REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2534** (CTA Case No. 9895)
-versus-	
MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD., *Respondent.*	

x- x

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD., *Petitioner,*	**CTA *EB* NO. 2554** (CTA Case No. 9895)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 0 7 2023 11:35 am

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D E C I S I O N

MANAHAN, *J.*:

For decision before the Court *En Banc* are the following:

1. Petition for Review, docketed as CTA EB Case No. 2534, filed by the Commissioner of Internal Revenue (CIR); and

2. Petition for Review, docketed as CTA EB Case No. 2554, filed by Maersk Global Services Centres (Philippines) Ltd. (Maersk).

Both parties are assailing the Decision, dated January 28, 2021, and Resolution dated September 20, 2021 of the CTA 3rd Division in CTA Case No. 9895, partially granting Maersk's claim for refund/issuance of tax credit certificate (TCC) of excess or unutilized input value-added tax (VAT) attributable to zero-rated sales for taxable year 2016.

FACTS

The CTA 3rd Division recounts the facts, as follows:

> Petitioner [Maersk] is a foreign corporation, duly organized and existing under the laws of Hong Kong and licensed to do business in the Philippines as a regional operating headquarters, with principal office at Levels 5-8, North Wing, Estancia Office, Capitol Commons, Meralco Avenue, Brgy. Oranbo, Pasig City. It is registered with the Bureau of Internal Revenue (BIR) for VAT purposes.
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> Respondent [CIR] is vested with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the *Tax Code* or other laws or portions thereof administered by the BIR. He holds office at 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.
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> Petitioner [Maersk]'s main business in the Philippines is to render corporate and administrative services for the ocean transportation business of its affiliate, Maersk Line A/S, a non-resident foreign corporation with address at Denmark, Esplanaden 50, 1098 Copenhagen. These services include, among others, the processing of import and export documentation, procurement, finance and accounting services, and information technology-related services.
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> During CY 2016, petitioner [Maersk] received the total amount of Php2,011,153,601.06 from Maersk Line A/S for these services. xxx
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> xxx

> For the period covering the 1st, 2nd, 3rd and 4th quarters of CY 2016, petitioner [Maersk] filed its quarterly VAT returns with respondent [CIR], as follows:
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> Aside from petitioner [Maersk]'s alleged zero-rated sales to Maersk Line A/S, it also had VATable sales during this period in the total amount of Php4,235,615.94. These pertain to the sale of its used or depreciated assets. For these sales, petitioner [Maersk] declared an output VAT in the total amount of Php508,273.91.
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> During the course of its operations for CY 2016, petitioner [Maersk] incurred input VAT from its local purchases of goods and services. After offsetting the output VAT from its sale of used or depreciated assets, petitioner [Maersk] supposedly incurred excess and unutilized input VAT in the total amount of Php38,676,213.08, as follows:
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> On 27 March 2018, petitioner [Maersk] filed an administrative claim for excess and unutilized input VAT attributable to its zero-rated sales for CY 2016 with the BIR VAT Credit Audit Division.
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> On 13 June 2018, the BIR issued a Denial Letter rejecting petitioner [Maersk]'s claim for input VAT refund based on lack of legal and factual basis. This Denial Letter was received by petitioner [Maersk] on 26 July 2018.[1]

On July 27, 2018, Maersk filed its Petition for Review docketed as CTA Case No. 9895.

After trial, the CTA 3rd Division rendered its Decision, dated January 28, 2021, with the following dispositive portion:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent [CIR] is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner [Maersk] in the amount of Php32,523,828.33, representing excess or unutilized excess input VAT attributable to its zero-rated sales for the four quarters of CY 2016.
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> **SO ORDERED**.[2]

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[1] EB Docket, CTA EB No. 2534, pp. 25-27.
[2] EB Docket, p. 46.

The parties' respective Motions for Partial Reconsideration were denied in the Resolution [3] dated September 20, 2021.

On November 9, 2021, the CIR filed his *Petition for Review*, docketed as CTA EB No. 2534. Maersk filed its *Comment (On Petitioner's Petition for Review dated 2 November 2021)*[4] through electronic mail on December 10, 2021, with hard copies submitted on December 15, 2021.

On February 2, 2022, Maersk filed its *Petition for Review*, docketed as CTA EB No. 2554.

On February 17, 2022, CTA EB Nos. 2534 and 2554 were consolidated.[5]

On April 6, 2022, the CIR filed his *Comment (Re: Petition for Review)*. [6] Subsequently, the cases were submitted for decision on May 24, 2022.[7]

ISSUES

The CIR assigns the following sole error for the Court's consideration:

> The Third Division of the Honorable Court erred in ruling that respondent [Maersk] is entitled to refund in the reduced amount of Php32,523,828.33 representing excess or unutilized excess input VAT attributable to zero-rated sales for the four quarters of CY 2016.[8]

Maersk assigns the following sole error for the Court's consideration:

> The Third Division committed reversible error in disallowing the VAT zero-rating of the sales of services of petitioner [Maersk] that were indisputably made to and paid for by petitioner

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[3] EB Docket, pp. 48-51.
[4] EB Docket, pp. 63-70.
[5] EB Docket, Minute Resolution dated February 17, 2022, p. 72.
[6] EB Docket, pp. 77-81.
[7] EB Docket, Resolution dated May 24, 2022, pp. 119-121.
[8] EB Docket, Petition for Review, Assignment of Error, p. 3.

> [Maersk]'s client, Maersk Line A/S (ML), an entity engaged in international shipping.[9]

CIR's arguments in CTA EB No. 2534

The CIR states that Maersk failed to substantiate its claim for refund.

The CIR also states that since a decision was rendered in the administrative level, the Court's jurisdiction becomes strictly appellate, and the Court should confine itself to whether the findings of the CIR are consistent with law.

Maersk's arguments in CTA EB No. 2554

Maersk states that based on the evidence on record and as examined by the court-commissioned independent certified public accountant (ICPA), the disallowed sales were made to and paid for by ML; that there is already a ruling that ML is indeed engaged in the international ocean transportation business; thus, sales of services by Maersk to ML are subject to VAT zero-rating.

RULING OF THE COURT

The Petitions for Review were timely filed.

Pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b),[10] the parties had fifteen (15) days from receipt of the assailed Resolution, within which to file their respective Petitions for Review.

The CIR received the assailed Resolution dated September 20, 2021 on October 28, 2021. Counting fifteen

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[9] EB Docket, CTA EB No. 2554, Petition for Review, Assignment of Error, p. 16.

[10] Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.-*
xxx xxx xxx
(b) A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

(15) days from October 28, 2021, the CIR had until November 12, 2021 within which to file his Petition for Review. Thus, the Petition for Review, docketed as CTA EB No. 2534 was timely filed on November 9, 2021.

Maersk received the assailed Resolution on November 29, 2021. Counting fifteen (15) days therefrom, Maersk had until December 14, 2021 within which to file its Petition for Review. On December 14, 2021, Maersk filed its *Motion for Extension of Time (To File Petition for Review),*[11] praying for an additional fifteen (15) days, or until December 29, 2021 to file its Petition for Review. The *Motion* was granted in the Minute Resolution dated December 15, 2021.[12]

On December 21, 2021, CTA Circular No. 02-2021 was issued suspending the filing of any and all pleadings and other court submissions from December 21, 2021 to January 3, 2022, and extending the period to file for seven (7) calendar days counted from January 4, 2022.

On January 11, 2022, Maersk filed its Petition for Review through electronic mail, with the hard copies submitted on February 2, 2022.

In a Minute Resolution dated February 17, 2022, CTA EB Case Nos. 2534 and 2554 were consolidated.[13]

On April 6, 2022, the CIR filed his *Comment (Re: Petition for Review)*[14] in CTA EB Case No. 2554.

In the Resolution dated May 24, 2022, the instant cases were submitted for decision.[15]

The CTA 3rd Division had no jurisdiction over the Petition for Review.

Section 112 of the 1997 National Internal Revenue Code, as amended, governs claims for refund or tax credit of unutilized or excess input VAT, as follows:

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[11] EB Docket, CTA EB No. 2554, pp. 1-6.
[12] EB Docket, CTA EB No. 2554, p. 7.
[13] EB Docket, CTA EB No. 2534, p. 72.
[14] EB Docket, CTA EB No. 2534, pp. 77-81.
[15] EB Docket, CTA EB No. 2534, pp. 119-121.

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 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 or 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.

(B) 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.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Based on the foregoing, the following requisites must be complied with:

1. The taxpayer-claimant must be VAT-registered;

2. There must be zero-rated or effectively zero-rated sales;

3. That input taxes have been paid or incurred;

4. The said input taxes are attributable to the zero-rated or effectively zero-rated sales;

5. The said input taxes were not applied against any output VAT liability; and,

6. That the administrative claim and judicial claim have been timely filed.

While the CTA 3rd Division found that the administrative claim and judicial claim were timely filed, We find that the judicial claim was belatedly filed and that the CTA 3rd Division had no jurisdiction.

The CTA 3rd Division correctly ruled that the administrative claim was timely filed, as follows:

> As provided in Section 112(A) of the 1997 NIRC, as amended, the administrative claim for input VAT refund should be made "within two (2) years after the close of the taxable quarter when the sales were made." The present case concerns the 1st, 2nd, 3rd, and 4th taxable quarters of CY 2016. Consequently, the deadline to file the administrative claims for input VAT refund for these periods are as follows:

Quarter	Deadline to File Administrative Claim
1st Quarter of CY 2016	31 March 2018
2nd Quarter of CY 2016	30 June 2018
3rd Quarter of CY 2016	30 September 2018
4th Quarter of CY 2016	31 December 2018

> In the case at bar, petitioner [Maersk] filed its administrative claim for input VAT refund on 27 March 2018 for all taxable quarters of CY 2016. Thus, petitioner [Maersk] timely filed its administrative claim for input VAT refund before respondent [CIR].

With respect to the filing of the judicial claim, Section 112(C) of the 1997 NIRC, as amended by the TRAIN Law,[16]

[16] Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Law.

prescribes the period for filing a judicial claim for the refund or tax credit of alleged excess or unutilized input VAT, as follows: (i) the period of ninety (90) days which serves as a period for the CIR to act on the administrative claim for refund or credit; and (ii) the thirty (30)-day period within which the taxpayer may file its judicial claim with the CTA.

In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,*[17] the Supreme Court summarized the rules regarding the prescriptive periods for filing of the administrative and judicial claims for refund or tax credit of input VAT. The pertinent rules for the judicial claim are quoted below:

> **B. 120 [now 90] + 30-Day Period**
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> 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 [now 90-day period], or (2) file the judicial claim within thirty days from the expiration of the 120-day [now 90-day] period if the Commissioner does not act within the 120-day [now 90-day] period.
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> 2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
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> 3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi and San Roque)*
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> 4. As an exemption 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)*
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> 5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *San Roque)*

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,*[18] the Supreme Court stated:

> A final note, the taxpayers are reminded that when the 120-day [now 90-day] period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come

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[17] G.R. No. 173241, March 25, 2015, citing *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, G.R. No. 191496, January 15, 2014.
[18] G.R. No. 168950, January 14, 2015, see also *Lapanday Foods Corporation vs. Commissioner of Internal Revenue*, G.R. No. 252821, September 2, 2020.

> 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 [now 90-day] waiting period.

The Supreme Court has also stated that "any claim filed in a period less than or beyond then 120+30 [now 90+30] days provided by the NIRC is outside the jurisdiction of the CTA."[19]

Thus, from the filing of Maersk's administrative claim on March 27, 2018, the CIR had ninety (90) days or until June 25, 2018, to act on the said claim. In case of inaction within the said 90-day period, Maersk has thirty (30) days from such expiration to file its judicial claim, or until July 25, 2018. Unfortunately, the Petition for Review before the CTA was filed only on July 27, 2018, or beyond the period prescribed.

In the present case, while there is a letter-denial dated June 13, 2018, the same was received by Maersk only on July 26, 2018, which was already beyond the 90+30-day period, which ended on July 25, 2018.

It is reiterated that the "judicial claim should 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 [now 90-day] period, whichever is sooner."[20] Maersk's receipt of the letter-denial on July 26, 2018, which was already beyond the 90+30-day period, does not alter the jurisdictional period within which to appeal to the CTA due to inaction, which ended on July 25, 2018.

It must also be emphasized that claims for tax credit or refund, are strictly construed against the taxpayer. Thus, strict compliance with the 90+30-day period is necessary for such claim to prosper.[21]

Clearly, the CTA 3rd Division had no jurisdiction over the judicial claim.

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[19] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.
[20] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.
[21] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal* Revenue, G.R. No. 168950, January 14, 2015, see also *Lapanday Foods Corporation vs. Commissioner of Internal Revenue*, G.R. No. 252821, September 2, 2020.

However, Section 2 of Republic Act No. 1125, as amended, provides:

> Section 2. *Sitting En Banc or Division; Quorum; Proceedings.* –
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> xxx xxx xxx
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> **The affirmative vote of five (5) members of the Court En Banc shall be necessary to reverse a decision of a Division** but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level. (*emphasis supplied*)

Likewise, Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA) states that the presence at the deliberation and the affirmative votes of at least five (5) members of the Court *En Banc* shall be necessary to reverse a decision of a Division. Where the necessary majority vote cannot be had in appealed cases, the judgment or order appealed from shall stand affirmed, thus:

> Section 3. *Court en banc; quorum and voting.* – The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. **The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division** x x x **Where the necessary majority vote cannot be had,** the petition shall be dismissed; **in appealed cases, the judgment or order appealed from shall stand affirmed;** and on all incidental matters, the petition or motion shall be denied. (*emphasis supplied*)

In the deliberation of the instant case, only Associate Justices Ma. Belen M. Ringpis-Liban, Marian Ivy F. Reyes-Fajardo, and Corazon G. Ferrer-Flores, concurred with the opinion of the ponente that the CTA 3rd Division had no jurisdiction to entertain Maersk's claim for refund/issuance of a TCC of excess or unutilized input VAT attributable to zero-rated sales for taxable year 2016.

WHEREFORE, considering that the required affirmative votes of five (5) members of the Court *En* Banc was not obtained in the instant case, the Petitions for Review, filed by the CIR and Maersk, docketed as CTA EB Nos. 2534 and 2554, respectively are **DENIED**.

Accordingly, the Decision and Resolution, dated January 28, 2021 and September 20, 2021, respectively, by the CTA 3rd Division in CTA Case No. 9895 are deemed **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I join the Dissenting Opinion of Justice Villena)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, I join the Dissenting Opinion of Justice Villena)
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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 cases were 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

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MAERSK GLOBAL SERVICE CENTRES (PHILIPPINES) LTD.,
Respondent.

CTA EB NO. 2534
(CTA Case No. 9895)

x---x

MAERSK GLOBAL SERVICE CENTRES (PHILIPPINES) LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2554
(CTA Case No. 9895)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, *JJ.*

Promulgated:
JUN 07 2023 11:35 am

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DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

After a re-evaluation of my previous position, I am constrained to withhold my assent to the *ponencia*, in reversing and setting aside the assailed Decision and Resolution of the Court in Division.

The crux of the controversy revolves around the proper interpretation of Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963 the Tax

Reform Acceleration and Inclusion (TRAIN) Law. A textual comparison of Section 112(C) before and after the amendments introduced by the TRAIN Law shows:

Section 112(C) of NIRC of 1997 prior to TRAIN Amendments	**Section 112(C) of NIRC of 1997 with TRAIN Amendments**
Sec. 112. *Refunds or Tax Credits of Input Tax.* – 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 Subsections (A) and (B) 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**.	Sec. 112. *Refunds or Tax Credits of Input Tax.* - xxx (C) *Period within which Refund or Tax Credit 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. In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code.

The *ponencia* holds that the Court in Division has no jurisdiction over the Petition for Review as it was filed beyond the mandatory 90+30-day period. The *ponencia* reckoned the start of the 30-day period to appeal before the CTA when the 90-day period for the Commissioner of Internal Revenue (CIR) to act on Maersk Global Service Centres (Philippines) Ltd.'s (Maersk) administrative claim ended.

I submit that Maersk's Petition for Review was filed within the 30-day period before the Court in Division.

The legislative history of Section 112(C) of the NIRC of 1997, as amended, shows that Congress intended the ninety (90)-day period to be mandatory

The VAT was first introduced to the Philippine taxation system with the enactment of Executive Order No. 273 in 1987. Under Section 106 thereof, a procedure for the refund or credit of input tax was put in place. Subsequent amendments to the said provision would show that it was the Legislature's intent to provide for a definite time period within which the CIR should act on the refund claim of the taxpayer.

In *Commissioner of Internal Revenue vs. Carrier Air Conditioning Philippines, Inc.*,[1] the Supreme Court traced the legislative history of said Section 106, now Section 112(C) of the NIRC of 1997, as amended, to wit:

> "To recount, the concept of VAT was introduced to the Philippine taxation system in 1987 through Executive Order No. 273. The refund thereof was governed by Section 106:
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> Section 106. *Refunds or Tax Credits of Input Tax*. —
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> xxx xxx xxx
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> (e) *Period within Which Refund of Input Taxes May be Made by the Commissioner*. — The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.
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> xxx xxx xxx
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> In 1994, when the VAT system was expanded by RA 7716, 15 Section 106 (d) was amended to recognize resort to the Court of Tax Appeals in cases of full or partial denial or inaction by the CIR of administrative claims for refund for input VAT:
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> Section 106. *Refunds or tax credits of creditable input tax*. — x x x

[1] G.R. No. 226529, July 27, 2021.

> (d) *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 for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) 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 sixty-day period, appeal the decision or the enacted claim with the Court of Tax Appeals.**

Upon the 1997 re-codification of the Tax Code, the VAT system was therein integrated, and Section 106 became Section 112. Paragraph (d), however, remained unchanged except for the increase in the period given to the CIR to act on such claims from sixty (60) days to one hundred twenty (120) days:

> Section 112. *Refunds or Tax Credits of Input Tax.* —
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> xxx xxx xxx
>
> (D) *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 Subsections (A) and (B) 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.

Section 112 (D) was then re-numbered to Section 112 (C) through RA 9337 or the VAT Reform Act, but it remained the same in substance:

> Section 112. *Refunds or Tax Credits of Input Tax.* —
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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.**

Most recently, **the TRAIN Law amended Section 112 (C) by reducing the period to act on the administrative claim for refund from one hundred twenty (120) days to ninety (90) days, mandating that the CIR must have legal and factual bases to deny any claim, and providing for sanctions if the CIR or his or her agents fail to act on any application within the ninety (90)-day period**:

> Section 112. *Refunds or Tax Credits of Input Tax*. —
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> 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.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

The evolution of the VAT provision on refund shows that the legislature has always intended for administrative claims for VAT refund to be subject to a mandatory period of review. x x x" (*Boldfacing supplied*)

Even with the enactment of the TRAIN Law, Congress remains mindful of a definite period within which the refund claim must be acted upon by the CIR. It went on further by providing that deliberate failure of any official or employee of the Bureau of Internal Revenue (BIR) to act on said claim is punishable by ten (10) to fifteen (15) years of imprisonment and payment of fine of ₱50,000.00 to ₱100,000.00, in addition to the accessory penalties of perpetual disqualification to hold public office, to vote, and to participate in any election.[2]

In the landmark case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[3] the Supreme Court envisioned two scenarios anent the then-one hundred twenty (120)-day period [now ninety (90)-day period] for the CIR to act on the administrative claim: "(1) when a decision is issued by the CIR before the lapse of the 120 [now 90]-day period; and (2) when no decision is made after the 120 [now 90]-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA."

The jurisdictional nature of filing an appeal upon the lapse of the then-one hundred twenty (120)-day period [now ninety (90)-day period] is sourced from the text of Section 112(C) of the NIRC of 1997. As the Supreme Court elucidated in the case of *San Roque*:

> **"[U]nder the novel amendment introduced by RA 7716, mere inaction by the Commissioner during the 60-day period is deemed a denial of the claim**. Thus, Section 4.106-2(c) states that 'if no action on the claim for tax refund/credit has been taken by the Commissioner after the sixty (60) day period,' the taxpayer 'may' already file the judicial claim even long before the lapse of the two-year prescriptive period. **Prior to the amendment by RA 7716, the taxpayer had to wait until the two-year prescriptive period was about to expire if the Commissioner did not act on the claim. With the amendment by RA 7716, the taxpayer need not wait until the two-year prescriptive period is about to expire before filing the judicial claim because mere inaction by the Commissioner during the 60-day period is deemed a denial of the claim**. This is the meaning of the phrase 'but before the lapse of the two (2) year period' in Section 4.106-2(c). As Section 4.106- 2(c) reiterates that the judicial claim can be filed only 'after the sixty (60) day period,' this period remains mandatory and jurisdictional. Clearly, Section 4.106-2(c) did not amend Section 106(d) but merely faithfully implemented it.
>
> Even assuming, for the sake of argument, that Section 4.106-2(c) of Revenue Regulations No. 7-95, an administrative issuance, amended Section 106(d) of the Tax Code to make the period given

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[2] Sec. 269(j), NIRC of 1997, as amended.
[3] G.R. No. 184823, October 6, 2010.

> to the Commissioner non-mandatory, still **the 1997 Tax Code, a much later law, reinstated the original intent and provision of Section 106(d) by extending the 60-day period to 120 days and re-adopting the original wordings of Section 106(d).** Thus, Section 4.106-2(c), a mere administrative issuance, becomes inconsistent with Section 112(D), a later law. Obviously, the later law prevails over a prior inconsistent administrative issuance.
>
> **Section 112(D) of the 1997 Tax Code is clear, unequivocal, and categorical that the Commissioner has 120 days to act on an administrative claim**. The taxpayer can file the judicial claim (1) only within thirty days after the Commissioner partially or fully denies the claim within the 120- day period, or (2) only within thirty days from the expiration of the 120- day period if the Commissioner does not act within the 120-day period.
>
> There can be no dispute that **upon effectivity of the 1997 Tax Code on 1 January 1998**, or more than five years before San Roque filed its administrative claim on 28 March 2003, **the law has been clear: the 120-day period is mandatory and jurisdictional**. San Roque's claim, having been filed administratively on 28 March 2003, is governed by the 1997 Tax Code, not the 1977 Tax Code. Since San Roque filed its judicial claim before the expiration of the 120-day mandatory and jurisdictional period, San Roque's claim cannot prosper." (*Boldfacing supplied*)

Relative to this scenario the question is: does a refund claimant still have immediate recourse to this Court upon the lapse of the ninety (90)-day period under Section 112(C) of the NIRC of 1997, as amended, even with the **deletion** of the phrase "**or after the expiration of the one hundred twenty day-period**"?

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[4] the Supreme Court characterized the then-one hundred twenty (120)-day [now ninety (90)-day] period as the taxpayer's "waiting period" within which the taxpayer should await for the decision of the CIR. The "waiting period" is the time expressly given by law to the CIR to decide whether to grant or deny the taxpayer's application for tax refund or credit.[5]

Thus, the "waiting period" should be read in relation to another important piece of legislation -- Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, or the Charter of this Court.

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[4] G.R. No. 168950, January 14, 2015.
[5] *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021.

Section 7(a)(2) of RA No. 1125, as amended, provides for the statutory basis for the Court's jurisdiction over refund claims which are "deemed denied"

A statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, "*interpretare et concordare legibus est optimus interpretandi*," or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[6]

Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, reads as follows:

> "Sec. 7. *Jurisdiction*. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**; x x x" (*Boldfacing supplied*)

As discussed, the ninety (90)-day period within which the CIR must decide on the administrative claim for refund is a "specific period of action" in contemplation of the above-quoted provision. **Thus, when the CIR fails to act on the refund claim within the said period, the "inaction [of the CIR] shall be deemed a denial" of the refund claim, and the taxpayer has recourse to this Court upon the lapse of the ninety (90)-day period.**

Section 11 of RA No. 1125, as amended by RA No. 9282, provides:

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[6] *The Office of the Solicitor General (OSG) vs. The Honorable Court of Appeals and the Municipal Government of Saguiran, Lanao del Sur*, G.R. No. 199027, June 9, 2014.

> "Sec. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, xxx **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**." (*Boldfacing supplied*)

In accordance with the above-quoted provision, in relation to Section 7(a)(2) of the CTA Charter, the taxpayer may file an appeal to this Court by filing an appeal within thirty (30) days from the lapse of the ninety (90)-day period.

Another question now comes: is recourse to this Court within thirty (30) days upon the lapse of the ninety (90)-day period only ***permissive***? In other words, can a claimant choose between: (*i*) filing an appeal upon the lapse of the "waiting period"; and, (*ii*) filing an appeal upon receipt of the decision or ruling of the CIR, even if it is issued after the lapse of the ninety (90)-day period?

The filing of an appeal upon the lapse of the ninety (90)-day period for the CIR to act on the refund claim is permissive on the part of the taxpayer

It is a well-settled rule in statutory interpretation that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation, especially with regard to tax laws where there should be strictness in requiring adherence to the letter of the law.[7]

As currently worded, Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, specifically vests jurisdiction upon this Court in only a single scenario -- that is, upon the filing of the appeal within thirty (30) days from the taxpayer's receipt of the full or partial denial of the refund claim. The **choice**, therefore, of bringing an appeal upon the lapse of the "waiting period" is not found in Section 112(C), but is only permitted under Section 7(a)(2) of RA No. 1125, as amended.

Analogous to the procedure in protesting assessments under Section 228 of the NIRC of 1997, as amended, the taxpayer is now

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[7] *Commissioner of Internal Revenue vs. Julieta Arete*, G.R. No. 164152, January 21, 2010.

granted the **choice** of waiting for the decision or ruling of the CIR on the administrative claim before filing an appeal with this Court **OR** filing an appeal upon the lapse of the "waiting period". Precisely, when a taxpayer files an administrative claim, the taxpayer naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if the taxpayer chooses to wait for the decision or ruling of the CIR. This is because the "waiting period" is primarily intended for the benefit of the taxpayer.[8] More so, the law contemplates a scenario where the CIR **must always** decide on the claim within the ninety (90)-day period lest the erring BIR official or employee BIR incurs criminal liability.

The permissive nature of bringing an appeal after the lapse of the "waiting period" is further supported by the implementing regulations of the NIRC of 1997, as amended. Specifically, Section 4.112-1(d) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 26-2018, provides that the BIR can continue to process a refund claim even after the lapse of the ninety (90)-day period, to wit:

> "SEC. 4.112-1. Claims for Refund/Credit of Input Tax. -
>
> x x x
>
> (d) Period within which refund/credit of input taxes shall be made
>
> xxx xxx xxx
>
> The 90-day period to process and decide shall start from the filing of the claim up to the release of the payment of the VAT refund: *Provided, That,* the claim/application is considered to have been filed only upon submission of the official receipts or invoices and other documents in support of the application as prescribed under pertinent revenue issuances.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected, may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals (CTA): *Provided,* that failure on the part of any official, agent or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of the Tax Code, as amended. *Provided, further, That,* **in the event that the 90-day period has lapsed without having the refund released to the taxpayer-claimant, the VAT refund claim may still continue to be processed administratively**. *Provided however, That* the BIR official, agent or employee who was found to have deliberately caused the delay in the processing of the VAT refund claim may be

[8] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

> subjected to penalties imposed under said section. x x x" (*Boldfacing supplied*)

Under the above-quoted provision, the lapse of the ninety (90)-day period will not preclude the BIR in continuing the processing of the refund claim. The implementing regulations contemplate the possibility that a refund claim may be acted upon even after the lapse of the "waiting period". In such case, the taxpayer may file an appeal with this Court within thirty (30) days from receipt of such decision or ruling.

The congressional deliberations of the TRAIN Law shows that the authors thereof did not intend to bring back the phrase "or after the expiration of the one hundred twenty day-period" in Section 112(C) of the NIRC of 1997, as amended

The TRAIN Law is a consolidation of House Bill No. 5636 passed by the House of Representatives, and Senate Bill No. 1592 passed by the Senate, both on December 13, 2017. Of these two bills, Senate Bill No. 1592 is the draft of the law that proposed amendments to Section 112(C) of the NIRC of 1997, as amended, as follows:

> "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)] NINETY (90) days from the date of submission of THE OFFICIAL RECEIPTS OR INVOICES AND OTHER DOCUMENTS [complete 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.
>
> 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: **PROVIDED, HOWEVER, THAT FAILURE ON THE PART OF COMMISSIONER TO ACT ON THE APPLICATION**

> **WITHIN THE NINETY (90)-DAY PERIOD SHALL AUTOMATICALLY RESULT IN THE APPROVAL OF THE CLAIM FOR REFUND WITHOUT PREJUDICE TO A SUBSEQUENT AUDIT TO BE CONDUCTED BY THE BIR."**[9] (*Boldfacing* supplied)

As can be gleaned above, the Senate version proposed to delete the phrase "failure on the part of the Commissioner to act on the application within the period prescribed above", and in its stead added a proviso in the last paragraph of Section 112(C) for the so-called "**deemed approved**" rule. Under this version, if the CIR fails to act within ninety (90) days from the submission of official receipts, invoices and other supporting documents, the refund claim shall automatically be approved, without prejudice to a subsequent audit to be conducted.

Due to disagreeing provisions in House Bill No. 5636 and Senate Bill No. 1592, a bicameral conference committee was called to thresh out the two bills. It has been held by the Supreme Court that the bicameral conference committee is part and parcel of the legislative process of Congress,[10] and that records of congressional deliberations, including that of the bicameral conference committee, would provide guidance in dissecting the intent of the law.[11]

The deliberations of the conference committee show that there was a concern from certain members about the "deemed approved" rule, cognizant that the said system is very much prone to corruption, *viz.*:

> "CHAIRPERSON CUA. Actually, I express[ed] concern over this to Senator Angara yesterday. Madaling ma-abuse yung "deemed approved", eh. But all the rest, we have no problem.
>
> CHAIRPERSON ANGARA. [...] What is the problem of the Chair for the...
>
> CHAIRPERSON CUA. Well, yung deemed approved can be a product of a conspiracy between the taxpayer and the BIR. **When an undeserving VAT refund claim is processed just because... and then because of an arrangement with the BIR, asks him to just sit on it until it expires into approval**.
>
> CHAIRPERSON ANGARA. It is inaction...
>
> CHAIRPERSON CUA. Yeah, inaction...

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[9] Senate Bill No. 1592 (2017). Capitalization in the original.
[10] *Arturo M. Tolentino vs. The Secretary of Finance and the Commissioner of Internal Revenue, et seq.*, G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873 & 115931, August 25, 1994.
[11] *Roxas & Company, Inc. vs. DAMBA-NSFW and the Department of Agrarian Reform, et seq.*, G.R. Nos. 149548, 167505, 167540, 167543, 167845, 169163 & 179650, December 4, 2009.

CHAIRPERSON ANGARA. He is paid to be inactive.

CHAIRPERSON CUA. Benefits both of them.

CHAIRPERSON ANGARA. Yeah.

CHAIRPERSON CUA. And is disadvantageous to the government.

xxx xxx xxx

CHAIRPERSON ANGARA. That is the point of Chairman Cua. I think, there is... Yeah, there's a bit of a... **may kaunting sabit kasi pagka nagkakuntsaba 'yung nagre-refund at saka 'yung BIR officer pwedeng upuan na lang 'yung... 'yung kanyang application at automatically maga-grant na 'yun.** So how do we resolve that, Your Honors? I think that was the issue. But you're...

SEN. RECTO. Administrative issue.

CHAIRPERSON ANGARA. Yeah.

SEN. RECTO. I think that's an administrative issue, ha, Mr. Chairman. The intention of this is that especially later on once the provision of the law kicks in, that the indirect exporters are now subject to the VAT, and there's a refund mechanism, they should be able to get a refund. **So we're saying that the BIR should decide on this 90 days so that there's comfort on the part of the people getting the refund.** It cannot be na wala naman... walang limitation...

CHAIRPERSON ANGARA. Yeah. I agree, Your Honor. We... we see the point of Senator Recto I think it's... Ayaw natin na talagang natetengga na lang dun 'yung mga applications kasi...

SEN. RECTO. Correct.

CHAIRPERSON CUA. You Honor...

CHAIRPERSON ANGARA. That is an age[-]old method employed by our civil servants and it's really causing us damage to our business reputation. x x x"[12] (*Boldfacing* supplied)

Ultimately, the members of the bicameral conference committee agreed to dispense with the proposed "deemed approved" rule due to the risk of connivance between the BIR and the taxpayer, and instead added the proviso now found in the last paragraph of Section 112(C) of the NIRC of 1997, as amended, which provides for criminal liability for any BIR official or

[12] Bicameral Conference Committee Meeting on the Disagreeing Provisions of HB No. 5636 and SB No. 1592, December 1, 2017, p. XXXIV-2; December 5, 2017, p. XXXI-1.

employee who fails to act on the administrative claim within ninety (90) days from submission of supporting documents, to wit:

> "REP. QUIMBO. How many transactions are we talking about if it will be deemed approved[?]
>
> CHAIRPERSON ANGARA. Ilan pa iyan, Director?
>
> CHAIRPERSON CUA. But even if the number is small, it is considering that the system is broken today. Now, we are trying to reform it to have a system that [will] become more efficient. I understand the objective of the Senate panel and I agree the we have to protect the taxpayer[']s right to collect his money baka naman masyadong disadvantageous to the government. **I think [what] we want to do is police those officials to make sure they release it on time, within the prescribed 90-day period. So, perhaps the penalty for the BIR officials can be upon those metrics,** for your consideration, Your Honor.
>
> CHAIRPERSON ANGARA. Are you proposing a penalty for BIR officials who fail to decide? Something like that? What does the BIR say to that?
>
> MS. TERESITA M. ANGELES (Director II, Officer-in-charge, Assistant Commissioner for Large Taxpayers Service, Bureau of Internal Revenue). As far as the present situation, we have the 120 days for the VAT refund. If not acted upon, the revenue officer may be subjected to administrative cases.
>
> CHAIRPERSON ANGARA. Is that in the law?
>
> MS. ANGELES. No, sir.
>
> xxx xxx xxx
>
> REP. QUIMBO. The object... am I correct in assuming that the objective of the provision is simply to prevent or in fact to compel action within a given period, correct? Wala ba kayong pweding i-suggest sa amin diyan, short of something like that, kasi we need to be able to address [this issue] because the BIR's record on VAT refund[s] has really been very bad. So, ano ba iyong remedy na puwedeng mai-suggest dito short of a deemed approved provision[?] Because I personally think that when I was in practice, what happens there really is that the admin[istrative] agency simply decides it against you or adverse to you just to get rid of the burden. They will just disapprove it and then a-appeal ka na lang kasi pa-lapse na iyong period, eh. Iyon ang mangyayari sa akin eh, as a practitioner eh. So ano ba ang ibang suggestions natin diyan how we can address the untimeliness of BIR in VAT refunds?
>
> MS. ANGELES. As far as the [L]arge [T]axpayers [S]ervice, we are actually acting on the refund within 120 days, Your Honor. Because we will be subjected... the superiors will not be signing whatever refund that they are recommending. So, it is the... the

