REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

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MONTALBAN METHANE POWER CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8167

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JAN 26 2011
JBFernando 4:20p.m.

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RESOLUTION

For this Court's resolution are: (a) respondent's special affirmative defense of prematurity as averred in her **"Answer"** filed on November 19, 2010, and (b) petitioner's "**Opposition (Re: Special Affirmative Defense in Respondent's *Answer* dated 18 November 2010)**" filed December 16, 2010.

Respondent moves for the dismissal of the instant case on the ground of lack of cause of action since this Court has no jurisdiction. Respondent maintains that the instant petition was filed before the lapse of the 120-day period within which respondent may act on petitioner's administrative claim for refund of unutilized input value-added tax (VAT), and that the instant case was filed in violation of the doctrine of exhaustion of administrative remedies.

Petitioner counter argues that the two–year prescriptive period under 112 (A) in relation to Section 112 (D) [now, Section 112 (C)] and Section 229, of the National Internal Revenue Code (NIRC) of 1997, as amended, is mandatory and applies to both administrative and judicial claims for input VAT refund; and that if the two-year prescriptive period is about to expire, the taxpayer can file directly the judicial claim with this Court without having to wait for the denial of the claim or the expiration of the 120-day reglementary period.

After reviewing the arguments of both parties, this Court rules in favor of respondent.

In accordance with Section 112 (A), in relation to Section 112 (C), and as interpreted by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, a VAT-registered person, whose sales are zero-rated or effectively zero-rated, has two years after the close of the taxable quarter when the sales were made, within which it may file an administrative claim for the issuance of tax credit certificate and refund of its unutilized input tax. The Commissioner of Internal Revenue (CIR) has 120 days to act on the claim and the affected taxpayer is granted a period of thirty (30) days within which to appeal its case before this Court, counted from the denial of the claim or upon the lapse of the one hundred twenty (120) day period, should the CIR fails to act.[1]

In the same case, the Supreme Court also ruled that Section 229 of the NIRC of 1997, as amended, is not applicable to cases of refund of unutilized input taxes attributable to zero-rated or effectively zero-rated sales. The Supreme Court further ruled that the two-year period mentioned in Section 112 (A), refers to the period within which the taxpayer may file its administrative claim before the CIR. Hence, petitioner's arguments are unmeritorious.

Applying the foregoing in the instant case, records show that petitioner filed its administrative claim and the supporting documents for its claim on June 29, 2010; 92 days thereafter, or on September 30, 2010, petitioner filed the instant petition. Clearly, the filing of the judicial claim was premature.

WHEREFORE, premises considered, respondent's prayer for the dismissal of the instant case is **GRANTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED** for having been prematurely filed.

SO ORDERED.

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[1] G.R. 184823, October 6, 2010.