REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LAPANDAY FOODS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9966

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:

JUN 30 2020 11:48 AM

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RESOLUTION

Before this Court are:

1. respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court**, filed on March 8, 2019, with petitioner's comment, incorporated in its **Comment/Opposition (To Respondent's Manifestation with Motion to Defer Respondent's Presentation Evidence dated 07 February 2020)**, filed on February 26, 2020;

2. petitioner's **Proffer of Excluded Evidence**, filed on January 23, 2020, with respondent's **Comment with Motion to Defer Submission of Memorandum**, filed on February 12, 2020;

3. petitioner's **Motion for Reconsideration (of the Court's Resolution dated 06 January 2020)**, filed on January 23, 2020, with respondent's comment incorporated in his **Comment with Motion to Defer Submission of Memorandum**, filed on February 12, 2020; and

4. respondent's **Manifestation with Motion to Defer Respondent's Presentation of Evidence**, filed on February 10, 2020, with petitioner's **Comment/Opposition (To Respondent's Manifestation with Motion to Defer Respondent's Presentation Evidence dated 07 February 2020)**, filed on February 26, 2020.

In his motion, respondent moves for the early determination of this Court's jurisdiction considering that the issue of jurisdiction is not an evidentiary matter that will require trial to resolve the same. He maintains that on the face of the petition alone, the question of jurisdiction may easily be resolved.

Respondent maintains that the instant petition was filed out of time considering that it failed to comply with the mandatory and jurisdictional thirty (30) day period from the expiration of the 120-day period pursuant to Section 112(D) of the National Internal Revenue Code (NIRC) of 1997, as amended.

The present claim for refund is for the four (4) quarters of taxable year 2011, the administrative claims of which were filed on March 14, 2013. Counting two years from the close of the first quarter of taxable year 2011, its administrative claims for refund were seasonably filed. As regards its judicial claim, petitioner filed the instant Petition for Review on October 30, 2018.

Thus, following the provisions of Revenue Memorandum Circular (RMC) No. 54-2014 and the provisions of Section 112 (A) and (C) of the NIRC of 1997, as amended, respondent claims that he only has 120 days from the filing of the administrative claim within which to decide on petitioner's claim for refund. Therefore, respondent asseverates that the Petition for Review filed on October 30, 2018, or almost five (5) years after the expiration of the 120-day period from the filing of its administrative claim for refund, was filed way out of time and therefore the Court has no jurisdiction over the instant case.

On the other hand, petitioner argues that the 120+30 day period under RMC No. 54-2014 does not apply in cases where respondent issues a decision on the VAT refund after the 120-day period. Further, petitioner argues that Section 112(C) of the NIRC of

1997, as amended, provides two (2) options on how to appeal the decision of respondent denying its claim for refund, which is to appeal with this Court, within 30 days, whether from the receipt of the adverse decision or from the expiration of the 120-day period to decide on the claim. Petitioner would want us to consider respondent estopped from claiming prescription considering that he acted on petitioner's claim despite being beyond the 120-day period.

Pertinent to the resolution of the present case are the provisions of Sections 112(A) and (C) of the NIRC of 1997, as amended, which provide:

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

Pursuant to the above provisions, the Commissioner of Internal Revenue (CIR) has 120 days from the date of the submission of the complete documents in support of the application for tax refund/credit within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the CIR. However, if after the 120-day period, the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,*[1] the Supreme Court held:

> "**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.**
>
> 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 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 doctrinal pronouncements, the 30-day period provided by law should be reckoned after the receipt of respondent's decision/ruling or after the expiration of the 120-day period, **<u>whichever is sooner</u>**. In addition, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day periods is outside the jurisdiction of this Court.

Moreover, in the case of *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,*[2] the Supreme Court reminded taxpayers that when the 120-day period lapses and there is inaction on the part of the respondent within the said period, the taxpayer must no longer wait for respondent to come up with a decision.

In the instant case, petitioner waited for respondent's decision on October 2, 2018, which is already beyond the 120-day period to decide. Thus, the 30-day period should have been reckoned from

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

the expiration of the 120-day period from the filing of the administrative claim and not on any other later date.

Since the filing of the instant petition is on October 30, 2018, the claim was made beyond the 120+30 day periods, the same is outside the jurisdiction of the Court in Division.

It is likewise relevant to refer to the pronouncement of the Supreme Court in the case of *Pilipinas Total Gas, Inc. vs Commissioner of Internal Revenue*[3], where it summarizerd the rules for claims for refund filed prior to the issuance of RMC No. 54-2014 on June 11, 2014, 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 document 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.
>
> 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. xxx" (*Emphasis ours*)

[3] G.R. No. 207112, December 8, 2015.

Thus, based on the foregoing, petitioner only has 30 days within which to submit documents to support its claim for refund, or until April 13, 2013.

However, in the instant case, petitioner received a First Notice dated November 11, 2013 from respondent only on November 21, 2013, requesting them to submit within ten days the necessary document for the processing of its claim.

Following the pronouncements of the Supreme Court in *Pilipinas Total Gas* case, the 120-day period for respondent to decide on petitioner's claim ended on August 11, 2013. Thus, petitioner should have filed its judicial claim for refund on September 10, 2013.

The Supreme Court held in the same case that the 120-day period is for the benefit of petitioner and it should take advantage of such benefit by using the 120+30 day periods within which to file its appeal with this Court and no longer wait for the untimely decision of respondent:

> **"Indeed, the 120-day period granted to the CIR to decide the administrative claim under the Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.**
>
> A hypothetical situation illustrates the hazards of granting the CIR to decide when complete documents have been submitted – A taxpayer files its administrative claim for VAT refund/credit with supporting documents. After 121 days, the CIR informs the taxpayers that it must submit additional documents. Considering that the CIR

had determined that complete documents have not yet been submitted, the 120-day period to decide the administrative claim has not yet begun to run. In the meantime, more than 120 days have already passed since the application with the supporting documents was filed to the detriment of the taxpayer, who has no opportunity to file a judicial claim until the lapse of the 120+30 day period in Section 112(C). With no limitation to the period for the CIR to determine when the complete documents have been submitted, the taxpayer may be left in a limbo and at the mercy of the CIR, with no adequate remedy available to hasten the processing of its administrative claim.

Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under the present law, when should the submission of documents be deemed "completed" for purposes of determining the running of the 120-day period?*

Ideally, upon filing his administrative claim, a taxpayer should complete the necessary document to support his claim for tax credit or refund or for excess utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, **it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim.** Therefore, ideally, the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit." (*Emphasis ours*)

The Court also disagrees with petitioner's reliance on the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*,[4] wherein the ruling was based on Section 228 of the NIRC of 1997, as amended, and Section 3(a)(2), Rule of 4 of the Revised Rules of the Court of Tax Appeals (CTA), and the issue pertains to a tax

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[4] G.R. No. 174584, March 25, 2012.

assessment and not an input VAT refund or credit claim. Unlike such provision wherein the taxpayer can wait for the decision of the respondent on the disputed assessment, no equivalent provision was present in the Revised Rules of the CTA with regard to claims for refund.

In view of the foregoing, the filing of the instant Petition for Review on October 30, 2018 is beyond the 30-day period under Section 112(C) of the NIRC of 1997, as amended, and therefore, the Court has no jurisdiction over the instant case. Hence, the Court will no longer act on all other incidents pending in this case.

WHEREFORE, premises considered, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** is **GRANTED**. Accordingly, the Petition for Review under CTA Case No. 9966 is **DISMISSED** for lack of jurisdiction by reason of prescription.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice