REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

LEPANTO CONSOLIDATED MINING COMPANY,	**CTA CASE NO. 10153**
Petitioner,	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	DEC 13 2019 2:56 p.m.

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RESOLUTION

For resolution are respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court filed on 16 October 2019 (hereinafter referred to as "Motion") and petitioner's Comment/Opposition filed on 7 November 2019 (hereinafter referred to as "Comment").

In his Motion, respondent alleges that the Petition for Review was filed beyond the mandatory and jurisdictional thirty (30) day period from the lapse of the one hundred twenty (120) day period pursuant to Section 112(D) of the National Internal Revenue Code of 1997 (hereinafter referred to as "Tax Code") and Revenue Memorandum Circular ("RMC") No. 54-2014.

Respondent contends that when petitioner's VAT refund/credit claim, which was filed on 22 May 2009,[1] was not acted upon within the one hundred twenty (120) day period or until 19 September 2009, the VAT refund/credit claim was already deemed denied. The recourse of the petitioner was to elevate its VAT refund/credit claim to this Court within thirty (30) days from the lapse of the one hundred twenty (120) day period or until 19 October 2009.

Given that petitioner only filed its Petition for Review on 20 August 2019, respondent alleges that it was filed out of time, and therefore, should be dismissed for lack of jurisdiction.

Petitioner counters that it timely filed its Petition for Review pursuant to Section 112(C) of the Tax Code, as amended by Republic Act No. 10963. The petitioner alleges that the said provision allows the filing of a Petition for

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[1] In petitioner's Petition for Review, it alleged that the complete documents in support of the application was also filed on 22 May 2009.

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Review within thirty (30) days from the taxpayer's receipt of respondent's Letter of Denial of its VAT refund/credit claim. In this case, petitioner opines that it received respondent's Letter of Denial on 22 July 2019 and filed its Petition for Review on 20 August 2019 which is within the thirty (30) day period provided in the Tax Code.

Petitioner further argues that its VAT refund/credit claim should not be considered as deemed denied since the Letter of Denial it received from the respondent is not covered by RMC No. 54-2014 but of Revenue Regulation ("RR") No. 1-2017. Petitioner states that there is no deemed denial for claims covered by RR No. 1-2017 as it is only through writing that a VAT refund/credit claim can be denied.

Petitioner also alleges that the respondent is already estopped from claiming that its Letter of Denial has no legal effect, and that the dismissal of the Petition for Review will constitute a violation of its due process.

After considering the aforementioned, the Court finds respondent's arguments tenable.

Under the Tax Code, a VAT-registered person, whose sales are zero-rated or effectively zero-rated is given the remedy to apply for tax credit or refund of its creditable input tax.[2] The pertinent provision is Section 112, to wit:

> "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, <u>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</u> 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

[2] Section 112 of the National Internal Revenue Code of 1997, as amended.

shall be allocated ratably between his zero-rated and non-zero-rated sales.

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(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, <u>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</u>.".[3]

As provided in Section 112 of the Tax Code, the remedy of VAT refund/credit claim is initiated by filing an application and submission of complete supporting documents to the respondent (*i.e.* administrative claim). The taxpayer is given two (2) years to apply for its administrative claim.[4] Upon the submission of the complete supporting documents, the respondent is given one hundred twenty (120) days to act on the application.[5]

In *Silicon Philippines, Inc. vs. CIR,*[6] the Supreme Court discussed that the respondent, during the one hundred twenty (120) day period, may either grant or deny, in full or partial, the VAT refund/credit claim. In case respondent fails to act on the VAT refund/credit claim within the said period, the application shall be deemed denied, to wit:

"Upon the filing of an administrative claim, respondent is given a period of 120 days within which to **<u>(1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial</u>**."[7]

In case of full or partial denial of the VAT refund/credit claim, or inaction of the respondent, the taxpayer is given another remedy which is to

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[3] Emphasis and underscoring supplied.
[4] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue, G.R. No. 182737, 2 March 2016.
[5] *Id.*
[6] *Id.*
[7] Emphasis and underscoring supplied.

file an appeal to this Court (*i.e.* judicial claim). The judicial claim should be filed within thirty (30) days from receipt of respondent's decision or ruling, or after the expiration of the one hundred twenty (120) day period, whichever is sooner.[8]

In *Mindanao II Geothermal Partnership v. CIR,*[9] the Supreme Court held that the one hundred twenty (120) day and thirty (30) day periods are both mandatory and jurisdictional. Non-compliance with both periods will render a taxpayer's judicial claim in this Court void. The only exception to this rule is a judicial claim filed prematurely pursuant to BIR Ruling No. DA-489-03, to wit:

> "In the Aichi case cited by both the CTA Division and the CTA En Banc, **the Court held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund/credit of input VAT before the CTA**. **Consequently, its non-observance would lead to the dismissal of the judicial claim on the ground of lack of jurisdiction**. Aichi also clarified that the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims. Succinctly put, once the administrative claim is filed within the two (2)-year prescriptive period, the claimant must wait for the 120-day period to end and, thereafter, he is given a 30-day period to file his judicial claim before the CTA, even if said 120-day and 30-day periods would exceed the aforementioned two (2)-year prescriptive period.
>
> However, in CIR v. San Roque Power Corporation (San Roque), **the Court recognized an exception to the mandatory and jurisdictional nature of the 120-day period. It ruled that BIR Ruling No. DA-489-03 dated December 10, 2003 provided a valid claim for equitable estoppel under Section 246 of the NIRC.** In essence, the aforesaid BIR Ruling stated that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."[10]

Applying the foregoing in the case at bar, the Petition for Review was clearly filed out of time. As correctly pointed out by the respondent, the petitioner should have appealed its VAT refund/credit claim within thirty (30) days from the lapse of the one hundred twenty (120) day period or until 19 October 2009. However, petitioner only filed its judicial claim on 20 August 2019 or several years after the lapse of the said period.

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[8] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue, G.R. No. 182737, 2 March 2016.

[9] Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue, G.R. No. 204745, 8 December 2014 *citing* Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, 6 October 2010 and Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113, and 197156, 12 February 2013.

[10] Emphasis and underscoring supplied.

Petitioner anchors its right to appeal on the Letter of Denial it received from respondent. However, the Supreme Court in numerous cases has already ruled that a Letter of Denial received by a taxpayer after the lapse of the one hundred twenty (120) day period is inconsequential, because the VAT refund/credit claim by this time is already deemed denied which became final and inappealable after the lapse of thirty (30) days as discussed in *CIR v. San Roque Power Corporation,*[11] to wit:

> The Atlas doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable.** The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.[12]

Finally, reliance of petitioner in RR No. 1-2017 is of no moment. RR No. 1-2017 did not extend the period for a taxpayer to file its judicial claim in this Court. Neither can petitioner rely on Section 112(C) of the Tax Code, as amended by Republic Act No. 10963, considering that the VAT refund/credit claim became deemed denied long before the effectivity of Republic Act No. 10963 on 1 January 2018.

It should be noted that "tax refunds or tax credits — just like tax exemptions — are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."[13]

WHEREFORE, premises considered, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court is **GRANTED.** The Petition for Review docketed as CTA Case No. 10153, entitled *Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue* is **DISMISSED** for lack of jurisdiction.

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[11] Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113, and 197156, 12 February 2013.
[12] Emphasis and underscoring supplied.
[13] Sitel Philippines Corp. v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice