Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROHM APOLLO SEMICONDUCTOR PHILIPPINES, Petitioner,	**G. R. No. 168950**
	Present:
- versus -	SERENO, *CJ*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondents.	Promulgated: **JAN 14 2015**

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DECISION

SERENO, *CJ:*

This Rule 45 Petition[1] requires this Court to address the question of timeliness with respect to petitioner's judicial claim for refund or credit of unutilized input Value-Added Tax (VAT) under Sections 112(A) and 112(D)[2] of the 1997 Tax Code. Petitioner Rohm Apollo Semiconductor Philippines., Inc. (Rohm Apollo) assails the Decision[3] and Resolution[4] of the Court of Tax Appeals En Banc (CTA En Banc) in CTA En Banc Case No. 59, affirming the Decision in CTA Case No. 6534 of the CTA First Division.[5] The latter denied the claim for the refund or issuance of a tax credit certificate filed by petitioner Rohm Apollo in the amount of ₱30,359,615.40 representing unutilized input VAT paid on capital goods purchased for the months of July and August 2000.

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[1] *Rollo,* pp. 10-51.

[2] The section is numbered 112(D) under R.A. 8424, but R.A. 9337 renumbered the section to 112(C).

[3] Id. at 252-258; CTA *En Banc* Decision dated 22 June 2005, penned by Presiding Justice Ernesto D. Acosta, and concurred in by Associate Justices Lovell R. Bautista, Caesar A. Casanova, Juanito C. Castañeda, Jr., Olga Palanca-Enriquez, and Erlinda P. Uy.

[4] Id. at 274-275; CTA Resolution dated 28 July 2005.

[5] Id. at 117-129; dated 27 May 2004, penned by Associate Justice Lovell R. Bautista, and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Juanito C. Castaneda.

FACTS

Petitioner Rohm Apollo is a domestic corporation registered with the Securities and Exchange Commission.[6] It is also registered with the Philippine Economic Zone Authority as an Ecozone Export Enterprise.[7] Rohm Apollo is in the business of manufacturing semiconductor products, particularly microchip transistors and tantalium capacitors at the People's Technology Complex – Special Economic Zone, Barangay Maduya, Carmona Cavite.[8] Further, it is registered with the Bureau of Internal Revenue (BIR) as a value-added taxpayer.[9]

Sometime in June 2000, prior to the commencement of its operations on 1 September 2001, Rohm Apollo engaged the services of Shimizu Philippine Contractors, Inc. (Shimizu) for the construction of a factory.[10] For services rendered by Shimizu, petitioner made initial payments of □198,551,884.28 on 7 July 2000 and □132,367,923.58 on 3 August 2000.[11]

It should be noted at this point that Section 112(B), [12] in relation to Section 112(A) [13] of the 1997 Tax Code, allows a taxpayer to file an application for the refund or tax credit of unutilized input VAT when it comes to the purchase of capital goods. The provision sets a time frame for the filing of the application at two years from the close of the taxable quarter when the purchase was made.

Going back to the case, petitioner treated the payments as capital goods purchases and thus filed with the BIR an administrative claim for the refund or credit of accumulated unutilized creditable input taxes on 11 December 2000.[14] As the close of the taxable quarter when the purchases

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[6] *Rollo,* p. 252.
[7] Under the provisions of R. A. 7916.
[8] *Rollo,* p. 253.
[9] Id. at 252.
[10] Id. at 253.
[11] Id.
[12] (B) Capital Goods. - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only **within two (2) years after the close of the taxable quarter when the *importation or purchase* was made.** (Emphases supplied)
[13] Section 112(A) states:

> 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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. (Emphasis supplied)

[14] *Rollo*, p. 118.

were made was 30 September 2000, the administrative claim was filed well within the two-year prescriptive period.

Pursuant to Section 112(D)[15] of the 1997 Tax Code, the Commissioner of Internal Revenue (CIR) had a period of 120 days from the filing of the application for a refund or credit on 11 December 2000, or until 10 April 2001, to act on the claim. The waiting period, however, lapsed without any action by the CIR on the claim.

Instead of filing a judicial claim within 30 days from the lapse of the 120-day period on 10 April, or until 10 May 2001, Rohm Apollo filed a Petition for Review with the CTA docketed as CTA Case No. 6534 on 11 September 2002. It was under the belief that a judicial claim had to be filed within the two-year prescriptive period ending on 30 September 2002.[16]

On 27 May 2004, the CTA First Division rendered a Decision[17] denying the judicial claim for a refund or tax credit. In support of its ruling, the CTA First Division held, among others, that petitioner must have at least submitted its VAT return for the third quarter of 2001, since it was in that period that it began its business operations. The purpose was to verify if indeed petitioner did not carry over the claimed input VAT to the third quarter or the succeeding quarters.

On 14 July 2004, petitioner Rohm Apollo filed a Motion for Reconsideration, but the tax court stood by its Decision.[18]

On 18 January 2005, the taxpayer elevated the case to the CTA *En Banc* via a Petition for Review.[19]

On 22 June 2005, the CTA *En Banc* rendered its Decision denying Rohm Apollo's Petition for Review.[20] The appellate tax court held that the failure to present the VAT returns for the subsequent taxable year proved to be fatal to the claim for a refund/tax credit, considering that it could not be determined whether the claimed amount to be refunded remained unutilized.

Petitioner filed a Motion for Reconsideration of the Decision, but it was denied for lack of merit.

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[15] (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 Subsection (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.** (Emphases supplied)

[16] *Rollo,* p. 253.

[17] Id.

[18] Id. at 254.

[19] Id. at 252.

[20] Id.

Persistent, the taxpayer filed this Rule 45 Petition, arguing that it has satisfied all the legal requirements for a valid claim for refund or tax credit of unutilized input VAT.

ISSUE

The threshold question to be resolved is whether the CTA acquired jurisdiction over the claim for the refund or tax credit of unutilized input VAT.

THE COURT'S RULING

We deny the Petition on the ground that the taxpayer's judicial claim for a refund/tax credit was filed beyond the prescriptive period.

The judicial claim was filed out of time.

Section 112(D) of the 1997 Tax Code states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the **period of 120 days**, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the **period of 30 days**, which refers to the period for filing a judicial claim with the CTA. It is the 30-day period that is at issue in this case.

The landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[21] has interpreted Section 112 (D). The Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period.

In this case, the facts are not up for debate. On 11 December 2000, petitioner filed with the BIR an application for the refund or credit of accumulated unutilized creditable input taxes. Thus, the CIR had a period of 120 days from 11 December 2000, or until 10 April 2001, to act on the claim. It failed to do so, however. Rohm Apollo should then have treated the CIR's inaction as a denial of its claim. Petitioner would then have had 30 days, or until 10 May 2001, to file a judicial claim with the CTA. But Rohm Apollo filed a Petition for Review with the CTA only on 11 September 2002. The judicial claim was thus filed late.

The error of the taxpayer lies in the fact that it had mistakenly believed that a judicial claim need not be filed within 30 days from the lapse

[21] G.R. No. 187485, 12 February 2013, 690 SCRA 336, 397.

of the 120-day period. It had believed that the only requirement is that the judicial claim must be filed within the two-year period under Sections 112(A) and (B) of the 1997 Tax Code. In other words, Rohm Apollo erroneously thought that the 30-day period does not apply to cases of the CIR's inaction after the lapse of the 120-day waiting period, and that a judicial claim is seasonably filed so long as it is done within the two year-period. Thus, it filed the Petition for Review with the CTA only on 11 September 2002.

These mistaken notions have already been dispelled by *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*[22] and *San Roque*. *Aichi* clarified that it is only the administrative claim that must be filed within the two-year prescriptive period.[23] *San Roque,* on the other hand, has ruled that the 30-day period always applies, whether there is a denial or inaction on the part of the CIR.[24]

Justice Antonio Carpio, writing for the Court in *San Roque*, explained that the 30-day period is a 1997 Tax Code innovation that does away with the old rule where the taxpayer could file a judicial claim when there is inaction on the part of the CIR and the two-year statute of limitations is about to expire. Justice Carpio stated:

> The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. *The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim* **even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period.** With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.[25] (Emphases supplied)

The 30-day period to appeal is mandatory and jurisdictional.

As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. The only exception to the general rule is when BIR Ruling No. DA-489-03 was still in force, that is, between 10 December 2003 and 5 October 2010, The BIR Ruling excused premature filing, declaring that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. In *San Roque,* the High Court explained both the general rule and the exception:

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[22] G.R. No. 184823, 6 October 2010, 632 SCRA 422, 443-444.
[23] Id.
[24] Supra note 21, at 387-388.
[25] Id.

> To repeat, 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,** whether before, during, or after the effectivity of the *Atlas* doctrine, **except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.**[26] (Emphases supplied)

San Roque likewise ruled out the application of the BIR ruling to cases of late filing. The Court held that the BIR ruling, as an exception to the mandatory and jurisdictional nature of the 120+30 day periods, is limited to premature filing and does not extend to the late filing of a judicial claim.[27]

In sum, premature filing is allowed for cases falling during the time when BIR Ruling No. DA-489-03 was in force; nevertheless, late filing is absolutely prohibited even for cases falling within that period.

As mentioned above, the taxpayer filed its judicial claim with the CTA on 11 September 2002. This was **before the issuance** of BIR Ruling No. DA-489-03 on 10 December 2003. Thus, Rohm Apollo could not have benefited from the BIR Ruling. Besides, its situation was not a case of premature filing of its judicial claim but one of late filing. To repeat, its judicial claim was filed on 11 September 2002 – long after 10 May 2001, the last day of the 30-day period for appeal. The case thus falls under the general rule – the 30-day period is mandatory and jurisdictional.

CONCLUSION

In fine, our finding is that the judicial claim for the refund or credit of unutilized input VAT was belatedly filed. Hence, the CTA lost jurisdiction over Rohm Apollo's claim for a refund or credit.

The foregoing considered, there is no need to go into the merits of this case.

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.

WHEREFORE, the Petition is **DENIED** for lack of merit.

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[26] Id. at 398-399.
[27] Id. at 405-406.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice