REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PROCTER AND GAMBLE ASIA PTE., LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7683

Members:

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

Promulgated:
NOV 0 9 2010
11:05 A.M.

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review seeks the refund or issuance of tax credit certificate in the amount of P53,624,427.14, representing input value-added tax (VAT) attributable to zero-rated sales of petitioner for the periods covering July 2005 to September 2005 and October 2005 to December 2005.

Procter and Gamble Asia, Pte., Ltd. (petitioner) is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarters in the Philippines, with office address at the 18/F Petron Megaplaza, 358 Sen. Gil Puyat Ave., Makati City. It provides management, marketing, technical and financial advisory, and other qualified services to related companies as specified by its Certificate of Registration and License issued by the Securities and Exchange Commission.[1] Petitioner is a VAT-registered taxpayer and is covered by Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the duty to act upon and approve claims for refunds or tax credits as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Monthly VAT Declarations and Quarterly VAT Returns on the following dates:

VAT RETURN/DECLARATION	DATE FILED (ORIGINAL)	DATE FILED (AMENDED)	EXHIBIT
July (Monthly)	August 22, 2005		W
August (Monthly)	September 19, 2005		X
Ending September (Quarterly)	October 24, 2005	April 4, 2007	M to M-2 and D to D-2
October (Monthly)	November 18, 2005		O
November (Monthly)	December 20, 2005		P
Ending December (Quarterly)	January 26, 2006	April 4, 2007	N to N-2 and F to F-3

Petitioner alleged that it accumulated input taxes from its domestic purchases of goods and services during the period covering July 1 to December 31, 2005 in the aggregate amount of P87,341,820.13. It also reported sales subject to ten percent (10%) VAT in the aggregate amount of P383,336,027.70 and sales subject to zero percent (0%) VAT in the aggregate amount of P1,132,160,726.03 during the same period. Petitioner likewise asserted that the Amended Quarterly VAT Returns

[1] Exhibit "A"; par. 1, Admitted Facts by Petitioner and Respondent, Joint Stipulation of Facts and Issues (JSFI), docket, p. 219
[2] Exhibit "B"

reflected refundable input VAT in the total amount of P53,624,427.14 (P19,496,365.57 for the quarter ended September 30, 2005 and P34,128,061.57 for the quarter ended December 31, 2005).[3]

On August 21, 2007, petitioner filed an application and letter request with the BIR Revenue District Office (RDO) No. 49 for the refund of or issuance of tax credit certificate for the input VAT attributable to its zero-rated sales covering the periods of July 2005 to September 2005 and October 2005 to December 2005.[4]

To date, respondent has not acted on petitioner's claim for refund, prompting petitioner to file the instant Petition for Review on September 27, 2007.

In the Answer[5] filed on December 3, 2007, respondent averred the following Special and Affirmative Defenses:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 6. Petitioner's claim for refund or issuance of tax credit certificate in the aggregate amount of **Php53,624,427.14**, as alleged unutilized input VAT paid attributable to its zero-rated sales of goods and services for the period covering July to September 2005 and October to December 2005 were not fully substantiated by proper documents, such sales invoices, official receipts and others.
>
> 7. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim.

[3] Docket, pp. 1616-1617
[4] Exhibits "R", "S", and "T"; par. 12, Admitted Facts by Petitioner and Respondent, JSFI, docket, p. 220
[5] Docket, pp. 195-196

8. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT.

9. The amount subject of the claim for refund of petitioner do not pertain in full to its input VAT attributable to its zero-rated sales of goods and services for the period covering July to September 2005 and October to December 2005.

10. Petitioner failed to comply with the substantiation requirements under the BIR Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the Tax Code.

11. It is incumbent upon the petitioner to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

12. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation, ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***."

During trial, petitioner presented documentary and testimonial evidence; while respondent manifested in open court on November 10, 2009 that he is submitting the case for decision based on the pleadings since the claim for refund is still pending with the district office.[6]

The case was submitted for decision on January 26, 2010, taking into consideration petitioner's Memorandum[7] filed on January 4, 2010 and the report of this Court's Records Division that respondent failed to file her Memorandum.

The issues[8], as jointly stipulated by the parties, are the following:

"1.) Whether or not petitioner's sales of services are zero-rated for VAT purposes under Section 108(B)(2) of the 1997 Tax Code.

2.) Whether or not petitioner has carried-over to the succeeding taxable quarter or quarters the alleged unutilized input VAT

[6] Docket, p. 1612
[7] Docket, pp. 1615-1628
[8] Docket, p. 221

paid on goods and services attributable to its zero-rated sales for the period covering July 2005 to September 2005 and October 2005 to December 2005 and applied the same amount in full to its output VAT liability for the said period.

3.) Whether or not the amounts of **Php19,496,365.57** and **Php34,128,061.57** being claimed by petitioner as unutilized input VAT for the periods covering July 2005 to September 2005 and October 2005 to December 2005, respectively, or a total of **Php53,624,427.14** pertains in full to its zero-rated sales of services.

4.) Whether or not petitioner's sales of services to non-resident foreign corporations qualify as zero-rated sales.

5.) Whether or not petitioner complied with the substantiation requirements prescribed under Revenue Regulation No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

6.) Whether or not petitioner is entitled to its claimed refund or tax credit in the amounts of **Php19,496.365.57** and **Php34,128,061.57**, as alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales, for the periods covering July 2005 to September 2005 and October 2005 to December 2005, respectively."

All of the above issues boil down to the question of whether petitioner is entitled to a tax refund or credit of its alleged input VAT attributable to zero-rated sales for the periods covering July 2005 to September 2005 and October 2005 to December 2005 in the amount of P53,624,427.14.

Petitioner anchors its claim for refund or issuance of tax credit certificate on Sections 110(B) and 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which are quoted hereunder for easy reference, to wit:

"SEC. 110. *Tax Credits.* –

xxx xxx xxx

(B) *Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided*, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

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

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

From the foregoing provisions, in order to be entitled to a refund or tax credit of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output tax liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

This Court finds it appropriate to determine first the timeliness of the filing of the instant claim as it is determinative of whether or not it is necessary to resolve petitioner's compliance with the other requisites for input VAT refund.

Petitioner filed its claim for refund with the Bureau of Internal Revenue on August 21, 2007[9], which is within the two-year prescriptive period counting from September 30, 2005 and December 31, 2005, the close of the taxable quarters when the relevant sales pertaining to the claimed input VAT were made.[10]

However, anent its filing of a judicial claim through the instant Petition for Review on September 27, 2007, this Court finds that the same was prematurely filed. As held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[11], compliance with the 120-30-day period under Section 112(D) of the NIRC of 1997 is crucial, thus:

> "***The filing of the judicial claim was premature***
>
> 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) of the NIRC, which provides that:
>
> > SEC. 112. Refunds or Tax Credits of Input Tax. -
> >
> > xxx xxx xxx
> >
> > (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 Subsections (A) and (B) hereof.** gc

[9] Par. 12, Admitted Facts by Petitioner and Respondent, JSFI, docket, p. 220
[10] Section 112(A) of the NIRC of 1997, as amended and Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.), G.R. No. 172129, September 12, 2008
[11] G.R. No. 184823, October 6, 2010

> 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.** (Emphasis supplied.)

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.

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 xxx 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.**" *(Emphasis supplied)*

Considering that the filing of the judicial claim on September 27, 2007 and the filing of the administrative claim on August 21, 2007 were only thirty-seven (37) days apart, it is clear that petitioner did not wait for the decision of respondent or for the lapse of the 120-day period before filing the instant petition. Thus, the filing of the judicial claim with this Court is premature.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for being prematurely filed.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice