REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TELUS INTERNATIONAL PHILIPPINES, INC. , Petitioner,	**CTA CASE NOS. 8053, 8118 and 8160**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** JJ
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 16 2011 4:00 P.m.

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RESOLUTION

This resolves respondent's "**Motion To Dismiss**" filed on May 6, 2011, with petitioner's comment/opposition filed on May 20, 2011.

Respondent prays for the dismissal of CTA Case Nos. 8053 and 8118 on the ground of lack of jurisdiction. Respondent alleges that Section 112(C) of the National Internal Revenue Code (NIRC) of 1997 unequivocally provides that respondent has 120 days from the date of submission of the complete documents in support of petitioner's claim for tax credit or refund within which to grant or deny the said claim. In case of full or partial denial, the taxpayer's recourse is to file an appeal before this Court within 30 days from the receipt of respondent's decision. However, if after the expiration of the 120-day period, respondent fails to act on the application for tax credit/refund, the remedy of the taxpayer is to file an appeal before this Court within a period of 30 days.

Respondent contends that in CTA Case No. 8053, petitioner filed its judicial claim on March 30, 2010, merely fifteen (15) days after the filing of the administrative claim for refund on March 15, 2010; and in CTA Case No. 8118, petitioner filed its judicial claim on June 29, 2010, merely one hundred three (103) days after the filing of its administrative claim for refund on March 18, 2010. Respondent concludes that both petitions for review were prematurely filed in violation of the provision of Section 112(C) of the NIRC of 1997, as amended, and that this Court has no jurisdiction to act on the same. In support of its claim, respondent cited the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc (Aichi case)*[1] wherein the Supreme Court held that "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."

For its part, petitioner substantially argues the following:

> 1. that a premature resort to the courts is equated with the non-exhaustion of available administrative remedies. However, the doctrine of exhaustion of administrative remedies is no inflexible rule;

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

2. under Section 1, Rule 9 of the Rules of Court, "[D]efenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived". In this case, the premature invocation of this court's intervention was never raised as a defense in respondent's Answers to the instant consolidated Petitions for Review; hence, the defense of prematurity is deemed waived and abandoned;

3. in the Consolidated Joint Stipulation of Facts and Issue dated March 2, 2011, approved in the Resolution dated March 7, 2011, both parties admitted the timeliness of the filing of the Petitions for Review. Hence, respondent is bound by her admissions in the Answers and Consolidated Joint Stipulation of Facts and Issue;

4. respondent filed her Answers on May 27, 2010; May 27, 2010; and August 18, 2010 for CTA Case No. 8053, CTA Case No. 8118, and CTA Case No. 8160, respectively. Hence, the motion to dismiss was belatedly filed and must be dismissed, for being filed after the filing of respondent's Answers;

5. its judicial claims for refund/tax credit covering the first to fourth quarters of 2008 were seasonably filed pursuant to Section 229 of the NIRC of 1997, as amended. Section 229 of the NIRC of 1997 covers "any national internal revenue tax" erroneously assessed and "any sum" excessively or wrongfully collected, which includes excess input taxes; and these consolidated cases come within the coverage of what is prohibited by the phrase "no such suit or proceeding". Also, claims for refund/tax credit certificate of excess and unutilized input VAT must be made within two (2) years from the close of the taxable quarter when the sales were made under Section 112 of the NIRC of 1997, as amended. As a taxpayer claiming for refund/tax credit, it is neither required nor compelled to wait for the expiration of the 120-day period; and

6. in a long line of cases, the Supreme Court categorically upheld the right of the taxpayer to seek judicial redress before this Court by filing a Petition for Review when its application for refund/tax credit of excess and unutilized input VAT remained unacted upon by respondent and before the lapse of the two (2)-year prescriptive period to protect its substantial right over the claim. Judicial decisions must conform to previous case laws as

required under the doctrine of *stare decisis;* and that amendment by implication is frowned upon.

After a careful evaluation of the arguments, this Court finds respondent's *Motion* meritorious.

Foremost, under Section 1, Rule 9, of the Rules of Court, the law provides that lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.[2] Thus, at this stage of the proceedings, respondent is not precluded from raising such ground.

Going now to petitioner's allegation that respondent is bound by her allegedly admission[3] on the timeliness of the filing of the instant Petitions for Review; this Court finds the same erroneous because a reading of the *Consolidated Joint Stipulation of Facts and Issue* dated March 2, 2011, shows that what was stipulated was the timeliness of the filing of the administrative claim with respondent, not the judicial claims before this Court. At any rate, parties may not stipulate the jurisdiction of this Court because jurisdiction of the courts is conferred by law.

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[2] Fernanda Geonzon vda. De Barrera and Johnny Oco, Jr. vs. Heirs of Vicente Legaspi, represented by Pedro Legaspi, G.R. No. 174346, September 12, 2008.
[3] Consolidated Joint Stipulation of Facts and Issue dated March 2, 2011.

Likewise, this Court finds without merit petitioner's allegation that the judicial claims for refund/tax credit of petitioner covering the first to fourth quarters of 2008 were seasonably filed pursuant to Section 229 of the NIRC of 1997, as amended.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc (Aichi case)*[4] the Supreme Court reiterated its ruling in *CIR vs. Mirant Pagbilao Corporation*[5] 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." The Supreme Court also ruled in the Aichi case that "[t]he 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".

Furthermore, the Supreme Court held that observance with the 120-day period mentioned in Section 112(C) (formerly 112(D)) of the NIRC is **crucial** in filing an appeal with this Court. Thus:

> "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

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[4] *Supra*, note 1.
[5] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

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 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.
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> 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.**" (*Emphases supplied.*)

In the instant consolidated cases, petitioner did not dispute the fact of its failure to exhaust the 120-day period provided under Section 112(C) of the NIRC, as amended. In CTA Case No. 8053, petitioner filed its judicial claim on March 30, 2010 or merely fifteen (15) days after the filing of the administrative claim for refund on March 15, 2010; while in CTA Case No. 8118, petitioner filed its judicial claim on June 29, 2010 or merely one hundred three (103) days after the filing of its administrative claim for refund on March 18, 2010. Following the ruling in the *Aichi case,* the premature filing of the above-entitled cases before this Court warrants a dismissal inasmuch as this Court has not acquired jurisdiction.

It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[6]

Finally, this Court has to bend to the recent Supreme Court's ruling in the *Aichi* case pursuant to the doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established), embodied in Article 8 of the Civil Code of the Philippines:

> "ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

The doctrine enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[7]

WHEREFORE, premises considered, respondent's *Motion to Dismiss* is hereby **GRANTED**. Accordingly, the consolidated Petitions for Review docketed as CTA Case Nos. 8053 and 8118 are hereby **DISMISSED** for lack of jurisdiction.

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[6] Asia International Auctioneers, Inc. and Subic Bay Motors Corporation vs. Hon. Guillermo L. Parayno, Jr., *et al.*, G.R. No. 163445, December 18, 2007.
[7] Lazatin, *et al*. vs. Desierto, G.R. No. 147097, June 5, 2009.

As to CTA Case No. 8160, set the continuation of petitioner's evidence to July 6, 2011, at 9:00 a.m., as previously scheduled.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

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