REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

WNS PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8317

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:
JAN 16 2012; 2:00 p.m.

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RESOLUTION

Fabon-Victorino, J.:

For resolution are the following:

1. Respondent's *Answer (with Motion to Dismiss)* posted on October 17, 2011; and
2. Petitioner's *Reply and Opposition to Respondent's Motion to Dismiss*, filed on December 12, 2011.

Invoking the ruling laid down by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[1] ("Aichi" case), and Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, respondent claims that she was deprived of the opportunity to rule on petitioner's claim for refund within the 120-day period granted unto her by the law. That being the case, petitioner's claim for refund should be deemed prematurely filed on August 8, 2011 or about 38 days after the submission of additional documents in support of its administrative action. The clear admission of petitioner in its Petition for Review filed on August 8, 2011 that "additional documents in support of the claim were likewise submitted to RDO 47 on July 1, 2011"[2], is lethal if not disastrous to its cause as it renders the instant *Petition for Review* premature depriving the Court of competence to determine the same.

Respondent alleges that petitioner filed its administrative claim for refund of unutilized input VAT for fiscal year ended March 31, 2010 in the amount of Php21,818,942.57 with Revenue District Office ("RDO") No. 47 on March 11, 2011.

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[1] G.R. No. 184823, October 6, 2010.
[2] Paragraph 10, Petition for Review.

Subsequently or on July 1, 2011, petitioner submitted additional documents in support of its application for refund with the same RDO. Following the instructions of the Supreme Court in the Aichi case and Section 112 of the NIRC of 1997, as amended, she has 120 days from July 1, 2011 or until October 29, 2011, within which to act on petitioner's claim for refund. However, petitioner with undue haste, sprinted to the Court and prematurely filed the instant *Petition for Review* on August 8, 2011 or before the 120-day period had lapsed. The premature filing of the *Petition for Review* justifies a dismissal as the Court has no jurisdiction to entertain the petition. Failure of petitioner to show that it has complied with Section 204(C) in relation to Section 229 of the NIRC of 1997 is fatal to its claim for refund.

In its *Reply and Opposition to Respondent's Motion to Dismiss*, petitioner counters that respondent's invocation of Sections 204(C) and 229 of the NIRC of 1997 as the applicable provision for its claim for VAT refund is flawed since "both provisions apply only to instances of erroneous payments or illegal collection of internal revenue taxes"[3]. According to petitioner, the applicable provision is Section 112 of the NIRC of

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[3] Paragraph 2, Petition for Review.

1997, as amended, since its claim is for the refund of unutilized input tax.

Petitioner likewise avers that Section 112(C) of the NIRC of 1997, as amended, does not explain or define the term "complete documents". However, Revenue Memorandum Circular ("RMC") No. 029-09 describes "complete documents" as those documents necessary to determine and or ascertain the correctness of the return and the amount for refund/credit. Petitioner believes that taxpayers are given wide latitude on what type of documents they should hand over for examination, provided that these documents enable the tax authorities to ascertain that the returns filed are correct and the amount for refund/credit is adequately supported.

Petitioner alleges that on March 11, 2011, it filed its application for refund of unutilized input VAT for fiscal year ended March 31, 2010 with RDO No. 47. In support thereof, it submitted the following documents:

a. Application for VAT Credit/refund (Form 1914);
b. Summary list of purchases;

c. Photocopies of VAT purchase invoices for purchases of goods and official receipts for purchase of service;
d. Quarterly VAT Returns for fiscal year 2010;
e. Articles of Incorporation;
f. Sales Contract/Agreement
g. Certificate of registration with the Board of Investments (BOI);
h. Income Tax Return; and
i. Audited Financial Statements.

According to petitioner, a perusal of the above-mentioned documents shows that they are sufficient for the tax authorities to ascertain the correctness of the return and determine the amount to be refunded/credited given that the Quarterly VAT returns were submitted as well as copies of the VAT purchase invoices and official receipts together with the summary list of purchases. Hence, the documents submitted on March 11, 2011 already constituted "complete documents".

Petitioner likewise admits that it submitted additional documents on July 1, 2011, to wit:

a. Quarterly VAT Returns for FY 2010;
b. Monthly VAT Declarations for FY 2010;
c. Official Receipts issued;
d. Purchase Invoices; and
e. Certification from the DOF[4] that the subject taxpayer has not filed similar claim for refund for the same period.

