REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HYDER CONSULTING MIDDLE EAST LTD. MANILA ROHQ, Petitioner,	CTA CASE NO. 8120
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 10 2010 ; 1:38 pm

x- -x

RESOLUTION

FABON-VICTORINO, J.:

Before the Court is the Motion to Dismiss dated July 22, 2010, filed by respondent Commissioner of Internal Revenue (CIR), praying for the dismissal of the instant case for refund or issuance of a Tax Credit Certificate (TCC) due to lack of cause of action for failure of petitioner to exhaust administrative remedies under the law.

Respondent posits that petitioner in haste filed the instant Petition for Review on June 29, 2010, or barely six (6) days from the institution of its administrative claim for refund or issuance of

TCC on June 23, 2010, in violation of Section 112 (C) of the National Internal Revenue Code (NIRC), as amended. Allegedly, under the cited provision, she had one hundred and twenty (120) days to rule on the claim while petitioner has 30 days from the lapse or expiration of the 120 days or from receipt of the adverse decision to elevate the matter to this Court through a petition for review.

By sprinting to the Court when there was yet no denial or inaction on her part within the 120-day period accorded to her under Section 112 of the NIRC, petitioner violated the rule on exhaustion of administrative remedies justifying the dismissal of the instant case.

Moreover, Section 112 of the NIRC specifically governs application for refund of excess and unutilized value added tax while Section 229 of the same Code covers claim for refund of erroneously or illegally assessed or collected taxes. The 2-year period from the close of the taxable quarter in the former provision applies only to the administrative claim and not to the filing of an appeal before this Court.

Despite the opportunity granted, petitioner failed to file comment or opposition to the Motion to Dismiss.

Section 112 of the National Internal Revenue Code (NIRC), as amended, relevantly provides:

> "Section 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 x x
>
> (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. x x x"

Under the foregoing provision, any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit certificate or refund of creditable input tax with respondent within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT.

Undeniably, petitioner seasonably filed on June 23, 2010 its administrative claim for refund or issuance of TCC for its excess and unutilized input value-added tax attributable to zero-rated sales in the amount of PHP1,059,840.21 for the period of April to June 2008. Presumably, complete documents in support of the application were also submitted on said date.

Under the circumstances, respondent had 120 days from June 23, 2010 or until October 21, 2010, within which to rule on petitioner's claim for refund. Failing any action on the part of respondent, petitioner has 30 days from the expiration of the 120-day period or until November 20, 2010 to seek recourse from the Court.

In this case however, petitioner instituted this appeal on June 29, 2010 or barely six (6) days after the administrative claim for refund was filed on June 23, 2010, effectively depriving respondent of the opportunity to act on the administrative claim for refund within the time frame accorded to her in Section 112 of the NIRC, as amended. During the relevant period, neither was there a denial of the claim nor inaction on the part of respondent that could be a subject of an appeal before this Court.

Significantly, in the very recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[1] the Supreme Court as the Final Arbiter, put this issue to rest in this wise:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes."
>
> x x x x x x x x x
>
> 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

[1] G.R. No. 184823, October 06, 2010.

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 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.
>
> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc*. relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
>
> 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."

WHEREFORE, the Motion to Dismiss dated July 22, 2010, filed by respondent, is hereby GRANTED. Consequently, the Petition for Review dated June 23, 2010, filed by petitioner Hyder Consulting Middle East Ltd. Manila ROHQ, is hereby DISMISSED for lack of cause of action, without prejudice.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice