filed late.

The inaction of the CIR within the prescribed period is deemed denial of the claim for refund.

As regards petitioner's allegation that the taxpayer may await the decision of the CIR before filing a judicial claim with this Court, the same deserves scant consideration.

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[14] *ROHM Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.
[15] Paragraph 3, *Petition for Review*, Docket, p. 11.
[16] Ibid.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, [17] the Supreme Court reminded taxpayers that when the one hundred and twenty (120)-day period lapses and there is inaction on the part of the CIR within the said period, the taxpayer must no longer wait for the CIR to come up with a decision. The Supreme Court ruled:

> "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)

Further, in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,[18] the Supreme Court held that for judicial claims, it must be filed within a period of thirty (30) days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner, *to wit*:

> "**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 complete documents, the taxpayer may resort to a judicial claim before the CTA.**
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> xxx xxx xxx
>
> **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, <u>whichever is sooner</u>.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the 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." (*Emphases and underscoring supplied.*)

Based on the foregoing, in case the CIR fails to act on the taxpayer's administrative claim for tax credit or refund within the 120-

[17] G.R. No. 168950, January 14, 2015.
[18] G.R. No. 182737, March 2, 2016.

day prescribed period, the taxpayer may treat such inaction as a denial of its claim. Thus, the taxpayer must no longer wait for the CIR to come up with a decision before it files an appeal to the CTA. Consequently, the taxpayer must file an appeal within thirty (30) days from the lapse of the one hundred twenty (120)-day waiting period.

Accordingly, the decision of the CIR denying the administrative claim which was received by petitioner on May 24, 2018 is of no moment considering that the said decision was issued long after the lapse of the 120-day prescriptive period.

The Court stresses that the 120/30-day prescriptive periods are mandatory and jurisdictional, and are not mere technical requirements. The Court should not establish the precedent that noncompliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements.[19] To reiterate, the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise.[20]

Taking the foregoing into consideration, petitioner's belated filing of its judicial claim on June 25, 2018 is fatal to its claim for its failure to observe the mandatory 120+30-day prescriptive periods, and has therefore rendered the Court devoid of jurisdiction over the instant *Petition for Review*.

WHEREFORE, premises considered, respondent's **Motion to Dismiss** is **GRANTED**. Accordingly, the instant **Petition for Review** is hereby **DISMISSED** due to lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[19] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 173241, March 25, 2015.
[20] *Hedcor Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207575, July 15, 2015.