Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILIPPINE PLAZA HOLDINGS, INC., Petitioner,	**CTA Case No. 8609**
-versus-	**Members:** CASTAÑEDA, JR., *Chairperson* CASANOVA, *and* COTANGCO-MANALASTAS, *JJ.*
HON. KIM S. JACINTO-HENARES, COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 06 2016 11:25 a.m.

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DECISION

CASANOVA, *J.*:

The Amended Petition for Review[1] filed on September 2, 2013 prays that respondent's Decision[2] dated September 25, 2012 be reversed and set aside and to grant petitioner's application for refund of the surcharge collected and paid in the amount of ₱807,951.22.[3]

Petitioner Philippine Plaza Holdings, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, and the owner of Sofitel Philippine Plaza, with principal office at Suite 128, Sofitel Philippine Plaza, CCP Complex, Roxas Boulevard, Pasay City.[4]

Respondent Kim S. Jacinto-Henares is the duly appointed Commissioner of the Internal Revenue, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5] a

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[1] Docket (Vol. I), pp.158-181
[2] Annex "A", Amended Petition for Review, Docket (Vol. I), p. 184
[3] Par. 1, Pre-Trial Order dated May 14, 2014, Docket (Vol. I), p. 429
[4] Par. I (4.1) of the Amended Petition for Review, Docket (Vol. I), p. 162
[5] Par. I (4.2) of the Amended Petition for Review, Docket (Vol. I), p. 162

After its several attempts to file its 2nd Quarterly VAT Return through the EFPS on July 25, 2011, petitioner successfully filed the same only on the following day, July 26, 2011 at 4:19 a.m.[6] As such, petitioner incurred surcharge for such late payment.

On July 26, 2011, petitioner filed an application for abatement of the VAT surcharge tax liability amounting to ₱807,851.22.[7] The computed interest and compromise penalty for one day in the amount of ₱11,770.85 was voluntarily paid on 27 July 2011, thus petitioner requested for abatement of surcharge on late payment.[8]

On September 25, 2012, respondent denied petitioner's application for abatement of surcharge, which the latter received on October 3, 2012.[9]

Thus, petitioner filed the instant Petition for Review, through registered mail, on November 5, 2012, and received by the Court on February 7, 2013.

On April 18, 2013, respondent filed an Answer[10].

Subsequently, respondent and petitioner filed their respective Pre-Trial Brief on May 28, 2013[11] and June 14, 2013[12], respectively.

During the pendency of this case, petitioner paid the alleged VAT surcharge liability amounting to ₱807,951.22 on July 16, 2013,[13] and respondent confirmed the said payment.[14]

On September 2, 2013, petitioner filed a Motion for Leave of Court to File Amended Petition for Review[15], and prayed for the admission of the Amended Petition for Review[16] attached therein.

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[6] Exhibit "P-2"
[7] Exhibit "P-8"
[8] Par. 1, Joint Stipulation of Fact, Docket (Vol. I), p. 426
[9] Exhibit "P-4"
[10] Docket (Vol. 1), pp. 57-66
[11] Docket (Vol. I), pp. 74-78
[12] Docket (Vol. I), pp. 111-116
[13] Exhibit "P-10"
[14] Exhibit "P-11"
[15] Docket (Vol. I), pp. 149 to 153
[16] Docket (Vol. I), pp. 158 to 181

Among others, petitioner added in the Amended Petition for Review an allegation of payment of the VAT surcharge liability and a prayer to grant the petitioner's claim for refund of such payment.

The Court granted the aforesaid motion for leave of court and admitted the attached Amended Petition for Review in the Resolution[17] dated November 18, 2013. On February 19, 2014, the Court denied the Motion for Reconsideration of the said Resolution.[18]

Accordingly, respondent submitted the Answer to the Amended Petition for Review[19] on March 3, 2014, interposing the following special and affirmative defenses:

> "4. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;
>
> **The nature of the jurisdiction of the Court of Tax Appeals is exclusively appellate. It is a court of special jurisdiction and as such it can only take cognizance of such matters as are clearly within its jurisdiction.**
>
> 5. In the present case, petitioner filed a Motion for Leave of Court to File Amended Petition for Review to reflect the payment of the tax sought to be abated and convert its claim to a case for a refund.
>
> 6. The mode of action resorted to by petitioner is against the well-established procedure in claiming a refund/tax credit. No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has

[17] Docket (Vol. I), pp. 303-306
[18] Docket (Vol. I), pp. 334-336
[19] Docket (Vol. I) pp. 337-350

been duly filed with the Commissioner in accordance with Section 204(C) and 229 of the NIRC, to wit:

> Section 204. Authority of the Commissioner to Compromise, Abate, and Refund or credit Taxes.- The commissioner may-
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> xxx
>
> **(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> **SEC. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the**

> **Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
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7. Petitioner in filing the instant petition hastily before this Honorable Court, attempts to circumvent well-established rules. Further, petitioner violated the doctrine of exhaustion of administrative remedies. It should be emphasized that original jurisdiction over claims for refund of erroneously collected taxes is bestowed by law on respondent.

8. In accordance with the above stated provisions of law, a claim for refund or credit must be filed within two years from the date of payment. A Letter of Authority will then be issued authorizing the revenue officer to conduct audit and examination of the claimed refund. In the present case petitioner never filed any administrative claim for refund or credit, thus, no Letter of Authority was issued. Such being the case, no investigation ever commenced in the administrative level, thus no decision can be appealed to this Honorable Court.

9. The purpose of filing an administrative claim for refund/credit is to give the administrative agency the opportunity to ascertain the veracity and validity of the claim. This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies. The doctrine rests upon the presumption that the administrative body, board, or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Thus, non-compliance with a condition precedent renders the petition for review filed by petitioner dismissible.

10. In cases such as this, before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. Petitioner must prove that it complied with all the administrative requirements continuing up to judicial

review. In other words, before *trial de novo* proceeds and disposes of the issue of refund entitlement under substantive law, it must first prove that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings.

11. Clearly, the necessity of filing an administrative claim for refund is imperative. **Absent these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxpayer's claim for refund. Had petitioner filed its claim for refund/credit in the administrative level, respondent would have the opportunity to determine the veracity of its claim and might refund or issue a tax credit certificate for the claimed amount**.

The Honorable Court had no jurisdiction over the original petition for review from which this case emanated.

12. Section 7 of Republic Act No. 1125, as amended by Republic Act No. 3457 and further amended by R.A. no. 9282 and R.A. 9503 provides for the jurisdiction of the Court of Tax Appeals, to wit:

> SEC. 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law

administered by the Bureau of Internal Revenue;

13. Furthermore, Section 3(a) (1), Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

'SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(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 Code or other laws administered by the Bureau of Internal Revenue

14. Respondent humbly submits that the issue of abatement may be properly passed upon by the Honorable Court if it is integrated as a collateral matter involving disputed assessments or refunds of internal revenue taxes not as a separate subject matter.

15. Moreover, the authority of the Commissioner of Internal Revenue to abate surcharges is enshrined in Section 204 of the National Internal Revenue Code of 1997, as amended, which states:

SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes

xxx xxx xxx

(B) Abate or cancel a tax liability, when:

> **(1) The tax or any portion thereof appears to be unjustly or excessively assessed; or**
>
> **(2) The administration and collection costs involved do not justify the collection of the amount due.**
>
> All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud.
>
> xxx xxx xxx
>
> **The Commissioner shall submit to the Chairmen of the Committee on Ways and Means of both the Senate and House of Representatives, every six (6) months, a report on the exercise of his powers under this Section, stating therein the following facts and information, among others: names and addresses of taxpayers whose cases have been the subject of abatement or compromise; amount involved; amount compromised or abated; and reasons for the exercise of power: Provided, That the said report shall be presented to the Oversight Committee in Congress that shall be constituted to determine that said powers are reasonably exercised and that the government is not unduly deprived of revenues.**

16. In consonance with her power to abate surcharge is her duty to render a report to the Chairmen of the Committee on Ways and Means of both Senate and House of Representative every six (6) months.

17. The said Committee determines whether the Commissioner in the exercise of her power to abate surcharges reasonably exercised her duty and that the government is not unduly deprived of revenues.

