Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

TAIHEI ALLTECH CONSTRUCTION (PHIL.) INC.,		**G.R. No. 258791**
Petitioner,	Members:	
-versus-	LEONEN, *SAJ., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.*	
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:	
Respondent.	DEC 07 2022	

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on Certiorari[1] seeks to reverse and set aside the following dispositions of the Court of Tax Appeals *En Banc* in CTA EB No. 2331 (CTA Case No. 10108):

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[1] Under Rule 45 of the Rules of Court. *Rollo*, pp. 16–47.

1) Decision[2] dated July 19, 2021 affirming the dismissal on jurisdictional ground of the judicial claims for refund of petitioner Taihei Alltech Construction (Phil.) Inc. (Taihei) in the total amount of ₱19,345,434.54 representing unutilized excess tax credit for the 3rd and 4th quarters of calendar year 2011; and

2) Resolution[3] dated February 3, 2022, denying the motion for reconsideration of the Commissioner of Internal Revenue.

The Proceedings before the Bureau of Internal Revenue

Taihei is a domestic corporation[4] primarily engaged in the construction of industrial plants.[5] It is Value Added Tax (VAT)-registered with the Bureau of Internal Revenue under Certificate of Registration OCN 9RC0000361302 dated June 22, 1994 with TIN 000-146-092-000.[6]

Within the mandatory two-year period under Section 112(A),[7] National Internal Revenue Code, as amended, Taihei filed the following administrative claims for refund before the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance in the total amount of ₱19,345,434.54 representing unutilized excess tax credit for the 3rd and 4th quarters of calendar year 2011, together with all the supporting documents:[8]

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2 Penned by Presiding Justice Roman G. Del Rosario, concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro, *id.* at 51–63.

3 *Id.* at 65–67.

4 *Id.* at 52. Petitioner Taihei Alltech Construction (Phil.), Inc. (Taihei) is a domestic corporation duly organized and existing under Philippine laws, with office address at 154 Cityland 10 Tower II, 2108 HV Dela Costa St., Salcedo Village, Makati City under Securities and Exchange Commission (SEC) Registration No. 71309. *See* also *id.* at 18.

5 Taihei's primary purpose is to engage in the construction of any industrial plant, such as processing plants, power plants, chemical plants, involving the installation of any mechanical, electrical, electronics, nuclear machinery, and equipment in SEC Registration No. 71309. *Id.*

6 *Id.* at 19.

7 Section 112, National Internal Revenue Code (NIRC). 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: 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.

8 Taihei alleged that it filed the said application "together with all the supporting documents as required under Section 112, NIRC...," *rollo*, p. 19.

a) September 30, 2013 - For excess input VAT for the 3rd Quarter (July to September) of calendar year 2011 in the amount of ₱6,649,651.47.[9]

b) December 23, 2013 - For excess input VAT for the 4th Quarter (October to December) of calendar year 2011 in the amount of ₱12,695,783.07.[10]

Meantime, on June 11, 2014, the Commissioner of Internal Revenue issued Revenue Memorandum Circular No. 54 (RMC 54-2014) following the decision in *CIR v. San Roque Power Corporation*[11] and *Mindanao II Geothermal Partnership v. CIR*,[12] *viz.*:

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

June 11, 2014

REVENUE MEMORANDUM CIRCULAR NO. 54-2014

SUBJECT : Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended

TO : All Internal Revenue Officers and Others Concerned

Clarification on the issues concerning the application for VAT refund/tax credit has been made by the Supreme Court in Commissioner of Internal Revenue vs. San Roque Power Corporation and in Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue. As such, this Circular is issued to summarize the rules on filing and processing of applications for VAT refund/tax credit.

I. Prescriptive Period within which Administrative Claim for Refund or Tax Credit of Input Taxes shall be Made

Section 112 (A) of the Tax Code, as amended, provides that 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 sales were made, apply for the issuance of tax credit certificate or refund of creditable input tax due or attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax. As such, the taxpayer can file his administrative claim for VAT refund or credit at anytime within two-year prescriptive period.

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9 *Id.* at 89–93.
10 *Id.* at 94–96.
11 *CIR v. San Roque Power Corporation, Taganito Mining Corporation v. CIR*, and *Philex Mining Corporation v. CIR*, 703 Phil. 310 (2013).
12 706 Phil. 48 (2013).

The Commissioner shall have one hundred twenty (120) days from the date of submission of complete documents to decide whether or not to grant the claim for refund or issuance of the Tax Credit Certificate (TCC) for creditable input taxes. If the claim for VAT refund or credit is not acted upon by the Commissioner within 120-day period as required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit.

II. Filing and Processing of Administrative Claims

The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex "B"). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (*i.e.*, at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

III. Mandatory 120+30 Day Period

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 (120) day-period, appeal the decision or the unacted claim with the CTA. Verily, a judicial claim must be filed with the CTA within 30 days from the receipt of the Commissioner's decision denying the administrative claim or from the expiration of the 120-day period without any action from the Commissioner, as the case may be. In this regard, the taxpayer/claimant is required to observe the 120+30 day rule before lodging a petition for review with the CTA.

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

IV. Exception to the Mandatory and Jurisdictional Nature of the 120+30 day Period (BIR Ruling No. DA-489-03 dated 10 December 2003)

As an exception to the mandatory and jurisdictional 120+30 day period, it was emphasized that from the time of issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court

in the Aichi case on October 6, 2010 (or a period of almost 7 years), taxpayers/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. This exception, however, is limited to cases of premature filing (filing of judicial claim prior to the lapse of the120-day period) and does not extend to late filing of a judicial claim.

V. Pending Administrative Claim

In cases where the taxpayer has filed a "petition for review" with the CTA, the Commissioner loses jurisdiction over the administrative claim. However, the Processing Office of the Administrative Agency shall still evaluate internally the administrative claim for purposes of intelligently opposing the taxpayer's judicial claim.

Indubitably, failure to file a judicial claim with the CTA within thirty (30) days from the expiration of the 120-day period rendered the Commissioner's decision, or inaction "deemed a denial", final and unappealable. This applies to all currently pending administrative claim for refund/tax credit.

All other issuances inconsistent herewith are hereby repealed or modified accordingly.

All concerned are hereby enjoined to be guided accordingly and give this Circular as wide a publicity as possible.

This Circular shall take effect immediately.

(SGD). KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

Taihei asserted that its pending administrative claims for refund were deemed denied by virtue of the retroactive application of RMC 54-2014.[13]

Thereafter, the Commissioner of Internal Revenue issued Revenue Regulations No. 1-2017 (RR 1-2017) dated January 3, 2017 on the "*supposed erroneous retroactive application*" of RMC 54-2014, *viz.*:

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

January 3, 2017

REVENUE REGULATIONS NO. 1-2017

SUBJECT : Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed Under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014

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[13] *Rollo*, pp. 19–20.

TO: All Internal Revenue Officers and Others Concerned

SEC. 1. BACKGROUND. - On August 27, 2003, Revenue Memorandum Circular (RMC) No. 49-2003 dated August 15,2003, was issued to allow taxpayers to file the complete documents to enable the Commissioner of Internal Revenue to properly process the administrative claims for tax credit or tax refund. It provided that upon filing of his application for tax credit/refund, the taxpayer-claimant is given thirty (30) days within which to complete the required documents unless given further extension by the head of the processing unit but such extension shall not exceed thirty (30) days. The claim shall be officially received only upon submission of complete documents. It is only upon such submission that the 120-day period would begin to run. In this sense, it is the taxpayer "who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period."

RMC No. 54-2014 dated June 11, 2014, was issued which provides that the Commissioner shall have one hundred twenty (120) days from date of submission of complete documents to decide whether or not to grant the claim for tax credit/refund. If the claim is not acted upon by the Commissioner within the statutory 120-day period, such "inaction shall be deemed a denial" of the application for tax credit or refund. Further it requires that the application or claim must already be accompanied by complete supporting documents and the taxpayer is barred from submitting additional documents after he has filed his administrative claim. This takes away from the taxpayer-claimant the reckoning of the 120-day period.

It appears that RMC No. 54-2014 was being given retroactive effect because pending claims were deemed denied upon expiration of the 120-day period from the date the claims were filed even though the taxpayer-claimants are still in the process of submitting the complete documents which was allowed under RMC No. 49-2003. It presumed that the pending claims had been filed with complete documents and the same have remained unacted upon beyond the 120-day period.

On December 8, 2016, the Supreme Court, in the case *Pilipinas Total Gas, Inc. vs. The Commissioner of Internal Revenue* (G.R. No. 207112), decreed that taxpayers "have every right to pursue their claims in the manner provided by existing regulations at the time it was filed," and, therefore, RMC No. 54-2014 cannot be applied retroactively as this would prejudice taxpayers whose VAT claims for tax credit or tax refund were filed and pending before June 11, 2014, the date RMC No. 54-2014 took effect. This judicial declaration compels the need to clarify the tax treatment and processing of applications for VAT tax credit/refund filed and pending prior to RMC 54-2014.

SEC. 2. SCOPE. - Pursuant to the provisions of Section 244, in relation to Section 246 and Section 112 of the Tax Code, as amended, these Regulations are issued to give effect to the doctrinal rule laid down in the aforecited *Pilipinas Total Gas* case and to afford fair and adequate relief to taxpayer-claimants whose claims were "deemed denied" as a result of the retroactive application of RMC No. 54-2014. For this purpose, and consistent with the judicial "summation of rules" decreed to be "made applicable to claims of tax credit/refund filed before June 11, 2014," such

claims filed prior to RMC No. 54-2014 shall continue to be processed administratively.

