

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LEPANTO
CONSOLIDATED
MINING COMPANY,

Petitioner,

CTA EB No. 2462
(CTA Case No. 10105)

Present:

-versus-

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

DEL ROSARIO, P.L.
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, II.

Promulgated:

OCT 06 2022

4:28pm

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DECISION

REYES-FAJARDO, I:

THE CASE

Before this Court En Banc (the "Court") is a Petition for Review filed by petitioner Lepanto Consolidated Mining Company seeking the reversal of the Resolution dated June 9, 2020 and the Resolution dated February 8, 2021 rendered by the Third Division of this Court (the "Court in Division"), which dismissed the Petition for Review dated July 4, 2019, praying for the issuance of tax credit certificate (TCC) or cash refund in the amount of Eighteen Million Two Hundred Ninety-One Thousand Eight Hundred Seventy-Six and 41/100 Pesos (₱18,291,876.41), allegedly representing petitioner's

input value-added tax (VAT) claims for the first, second, and third quarters of taxable year (TY) 2010, for want of jurisdiction.¹

THE PARTIES

Petitioner Lepanto Consolidated Mining Company is a corporation organized and existing under the laws of the Republic of the Philippines with principal address at 21/F Lepanto Building, 8747 Paseo de Roxas, Makati City.²

On the other hand, respondent is the appointed Commissioner of Internal Revenue (CIR) vested with the authority to carry out the functions, duties and responsibilities of said Office, including the power to decide, approve, and grant refunds of excess and unutilized input VAT pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.³

THE FACTS

The antecedent facts are as follows:

On March 28, 2012 and September 26, 2012, petitioner filed with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF-OSS) its application for tax credit/refund consisting of its input VAT for the first, second, and third quarters of TY 2010 in the total amount of Eighteen Million Two Hundred Ninety-One Thousand Eight Hundred Seventy-Six and 41/100 Pesos (₱18,291,876.41). The input VAT arose from petitioner's local purchases, importation of consumable goods, capital goods, and services of non-resident individuals.⁴

On the same day, petitioner submitted the complete required documents in support of its application for refund as shown by the

¹ Petition for Review, Docket – p. 16.

² *Id.* at p. 17.

³ *Id.*

⁴ Petition for Review, Docket – p. 18.

accomplished DOF-OSS Checklists of Mandatory Requirements for VAT Credit Claims.⁵

On June 4, 2019, petitioner received a denial letter issued by the Bureau of Internal Revenue (BIR) on January 17, 2019. In said letter signed by Ma. Luisa I. Belen, OIC – Assistant Commissioner of Internal Revenue for Assessment Service, the BIR denied petitioner's application for VAT refund for failure to prove validity of its claim.⁶

On July 4, 2019, petitioner filed its Petition for Review before the Court in Division.

On November 29, 2019, respondent filed a Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court. On December 19, 2019, petitioner filed a Comment/Opposition (to the respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated November 29, 2019).

The Court in Division, in its Resolution dated June 9, 2020, dismissed petitioner's Petition for Review dated July 4, 2019 for being filed out of time.⁷

On August 19, 2020, petitioner filed a Motion for Reconsideration (of the Honorable Court's Resolution dated June 9, 2020). On December 7, 2020, respondent filed a Comment/Opposition (to the petitioner's Motion for Reconsideration dated August 19, 2020).

The Court in Division, in its Resolution dated February 8, 2021, denied petitioner's Motion for Reconsideration finding no cogent reason to depart from its earlier ruling.⁸

On June 8, 2021, petitioner filed the present Petition for Review before this Court seeking the reversal of the Resolution dated June 9, 2020 and the Resolution dated February 8, 2021 rendered by the

⁵ Petition for Review, Docket – p. 19.

⁶ *Id.*

⁷ Resolution, Docket – pp. 10-11.

⁸ *Id.* at pp. 53.

Court in Division. On November 8, 2021, respondent filed a Comment/Opposition thereto.

On November 24, 2021, this Court promulgated a Resolution submitting the case for decision.

THE ISSUE

The sole issue to be resolved in this case is whether or not petitioner's judicial claim for VAT refund was filed out of time.

Petitioner's Arguments:

Petitioner submits that the Court in Division erred in dismissing the Petition for Review for being filed out of time. It is petitioner's position that the denial letter issued by the BIR on January 17, 2019 was an actual denial of its VAT refund claim; hence, the deadline for the filing of the Petition for Review must be reckoned from the date of receipt of said denial letter on June 4, 2019.⁹ Moreover, petitioner argues that the Court in Division erred in ruling that petitioner's VAT refund claim is deemed denied after the lapse of the one hundred twenty (120)-day period from the filing of the administrative claim.¹⁰

Respondent's Arguments:

Respondent counters that, assuming petitioner's administrative claims were filed on time, the Petition for Review filed on July 4, 2019 was filed beyond the mandatory and jurisdictional thirty (30)-day period from the expiration of the one hundred twenty (120)-day period pursuant to Section 112(D) of the NIRC of 1997, as amended.¹¹

⁹ Petition for Review, Docket – p. 21.

¹⁰ *Id.*; Resolution, Docket – p. 48

¹¹ Comment/Opposition, Docket – p. 67.

THE COURT’S RULING

The Petition for Review should be dismissed.

The Court notes that the arguments raised in the Petition for Review are mere reiterations of the arguments petitioner previously pleaded in both its Petition for Review dated July 4, 2019 and its Motion for Reconsideration dated August 19, 2020. The same arguments have already been submitted to and resolved by the Court in Division in its Resolutions; thus, are unsubstantial to warrant reconsideration or modification of the same. Consequently, the Court adopts the findings of the Court in Division and expounds on matters below.

The relevant dates, summarized by the Court in Division, are as follows:

Period Covered	1 st Quarter of 2010	2 nd Quarter of 2010	3 rd Quarter of 2010
Last day for filing of administrative claim	March 31, 2012	June 30, 2012	September 30, 2012
Date of filing of administrative claim	March 28, 2012	March 28, 2012	September 26, 2012
End of 120-day period for the CIR to decide	July 26, 2012	July 26, 2012	January 24, 2013
30-day period from expiration of 120-day period	August 27, 2012	August 27, 2012	February 25, 2013
Receipt of Denial Letter dated January 17, 2019	June 4, 2019		
Date of filing of Petition for review	July 4, 2019		

Section 112 of the NIRC of 1997, as amended, provides the procedure for filing a claim for VAT refund or credit, and prescribes the corresponding periods therefor. Prior to the passage of Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Act,¹² the provision states, in part:

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

¹² Effective January 1, 2018.

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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:

...

(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.¹³

The above provision speaks of two (2) periods: (1) the one hundred twenty (120)-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for a tax credit or refund; and (2) the thirty (30)-day period, which refers to the period for filing a judicial claim with the Court of Tax Appeals (CTA).¹⁴

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*,¹⁵ the Supreme Court provided a summary of the rules on prescriptive periods, particularly the “120+30 day period”, for claiming refund/credit of input VAT, considering the aforequoted statutory provisions and relevant jurisprudence,¹⁶ to wit:

SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

¹³ Emphasis supplied.

¹⁴ *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

¹⁵ G.R. No. 191498, January 15, 2014.

¹⁶ *Commissioner of Internal Revenue v. Taganito Mining Corp.*, G.R. Nos. 219630-31 & 219635-36, December 7, 2021, citing *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014.

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...

B. 120+30-Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (Aichi and San Roque)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (San Roque)

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force.¹⁷

Jurisprudence holds that the running of the one hundred twenty (120)-day period for the CIR to decide the claim for refund commences from the time of the submission of complete documents in support of the tax refund application.¹⁸ The term "*complete documents*" is further clarified in Revenue Memorandum Circular (RMC) No. 49-2003.¹⁹ *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,²⁰ explained the term "*complete documents*" in accordance with RMC No. 49-2003, viz.:

[F]or purposes of determining when the supporting documents have been completed — **it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.** After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, **the 120-day period is reckoned from the date of filing.** The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have

¹⁷ Emphasis supplied.

¹⁸ *Commissioner of Internal Revenue v. Philex Mining Corp.*, G.R. No. 218057, January 18, 2021.

¹⁹ *Id.*

²⁰ G.R. No. 207112, December 8, 2015.

filed his supporting documents on the first day he was notified by the BIR of the lack of necessary documents. **In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.**

...

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.²¹

Records of this case show that petitioner filed its application for tax refund and attached therewith the complete required documents in support thereto, on March 28, 2012 for the first and second quarters of 2010, and on September 26, 2012 for the third quarter of 2010. Following *Pilipinas Total Gas, Inc.*, it is petitioner that determines the completeness of the documents submitted for purposes of counting the one hundred twenty (120)-day period. Thus, within the period of one hundred twenty (120) days from March 28, 2012 and September 26, 2012, respectively, the CIR could have requested petitioner to submit additional documents as deemed necessary. Considering that no such request or any other action was taken by the CIR within the said one hundred twenty (120) days, petitioner had thirty (30) days from the lapse of said one hundred twenty (120)-day period from the filing of the respective administrative claims, or until **August 27, 2012** for the first and second quarters of 2010, and **February 25, 2013** for the third quarter of 2010, to file its judicial claim before this Court. Given that petitioner's judicial claim for VAT refund was filed only on **July 4, 2019**, the same was filed out of time thereby precluding the Court in Division from acquiring jurisdiction over the same.

The denial letter issued by the BIR on June 4, 2019 is inconsequential since it was issued beyond the 120+30 day period. In *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue*,²²

²¹ Emphasis supplied.

²² G.R. No. 168950, January 14, 2015.

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the Supreme Court reminded tax payers that the CIR's inaction after the lapse of the one hundred twenty (120)-day period is the decision itself that must be appealed to the Court within thirty (30) days from the lapse of the one hundred twenty (120)-day period, to wit:

A final note, the taxpayers are reminded that 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.**²³

It is thus settled that the inaction of the CIR on the claim during the one hundred twenty (120)-day period is, by express provision of law, "*deemed a denial*" of such claim, and the failure of the taxpayer to file its judicial claim within thirty (30) days from the expiration of the one hundred twenty (120)-day period shall render the "*deemed a denial*" decision of the CIR final.²⁴

In this case, the judicial claims were respectively filed two thousand five hundred three (2,503) and two thousand three hundred twenty-one (2,321) days from the last day when they should have been filed; hence, there can be no denying that these were belatedly filed. Accordingly, the Court in Division correctly dismissed the Petition before it for lack of jurisdiction.

It bears stressing that the right to appeal to the CTA from a decision or "*deemed a denial*" decision of the CIR 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.²⁵

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Resolution dated June 9, 2020 and the Resolution dated February 8, 2021 of the Third Division of this Court in CTA Case No. 10105 are **AFFIRMED**.

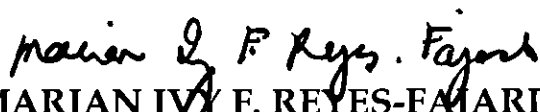
²³ Emphasis supplied.

²⁴ *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, October 22, 2014.

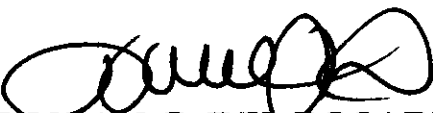
²⁵ *Id.*



SO ORDERED.


MARIAN IV F. REYES-FAJARDO
Associate Justice

WE CONCUR:

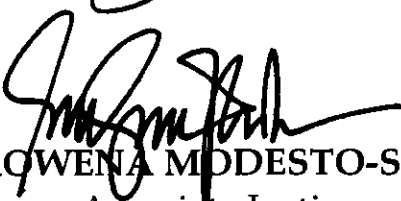

ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

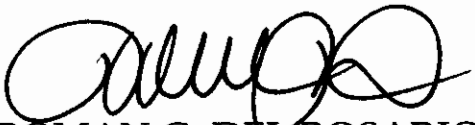

JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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