18. The exercise of the Commissioner of her power to abate surcharges is final and executory subject only to the review of the Committee on Ways and Means for reasonableness.

19. The abovequoted provisions clearly show that the abatement of surcharges is purely executive function and cannot in any way be appealed to the Honorable Court.

An administrative claim for refund is a condition *sine qua none* before this Honorable Court can acquire jurisdiction over the case

20. The issue in the instant case does not merely involve amendments to the original petition for review. The real issue in the instant case is the compliance with the rules and procedures for an administrative claim for refund/credit. An administrative claim for refund is a condition *sine qua none* before this Honorable Court can acquire jurisdiction over the case.

21. The following discussion of the Supreme Court in the case of ***Mindanao II Geothermal Partnership vs Commissioner of Internal Revenue*** is enlightening:

> The charter of the CTA expressly provides that its jurisdiction is to review on appeal 'decisions of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes.' When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no 'decision' of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly

> provides that if the Commissioner fails to decide within 'a specific period' required by law, such 'inaction shall be deemed a denial' of the application for tax refund or credit. It is the Commissioner's decision, or inaction 'deemed a denial,' that the taxpayer can take to the CTA for review. Without a decision or an 'inaction x x x deemed a denial' of the Commissioner, the CTA has no jurisdiction over a petition for review.

22. It bears emphasis that petitioner never filed any administrative claim for refund/credit. Hence there is neither denial of the claim for refund or credit nor any denial by inaction made by the Commissioner. Absent such denial, there is no decision that can be appealed to this Honorable Court. It is in effect an original action which must first be filed in the administrative level.

Assuming the Honorable Court has jurisdiction, respondent avers that petitioner failed to properly support its request for abatement under Revenue Regulation 13-2001.

23. Under Section 114 of the NIRC of 1997, as amended, every person liable to pay the value-added tax must file a quarterly return within twenty-five (25) days following the close of each taxable quarter. Section 114 states:

> SEC. 114. Return and Payment of Value-added Tax. –
>
> (A) In General. – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered

> persons shall pay the value-added tax on a monthly basis.

24. Petitioner has twenty five (25) days from the close of each taxable quarter within which to file a quarterly return of the amount of his gross sales or receipts. In the case at bar, the taxable quarter involved was for the period of April 1, 2011 to June 30, 2011. Applying Section 114 of the 1997 NIRC, respondent had until July 25, 2011 within which to file its quarterly return for gross sales or receipts. However petitioner failed to comply with the above stated provision thus, petitioner is liable for surcharge amounting to P807,951.22. The legal basis for the imposition of the 25% surcharge is Section 248(A) of the NIRC of 1997 as amended, which states:

> SEC. 248. – Civil Penalties. –
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed

25. Petitioner on July 27, 2011 filed an application for abatement or cancellation of VAT-surcharge, which was denied in a letter, dated September 25, 2012. The said letter was received by petitioner on October 3, 2012.

26. Revenue Regulation No. 13-2001 was promulgated to provide for the implementation of Section 204 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended.

27. Section 2 thereof provides for instances when the penalties and/or interest imposed on the taxpayer

may be abated or cancelled on the ground that the imposition thereof is unjust or excessive, to wit:

> **SECTION 2**. Instances When The Penalties And/Or Interest Imposed On The Taxpayer May Be Abated Or Cancelled On The Ground That The Imposition Thereof Is Unjust Or Excessive. –
>
> 2.1When the filing of the return/payment of the tax is made at the wrong venue;
>
> 2.2When taxpayer's mistake in payment of his tax is due to erroneous written official advice of a revenue officer;
>
> 2.3When taxpayer fails to file the return and pay the tax on time due to substantial losses from prolonged labor dispute, force majeure, legitimate business reverses such as in the following instances, provided, however, that the abatement shall only cover the surcharge and the compromise penalty and not the interest imposed under Section 249 of the Code:
>
> 2.3.1 Labor strike for more than six (6) months which has caused the temporary shutdown of business;
>
> 2.3.2 Public turmoil;
>
> 2.3.3 Natural calamity such as lightning, earthquake, storm, flood and the like;
>
> 2.3.4 Armed conflicts such as war or insurgency;
>
> 2.3.5 Substantial losses sustained due to fire, robbery, theft, embezzlement;
>
> 2.3.6 Continuous heavy losses incurred by the taxpayer for the last two (2) years;
>
> 2.3.7 Liquidity problem of the taxpayer for the last three (3) years; or
>
> 2.3.8 Such other instances which the Commissioner may deem analogous to the enumeration above.
>
> 2.4 When the assessment is brought about or the result of taxpayer's non-

compliance with the law due to a difficult interpretation of said law;

