REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PILIPINAS KYOHRITSU, INC.
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE
Respondent.

C.T.A. Case No. 8622

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 12 2013
ABFernand 1:58 p.m.

x- -x

RESOLUTION

Fabon-Victorino, J.:

Before the Court are the two manifestations and motions filed by petitioner Pilipinas Kyohritsu, Inc., both filed on October 3, 2013.

In the first Manifestation and Motion dated October 2, 2013, petitioner prays for the suspension of the proceedings in the instant case allegedly to give respondent time to complete her examination of the documents it submitted pertaining to its claim for refund.

In the other Manifestation and Motion dated October 3, 2013, petitioner asks the Court to set a date for the marking of its exhibits but only after the first incident has been resolved.

To determine the pending incidents, the Court revisited the allegations in the instant Petition for Review filed on the ground that respondent failed to act on its administrative claim for refund or issuance of a tax credit certificate (TCC) despite the lapse of the 120-day period provided under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337. According to petitioner, it seasonably filed two applications for refund of its unutilized input VAT covering the year 2011 with respondent on the following dates:

Period	**Amount**	**Date Filed**
January 1, 2011 to March 31, 2011	Php14,502,014.94	December 15, 2011
April 01, 2011 to December 31, 2011	Php55,469,442.36	April 25, 2012
Total	Php69,971,457.30	

Due to respondent's inaction on its application for refund/TCC within the allowable period, petitioner filed the instant Petition for Review with this Court on **March 25, 2013** praying that an order be issued directing respondent to refund or issue a TCC in the aggregate amount of Php69,971,457.30, allegedly representing its unutilized input value-added tax (VAT) attributable to zero-rated sales for taxable year 2011.[1]

Section 112 of the NIRC of 1997, as amended, the provision invoked by petitioner, provides:

> 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: Provide,

[1] Docket, pp. 7-20.

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.

xxx xxx xxx

(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. xxx (*Boldfacing supplied*)

Based on the above-quoted provision, a VAT-registered person, such as petitioner, **has two (2) years after the close of the taxable quarter when the pertinent sales were made, within which to apply with respondent a claim for refund or tax credit of creditable input tax that remains unutilized**. Respondent, on the other hand, **has 120 days from the date of submission of complete documents in support of the application for refund or tax credit of input tax to grant or deny the same**. Upon notice of denial or expiration of the allowable period of 120 days without any action on the part of respondent, **the VAT-registered person has 30 days, within which to appeal the adverse decision or the inaction of respondent with the Court of Tax Appeals**.

The above interpretation is not without authority. In the early case of *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*,[2] promulgated on April 27, 2007, the Supreme Court enumerated the requisites for filing an application for refund or issuance of TCC for unutilized input VAT attributable to zero-rated or effectively zero-rated transactions, to wit:

> Under Section 106 (A)(2)(a)(1) in relation to 112 (A) of the Tax Code, a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for a refund or issuance of a tax credit certificate for input taxes paid attributable to such sales upon complying with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated (like export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the **claim must be filed within two years after the close of the taxable quarter when such sale were made**; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section

---

[2] G.R. No. 166732.

> 106(A)(2)(a)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations. (*Boldfacing supplied*)

The two-year prescriptive period emphasized in the above-quoted ruling was affirmed in the Mirant case[3] where the Supreme Court literally applied the letter of the law and reckoned the two-year prescriptive period from the close of the taxable quarter when the relevant sales were made. The doctrine was fortified in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi case)*,[4] where the Supreme Court laid to rest the issue on the reckoning period for filing a claim for refund of input VAT. More significantly, the *Aichi Case* emphasized the mandatory nature of the 120+30 day periods provided under Section 112 (C) of the 1997 NIRC, as amended, prior to instituting a judicial claim with the CTA. The Supreme Court held, thus:

> However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112 (D)[5] of the NIRC, which provides that:
>
> xxx xxx xxx
>
> 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

---

[3] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[4] G.R. No. 184823, October 6, 2010.
[5] Now Section 112(C) of the NIRC of 1997, as amended.

> application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> 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.
>
> xxx xxx xxx
>
> . . . **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.**
>
> xxx xxx xxx
>
> 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*)

The mandatory and jurisdictional nature of the 120+30 day periods under Section 112(C) was further elucidated in the recent consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue (San Roque),*[6] viz:

---

[6] *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 187485, 196113, and 197156, 12 February 2013.

At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: ". . . 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." Following the verba legis doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision **<u>within the 120-day mandatory and jurisdictional period</u>**. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.

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:

> . . . 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**.

xxx xxx xxx

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 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 . . . 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).

In its Petition for Review, petitioner admitted that it filed its administrative claims for refund of the unutilized input VAT attributable to its zero-rated sales for taxable year 2001 on December 15, 2011, covering the first quarter of 2011, and on April 25, 2012, covering the three (3) remaining quarters of 2011. As alleged by petitioner, the administrative claims were filed well within the two-year prescriptive period provided under Section 112 (A) of the NIRC of 1997, as amended.

The same is however not true with regard the filing of the instant Petition for Review.

From December 15, 2011 and April 25, 2012 or the dates when petitioner filed its administrative claims for refund with the BIR and presumably the dates of its submission of complete documents supporting its applications for refund/TCC, respondent had 120 days or until April 13, 2012, for the first claim, and August 23, 2012, for the second claim, within which to act on the claim. After the lapse of the said 120-day period without any action on the part of respondent, petitioner had thirty (30) days or until May 13, 2012, for the first claim, and September 22, 2012, for the second claim, within which to seek judicial recourse.

But as admitted by petitioner, it filed the instant Petition for Review only on March 25, 2013, or way beyond the 30-day period to appeal effectively depriving the Court of jurisdiction to entertain its judicial claim.

Parenthetically, Section 1, Rule 9 of the Rules of Court provides for the instances when the court may *motu proprio* dismiss a claim, thus:

> Section 1. *Defenses and objections not pleaded*. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or in the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that **the action is barred by a prior judgment or by <u>statute of limitations</u>, the court shall dismiss the claim**. (*Emphases supplied*)

By opting to file its judicial claim only on March 25, 2013, or way beyond the 30-day period to appeal, petitioner's judicial recourse is already barred by prescription.

To proceed further with the trial under the obtaining circumstances clearly showing lack of authority on the part of the Court to entertain the appeal is futile if not a waste of time and resources.

WHEREFORE, the *Petition for Review* filed by petitioner Pilipinas Kyohritsu, Inc. on March 25, 2013 is hereby **DISMISSED** on jurisdictional ground, rendering the two pending incidents moot.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice