REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MANULIFE DATA SERVICES, INC., Petitioner,	**CTA CASE NO. 10666**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondents.	Promulgated: AUG 0 2 2024 2:03 pm

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DECISION

***FERRER-FLORES, J.*:**

The **Petition for Review** prays that the Cout grant **Manulife Data Services, Inc. (petitioner)** the refund/issuance of a tax credit certificate (TCC) in the total amount of **₱127,437,097.24**, which represents the excess and unutilized input value-added (VAT) it paid for the four (4) quarters of calendar year (CY) 2019, and order **respondent Commissioner of Internal Revenue (CIR)** to refund/issue a TCC in favor of petitioner in the said amount.[1]

THE PARTIES

Petitioner is a foreign corporation duly registered with and authorized by the Securities and Exchange Commission (SEC) to operate as a Regional Operating Headquarters (ROHQ) in the Philippines, under SEC Certificate of Registration No. FS200603505.[2] It is also registered with the Large

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[1] Statement of the Case, Pre-Trial Order dated June 20, 2022, Docket – Vol. IV, p. 1358.
[2] Exhibits "P-2" and "P-3", Docket – Vol. 1, pp. 65 to 114.

Taxpayers Services Division of the Bureau of Internal (BIR) Revenue District Office No. 126, under Tax Identification Number (TIN) 244-027-271-00000.[3]

Respondent, on the other hand, holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4] He is vested with the power to decide tax cases, including claims for refunds and/or tax credits pursuant to Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Petitioner filed its application for a refund of its excess and unutilized input VAT for the whole period of CY 2019 on May 10, 2021.[6] Petitioner then received the *Tax Verification Notice* dated May 11, 2021.[7]

Subsequently, on October 7, 2021, petitioner received the *VAT Refund Notice* dated July 30, 2021 from the BIR,[8] informing the former that its claim for refund has been denied.

PROCEEDINGS BEFORE THIS COURT

The present *Petition for Review* was filed on November 8, 2021.[9]

Respondent filed his *Answer* on February 2, 2022[10] and transmitted the *BIR Records* for the present case on February 3, 2022.[11]

The Pre-Trial Conference was set and held on May 10, 2022.[12] Prior thereto, *Respondent's Pre-Trial Brief* was submitted on February 15, 2022,[13] while petitioner's *PreTrial Brief* was filed on April 12, 2022.[14]

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[3] Exhibit "P-8", Docket – Vol. 3, p. 948.
[4] Par. 1(a), Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. IV, p. 1338.
[5] Par. 1(b), *Id.*
[6] Par. 1(c), *Id.*
[7] Exhibit "P-40", Docket – Vol. 3, p. 1203; Exhibit "R-1", BIR Records, p. 172.
[8] Exhibit "P41", Docket – Vol. 3, pp. 1204 to 1237; Exhibit "R-4", BIR Records, pp. 254 to 302.
[9] Docket – Vol. 1, pp. 6 to 18.
[10] Docket – Vol. 3, pp. 1239 to 1247.
[11] *Compliance* dated January 25, 2022, Docket – Vol. 3, pp. 1249 to 1251.
[12] Notice of Pre-Trial Conference dated February 9, 2022, Docket – Vol. 3, pp. 1253 to 1254; Minutes of the hearing held on, and Order dated, May 10, 2022, Docket – Vol. IV, pp. 1330, and 1335 to 1337, respectively.
[13] Docket – Vol. 3, pp. 1266 to 1269.
[14] Docket – Vol. IV, pp. 1309 to 1327.

On May 27, 2022, the parties filed their *Joint Stipulation of Facts and Issue*,[15] which was admitted and approved by the Court in its Resolution dated June 7, 2022,[16] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated June 20, 2022 was then issued.[17]

Trial then ensued, with the parties presenting and offering their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Iñigo P. Garcia,[18] petitioner's Finance Director; (2) Ms. Clarissa L. Magarao,[19] petitioner's Accounting Specialist; and, (3) Mr. Michael L. Aguirre,[20] the Court-commissioned Independent Certified Public Accountant (ICPA).[21]

The ICPA *Report* was submitted on June 24, 2022.[22]

On August 23, 2023, petitioner filed its *Formal Offer of Exhibits*.[23] Respondent failed to file a comment thereon.[24] In the Resolution dated January 18, 2023,[25] the Court admitted all of petitioner's offered exhibits, *except* the following:

1. Exhibits "P-4-5", "P-4-8", "P-4-10", "P-4-15", and "P-4-15-a", for failure to present the original for comparison;

2. Exhibits "P-5-9", "P-5-9-a", and "P-5-9-b", for failure to correspond; and,

3. Exhibits "P15-A.6-ICPA" and "P-15-B.210 to -B.299-ICPA", for not being found in the records.

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15 *Id.* at 1338 to 1354.
16 *Id.* at 1356.
17 *Id.* at 1358 to 1368.
18 Exhibit "P-1", Docket – Vol. 1, pp. 35 to 64; Minutes of the hearing held on, and Order dated, August 9, 2022, Docket – Vol. IV, pp. 1525 to 1527.
19 Exhibit "P-7", Docket – Vol. 3, pp. 936 to 947; Minutes of the hearing held on, and Order dated, August 9, 2022, Docket – Vol. IV, pp. 1525 to 1527.
20 Exhibit "P-42", Docket – Vol. IV, pp. 1516 to 1520; Minutes of the hearing held on, and Order dated, August 9, 2022, Docket – Vol. IV, pp. 1525 to 1527.
21 *Oath of Commission* dated May 10, 2022, Docket – Vol. IV, p. 1331; Minutes of the hearing held on, and Order dated, May 10, 2022, Docket – Vol. IV, pp. 1330, and 1335 to 1337, respectively.
22 Exhibit "P-43", Docket – Vol. IV, pp. 1369 to 1496.
23 Docket – Vol. IV, pp. 1541 to 1561.
24 Records Verification Report dated October 18, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. IV, p. 1564.
25 Docket – Vol. IV, pp. 1568 to 1574.

For his part, respondent presented the testimony of Revenue Officer (RO) Junelle Aira C. Salamanca.[26]

On April 3, 2023, respondent filed his *Formal Offer of Evidence*,[27] to which petitioner filed its *Comment (Re: Formal Offer of Evidence)*.[28] In the Resolution dated June 23, 2023,[29] the Court admitted all of respondent's offered evidence.

Respondent filed his *Memorandum* on July 14, 2023;[30] while petitioner's *Memorandum* was posted on July 26, 2023.[31]

The case was considered submitted for decision on August 4, 2023.[32]

Hence, this Decision.

THE STIPULATED ISSUES

The parties stipulated the following issues for this Court's resolution, *viz.*:

> (a) Whether, and to what extent, the petitioner is entitled to a refund or the issuance of a tax credit certificate for its unutilized/excess input VAT payments for the first to fourth Quarters of CY 2019; and,
>
> (b) Whether or not the CIR's decision is correct based on the documents submitted by the petitioner to the respondent.[33]

Petitioner's arguments:

Petitioner, in insisting that it is entitled to a refund, reiterates that it is VAT-registered and that it is engaged in zero-rated sales paid by inward remittances of foreign currency. It argues that it paid input VAT in CY 2019, arising from its domestic purchases of goods and services. Petitioner claims that its excess and unutilized input VAT is directly attributable to its

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26 Exhibit "R-6", Docket – Vol. 3, pp. 1260 to 1265; Minutes of the hearing held on, and Order dated, March 29, 2023, Docket – Vol. IV, pp. 1585 and 1588, respectively.
27 Docket – Vol. IV, pp. 1589 to 1592.
28 *Id.* at 1594 to 1596.
29 *Id.* at 1601 to 1602.
30 *Id.* at 1603 to 1610.
31 *Id.* at 1612 to 1619.
32 Resolution dated August 4, 2023, Docket – Vol. IV, p. 1621.
33 Issues, JSFI, Docket – Vol. IV, p. 1352.

zero-rated sales for CY 2019, and was not applied against output tax in the same or succeeding quarters. Finally, petitioner asserts that the ICPA concluded in his report that it is entitled to a refund of ₱102,991,135.71.

Respondent's counter-arguments:

Respondent contends that petitioner is not entitled to refund in the amount of ₱127,437,097.24 and that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund. According to respondent, claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

THE COURT'S RULING

The present *Petition for Review* must be dismissed.

Requisites under the law for the refund or issuance of tax credit certificate of input VAT.

Section 112 of the NIRC of 1997, as last amended by Republic Act (R.A.) Nos. 10963[34] and 11976[35] provides, in part, as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (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

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[34] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

[35] AN ACT INTRODUCING ADMINISTRATIVE TAX REFORMS, AMENDING SECTIONS 21, 22, 51, 56, 57, 58, 76, 77, 81, 90, 91, 103, 106, 108, 109, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 128, 200, 204, 229, 235, 236, 237, 238, 241, 242, 243, 245, 248, AND 269; AND REPEALING SECTION 34 (K) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES (Ease of Paying Taxes Act, Republic Act No. 11976, [January 5, 2024]).

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.

xxx xxx xxx

(C) Period within which the Refund of Input Taxes shall be Made. —In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That for this purpose, the VAT refund claims shall be classified into low-, medium-, and high-risk claims, with the risk classification based on amount of VAT refund claim, tax compliance history, frequency of filing VAT refund claims, among others: Provided, further, That medium- and high-risk claims shall be subject to audit or other verification processes in accordance with the Bureau of Internal Revenue's national audit program for the relevant year: Provided, finally, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial within the ninety (90)-day period.

In case of full or partial denial of the claim for tax refund, 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 ninety (90)-day period, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the Bureau of Internal Revenue to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites may be classified into certain categories as follows:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[36]

[36] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts (ORs) or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision,[37] or after the expiration of the ninety (90)-day period;[38]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[39]

<u>In relation to the taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[40]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[41]

<u>As regards the taxpayer's input VAT being refunded</u>:

6. the input taxes are not transitional input taxes;[42]

7. the input taxes are due or paid;[43]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[44] and,

9. the input taxes have not been applied against output taxes

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37 Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

38 Ease of Paying Taxes, R.A. No. 11976, January 5, 2024.

39 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.*

44 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

during and in the succeeding quarters.[45]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[46] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner timely filed its administrative claim.

The *first* requisite pertains to the filing of the administrative claim for tax credit or refund of input VAT before the BIR. To recall, Section 112(A) of the NIRC of 1997, as amended, states that within two (2) years after the close of the taxable quarter when the zero-rated sales or effectively zero-rated sales were made.

The present claim covers the first to fourth quarters of CY 2019. Counting two (2) years from the respective close of the said quarters, the pertinent dates for filing of administrative claim for the said four (4) quarters are shown below:

2019	Close of taxable quarter	Last day for filing administrative claim	Date of filing of claim for refund
1st quarter	March 31, 2019	March 31, 2021	May 10, 2021[47]
2nd quarter	June 30, 2019	June 30, 2021	
3rd quarter	September 30, 2019	September 30, 2021	
4th quarter	December 31, 2019	December 31, 2021	

Based on the table, petitioner had until March 31, 2021, June 30, 2021, September 30, 2021, and December 31, 2021, within which to file the administrative claims for refund for the first, second, third and fourth quarters of CY 2019, respectively. Though it appears that petitioner have belatedly filed its administrative claim for the first quarter, Section 5 of

45 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

46 *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

47 Exhibits "P-38", and "P-39", Docket – Vol. 3, pp. 1198 to 638 to 640.

Revenue Regulations (RR) No. 27-20[48] effectively extended the statutory deadline for the filing of applications for VAT refund claims as follows:

> **SECTION 5. Suspension Beyond the Effectivity of R.A. No. 11494.** – In areas where the Enhanced Community Quarantine (ECQ) or the Modified ECQ (MECQ) is in force after the effectivity of R.A. No. 11494, the following shall be observed:
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> 1. If the deadline for the filing of the VAT refund claim falls within the ECQ or MECQ period, filing of the claim shall be **extended for thirty (30) days after the lifting of the ECQ or MECQ**. This applies to affected areas of the processing offices or to the registered business address of the taxpayer-claimant where the restrictions are strictly enforced.
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> xxx xxx xxx. *(Emphasis added)*

Notably, on March 29, 2021, the Inter-Agency Task Force (IATF) re-imposed the Enhanced Community Quarantine (ECQ) in the National Capital Region (NCR) until April 4, 2021[49] due to a surge in COVID-19 cases in the area. This was extended for another week. The NCR then transitioned to MECQ beginning April 12, 2021 until April 30, 2021[50] and was downgraded to General Community Quarantine from May 1, 2021 to May 31, 2021[51].

As such, when petitioner filed its administrative claim covering the four (4) quarters of CY 2019 on May 10, 2021, the period to file a claim for the first quarter of said taxable year has yet to lapse pursuant to Section 5 of RR No. 27-2020, which extended the period to file VAT refund application for thirty (30) days from the lifting of the ECQ or MECQ, as the case may be. Hence, the administrative claim for refund was timely filed.

Petitioner failed to timely file its judicial claim.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from the receipt of respondent's decision or after the expiration of the ninety (90)-day period under Section 112(C) of the NIRC of 1997, as amended by R.A. No. 11976.

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48 Regulations Suspending the Filing and Ninety (90)-Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4 (tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act", October 6, 2020.

49 IATF Resolution No. 107-A.

50 IATF Resolution No. 109-A.

51 IATF Resolution No. 115-A.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, [52] the Supreme Court held that a judicial claim shall 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 [now 90-day] period, whichever is sooner. 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 [now 90+30] days provided by the NIRC is outside the jurisdiction of the CTA.

Counting ninety (90) days from petitioner's submission of its administrative claim on May 10, 2021, respondent had until August 8, 2021 to act on the said claim. In case of inaction within the said 90-day period, petitioner had thirty (30) days from such expiration to file its judicial claim, or until September 7, 2021.

Petitioner received said *VAT Refund Notice* dated July 30, 2021[53] from respondent on October 7, 2021.[54] Considering that no decision was communicated to the taxpayer within the ninety (90)-day period, there is no decision appealable to this Court to speak of. Any decision belatedly received by petitioner is not binding upon it. Petitioner, then, should have construed the non-receipt of the decision within the ninety (90)-day period as inaction on the part of respondent and reckoned the thirty (30)-day period to file its judicial claim from August 8, 2021, and not from the receipt on October 7, 2021, which was already beyond the 90+30 day period.

Given the foregoing, the filing of the *Petition or Review* on November 8, 2021 was beyond the thirty (30)-day mandatory and jurisdictional period. The Court, therefore, lacks jurisdiction to hear and decide petitioner's case.

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

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

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[52] G.R. No. 182737, March 2, 2016.
[53] Exhibit "R-4", BIR Records, pp. 254 to 302.
[54] Par. 21, Facts, *Petition for Review*, Docket – Vol. 1, p. 12; Exhibit "P-41", Docket – Vol. 3, pp. 1204 to 1237.

WE CONCUR:

Please see concurring opinion
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Second Division Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

MANULIFE DATA SERVICES, INC.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA CASE NO. 10666

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
AUG 0 2 2024 2:03 pm

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CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the *ponencia* that the filing of the "Petition for Review" on November 28, 2021 was beyond the period provided for under the Tax Code, and as such this Court lacks jurisdiction to hear and decide Petitioner's case.

Section 112(C)[1] of the National Internal Revenue Code ("NIRC") of 1997, as amended by TRAIN Law, provides that the Bureau of Internal Revenue ("BIR") is given ninety (90) days to act on a claim for refund of unutilized input value-added tax ("VAT"). During this period, the BIR can grant or deny (whether fully or partially) or not act on the VAT refund claim.

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[1] SEC. 112. Refunds or Tax Credits of Input Tax. —

xxx xxx xxx

(C) Period within which Refund of Input Taxes shall be made. — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial. xxx

If the BIR does not act on the claim within the 90-day period, the same is considered deemed denied. Jurisprudence is unequivocal on this matter.[2] Particularly, the Supreme Court in *Aichi Forging Company of Asia, Inc. v. Court of Tax Appeals - En Banc, Et. Al.*[3] held, to wit:

> "From the submission of the complete documents to support the claim, the CIR has a period of one hundred twenty (120) days [now ninety (90) days] to decide on the claim. If the CIR decides within the 120-day [now 90-day] period, the taxpayer may initiate a judicial claim by filing within 30 days an appeal before the CTA. **If there is no decision within the 120-day [now 90-day] period, the CIR's inaction <u>shall be deemed a denial of the application.</u>** In the latter case, the taxpayer may institute the judicial claim, also by an appeal, within 30 days before the CTA."[4]

In the instant case, the administrative claim was filed by Petitioner on May 10, 2021. Respondent then had ninety (90) days or until August 08, 2021 within which to decide on it. Since Petitioner did not receive an actual denial within the period provided for, the protest is deemed denied due to inaction on August 08, 2021 regardless of Petitioner's subsequent receipt of the VAT Refund Notice on October 07, 2021.

Since Respondent was not able to render a decision within the 90-day period, Petitioner had thirty (30) days from August 08, 2021, or until September 07, 2021 within which to file its Petition for Review, determined as follows:

Period	Date of Filing of the Administrative Claim	End of 90 days for BIR to decide on the claim	End of 30 days from the expiration of the 90 days
1st quarter to 4th quarter of 2019	May 10, 2021	August 08, 2021	September 07, 2021

Note however that due to the existence of a continuing national health emergency arising from the Coronavirus Disease 2019 (COVID-19) situation, the courts were declared to be physically closed from August 09, 2021 to September 07, 2021.[5] As such, it was physically impossible for Petitioner to file its judicial claim during those days. The earliest day Petitioner could have filed its "Petition for Review" was on October 20, 2021 since the suspension of the

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[2] Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113 and 197156, February 12, 2013; Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014; Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015; Silicon Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182737, March 02, 2016.

[3] G.R. No. 193625, August 30, 2017.

[4] *Emphasis and underscoring supplied.*

[5] *See* Supreme Court Administrative Circular No. 56-2021, July 30, 2021; OCA Circular No. 114-2021, August 20, 2021; OCA Circular No. 117-2021, August 28, 2021.

time for filing and service of pleadings and motions was finally lifted on that day.[6] Additionally, Petitioner had until October 27, 2021 within which to file the appeal since court filings were extended up to seven (7) calendar days from October 20, 2021.[7] And yet the "Petition for Review" in the case at bar was filed only on November 08, 2021, rendering the filing thereof out of time.

From all the foregoing, I vote to **DISMISS** the Petition for Review for lack of jurisdiction.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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6 *See* OCA Circular No. 119-2021, September 07, 2021; OCA Circular No. 123-2021, October 01, 2021; OCA Circular No. 128-2021, October 14, 2021; Administrative Circular No. 83-2021, October 18, 2021.

7 *See* OCA Circular No. 119-2021, September 07, 2021; OCA Circular No. 123-2021, October 01, 2021; OCA Circular No. 128-2021, October 14, 2021; Administrative Circular No. 83-2021, October 18, 2021.