REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CALAMBA STEEL CENTER, INC.,
Petitioner,

CTA CASE NO. 7535

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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CALAMBA STEEL CENTER, INC.,
Petitioner,

CTA CASE NO. 7589

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

APR 2 9 2011
1:30 p.m.

x- -x

DECISION

CASTAÑEDA, JR., *J.*:

This case is a consolidation of two Petitions for Review separately filed by Calamba Steel Center Inc. to seek the refund of its alleged excess and unutilized input value-added tax (VAT) arising from its domestic purchases of goods and services attributable to its zero-rated sales, as well as from importation and local purchases of capital goods for the third and fourth quarters of 2004 and for the first, second, and third quarters of 2005.

Petitioner Calamba Steel Center, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at Barangay Saimsim, Calamba, Laguna.[1]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to act as such, including the power to decide, approve, and grant tax refunds and/or tax credits of excess and unutilized input VAT payments. He holds office at the BIR National Office Building, Agham Road, Diliman Quezon City.

Petitioner filed with the BIR its Quarterly VAT Returns for the third quarter and fourth quarter of 2004 on October 25, 2004[2] and January 25, 2005[3], respectively.

On October 25, 2006, petitioner filed with the BIR Revenue Region No. 9, Revenue District No. 56 (Calamba, Laguna) an administrative claim for the refund or issuance of tax credit certificate in the amount of P7,662,714.76, representing its excess and unutilized input VAT attributable to zero-rated sales of goods and from local purchases and importation of capital goods, covering the third and fourth quarters of 2004.[4]

On October 25, 2006, petitioner likewise filed a Petition for Review before this Court, which was docketed as "Calamba Steel Center, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7535".

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[1] Exhibit "B"
[2] Exhibit "G"
[3] Exhibit "H"
[4] Exhibit "E"

In his Answer[5] filed on January 8, 2007 in CTA Case No. 7535, respondent alleged the following by way of Special and Affirmative Defenses:

> "4. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 5. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
>
> 6. To support its claim, it is imperative for petitioner to prove the following, viz:
>
>> a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4. 107-1(a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
>>
>> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code as amended;
>>
>> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law.** Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

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[5] CTA Case No. 7535, docket, pp. 45-49

> d. That the input taxes of P7,662,714.76 allegedly paid by the petitioner on its domestic purchases of taxable goods and services and importation of capital goods for the third and fourth quarters of taxable year 2004 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;
>
> e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;
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> f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4. 104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);
>
> g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits);

7. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I} v. Llanes, 49 Phil. 466 cited in Collector of internal Revenue v. manila Jockey Club, Inc., 98 Phil. 670);

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation." *jc*

Petitioner filed with the BIR its original Quarterly VAT Returns for the first, second, and third quarters of 2005 on the following dates:

Exhibit	Period Covered (2005)	Date Filed
"EE"	First Quarter	April 25, 2005
"LL"	Second Quarter	July 25, 2005
"SS"	Third Quarter	October 25, 2005

Petitioner amended the said Quarterly VAT Returns on February 14, 2007.[6]

On February 23, 2007, petitioner filed with the BIR Revenue Region No. 9, Revenue District No. 56 (Calamba, Laguna) an administrative claim for refund or issuance of tax credit certificate of its excess and unutilized input VAT derived from domestic purchases of goods (other than capital goods) attributable to its zero-rated sales and those derived from locally purchased and imported capital goods in the amount of P8,952,932.17 covering the first, second, and third quarters of 2005.[7]

Alleging that the two-year prescriptive period under Section 229 of the National Internal Revenue Code (NIRC) of 1997 is about to expire, petitioner filed a Petition for Review for its refund claim covering the first, second, and third quarters of 2005 on March 30, 2007, which was later docketed as "Calamba Steel Center, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7589".

Respondent, in his Answer[8] filed on June 12, 2007 in CTA Case No. 7589, alleged the following Special and Affirmative Defenses:

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[6] Exhibits "I", "J", and "K"
[7] Exhibit "R"
[8] CTA Case No. 7589, docket, pp. 112-116

"4. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

5. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;

6. To support its claim, it is imperative for petitioner to prove the following, viz:

a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4. 107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law.** Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

d. That the input value added taxes (VAT) of P8,952,932.17 allegedly paid by the petitioner on it domestic purchases of goods (other than capital goods) attributable to its zero-rated sales and on its purchases of capital goods, both local and imported, attributable to its vatable and zero-rated sales, for the period covering the first, second, and third quarters of 2005 and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4. 104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);

7. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I} v. Llanes, 49 Phil. 466 cited in Collector of internal Revenue v. manila Jockey Club, Inc. 98 Phil. 670);

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

On May 23, 2007, petitioner filed a Motion for Consolidation of CTA Case Nos. 7535 and 7589 since the two cases prayed for the same relief and involved the same parties, issues, and subject matter.[9] The Court granted the said motion in a Resolution[10] dated June 13, 2007.

During trial, petitioner formally offered its documentary and testimonial evidence; while respondent, through counsel, manifested that he has no witness to present.[11]

This Court, in a Resolution[12] dated February 25, 2011, submitted the case for decision after both parties filed their respective Memorandum.

The issues as stipulated by the parties can be summarized as follows:

> "Whether or not petitioner is entitled to a refund of its alleged excess/unutilized input VAT derived from domestic purchases of goods and services attributable to its effectively zero-rated sales and from locally purchased and imported capital goods in the amounts of P7,662,714.76 and P8,952,932.17, covering the third and fourth quarters of 2004 and the first, second, and third quarters of 2005, respectively, or a total of P16,615,646.93."

The Court will first determine whether it has jurisdiction over the present case.

Jurisdiction of courts is conferred by law.[13] In this connection, Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, defines the appellate jurisdiction of the Court of Tax Appeals as follows:

> "SEC. 7. *Jurisdiction* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> xxx xxx xxx

[9] CTA Case No. 7589, docket, pp. 98-102
[10] CTA Case No. 7589, docket, p. 111
[11] Docket, p. 458
[12] Docket, p. 524
[13] *Que vs. Court of Appeals*, 339 SCRA 505

(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 for action, in which case the inaction shall be deemed a denial;"

One of the inactions contemplated under the said law is found under Section 112 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337, which reads:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales* – Any VAT-registered person whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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(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.
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> xxx xxx xxx"

Based on the foregoing provisions, the taxpayer has two years from the close of the taxable quarter when the sales were made to apply for a tax refund or issuance of tax credit certificate with the Bureau of Internal Revenue. The Revenue Commissioner, in turn, has one hundred twenty (120) days to decide on the claim from the date of submission of complete documents in support of the taxpayer's claim for refund. In case the Revenue Commissioner denies the claim or fails to act upon the claim within the 120-day period, the taxpayer may, within thirty (30) days from the denial or inaction, appeal the case before the Court of Tax Appeals.

The 120-day period provided for under Section 112 of the National Internal Revenue Code is a mandatory requirement. Non-compliance may result in the dismissal of the case on the ground of lack of jurisdiction. The Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[14] stated:

> "Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

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[14] G.R. No. 184823, October 6, 2010

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. **Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.**

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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.' The phrase 'within two (2) years x x x apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

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In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA." *(Emphasis supplied)*

In this case, petitioner filed its administrative claim for refund with respondent on October 25, 2006 for the third and fourth quarters of 2004, then filed its Petition for Review on October 25, 2006. On February 23, 2007, petitioner filed another administrative claim for refund with the BIR, this time for the first, second, and third quarters of 2005, and then filed a Petition for Review on March 30, 2007. Clearly, the filing by petitioner of its judicial claims was premature.

Courts are bound to take notice of the limits of their authority and they may act accordingly by dismissing the action even though the issue of jurisdiction is not raised or not even suggested by counsel.[15] When it appears that the court has no jurisdiction over the subject matter of a complaint filed before it, the court shall dismiss the claim and can do so *motu propio*.[16]

WHEREFORE, premises considered, the instant Petitions for Review are hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(On Leave)
CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[15] *Ace Publications vs. Commissioner of Customs*, 11 SCRA 147
[16] Section 1, Rule 9, Rules of Court

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division