REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PILIPINAS KYOHRITSU INC. *Petitioner,*	**CTA *EB* NO. 2750** *(CTA Case No. 9581)*
	Present:
-versus-	**DEL ROSARIO, P.J.,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 2 9 2024

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a *Petition for Review* ("Petition"), filed on May 4, 2023,[1] with respondent's Comment/Opposition (To the Petition for Review), filed on June 8, 2023[2]. The Petition assails the November 8, 2022 Decision[3] of the Court's First Division which dismissed its Petition for Review which sought the refund of its unutilized, unused, and/or unapplied Input Value-Added Tax ("VAT") for the period covering January 1, 2012 to December 31, 2012, in the amount of P38,684,751.56, as well as the April 5, 2023 Resolution[4] denying its Motion for Reconsideration.

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1 *Rollo*, pp. 1-184.
2 *Id.* at 186-192.
3 Division Docket, Vol. IV, pp. 1708-1718.
4 *Id.* at 1741-1747.

The Parties

Petitioner Pilipinas Kyohritsu Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Km. 75 Laurel Highway Inosloban, Lipa City, Batangas.[5]

Petitioner is engaged in the business of manufacturing and exporting parts and accessories, specifically wiring harnesses, weld caps, and engineering design activities. Petitioner is registered with the Bureau of Internal Revenue ("BIR") as a VAT-registered large taxpayer with identification number 000-269-082-000 and with the Board of Investments ("BOI") as an export producer of tie band products for automotive wiring harnesses, vinyl tubes for automotive application, and automotive wiring harnesses, and as an IT-enabled service exporter in the field of engineering design of automotive wiring harnesseses, with BOI Registration Nos. 2015-080, 2000-058, 2007-060, and 2003-046.[6]

On the other hand, respondent is the Commissioner of the BIR, vested with the authority to decide, approve, and grant tax refunds pursuant to *Section 112 (C) of the National Internal Revenue Code of 1997, as amended* ("Tax Code"). He may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[7]

The Facts

The case began on December 13, 2013, when petitioner filed its Application for VAT Refund (with BIR Form No. 1914) requesting for the refund of its unutilized and/or unused input VAT amounting to P53,865,617.38 covering the period of January 1 to December 31, 2012.[8]

More than three years later, or on March 23, 2017, petitioner received a copy of the BIR's letter, dated February 28, 2017, denying its application for refund.[9]

Petitioner thus filed a Petition for Review[10] before the Court on April 24, 2017, to which respondent filed his Answer[11] on June 23, 2017, on an extended period.

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5 See Petition for Review, *id.*, p. 2.
6 See The Parties, *id.* at 2.
7 *Id.*.
8 Exhibit "P-6" and "P-7", Division Docket Vol. III, pp. 999-1001.
9 Exhibit "P-10", Division Docket Vol. I, p. 36-38.
10 *Id.* at 10-124.
11 *Id.* at 133-143.

Following trial, the Court, acting through its First Division, issued the assailed Decision dismissing the case on the ground of prescription. Petitioner's Motion for Reconsideration, filed on December 2, 2022, was denied per the April 5, 2023 Resolution.

Having received said Resolution on April 19, 2023, petitioner filed the instant Petition for Review on May 4, 2023 before the Court *En Banc*.

The Court *En Banc* then issued a Resolution, dated May 23, 2023, requiring respondent to file its Comment to the Petition within 10 days from notice.[12] On June 8, 2023, respondent filed his Comment/Opposition (Re: Petition for Review dated 27 April 2023).[13]

On July 3, 2023, this Court *En Banc* issued a Resolution submitting the instant case for Decision.[14]

Hence, this Decision.

The Issue

The sole issue for this Court's resolution is whether the dismissal of the Petition for Review before the Court in Division on the ground of prescription was proper.

Arguments of the Parties

Petitioner's Arguments

Petitioner argues that the applicable rules when its VAT refund claim was filed were those enumerated in *Revenue Memorandum Circular* ("*RMC*") *No. 49-2003* and *Revenue Regulations No. 01-17* and not those of *RMC No. 54-2014*, when its application was denied.

In so arguing, petitioner maintains that the period of 120 days for its refund claim to be decided only began to run from receipt by the BIR of complete documents. It avers that it submitted supporting documents from the time of its application on December 31, 2013 until October 9, 2014. It does admit that it "was left in the dark and confused as to the applicability of RMC No. 54-2014."

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12 *Rollo*, at 185.
13 *Id.* at. 186-192.
14 *Id.* at 193.

Petitioner also argues that the 30-day period for the filing of an appeal with the Court should be counted from receipt of full denial of its refund claim. Having received the full denial of its claim only on March 23, 2017, it insists that it timely filed its Petition for Review on April 21, 2017.

Respondent's Counter-Arguments

Respondent faults petitioner for waiting for its administrative claims to be resolved instead of immediately filing its appeal before this Court following the lapse of 120 days. It stresses that the Petition before the Court in Division was correctly dismissed for lack of jurisdiction.

The Ruling of the Court

The Petition must be denied.

To begin with, a reading of the allegations in the instant Petition for Review would show that the allegations contained in the section on Arguments and Discussion are *exactly the same allegations* contained in the Arguments/Discussion portion of the Motion for Reconsideration petitioner filed before the Court in Division.

These arguments were already met and discussed in the April 5, 2023 Resolution of the Court in Division denying said Motion for Reconsideration. In fact, the Resolution even stressed that the arguments raised in the Motion were already exhaustively discussed and explained in the Assailed Decision. In effect, this would be the third time these very same set of arguments are brought before the Court.

On this score, alone, the Petition already fails.

Nevertheless, We shall afford petitioner yet another chance to understand the futility of its appeal.

In tax refund cases, the period when respondent must act on a taxpayer's claim for input VAT refund/credit and the period when a taxpayer may appeal the action or inaction of the respondent are provided for in *Section 112(c) of the 1997 NIRC.* Said section provides, to wit—

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 Subsections (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.

The 30-day period given to a taxpayer to file a judicial claim for input tax refund or tax credit shall start from whichever starting point comes first. Taxpayers cannot opt to wait for an actual adverse decision by respondent despite the lapse of the 120-day mandatory period given to respondent to act before filing a judicial claim before this Court. Otherwise, such judicial action is belatedly filed, which results in this Court losing its jurisdiction to try the judicial claim for input tax refund or tax credit. This is known as the mandatory and jurisdictional 120+30-day period as enunciated in *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue.*[15]

Petitioner does not argue against this mandatory and jurisdictional 120+30-day period. Instead, it vainly insists that the Decision (a) should not have used *RMC No. 54-2014* in counting the 120-day period; and (b) should have considered the date of receipt of full denial of its refund claim in counting the 30-day period.

As explained in the Decision appealed from, petitioner is mistaken in holding that said Decision applied *RMC No. 54-2014* (which provides the reckoning period of the 120 days from the time the refund application was filed, instead of from receipt by the BIR of complete documents). Even the most cursory reading of the Decision will reveal why this is so—

> Based on the foregoing, respondent has 120 days *from the date of submission of the complete supporting documents* of such application to take action on the same.[16]
> (Emphasis, Ours)

And again—

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[15] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[16] *See* Decision, at p. 6, Docket, Vol. IV, p. 1713.

> In Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue, the Supreme Court ruled that *the reckoning point in the counting of the 120+30 day period prior to the promulgation of Revenue Memorandum Circular No. 54-2014 was at the time the taxpayer had submitted its complete supporting documents. . .*[17]
> (Emphasis, Ours)

The Decision went on to present tables reflecting the last day of the 120-day period within which its claim for refund could be acted upon as well as the last day of the 30-day period within which it should have filed its appeal before this Court. Notably, the basis of the table showing the last day of the 120-day period was the date of filing of petitioner's refund claim. This was on the finding that "there was no subsequent filing of other supporting documents by petitioner from the time of the filing of the administrative claim for refund on December 13, 2013."[18]

It does not escape the attention of the Court that neither in its Motion for Reconsideration nor in the instant Petition for Review does petitioner argue against this finding in the Decision.

At any rate, even considering the filing of additional documents by petitioner, dismissal of its appeal on the ground of prescription will still result.

As explained in the assailed Resolution, the last transmittal letter validly filed with the BIR was dated August 25, 2014. This appears to have been received on September 17, 2014. Thus, as shown in the tables presented in the Resolution, the last day of the 120-day period would have been on January 15, 2015, and the last day of the 30-day period to file an appeal with the Court would have been on February 14, 2015. Accordingly, the Petition for Review, having been filed only on April 21, 2017, was dismissed for not having been timely filed.

Prescription would still step in even if the Court were to consider petitioner's allegation that it submitted the last of its supporting documents on October 10, 2014, through its transmittal letter, dated October 9, 2014.[19]

Indeed, the testimony of petitioner's witnesses would show that the last of the additional supporting documents submitted by it to the BIR was through its transmittal letter, dated October 9, 2014.

Edna Luis Lopez, manager of petitioner's Finance and Management Accounting department, testified as follows

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17 *Id.* at 7, Division Docket, Vol. IV, p. 1714.
18 *Id.*
19 Exh. P-11.5, Docket, Vol. III, p. 1010.

Q51: When did petitioner file/submit the additional supporting documents requested by the BIR?
A: PKI filed them on several dates.

Q52: What is your proof that petitioner indeed filed/submitted the additional supporting documents requested by BIR?
A: The additional supporting documents we submitted to the BIR were accompanied by transmittal letters dated particularly on 26 April 2014, 08 May 2014, 04 August 2014, 25 August 2014 and *09 October 2014*, which were duly stamped received by the BIR.[20]
(Emphasis, Ours)

Petitioner actually admitted this in its very Petition for Review when it alleged as follows—

> 33. Thus, believing that RMC No. 49-2003 applies to its claim, and not RMC No. 54-2014, which cannot be given retroactive application as clarified by RR No. 01-2017, (petitioner) continued to submit supporting documents. Petitioner, as has been established in previous pleadings filed before this Honorable Court which cited the testimony of Ms. Edna Luis Lopez, PKI's Finance and Management Accounting Department (manager), as well as the testimony of Mr. Salvador Laylo, Jr. of the Business Planning Department (Import/Export Section), still *submitted supporting documents to the Respondent up until 09 October 2014*.[21]
> (Emphasis, Ours)

Applying, then, *RMC No. 49-2003*, which petitioner holds out as applicable and where the 120-day period shall begin to run only upon submission of complete documents, the last day of the 120-day period counted from October 10, 2014 is February 7, 2015.

Continuing on, since respondent did not act on petitioner's refund claim within the 120-day period abovementioned, petitioner then had 30 days from the lapse of the 120-day period within which to file its appeal before this Court.

Counting 30 days from February 7, 2015, petitioner only had until March 9, 2015 within which to file its appeal with this Court.

The table below clearly demonstrates how the appeal of petitioner was belatedly filed—

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[20] *See* Judicial Affidavit of Edna Luis Lopez, Exh. P-30, at 14, Docket, Vol. I, p. 205.
[21] Petition for Review, p. 17, *Rollo*, p. 17.

Reckoning period for 120 days	Last day of 120 days	Last day of 30 days	Date Petition for Review Filed
December 13, 2013—per Decision	April 12, 2014	May 12, 2014	April 21, 2017 (1075 days late)
September 17, 2014—per Resolution	January 15, 2015	February 14, 2015	April 21, 2017 (797 days late)
October 10, 2014—per petitioner	February 7, 2015	March 9, 2015	April 21, 2017 (774 days late)

In summary, whether its last submission was on December 13, 2013 as found in the assailed Decision, September 17, 2014 as found in the assailed Resolution, or on October 10, 2014 as held out by petitioner itself, the filing of its Petition for Review only on April 21, 2017 was beyond the 120+30 day period provided for under *Section 112(c) of the NIRC*.

With prescription having set in, dismissal of its Petition for Review was inevitable.

Petitioner's position that the Court should have considered the date of receipt of full denial of its refund claim in counting the 30-day period is likewise futile.

The rationale for the mandatory and jurisdictional 120+30-day period is the fact that respondent's inaction within the 120-day mandatory period given him to decide a request for input tax refund or tax credit is treated as a denial itself. Hence, a taxpayer need not await an actual denial as its request for input tax refund or tax credit has been deemed denied, by express provision of law.[22]

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*,[23] the Supreme Court had a chance to categorically declare that a judicial appeal must be instituted immediately within 30 days from the expiration of the mandatory 120-day period given to respondent to decide claims for input tax refund or tax credit, considering that such inaction of respondent is already considered a denial of such claims, *viz.*:

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[22] *See Section 7(a)(2) of Republic Act 9289, 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 of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes*, March 30, 2004; *see also CIR v. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

[23] G.R. No. 168950, January 14, 2015.

> 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.*
> (Emphasis, Ours)

Moreover, in *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*,[24] the High Court ruled that as follows—

> [A] judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner. . . . any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.

In light of these clear pronouncements, petitioner cannot continue to insist that the 30-day period must be counted from its receipt of what it perceived to be the full denial of its refund claim.

All told, dismissal of petitioner's appeal was correctly ordered. As stressed in *Taihei Alltech Construction (Phil.), Inc. v. Commissioner of Internal Revenue*—[25]

> [A] claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is with the 120+30-day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30-day periods is necessary for such a claim to prosper.

FOR THESE REASONS, the Petition for Review, filed on May 4, 2023, is hereby **DENIED** for lack of merit. The Assailed Decision, dated November 8, 2022, and the Assailed Resolution, dated April 5, 2023, of the Court in Division are hereby **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[24] G.R. No. 182737, March 2, 2016.
[25] G.R. No. 258791, December 7, 2022, citing Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue (720 Phil. 782 [2013]).

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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