2.5 When taxpayer fails to file the return and pay the correct tax on time due to circumstances beyond his control, provided, however, that abatement shall cover only the surcharge and the compromise penalty and not the interest;

2.6 Late payment of the tax under meritorious circumstances such as those provided hereunder:

2.6.1 One day late filing and remittance due to failure to beat bank cut-off time:

2.6.2 Use of wrong tax form but correct amount of tax was remitted;

2.6.3 Filing an amended return under meritorious circumstances, provided, however, that abatement shall cover only the penalties and not the interest;

2.6.4 Surcharge erroneously imposed;

2.6.5 Late filing of return due to unresolved issue on classification/valuation of real property (for capital gains tax cases, etc.);

2.6.6 Offsetting of taxes of the same kind, i.e., overpayment in one quarter/month is offset against underpayment in another quarter/month;

2.6.7 Automatic offsetting of overpayment of one kind of withholding tax against the underpayment in another kind;

2.6.8 Late remittance of withholding tax on compensation of expatriates for services rendered in the Philippines pending the issuance by the Securities and Exchange Commission of the license to the Philippine branch office or subsidiary, provided, however, that the abatement shall only cover the surcharge and the compromise penalty and not the interest;

2.6.9 Wrong use of Tax Credit Certificate (TCC) where Tax Debit Memo (TDM) was not properly applied for; and

2.6.10 Such other instances which the Commissioner may deem analogous to the enumeration above.

2.7 Other cases similar or synonymous thereto.

28. The circumstances surrounding petitioner's failure to file the quarterly VAT within the required period is not one of those mentioned in Section 2 of Revenue Regulation No. 13-2001.

29. One day late filing mentioned in RR No. 13-2001 must be due to the failure to beat bank cut-off.

30. Petitioner had ample time from July 1, 2011 to July 25, 2011 within which to file its quarterly VAT return.

31. Contrary to petitioner's allegation, no reported case of system unavailability was recorded in the BIR-EFPS Help Desk Facility and no other error logs were available to show that technical problems were actually experienced by the system and/or the taxpayer.

32. Timely filing and payment of tax is important to maintain the proper functioning of the government. Thus for failure of petitioner to timely comply with its obligation, imposition of surcharge is nothing but a consequence of its own act."

On April 3, 2014, respondent filed the Omnibus Motion 1. To Expunge "Pre-Trial Brief for Respondent" dated May 28, 2013[20]; 2. To Admit the Attached Pre-Trial Brief, which the Court granted, and the Pre-Trial Brief attached thereto was admitted on April 10, 2014.[21]

On April 4, 2014, petitioner submitted its Amended Pre-Trial Brief.[22] a

[20] Docket (Vol. I), pp. 352-358
[21] Minutes of the Hearing dated April 10, 2014, Docket (Vol. I), p. 395
[22] Docket (Vol.I), pp. 385-394

As trial ensued, petitioner presented its witnesses, namely: Ms. Rose Gel Camus and Mr. Ronald Vallesteros. Petitioner, likewise, presented and offered its documentary evidence, and the Court admitted petitioner's Exhibits "P-2 and sub-markings", "P-3 and sub-markings", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-9-A", "P-10" and "P-11".[23]

On the other hand, respondent presented her lone witness Ms. Alma M. Vallada. After respondent's counsel made an oral Formal Offer of Evidence, of her Exhibits "1", "2" and "2-A" in the hearing held on December 1, 2014, the same were admitted by the Court on even date.[24]

After the Court considered petitioner's Memorandum[25], filed through registered mail on January 10, 2015, and received by the Court on January 14, 2015, and the Report dated February 6, 2015 of the Records Division that no memorandum was filed by the respondent, the instant case was submitted for decision on February 10, 2015.[26]

However, on March 6, 2015 respondent filed a Motion to Admit Attached Memorandum[27], which the Court granted in a Resolution[28] dated on April 10, 2015. Accordingly, this case was submitted anew for decision on even date.[29]

The following issues were raised by both parties in their respective Memorandum:

> 1. Whether respondent gravely erred in denying PPHI's request for abatement or cancellation of VAT surcharge, considering that the delay in payment was solely caused by the persistent system error in the BIR's EFPS facility;
>
> 2. Whether the four-hour delay in PPHI's filing and payment of its quarterly VAT liability due to the persistent

[23] Resolution dated October 24, 2014 and December 22, 2014, Docket (Vol. II), pp. 502-503 and pp. 523-524, respectively
[24] Docket (Vol. II), pp. 523-524
[25] Docket, (Vol. II), pp. 526-541
[26] Resolution, Docket (Vol. II), p. 626
[27] Docket (Vol. II), pp. 632-652
[28] Resolution, Docket (Vol. II), pp. 654-655
[29] Ibid

system error in the BIR's EFPS facility is one of the instances under Section 2 of RR No. 13-2001, which allows for the abatement or cancellation of imposed penalties and/or interest on the ground that the imposition thereof is unjust or excessive;

3. Whether respondent should refund to PPHI the VAT surcharge, considering that the same should never have been assessed in the first place, but was nevertheless paid in full;

4. Whether the assailed Decision is compliant with the requirements set forth by law;

5. Whether or not the Court has jurisdiction over the instant case; and

6. Whether or not petitioner is entitled to the refund of a surcharge amounting to ₱807,951.22

Respondent contends that this Court has no jurisdiction over the original Petition for Review because the abatement of surcharges is purely executive function and cannot in any way be appealed to this Court.

Section 7(a)(1), Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282 and R.A. No. 9503, provides:

"SEC. 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 Code or other laws**

> **administered by the Bureau of Internal Revenue.**
>
> xxx xxx xxx"

Also, Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals, as amended, states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (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 Code or other laws administered by the Bureau of Internal Revenue.**" (Emphasis supplied.)

Further, Section 11 of RA No. 1125, as amended by R.A. Nos. 9282 and 9503, expresses that any party adversely affected by a decision or ruling of the Commissioner of Internal Revenue may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling.

Apparently, the Decision dated September 25, 2012 issued by respondent is a denial of the petitioner's application for abatement of surcharge.[30]

Considering that such denial of the petitioner's application for abatement of surcharge involves the interpretation and application of Section 204 (B) of the NIRC of 1997, as amended, it falls under the phrase "other matters arising from the NIRC, pursuant to Section 7(a)(1) of R.A. No. 1125, as amended by R.A. Nos. 9282 and 9503.

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[30] Exhibit "P-4"

Since petitioner received the respondent's Decision on October 3, 2012, it had thirty days therefrom or until November 2, 2012, within which to appeal the denial of its application for abatement. Considering November 2, 2012 was declared as a special non-working day, and November 3 and 4, 2012 are Saturday and Sunday, respectively, the instant Petition for Review was, therefore, timely filed, through registered mail, on November 5, 2012.

Thus, the Court has jurisdiction over the original Petition for Review.

Nonetheless, respondent posits that the nature of the jurisdiction of this Court is exclusively appellate, and being a court of special jurisdiction, it can only take cognizance of such matters as are clearly within its jurisdiction. Respondent states that the **Motion for Leave of Court to File Amended Petition for Review** was filed to claim a refund. Allegedly, this mode of action resorted to by petitioner is against the well-established procedure in claiming a refund/tax credit pursuant to Sections 204 (C) and 229 of the 1997 NIRC, as amended. Respondent further asserts that an administrative claim for refund is a *condition sine qua non* before this Court acquires jurisdiction over this case. But in this case, petitioner did not file an administrative claim for refund. Thus, respondent insists that petitioner's Motion to File Amended Petition for Review should be denied for lack of merit.

At the outset, it bears to note that in the **original Petition for Review**, petitioner assails respondent's denial of petitioner's application for abatement of VAT surcharge. However, petitioner paid such surcharge during the pendency of this case. Hence, in the **Amended Petition for Review**, petitioner prays not only for the reversal and setting aside of the respondent's September 25, 2012 Decision, but also for the refund of the VAT surcharge payment made by petitioner on July 16, 2013.

To fully discharge the issues at hand, the Court deems it proper to resolve the issue on the validity of respondent's denial of petitioner's application for abatement, with petitioner's alleged entitlement for refund of VAT surcharge payment, since the same are intimately related to and inextricably intertwined with each other, following the principle enunciated in C*ommissioner of Internal*

Revenue vs. Court of Appeals, City Trust Banking Corporation and Court of Tax Appeals[31]. Pertinent portions of said Decision are hereby quoted for ready reference:

> "x x x. The fact of such deficiency assessment is intimately related to and inextricably intertwined with the right of respondent bank to claim for a tax refund for the same year. To award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects. Herein private respondent cannot be entitled to refund and at the same time be liable for a tax deficiency assessment for the same year.
>
> The grant of a refund is founded on the assumption that the tax return is valid, that is, the facts stated therein are true and correct. The deficiency assessment, although not yet final, created a doubt as to and constitutes a challenge against the truth and accuracy of the facts stated in said return which, by itself and without unquestionable evidence, cannot be the basis for the grant of the refund.
>
> Section 82, Chapter IX of the National Internal Revenue Code of 1977, which was the applicable law when the claim of Citytrust was filed, provides that '(w)hen an assessment is made in case of any list, statement, or return, which in the opinion of the Commissioner of Internal Revenue was false or fraudulent or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suits unless it is proved that the said list, statement, or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this provision shall not apply to statements or returns made or to be made in good faith regarding annual depreciation of oil or gas wells and mines.'
>
> Moreover, to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits. If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously

[31] G.R. No. 106611, July 21, 1994.

refunded taxes which recourse must be filed within the prescriptive period of ten years after discovery of the falsity, fraud or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on and a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.

Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.

In fact, as the Court of Tax Appeals itself has heretofore conceded, **it would be only just and fair that the taxpayer and the Government alike be given equal opportunities to avail of remedies under the law to defeat each other's claim and to determine all matters of dispute between them in one single case.** It is important to note that in determining whether or not petitioner is entitled to the refund of the amount paid, it would be necessary to determine how much the Government is entitled to collect as taxes. This would necessarily include the determination of the correct liability of the taxpayer and, certainly, a determination of this case would constitute res judicata on both parties as to all the matters subject thereof or necessarily involved therein." (Emphases supplied)

In view of the foregoing, the Court will now ascertain if petitioner is entitled to its claim for refund of the VAT surcharge collected in the amount of P807,851.22, as prayed for in the **Amended Petition for Review.**

The relevant provisions of the 1997 NIRC are Sections 204 (C) and 229, which provide the procedures governing the refund, among others, of any penalty claimed to have been tax collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, to *wit*:

"SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.**

xxx xxx xxx

SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — **No suit or proceeding shall be maintained in any court for the recovery** of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or **of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner;** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: x x x" (Emphases and underscoring supplied)

Section 204 (C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery, among others, of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected. **Both sections mandatorily require the filing of administrative and judicial claims within two (2) years from the date of payment of the tax.**

However, perusal of the records shows that petitioner did not file any administrative claim for refund within two (2) years after the payment of penalty, and before it filed the subject **Amended Petition for Review.** An administrative claim for refund is a condition *sine qua non* before this Court acquires jurisdiction over this case. By such reason, the Court cannot exercise its appellate jurisdiction over the same, pursuant to Sections 204(c) and 229, as there was no administrative claim filed before the Commissioner of Internal Revenue. Consequently, the instant **Amended Petition** must necessarily fail for lack of jurisdiction.

Further, the Court sees no necessity to discuss anymore the validity of the denial of petitioner's application for abatement of the VAT surcharge considering that the said surcharge was already paid.

WHEREFORE, premises considered, the instant Amended Petition for Review is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
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.
Associate Justice
Chairperson, Second Division

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.

ROMAN G. DEL ROSARIO
Presiding Justice