SEC. 3 PROCESSING OF ADMINISTRATIVE CLAIMS. - VAT claims filed and pending prior to the effectivity of RMC 54-2014, the claims solely covered by these Regulations, shall be processed and approved in accordance with the following rules:

1. The claimant-taxpayer, under Section 112 (A) of the Tax Code, as amended, has two (2) years after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must have submitted his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, "officially received" as clarified under RMC No. 49-2003.

2. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the Tax Code, as amended, and the Commissioner, or his duly authorized representative, should have decided on the claim for tax credit or refund within 120 days from the date of submission of complete documents, or from the date filing of the application, if the claimant-taxpayer did not submit additional documents.

   Hence, pending administrative claims prior to the effectivity of RMC No. 54-2014 shall be processed by the concerned offices based on available documents submitted by the claimant-taxpayer within the aforesaid statutory two-year period. For this purpose, the result shall be communicated in writing by the concerned revenue official.

SEC. 4. CLAIMS NOT COVERED. - The following claims filed and pending before the effectivity of RMC 54-2014 are not covered by these Regulations:

1. Those claims filed beyond the two-year statutory prescriptive period under Section 112 (A) of the Tax Code, as explained in Sec. 3 hereof;

2. Those denied in writing by the approving authority;

3. Those approved or granted fully or partially by the approving authority; and

4. Those already appealed to and pending with the CTA unless there is proof of withdrawal of the case filed with the CTA.

SEC. 5. REPEALING CLAUSE. - Any revenue issuances inconsistent herewith are hereby repealed or modified accordingly.

SEC. 6. EFFECTIVITY CLAUSE. – These regulations shall take effect fifteen (15) days after publication in a newspaper of general circulation.

(SGD.) CARLOS G. DOMINGUEZ III
Secretary of Finance

RECOMMENDING APPROVAL:

(SGD). CAESAR R. DULAY
Commissioner of Internal Revenue

By virtue of RR 1-2017, Taihei alleged that its administrative claim was deemed revived.[14] Subsequently, on June 10, 2019,[15] OIC-Assistant Commissioner for Assessment Service Ma. Luisa I. Belen denied Taihei's administrative claim under Letter[16] dated February 6, 2019, *viz.*:

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The said applications were deemed denied as a result of the retroactive application of Revenue Memorandum Circular (RMC) No. 54-2014 dated June 11, 2014. However, pursuant to Revenue Regulations No. 1-2017 dated January 3, 2017, claims filed prior to RMC No. 54-2014 shall continue to be processed administratively, to wit:

> ***"Hence, pending administrative claims prior to the effectivity of RMC No. 54-2014 shall be processed by the concerned office based on available documents submitted by the claimant-taxpayer within the xxx statutory two-year period xxx".***

The examination conducted by this Office on the available documents submitted supporting the said applications, resulted in excess deductions over input VAT claimed, as computed hereunder:

Amount of claims	**P19,345,434.54**
Deductions:	
Violation of invoicing requirements per Sec. 113 of NIRC of 1997	P17,150,738.30
Input VAT not supported with ORs/invoices	1,333,099.23
Input VAT on importations without proof of payment of VAT	908,065.00
Total Deductions	**P19,391,902.53**
Excess Deductions over Input VAT Claimed	**(P46.467.99)**

In view of the foregoing, we regret to inform that your claims for VAT credit aggregating P19,345,434.54 are **DENIED** for lack of factual and legal bases.

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14 *Id.* at 20.
15 *Id.*
16 *Id.* at 97.

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In view of the mandatory rule that "*[i]n 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*" prescribed under Section 112(C),[17] National Internal Revenue Code, as amended, Taihei filed a Petition for Review with the Court of Tax Appeals entitled *Taihei Alltech Construction (Phil.) Inc. v. CIR* docketed as CTA Case No. 10108 on July 10, 2019.

Proceedings before the Court of Tax Appeals Second Division

In its Petition for Review,[18] Taihei asked the Court of Tax Appeals Second Division to grant its claims for refund in the total amount of ₱19,345,434.54 representing unutilized excess tax credit for the 3rd and 4th quarter of calendar year 2011.

In support of its claims, Taihei alleged: (1) The claims for refund with all the supporting documents were filed in accordance with Section 112, National Internal Revenue Code, as amended; (2) While the Commissioner of Internal Revenue had 120 days within which to act on Taihei's claims for refund, the same were "deemed denied" by virtue of the retroactive application of RMC 54-2014. Nevertheless, these claims for refund were "re-processed" administratively when the Commissioner of Internal Revenue subsequently issued RR 1-2017, effectively reviving the claims; and (3) Despite the subsequent denial thereof, it remained entitled to the refund thereof.

Under its Answer dated July 31, 2019,[19] the Commissioner of Internal Revenue riposted: (a) The Petition for Review was filed out of time and the Court of Tax Appeals had no jurisdiction over the same; (b) RMC 54-2014 mentioned only one exception to the 120+30-day rule which is Bureau of Internal Revenue Ruling No. DA-489-03 dated December 10, 2003 effective up to October 6, 2010 only, relating to premature filing of judicial claim, as

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17 Section 112(C), NIRC. 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 decision or the unacted claim with the Court of Tax Appeals.

18 *Rollo*, pp. 69–121.

19 *Id.* at 122–137.

emphasized in *Mindanao II Geothermal Partnership v. CIR.*[20] It does not extend to late filing of a judicial claim; (c) The subsequent denial of Taihei's claims for refund have no bearing as the 30-day jurisdictional period from the 120-day period under Section 112(C), National Internal Revenue Code, as amended, had already expired; and (d) Taihei failed to substantiate its administrative claims for refund.

Taihei, in its Reply[21] dated August 8, 2019, maintained that it is entitled to the refund since RR 1-2017 already repealed RMC 54-2014, hence, its claims were deemed revived by the Commissioner of Internal Revenue itself. If its claims were denied, the noble intentions of the Commissioner of Internal Revenue to rectify its "erroneous" misapplication of law shall be useless.

By its Motion for Early Resolution[22] dated October 11, 2019, the Commissioner of Internal Revenue asked the Court of Tax Appeals Second Division to resolve the issue of jurisdiction, which on the face of the petition itself, may already be done.

The Commissioner of Internal Revenue reasoned: (1) The **administrative claims** for refund for excess input VAT **got filed**: (i) **on September 30, 2013** for the 3rd Quarter, 2011 in the amount of ₱6,649,651.47; and (ii) **on December 23, 2013** for the 4th Quarter, 2011 in the amount of ₱12,695,783.07; (2) The **judicial claims** for refund or petition for review **were filed only on July 10, 2019**, way beyond the period of 30 days from the expiration of the 120 days ordained under Section 112(C), National Internal Revenue Code, as amended; and (3) The right to appeal is not a natural right. It is a statutory privilege and may be exercised only in the manner provided by law. Failure to do so often leads to the loss of the right to appeal.[23]

In its Comment[24] dated November 12, 2019, Taihei averred: (a) It was affected by the misapplication of RMC 54-2014; (b) RR 1-2017 has the force of law and should be followed so long as it does not contravene any statute or the Constitution; and (c) The government is not exempt from the application of *solutio indebiti*. It expects fair dealings from them and the duty to refund without unreasonable delay what it has erroneously collected. It should not unjustly enrich itself at the expense of the taxpayer.

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20 *Supra* note 12 at 85.
21 *Rollo*, pp. 138–167.
22 *Id.* at 168–177.
23 *Id.*
24 *Id.* at 178–183.

Ruling of the Court of Tax Appeals Second Division

Under Resolution[25] dated February 3, 2020, the Court of Tax Appeals Second Division dismissed the Petition, ruling that Taihei's judicial claim was filed out of time.

One, based on Section 112(C), National Internal Revenue Code, the **Commissioner of Internal Revenue has 120 days to decide on the claim for refund from the submission of complete documents**, which in this case should be reckoned from September 30, 2013 for the 3rd Quarter, 2011 and on December 23, 2013 for the 4th Quarter, 2011, the **last day of which was January 28, 2014 for the 3rd Quarter** and **April 22, 2014 for the 4th Quarter**. Thereafter, **due to inaction of the Commissioner of Internal Revenue, Taihei had 30 days to file a judicial claim before the Court of Tax Appeals**. Taihei's two claims **expired on February 27, 2014 and May 22, 2014, respectively**, long before Taihei actually **filed its judicial claims on July 10, 2019**, way beyond the period contemplated by law.

Two, the 120-day period starts from the date of submission of complete documents or the date of filing of application if the taxpayer, as in this case, did not submit any additional documents. RR 1-2017 bears the same rule.

Three, the 30-day period should be reckoned from the Commissioner of Internal Revenue decision or from the expiration of the 120 days, whichever comes first. Any judicial claim filed outside the 120+30-day periods does not fall within the jurisdiction of the Court of Tax Appeals.

Four, thus, it resolved the jurisdictional issue based on relevant laws and jurisprudence and not on the retroactive application of RMC 54-2014.

The petitioner's subsequent Motion for Reconsideration[26] was denied under Resolution[27] dated July 14, 2020.

Ruling of the Court of Tax Appeals *En Banc*

The Court of Tax Appeals *En Banc* affirmed by Decision[28] dated July 19, 2021 and Resolution[29] dated February 3, 2022. It pronounced that since Taihei's judicial claims for refund were clearly filed out of time, the court was devoid of jurisdiction over the same.

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25 Penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Associate Justices Cielito N. Mindaro-Grulla and Jean Marie A. Bacorro-Villena. *Id.*, pp. 184–190.

26 *Id.* at 191–201. Commissioner of Internal Revenue filed an opposition thereto, see *rollo*, pp. 202–206.

27 Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justice Jean Marie A. Bacorro-Villena, *id.* at 208–214.

28 *Id.* at 51–63.

29 *Id.* at 65–67.

For one, Section 112 (C), National Internal Revenue Code, as amended, speaks of two (2) periods: (1) the 120-day period, which serves as a waiting period to give time for the Commissioner of Internal Revenue to act on the administrative claim for a refund or credit; and (2) the 30-day period, which refers to the period for filing a judicial claim with the Court of Tax Appeals.

For another, complementing Section 112, National Internal Revenue Code, as amended, Republic Act No. 1125, as amended by Republic Act No. 9282, confers exclusive appellate jurisdiction to the Court of Tax Appeals to review by appeal, only the decisions or inaction of the Commissioner of Internal Revenue in cases for refund of internal revenue taxes.[30]

Verily, the taxpayer may file the appeal within 30 days after the Commissioner of Internal Revenue denies the administrative claim within the 120-day waiting period; or it may file the appeal within 30 days from the expiration of the 120-day period if there is inaction on the part of the Commissioner of Internal Revenue, **whichever comes first**.

The inaction of the Commissioner of Internal Revenue on the claim during the 120-day period is, by express provision of law, "**deemed a denial**" of the claim, and the taxpayer has 30 days to file its judicial claim with the Court of Tax Appeals; otherwise such denial shall be deemed final and inappealable. A **taxpayer must no longer wait for the Commissioner of Internal Revenue to come up with a decision as his 120-day inaction is the decision itself**. Any claim filed beyond the 120+30-day period provided by the National Internal Revenue Code is outside the jurisdiction of the Court of Tax Appeals.

More, RR 1-2017 did not repeal RMC 54-2014 and did not effectively revive Taihei's claims for refund as this regulation did not create any exception to the 120+30-day mandatory and jurisdictional period. It was issued to give effect to the doctrinal rule laid down in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[31] which only afforded relief to taxpayers whose claims were deemed denied as a result of the retroactive

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[30] Republic Act No. 1125, as amended by RA. 9282, Section 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
1 Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
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.
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[31] 774 Phil. 473, 496 (2015).

application of RMC 54-2014 by providing that claims for refund filed before June 11, 2014 shall continue to be processed administratively.

The Present Petition

Taihei now asks the Court to exercise its discretionary appellate jurisdiction to reverse the dispositions of the Court of Tax Appeals. It insists that the 120-day timeline has been invalidated by the retroactive application of RMC 54-2014, thus, it can still avail of the judicial remedies for the grant of its claim for refund even beyond this timeline. At any rate, RR 1-2017 repealed RMC 54-2014 and effectively revived its claims for refund.[32] By jurisprudence though, compliance with the jurisdictional periods for filing a claim has been excused in cases where the taxpayers relied on a Bureau of Internal Revenue ruling of general interpretative order. Surely, the Court will apply this exception here since what has been relied upon is RR 1-2017, a revenue issuance far superior to a general interpretative order.

In its Comment[33] dated September 7, 2022, the Commissioner of Internal Revenue defends the dispositions of the Court of Tax Appeals and ripostes that the 120+30-day period within which to elevate judicial claims is mandatory and jurisdictional for VAT claims for refund. The dispositions of the Court of Tax Appeals did not use RMC 54-2014 to dismiss its petition, nor apply it retroactively. RMC 54-2014 and RR 1-2017 did not create a peculiar circumstance that warrants an exception to Section 112(C), National Internal Revenue Code, as amended. More, RR 1-2017, being an administrative regulation, could not amend the provisions of Section 112, National Internal Revenue Code, as amended.

Core Issues

1) Were Taihei's judicial claims for refund filed out of time?

2) Did RMC 54-2014 retroactively invalidate Taihei's 120-day period to file a judicial claim under Section 112(C), National Internal Revenue Code, as amended?

3) Did RR 1-2017 revive Taihei's claims for refund?

4) Did RMC 54-2014 and RR 1-2017 create an exception to the 120+30-day period?

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32 *Rollo*, pp. 16–49.

33 Comment dated September 7, 2022 of the CIR, *id.* at 332–343.

Our Ruling

We affirm.

Nine years after *CIR v. San Roque Power Corporation*,[34] questions regarding the mandatory and jurisdictional nature of 120+30-day rule under Section 112, National Internal Revenue Code, as amended would have been already been settled. Unfortunately, however, some taxpayers continue to question the doctrinal ruling in an effort to stretch its interpretation or add new exceptions insofar as their judicial claims for refunds are concerned. To recall, *San Roque* explained the 120+30-day prescriptive periods under Section 112(A) and (C), National Internal Revenue Code:

> II. Prescriptive Periods under Section 112(A) and (C)
>
> There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.
>
> *First*, Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer "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 the creditable input tax due or paid to such sales." In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit "**within two (2) years**," **which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.
>
> *Second*, Section 112(C) provides that the Commissioner shall decide the application for refund or credit "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)." The reference in Section 112(C) of the submission of documents "in support of the application filed in accordance with Subsection A" means that the application in Section 112(A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two-year prescriptive period in Section 112(A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. **Stated otherwise, the two-year prescriptive period does not refer to the filing of the**

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[34] *Supra* note 11.

> **judicial claim with the CTA but to the filing of the administrative claim with the Commissioner.** As held in Aichi, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund' **refers to applications for refund/credit with the CIR and not to appeals made to the CTA.**"
>
> *Third*, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period.** Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.
>
> The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain, and unequivocal language.
>
> Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).

The Court had to restate this doctrinal ruling on the 120+30-day period in subsequent cases to address any perceived "loopholes" in its interpretation. In *CIR v. Mindanao II Geothermal Partnership*,[35] the Court ruled that the 30-day period applied not only to actual denial of claims but to the Commissioner of Internal Revenue's inaction as well. The Court even summarized the rules on prescriptive period as to what should be filed within the prescriptive period and when it should be reckoned, thus:

> **A. 30-Day Period Also Applies to Appeals from Inaction**

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35 724 Phil. 534 (2014).

Section 112(D) of the 1997 Tax Code states the time requirements for filing a judicial claim for refund or tax credit of input VAT:

> (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.

Section 112(D) 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 refund or credit, and the period of 30 days, which refers to the period for interposing an appeal with the CTA. It is with the 30-day period that there is an issue in this case.

The CTA En Banc's holding is that, since the word "or" – a disjunctive term that signifies dissociation and independence of one thing from another – is used in Section 112(D), the taxpayer is given two options: 1) file an appeal within 30 days from the CIR's denial of the administrative claim; or 2) file an appeal with the CTA after expiration of the 120-day period, in which case the 30-day appeal period does not apply. The judicial claim is seasonably filed so long as it is filed after the lapse of the 120-day waiting period but before the lapse of the two-year prescriptive period under Section 112(A).

We do not agree.

The 30-day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by the CIR as well. This is the correct interpretation of the law, as held in San Roque:

> Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:
>
> > x x x 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.

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does

not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

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

xxx xxx[36]

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

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

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (Aichi)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (San Roque)

3. The only other rule is the Atlas ruling, which applied only from 8 June 2007 to 12 September 2008. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. (San Roque)

B. 120+30 Day Period

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

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

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

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

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force.[37] (San Roque) (Emphases supplied)

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36 *Id.* at 553–555.

37 *Id.* at 562–563.

In *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue*,[38] the Court ruled that the taxpayer should not wait for the decision of the Commissioner of Internal Revenue as the 30-day period is triggered upon the expiration of the 120-day period:

> **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* 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.**
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> xxx 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) and San Roque. Aichi clarified that it is only the administrative claim that must be filed within the two-year prescriptive period. 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.
>
> 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**

[38] 750 Phil. 624 (2015).

> **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. 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. xxx
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>
> 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.
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> xxx xxx
>
> 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.***[39] (Emphases and italics supplied)

In *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,[40] the Court likewise ordained that a judicial claim for refund shall be filed within a period of 30 days after the receipt of Commissioner of Internal Revenue's decision/ruling or after the expiration of the 120-day period, "**whichever is sooner**," thus, further solidifying the rule.

Taihei's judicial claims were filed out of time

Following these doctrinal rulings, the 120+30-day period for Taihei's judicial claims for refund should reckon with the following dates relevant to its earlier administrative claims for refund, thus:

2011	Administrative Claim Filed	End of 120-day Period	End of 30-day Period
3rd Quarter	September 30, 2013	January 28, 2014	February 27, 2014
4th Quarter	December 23, 2013	April 22, 2014	May 22, 2014

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39 *Id.* at 630–633.

40 782 Phil. 44, 56 (2016).

As it was, Taihei filed its **judicial claims with the Court of Tax Appeals only on July 10, 2019** way **beyond the 120+30-day period**. Thus:

2011	End of 120-day Period	Judicial Claim Filed	No. of Days Late
3rd Quarter	January 28, 2014	July 10, 2019	**1,989 days** (or 5 yrs. and 163 days)
4th Quarter	April 22, 2014	July 10, 2019	**1,905 days** (or 5 yrs. and 79 days)

The ***post facto*** **denial** of Taihei's administrative claims is **irrelevant** as **Commissioner of Internal Revenue's inaction for 120 days** is already considered "**deemed denial**" of the administrative claims for refund. Surely, **without a timely appeal**, the "deemed denial" becomes **final and unappealable**.

RMC 54-2014 was not retroactively applied to Taihei's claims for refund

Citing *Pilipinas Total Gas, Inc. v. CIR*,[41] Taihei asserts that RMC 54-2014 cannot be retroactively applied to its claims for refund already pending before RMC 54-2014 took effect on June 11, 2014.

The argument is misplaced. Before RMC 54-2014 got issued, the reckoning point of the 120-day period had always been "*from the date of submission of complete documents in support of the application filed.*" To recall, as there were pending administrative claims which were not acted upon by the Commissioner of Internal Revenue due to incomplete documentation, there was a need to define the period within which the documentation process should be completed as well as the period within which the Commissioner of Internal Revenue should receive the claims. Thus, RMC 49-2003[42] was issued

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41 *Supra* note 31.

42 RMC No. 49-2003 dated August 15, 2003, "Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

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Q-18: For **pending claims with incomplete documents**, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?

A-18: For **pending claims** which have not been acted upon by the investigating/processing office **due to incomplete documentation**, the **taxpayer-claimants are given thirty (30) days** within which **to submit the documentary requirements unless given further extension** by the head of the processing unit, but such extension should **not exceed thirty (30) days**.

For claims to be filed by claimants with the respective investigating/processing office of the administrative shall be agency, the same officially received only upon submission of complete documents.

For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from

giving claimants with incomplete documentation a period of thirty (30) days from the filing of the administrative claim to submit the documentary requirements unless the Commissioner of Internal Revenue granted a further extension of thirty (30) days. It is only after the expiration of this period shall the 120-day period begin to run.

Pilipinas Total Gas[43] merely expounded on the reckoning point of the 120-day period applying RMC 49-2003 **prior** to the issuance of RMC 54-2014 for claimants with incomplete documents:

> With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining when the supporting documents have been completed — **it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.** After all, **he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.**
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> xxx After all, in a claim for tax credit or refund, **it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.**
>
> The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, **it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.**
>
> x x x x
>
> To summarize, for the just disposition of the subject controversy, **the rule is** that **from the date an administrative claim** for excess unutilized VAT is filed, a **taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer**, on the date of his filing, **manifest that he no longer wishes to submit any other [additional] documents** to complete his administrative claim, **the 120 day period allowed to the CIR begins to run from the date of filing**.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from

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request of the investigating/processing office, which shall be construed as within the one hundred twenty (120) day period.

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[43] *Supra* note 31.

the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

It bears mentioning at this point that the foregoing summation of the rules should **only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014**, such as the claim at bench. **As it now stands, RMC 54- 2014 dated June 11, 2014 mandates that:**

> **The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B).** The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (*i.e.*, at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> **Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation.** A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.
>
> Thus, **under the current rule**, the **reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54- 2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.**

On this score, the Court finds that the foregoing issuance cannot be applied retroactively to the case at bar since it imposes new obligations upon taxpayers in order to perfect their administrative claim, that is, [1] compliance with the mandate to submit the "supporting documents" enumerated under RMC 54-2014 under its "Annex A"; and [2] the filing of "a statement under oath attesting to the completeness of the submitted documents," referred to in RMC 54-2014 as "Annex B." This should not prejudice taxpayers who have every right to pursue their claims in the manner provided by existing regulations at the time it was filed.[44] (Emphases supplied)

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[44] *Id.*

Accordingly, RMC 54-2014 (requiring taxpayer to file at once complete supporting document simultaneously with its administrative claim for refund) should not be retroactively applied to administrative claims with incomplete documents pending as of June 11, 2014 as the same was deemed to have been continuously governed by the old RMC 49-2003.

As for Taihei, it has been earlier illustrated that **even long before RMC 54-2014** got issued on June 11, 2014, **Taihei already lost its 30-day period** for filing its judicial claims on February 27, 2014 and May 22, 2014, respectively. Thus, its allegation that RMC 54-2014 was retroactively applied to its claims for refund is totally misplaced.

RR 1-2017 did not revive Taihei's claims for refund

Taihei next argues that RR 1-2017 had revived its claims for refund as it "reprocessed" the same due to the retroactive application of RMC 54-2014.

Again, the argument is misplaced. To begin with, the **Commissioner of Internal Revenue has no power to revive lapsed claims** for refund. What Section 4, National Internal Revenue Code[45] grants to the Commissioner of Internal Revenue is only the authority to interpret and decide tax cases; not the power to alter the periods prescribed by law for filing of tax refunds.[46]

To be clear, RR 1-2017 did not in any way provide that any claims for refund had been "revived" or "reprocessed." While the regulation admittedly provided that RMC 54-2014 retroactively applied to claimants whose documentary requirements were already complete prior to its effectivity on June 1, 2014, the issuance qualified that it should be consistent with the judicial "summation of rules" decreed to be "made applicable to claims of tax credit/refund filed before RMC 54-2014." It never ordained that lapsed claim were "revived" or "reprocessed."

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[45] Section 4, NIRC. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
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 this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[46] In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations," G.R. No. 215801, Bureau of Internal Revenue (BIR), as herein represented by its Commissioner Kim S. Jacinto-Henares and Revenue District Officer (RDO) *Ricardo B. Espiritu v. First E-Bank Tower Condominium Corp.*, In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying The Taxability Of Association Dues, Membership Fees And Other Assessments/Charges Collected By Condominium Corporations," *First E-Bank Tower Condominium Corp. v. Bureau of Internal Revenue (BIR)*, as herein represented by its Commissioner Kim S. Jacinto-Henares, G.R. No. 218924, January 15, 2020, *citing COURAGE v. Commissioner, Bureau of Internal Revenue*, G.R. No. 213446, July 03, 2018.

In any event, RR 1-2017 is replete with provisions which clearly referenced the 120+30-day rule, most telling of which is par. 2, Section 3 thereof stating that "*[i]n all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the Tax Code, as amended, and the Commissioner, or his duly authorized representative, should have decided on the claim for tax credit or refund within 120 days from the date of submission of complete documents, or from the date filing of the application, if the claimant-taxpayer did not submit additional documents.*"

Inevitably, when Taihei received the Letter of Denial on a date far removed from the 120+30-day rule, its judicial claims were already deemed barred by the earlier lapse of the 120+30-day rule or the so-called "whichever sooner" rule.

RMC 54-2014 and RR 1-2017 did not create an exception to the 120+30-day period

Taihei claims, too, that both RMC 54-2014 and RR 1-2017 created an exception to the 120+30-day rule. It argues that exceptions from jurisdictional periods for filing a claim have been made in a case where the taxpayer relied on a BIR ruling of general interpretative order. Here, it claims to have relied on RR 1-2017, a revenue issuance far more superior than a general interpretative order. On this score, we emphasize anew that the expiration of Taihei's judicial claims for refund predates the two issuances. For sure, the CIR cannot breathe life to a claim that had already expired.

At the time Taihei was required to file a judicial claim on January 28, 2014 and April 22, 2014, the 120+30-day rule had already been settled. *San Roque*,[47] *Mindanao II*[48] and *Rohm*[49] had all exhaustively clarified and explained what was then a difficult question of law. Consequently, Taihei cannot feign ignorance relative to the 120+30-day rule as the aforesaid jurisprudence repeatedly clarified that it had only 30 days from the lapse of the 120 days to file a judicial claim. Its so called reliance on RR 1-2017, if accepted by the Court, would not only sanction stubborn defiance by administrative agencies of settled jurisprudence which are part of the law of the land but worse, allow taxpayers to misconstrue regulations, deliberately or otherwise, and easily get away with it.

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47 *Supra* note 11.
48 *Supra* note 12.
49 *Supra* note 38.

When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation; there is only room for application.[50] But where the law is ambiguous, it is the first and fundamental duty of the Court to apply the law in such a way that in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms.[51] The Court should apply the law in a manner that would give effect to their letter and spirit, especially when the law is clear as to its intent and purpose.[52]

In *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*,[53] the Court ruled that 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.

Here, Taihei was clearly negligent when it did not file its judicial claims after the lapse of the 120-day period and within the 30-day window. So must it be.

ACCORDINGLY, the Petition is **DENIED**. The Decision dated July 19, 2021 and Resolution dated February 3, 2022 of the Court of Tax Appeals *En Banc* in CTA EB No. 2331 (CTA Case No. 10108) are **AFFIRMED**.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

see: separate concurring opinion

MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice
Chairperson

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50 *Coca-Cola Bottlers Philippines, Inc. v. CIR*, 826 Phil. 329 (2018), citing *Nippon Express (Philippines) Corporation v. CIR*, 706 Phil. 442, 450 (2013); citing *Rizal Commercial Banking Corporation v. Intermediate Appellate Court and BF Homes, Inc.*, 378 Phil. 10, 22 (1999).

51 *Id.*, citing *Corpuz v. People*, 734 Phil. 353, 416 (2014).

52 *Id.*

53 720 Phil. 782 (2013).

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest 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.

MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above Division Chairperson's Attestation, 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.

ALEXANDER G. GESMUNDO
Chief Justice