



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 September 2020** which reads as follows:*

“G.R. No. 252821 (*Lapanday Foods Corporation v. Commissioner of Internal Revenue*). – After review, the Court resolves to **DENY** the petition for failure to sufficiently show that the Court of Tax Appeals (CTA) *En Banc* committed any reversible error in its ruling.

It must be noted that Lapanday Foods Corporation (petitioner) filed its administrative claim on September 23, 2008. The 120-day period expired on January 21, 2009, while the additional 30 days was until February 20, 2009. However, petitioner filed its petition for review only on September 28, 2018 or more than nine (9) years, from the time it should have filed its appeal before the CTA.

The prescriptive periods regarding judicial claims for refunds or tax credits of input value added tax (VAT) are set forth in Section 112 (C) of the National Internal Revenue Code (NIRC), to wit:

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

x x x x

(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 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. (Emphasis supplied)

Moreover, Section 112 (C) is to be read in conjunction with Section 11 of Republic Act No. (RA) 1125,¹ as amended by Section 9 of RA 9282,² which provides:

Section 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, x x x 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.** (Emphasis supplied)

Meanwhile, Section 7 (a) (2) of the same Act provides:

Section 7. *Jurisdiction.* — The CTA shall exercise:

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

x x x x

(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.**] (Emphasis supplied)

The words of the law are clear and need no interpretation. It provides that the taxpayer may appeal the denial or the inaction of the Commissioner of Internal Revenue (CIR) only within 30 days from receipt of the decision denying the claim or the expiration of the 120-day period given to the CIR to decide the claim.

Petitioner claims that the petition for review was filed on time since it received the letter from the Assistant Commissioner of Internal Revenue Assessment Service denying its claim for refund only on August 31, 2018. It also ascribed estoppel against the CIR, allegedly for taking cognizance of

¹ AN ACT CREATING THE COURT OF TAX APPEALS, Republic Act No. 1125, June 16, 1954.

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 of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, Republic Act No. 9282, March 30, 2004.

its claim albeit the lapse of the 30-day period after the expiration of the 120-day period.

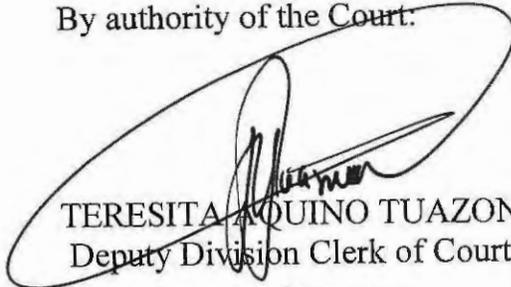
We emphasize that the periods provided in Section 112 (C) of the NIRC are mandatory and jurisdictional. Its strict compliance must be observed for a claim for refund or tax credit to prosper.³ Moreover, jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.⁴ Therefore, the fact that petitioner allegedly received a letter from the Assistant Commissioner of Internal Revenue Assessment Service in 2018 was of no moment a cure to petitioner's failure to seek recourse within the time prescribed in Section 112 (C).

In *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue*,⁵ taxpayers are reminded 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 Decision dated July 9, 2020 of the Court of Tax Appeals in CTA EB No. 2117 is hereby **AFFIRMED**.

SO ORDERED." (*Baltazar-Padilla, J., on leave.*)

By authority of the Court.


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

24 NOV 2020

11/24

³ See *CIR v. San Roque Power Corporation*, 703 Phil. 310, 354 (2013).

⁴ *Nippon Express (Phil.) Corp. v. Commissioner of Internal Revenue*, 706 Phil. 442, 450-451 (2013).

⁵ 750 Phil. 624, 633 (2015).

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(CTA Case No. 9938)

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