REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ENERGY DEVELOPMENT CORPORATION ("EDC", formerly "PNOC ENERGY DEVELOPMENT CORPORATION"),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7926

Members:

CASTAÑEDA, Chairman
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:
MAY 0 9 2011 3:30 p.m.

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RESOLUTION

Submitted for resolution is respondent's "**Motion to Dismiss**" filed on March 25, 2011, with petitioner's "**Comment/Opposition (Re: Motion to Dismiss dated March 23, 2011)**" filed on April 25, 2011.

In its motion, respondent prays that the Petition for Review filed by petitioner be dismissed for lack of cause of action, as follows:

1. Section 112 of the National Internal Revenue Code (NIRC) of 1997, explicitly states that respondent has 120 days within which to rule on a taxpayer's application for tax refund or credit. As held by the Supreme Court in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of*

Asia, Inc.,[1] (Aichi) the aggrieved party may elevate the case to this Court only within 30 days after the lapse of the 120-day period, accorded to respondent to decide on petitioner's claim for input VAT refund. Since petitioner filed with the Bureau of Internal Revenue (BIR), its administrative claim for refund of alleged unutilized input VAT on March 30, 2009 and then immediately filed its Petition for Review with the Court, only 25 days after it filed its claim with the BIR, its Petition for Review should be dismissed by the Court inasmuch as no jurisdiction was acquired over the subject matter.

2. The Court's lack of jurisdiction over the subject matter may be raised at any stage of the proceedings. Jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on an action. Hence, the jurisdictional issue, although raised after the filing of the answer and presentation of evidence, still deserves consideration by the Court.

However, petitioner counters the following arguments:

1. The doctrine laid down in Aichi is inapplicable since the same should only be applied prospectively. When a litigant takes a course of action in good faith, such as reliance on prevailing jurisprudence, a litigant's course of action should not be compromised by a subsequent jurisprudence.

2. The last portion of Rule 4, Section 3(a)(2) in A.M. No. 05-11-07-CTA, otherwise known as the "*Revised Rules of the Court of Tax Appeals*" (RRCTA), provides that claims for refund must be filed prior to the expiration of the two-

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

year period provided under Section 229 of the NIRC. In support thereof is the case of *Atlas Consolidated Mining and Development Corp., v. CIR*[2], where the Supreme Court held that the two-year prescriptive period prescribed under Section 229 of the NIRC is applicable to claims for refund or tax credit of unutilized input VAT. Hence, petitioner's act of filing the Petition for Review prior to the 120-day statutory period is consistent with the procedure laid down in Section 229 of the NIRC which requires the filing of the Petition for Review before the expiration of the two-year period.

We find merit in respondent's motion.

Section 112 of the NIRC of 1997 explicitly provides for the period within which a taxpayer should file its administrative claim for refund as well as its appeal before this Court, *viz*:

> "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 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 x x
>
> (C) *Period within which to 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.**" [Emphasis supplied]

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2 G.R. Nos. 141104 & 148763, June 8, 2007.

Based on the foregoing, it is clear that a taxpayer may apply for an administrative claim for refund of its unutilized input VAT payments "within two years reckoned from the close of the taxable quarter when the relevant sales were made." Thereafter, the taxpayer must wait for the decision of the Commissioner of Internal Revenue (CIR) on its claim or expiration of the 120-day period from the submission of the complete documents in support of such claim, before it may file a Petition for Review before the Court. The wisdom for this rule was expounded by the Supreme Court in Aichi, to wit:

> "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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> **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.
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> 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.
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> 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]

It is established that petitioner filed its Petition for Review, 95 days earlier than the period given to the CIR to rule on its claim for refund/ credit. It is clear that petitioner filed said Petition without waiting for the 120-day period prescribed under Section 112(C) of the NIRC of 1997 to lapse.

Since the counting of the thirty-day period to appeal before this Court has not even began to run, the appellate jurisdiction of this Court has not yet ripened. This Court, being a court of special jurisdiction, may only take cognizance of cases which are within its jurisdiction.[3] Accordingly, petitioner's failure to comply with Section 112(C) warrants the dismissal of the petition, because the Court has not acquired jurisdiction over the same.

As to petitioner's claim that the administrative and judicial claim should be filed within two years, We find the same to be misplaced.

Rule 4, Section 3(a)(2) of the *Revised Rules of the Court of Tax Appeals, as amended*, categorically provides --

> "**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:
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> x x x x
>
> (2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: **<u>Provided</u>**, that in case of **disputed**

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3 Ker & Company, Ltd. v. Court of Tax Appeals, et. al., G.R. No. L-12396, January 31, 1962.

> **assessments**, the **inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code** shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; **Provided, further**, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and **Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code.** [*Emphasis and underscoring supplied.*]

Apparently, the last portion of the paragraph clearly refers to cases of disputed assessments in Section 228 of the NIRC and not claims for refund of input VAT as found in Section 112 of the same law. The use of the words "Provided, **still further**...." in the last portion of the paragraph, directly refers to the one preceding it, which is Section 228 of the NIRC. Hence, the requirement that the filing of the Petition for Review must be done within the two-year period, only applies in cases of claims for refund of **taxes erroneously or illegally collected** and not to claims for refund of input VAT.

In fact, in *CIR v. Mirant Pagbilao Corporation*,[4] the Supreme Court categorically ruled that taxpayers cannot avail of the provisions of Section 229 of the NIRC of 1997 as regards refund of unutilized creditable input VAT. Said provision applies only to instances of erroneous payment or illegal collection of internal revenue taxes. Contrary to petitioner's claim, a refund of unutilized input VAT is not an erroneously, illegally or unlawfully collected tax.

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[4] G.R. No. 172129, September 12, 2008.

WHEREFORE, premises considered, respondent's "**Motion to Dismiss**" filed on March 25, 2011 is hereby **GRANTED**. **Accordingly**, the instant Petition for Review is **DENIED** for having been prematurely filed.

SO ORDERED.

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

(On Wellness Leave)
CAESAR A. CASANOVA
Associate Justice

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