consequence would be on the revenue officer. So, they would act on it because they will be subjected to administrative case.

CHAIRPERSON ANGARA. Anyway, I think there is a provision in Section 269 of the NIRC [on] violations committed by government enforcement officer[s]. One option instead of the deemed approved is to carve out to add to this list, the failure to act on refunds within a given period, how about that?

MS. ANGELES. Yes, Your Honor.

CHAIRPERSON ANGARA. Okay. Sige. And the cause of action will belong to the person entitled to a refund...

SEN. RECTO. Excellent, Mr. Chairman.

CHAIRPERSON ANGARA. ...not the BIR..

SEN. RECTO. We can move to the next...

CHAIRPERSON ANGARA. Yeah, we can move forward. Thank you.

CHAIRPERSON CUA. We accept."[13] (*Boldfacing* supplied)

Verily, the authors of the TRAIN Law were not keen on replacing the "deemed denied" rule with the "deemed approved" rule as the latter was soundly rejected by members of the bicameral conference committee. Even if the proposed "deemed approved" rule was not enacted, however, the deliberations show that **there was also no intention on the part of the legislators to bring back a mandatory appeal "after the expiration of the one hundred twenty day-period" in Section 112(C) of the NIRC of 1997, as amended.**

It is a rule in statutory construction that an amendment by the deletion of certain words or phrases indicates an intention to change the statutory meaning.[14] By not bringing back the subject phrase, the authors of the TRAIN Law intended to remove the jurisdictional nature of the ninety (90)-day period with respect to the remedy of appeal to this Court. Since Section 7(a)(2) of the CTA Charter remains, appeal to this Court from the inaction of the CIR is clearly permissive.

In summary, under the present text of Section 112(C) of the NIRC of 1997, as amended, in relation to Sections 7(a)(2) and 11 of

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[13] Bicameral Conference Committee Meeting on the Disagreeing Provisions of HB No. 5636 and SB No. 1592, December 5, 2017, pp. XXXII-1 to XXXII-3.
[14] *Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH) vs. St. Vincent de Paul Colleges, Inc.*, G.R. No. 192908, August 22, 2012.

RA No. 1125, as amended, the taxpayer has two (2) options as to when he can interpose an appeal, *viz.*:

(1) File a petition for review with this Court within thirty (30) days upon the lapse of the ninety (90)-day period within which the CIR should act on the claim; or,

(2) Await the decision or ruling of the CIR and file a petition for review with this Court within thirty (30) days upon receipt of such decision or ruling.

Considering these two (2) divergent options, the same are mutually exclusive and resort to one bars the application to the other.

The Court has jurisdiction over the present Petition for Review

In this case, petitioner's administrative claim was filed on time, as found by the Court in the assailed Decision.

From the filing of Maersk's administrative claim on **March 27, 2018**, the CIR had ninety (90) days therefrom, or until **June 25, 2018**, within which to decide the refund claim. Records reveal, however, that within thirty (30) days upon the lapse of the ninety (90)-day period on July 25, 2018, Maersk did not file a petition for review before the Court in Division.

On **July 26, 2018**, petitioner received a Letter-Denial dated June 13, 2018, from the BIR, which denied the administrative claim. Effectively, petitioner chose to await the decision or ruling on its administrative claim. Thus, it had thirty (30) days from receipt of said Letter, or until **August 25, 2018**, within which to file the judicial claim.

Considering that the present Petition for Review was filed on **July 27, 2018**, the same was filed within the prescriptive period and the Court in Division has jurisdiction to resolve the present controversy.

All told, I **VOTE** for the Court *En Banc* to resolve the present case on the merits.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2534** (CTA Case No. 9895)
- versus -	
MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD., Respondent.	
x----------x	
MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD., Petitioner,	**CTA EB No. 2554** (CTA Case No. 9895)
	Present: **DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 07 2023 11:35
x----------x	

DISSENTING OPINION

BACORRO-VILLENA, J.:

With utmost respect to my esteemed colleague, Hon. Associate Justice Catherine T. Manahan, I register my dissent to the *ponencia*'s conclusion that Maersk Global Services Centres (Philippines) Ltd.'s (**Maersk**'s) prior Petition for Review was not timely made hence the Third Division had no jurisdiction over the same.

The *ponencia* found that Maersk's administrative claim was filed on 27 March 2018 thus the Commissioner of Internal Revenue (**CIR**) had ninety (90) days therefrom, or until 25 June 2018, within which to act on the claim. Since the CIR failed to act thereon within the said 90-day period, Maersk had thirty (30) days from the lapse of the said period, or until 25 July 2018, within which to file a judicial claim. However, while there was a letter-denial issued by the CIR dated 13 June 2018, the same was received by Maersk only on 26 July 2018 or after the lapse of the 90+30-day periods.

It was thus concluded that since there was already a denial due to inaction upon the lapse of the 90-day period, Maersk should have filed its judicial claim by 25 July 2018. Since the prior petition was filed only on 27 July 2018, the same was already time-barred hence the Third Division had no jurisdiction to act thereon.

With all due respect, I humbly submit that the proper interpretation of the amendment brought about by Republic Act (**RA**) No. 10963, otherwise known as Tax Reform for Acceleration and Inclusion (**TRAIN**), would reveal that Maersk's prior petition was timely made.

Forwarding herein are the reasons for my above submissions.

At the onset, I wish to clarify that I agree that the "deemed denial rule" is still applicable in view of the fact that TRAIN did not repeal the pertinent provisions of RA 1125[1], as amended by RA 9282.[2]

Sections 7 and 11 of the RA 9282 provide when a taxpayer should file his or her appeal with this Court in the event that the CIR fails to act within the

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1 AN ACT CREATING THE COURT OF TAX APPEALS.

2 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

specific period of action provided in the National Internal Revenue Code (**NIRC**) of 1997, as amended, to wit:

> ...
>
> **SEC. 7.** *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ...
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**;
>
> ...
>
> **SEC. 11.** *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA **within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. A Division of the CTA shall hear the appeal: *Provided, however*, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc.[3]
>
> ...

Section 86[4] of TRAIN, which contains the lengthy enumeration of laws expressly repealed by the said law, did not mention RA 9282. Thus, considering that pertinent provisions of RA 9282 were not repealed by TRAIN, it cannot be said that the "deemed denial rule" (insofar as claims for refund of unutilized input taxes attributable to zero-rated sales) has already been

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3 Emphasis supplied.

4 **Sec. 86.** *Repealing Clause.* — ...

abrogated. Truth is, the "deemed denial rule" still finds relevance even after the passage of TRAIN and it could not be disregarded simply because a similar provision dealing with the same subject matter has been deleted.

Consistently, it has been held that "whenever the legislature enacts a law, it has in mind the previous statutes relating to the same subject matter, and **in the absence of any express repeal or amendment, the new statute is deemed enacted in accordance with the legislative policy embodied in those prior statutes.**"[5]

Applying herein the foregoing, in enacting TRAIN, the legislature is presumed to have in mind the pertinent provisions of RA 9282 with respect to when the taxpayer may treat the CIR's inaction as denial. Thus, in the absence of its express repeal, TRAIN is deemed enacted in accordance with the legislative policy embodied in such prior laws (including RA 9282).

Nevertheless, while I concur that TRAIN did not abrogate the "deemed denial rule", I am of the humble opinion that to limit the construction of the amendment brought about it (such that it only shortened the period for the CIR to act on the claim from 120 days to 90 days) **would be to disregard the significance of substantial amendments made in Section 112(C)**[6] of the NIRC of 1997, as amended.

It has been noted that "[t]he change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had. In construing the amended provision, courts may investigate the history of the provision to ascertain legislative intent as to the meaning or scope of the amended law. Thus, where the legislative history shows that a statute has undergone several amendments, each amendment using different phraseology, the deliberate selection of language differing from that of the earlier act on the subject indicates that a change in meaning of the law was intended, and courts should so construe that statute as to reflect such change in meaning. **Where the law has been amended, which requires a particular course of action different from the law prior to its amendment, effect must be given to changes in the statutory language.**"[7]

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5 *Hon. Arturo C. Corona, et al. v. Court of Appeals, et al.*, G.R. No. 97356, 30 September 1992.

6 **Sec. 112.** *Refunds or Tax Credits of Input Tax* -

...

(C) *Period within which Refund of Input Taxes shall be Made.* — ...

7 Statutory Construction by Ruben E. Agpalo, Sixth Edition (2009) p. 181; Citations omitted and emphasis supplied.

"Further changes made by the legislature in the form of amendments to a statute should be given effect, together with other parts of the amended act. **For it is not to be presumed that the legislature, in making such changes, was indulging merely in semantic exercise. There must be some purpose in making them which should be ascertained and given effect.**"[8]

For proper context, the following table shows a comparison between the provisions of Section 112(C) of the NIRC of 1997, as amended, prior to and after the amendments brought about by TRAIN:

Before TRAIN	**After TRAIN**
...	...
Sec. 112. *Refunds or Tax Credits of Input Tax.* –	**Sec. 112.** *Refunds or Tax Credits of Input 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.	(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.**
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.**[9]	In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That **failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.**[10]
...	...

8 Id.
9 Emphasis supplied.
10 Emphasis supplied.

Clearly observable from Section 112(C) of the NIRC of 1997, after the TRAIN's enactment, is the absence of the phrase "**the failure on the part of the Commissioner to act on the application within the period prescribed above**" and thus, bridging its previous and subsequent phrases so as to read "[i]n case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals..."

As presently worded, it is clear therefore that the taxpayer may still appeal the denial of the claim to this Court within 30 days from receipt of the CIR's decision.

To my mind, the proper interpretation of the amendments brought about by TRAIN *vis-à-vis* the unamended provisions of RA 9282, relative to claims for refund of unutilized input taxes attributable to zero-rated sales, should be as follows:

1. In case a full or partial denial of the claim for tax refund within the 90-day period for the CIR to decide, the taxpayer should file an appeal with this Court within 30 days from receipt of the decision;

2. In case the 90-day period lapses and the taxpayer did not receive any decision fully or partially denying the claim, the said taxpayer may treat the same as deemed denied pursuant to the CTA Law and may thus appeal with this Court within 30 days from the lapse of the said 90-day period; and,

3. In case the taxpayer opts to wait for the CIR's decision and receives a full or partial denial of the claim after the lapse of the 90-day period, the taxpayer may still file an appeal with this Court within 30 days from receipt of the said decision, pursuant to the present wording of Section 112(C) of the NIRC of 1997, as amended.

In that way, both the TRAIN Law and RA 9282 are construed harmoniously with each other as to give effect to both provisions.

The above construction finds basis in *C&C Commercial Corporation v. National Waterworks and Sewerage Authority*[11] where the Supreme Court held that:

> ...
>
> On the presumption that whenever the legislature enacts a provision it has in mind the previous statutes relating to the same subject matter, it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together. **Provisions in an act which are omitted in another act relating to the same subject matter will be applied in a proceeding under the other act, when not inconsistent with its purpose. Prior statutes relating to the same subject matter are to be compared with the new provisions; and if possible by reasonable construction, both are to be construed that effect is given to every provision of each.** Statutes *in pari materia* although in apparent conflict, are so far as reasonably possible construed to be in harmony with each other.
>
> ...

In the more recent case of *Philippine Economic Zone Authority v. Green Asia Construction & Development Corporation Represented by Mr. Renato P. Legaspi, President/CEO*[12], the Supreme Court similarly ruled that:

> ...
>
> Statutes are in *pari materia* when they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter.
>
> It is axiomatic in statutory construction that **a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system.** The rule is expressed in the maxim, *"interpretare et concordare legibus est optimus interpretandi,"* or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.
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> ...

Applying the foregoing disquisitions to the case at bar, it is noted that Maersk received the letter-denial dated 13 June 2018 on 26 July 2018. Counting 30 days from such receipt, Maersk had until 25 August 2018 within which to

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11 G.R. No. L-27275, 18 November 1967; Citation omitted and emphasis supplied.
12 G.R. No. 188866, 19 October 2011; Citation omitted and emphasis supplied.

file an appeal. Maersk filed the same on 27 July 2018, or the day following its receipt of the letter-denial. Clearly, Maersk's judicial claim was filed within the period prescribed by Section 112(C) of the NIRC of 1997, as amended by TRAIN, which is 30 days from the receipt of the decision denying the claim. This is especially true when the letter-denial was issued on 13 June 2018 or within the 90-day period for the CIR to decide. Thus, Maersk's prior petition was timely made.

In sum, I vote: (1) to rule that Maersk Global Services Centres (Philippines) Ltd.'s prior Petition for Review was timely filed; and, (2) for the Court *En Banc* to rule on the merits of the case.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD.,
Respondent.

CTA EB No. 2534
(CTA Case No. 9895)

x- x

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2554
(CTA Case No. 9895)

Present:

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

Promulgated:

JUN 0 7 2023 11:35 am

x- x

CONCURRING OPINION

REYES-FAJARDO, *J.*:

I agree with the conclusion reached by Associate Justice Catherine T. Manahan that the Court in Division lacks jurisdiction over CTA Case No. 9895.

In refund of unused input Valued-Added Tax (VAT), attributable to zero-rated sales, the Court in Division may only take cognizance of a refund claimant's judicial claim, upon strict adherence with Section 112(C) of the National Internal Revenue Code (NIRC). Juxtaposed below are the then Section 112(C) of the NIRC, with Section 112(C) of the NIRC, as amended by Republic Act (RA) No. 10963, otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN):

Section 112(C) of the NIRC, prior to Amendment by TRAIN	Section 112(C) of the NIRC, as amended by TRAIN
SEC. 112. Refunds or Tax Credits of Input Tax. –	*SEC. 112. Refunds or Tax Credits of Input 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	*(C) Period within which Refund or Tax Credit 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. **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: Provided, however, That failure

decision or the unacted claim with the Court of Tax Appeals.[1]	on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code.[2]

Indeed, TRAIN introduced amendments on the then Section 112(C) of the NIRC. To be precise, the Legislature removed the phrases "or the failure on the part of the Commissioner to act on the application within the period prescribed above," "or after the expiration of the one hundred twenty day-period" in the second paragraph thereof. Moreover, the same provision states that the taxpayer may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the CTA. These changes might lead one to deduce that the BIR's adverse decision in an administrative claim for input VAT refund may be elevated to the Court in Division, irrespective of whether the same was rendered within or outside the ninety (90)-day period to decide such administrative claim. Yet, *Commissioner of Internal Revenue v. Secretary of Justice, and Philippine Amusement and Gaming Corporation*[3] taught us that:

> A law must not be read in truncated parts: its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.
>
> In constructing a statute, courts have to take the thought conveyed by the statute as a whole: construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.

By reading the *entirety* of Section 112(C) of the NIRC, as amended by TRAIN, only the adverse decision rendered by the BIR

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1 Boldfacing supplied.
2 Boldfacing supplied.
3 G.R. No. 177387, November 9, 2016, citing *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 170680, October 2, 2009.

within the ninety (90)-day period prescribed therein, may be the subject of an appeal before the Court in Division. Consider:

First. The first paragraph of Section 112(C) of the NIRC, as amended by TRAIN, states that "[i]n 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." Jurisprudence holds that "... the word "shall" connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature."[4] Therefore, the claimant's administrative claim for input VAT refund must be decided by the BIR *within* the ninety (90)-day period under Section 112(C) of the NIRC, as amended by TRAIN.

Second. The second paragraph of Section 112(C) of the NIRC, as amended by TRAIN, penalizes the failure of any BIR official, agent, or employee to decide on an administrative claim for input VAT refund, within the ninety (90)-day period prescribed therein. This fortifies the position that indeed, BIR personnel must render an adverse decision *within* said ninety (90)-day period, lest they be punished under Section 269 of the same Code.

Third. In the second paragraph of Section 112(C) of the NIRC, as amended by TRAIN, the word 'decision' was preceded by the definite article 'the.' The definite article 'the' particularizes the subject spoken of, and refers to a certain object, as opposed to the article 'a' which refers to the indefinite.[5] It means that the BIR adverse decision in input VAT refund cases specifically pertains to one decided within the ninety (90)-day period to decide an administrative claim, as commanded by the first paragraph of the same provision of the Code.

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4 *UCPB General Insurance Company v. Hughes Electronics Corporation*, G.R. No. 190385, November 16, 2016.

5 See *Commissioner of Internal Revenue v. GMA Network Films, Inc.*, CTA EB No. 2441, October 17, 2022, citing Black' Law Dictionary, 4th Edition, p. 1647, citing in turn, *Sharff v. Com., 2 Bin., Pa., 516; Penn Mut. Life Ins. Co. v. Henderson, D.C.Fla., 244 F. 877, 880; Howell v. State, 138 S.E. 206, 210, 164 Ga. 204; Hoffman v. Franklin Motor Car Co., 32 Ga.App. 229, 122 S.E. 896, 900. "The" house means only one house. Rocci v. Massachusetts Acc. Co., 222 Mass. 336, 110 N.E. 972, 973, Ann. Cas.1918C, 529.*

Additionally, the adverse decision rendered by the BIR within the ninety (90)-day period, too, must be received by the claimant within said period. Revenue Memorandum Circular No. 17-2018[6] confirmed:

> I. Claims for value-added tax (VAT) refund:
>
> A. General Policies
>
> ...
>
> 5. ...
>
> **Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90-day period.** The denial letter shall be signed by the Commissioner of Internal Revenue (CIR)/Deputy Commissioner - Operations Group (DCIR - OG)/ Assistant Commissioner (ACIR)/Regional Director, as the case may be.[7]

In a nutshell, save for the modification in the period to decide an administrative claim for input VAT refund, *i.e.*, from 120 to 90 days, the pronouncement in *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[8] remains good case-law to date:

> **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 [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.[9]

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6 SUBJECT: Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as Tax Reform for Acceleration and Inclusion (TRAIN).

7 Boldfacing supplied.

8 G.R. No. 182737, March 2, 2016. This case involved a taxpayer's claim for input VAT refund under the *then* Section 112 of the NIRC. The jurisdiction of the CTA in Section 7 of RA No. 1125, as amended by RA No. 9282 *stands untouched* notwithstanding the amendments introduced by RA No. 10963 in Section 112(C) of the NIRC. Thus, this case may find application in input VAT refund claims covered by RA No. 10963.

9 Boldfacing supplied.

On March 27, 2018, Maersk Global Services Centres (Philippines) Ltd. (Maersk) filed its administrative claim for input VAT refund covering Calendar Year 2016. Counting ninety (90) days therefrom, the BIR had until June 25, 2018 to decide on its administrative claim. No BIR adverse decision was received by Maersk as of June 25, 2018;[10] thus, said administrative claim is considered denied pursuant to Section 7(a)(2)[11] of RA No. 1125,[12] as amended by RA No. 9282. Counting another thirty (30) days from June 25, 2018, Maersk had until July 25, 2018 to seek judicial recourse. *Ergo,* the late filing of its Petition for Review on July 27, 2018, resulted in the Court in Division's non-acquisition of jurisdiction over CTA Case No. 9895.

All told, I **CONCUR** in the *ponencia* of Associate Justice Catherine T. Manahan.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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10 The Letter-Denial dated June 13, 2018 was received by Maersk on July 26, 2018, or outside the ninety (90)-day period prescribed in Section 112(C) of the NIRC, as amended by TRAIN.

11 Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

...

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;** (Boldfacing supplied)

12 An Act Creating the Court of Tax Appeals.