Except for the Monthly VAT Declarations and the DOF Certification, petitioner claims that the above-enumerated documents are the same documents submitted on March 11, 2011. Allegedly, these "additional documents" did not affect the counting of the 120 days prescribed under Section 112(C) of the Tax Code as they did not adversely or favorably affect the process of ascertaining or determining the correctness of the return and the amount to be refunded/credited. The input and output VAT contained in the Monthly VAT Declarations are already included and reconciled in the Quarterly VAT Returns which were already submitted to respondent. The DOF Certification, while useful for the BIR to ensure that no other claim was filed, it is not one of the indispensable requisites in a claim for refund of unutilized input VAT.

[4] Department of Finance.

Petitioner likewise claims that the submission of documents on July 1, 2011 was pursuant to the Regular Audit Program of RDO No. 47 – a tax audit separate and distinct from the administrative claim for refund filed. Respondent cannot also take refuge on the allegation that "additional documents" were submitted on July 1, 2011 since those documents were substantially the same as those submitted on March 11, 2011. Thus, respondent had the benefit of the entire 120 days to act on the claim for refund.

RULING OF THE COURT

The pivotal issue is whether the submission of the "additional documents" on July 1, 2011 affected the reckoning point of the 120-day period prescribed in Section 112(C) of the NIRC of 1997, as amended.

The pertinent provision is Section 112(C) of the NIRC of 1997, as amended, which provides as follow:

> "SEC. 112. Refunds or Tax Credits of Input Tax. —

xxx xxx xxx

"(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**. (*Emphases supplied*)

Thus, respondent has **120 days from the date of submission of complete documents within which to grant or deny petitioner's application for refund or tax credit of excess input tax**. Upon notice of denial or expiration of the 120-day period without any action on respondent's part, petitioner has 30 days, within which to appeal the adverse decision or inaction of respondent with the Court of Tax Appeals.

Record dovetails the facts that led to the filing of the instant case. Petitioner filed its application for the refund of unutilized input VAT for fiscal year ended March 31, 2010 on March 11, 2011. Admittedly, it filed additional documents in support of its claim for refund on July 1, 2011.[5] This is as well evident in the transmittal letter of the additional documents which states:

> "Gentlemen:
>
> On behalf of our client, WNS Philippines, Inc., **we are pleased to transmit to you the following documents required in filing the TCC claim for unutilized Input VAT covering FY ended 31 March 2010**:
>
> 1. In hard copy
>   a) Quarterly VAT Returns for FY 2010;
>   b) Monthly VAT Declarations for FY 2010;
>   c) Official Receipts Issued;
>   d) Purchase Invoices; and
>   e) Certification from the DOF that the subject taxpayer has not filed similar claim for refund for the same period
>
> We hope you find the foregoing in order."
> (*Emphases ours*)

Counting 120 days from the submission of additional documents in support of the claim, respondent had until October 29, 2011, within which to grant or deny refund or credit. But

[5] Paragraph 10, Petition for Review.

before the 120- day period lapsed, petitioner sought judicial intervention by filing a *Petition for Review* on August 8, 2011, rendering the action taken premature.

Realizing that its argument is checkered with flaws, petitioner in its *Reply and Opposition to Respondent's Motion to Dismiss* argues that the documents it submitted on March 11, 2011 already constituted complete documents, hence, the 120-day period should be reckoned from the said date. Further, except for the Monthly VAT Declarations and the DOF Certification, the additional documents it submitted on July 1, 2011 are the same documents as those submitted on March 11, 2011. More, the input and output VAT contained in the Monthly VAT Declarations are already included and reconciled in the Quarterly VAT Returns which were already submitted to respondent. The DOF Certification, on the other hand, is not one of the indispensable requisites in a claim for refund of unutilized input VAT. Besides, the submission of documents on July 1, 2011 was pursuant to the Regular Audit Program of RDO 47 – a tax audit separate and distinct from the administrative claim for refund.

The Court rules for respondent.

Indeed, it is for the taxpayer to determine the appropriate documents to be presented to obtain a favorable resolution on a claim for refund. There is no argument that when petitioner filed its administrative claim for refund on March 11, 2011, it submitted supporting documents in support of its claim. However, on July 1, 2011, it submitted additional documents which per petitioner's own declaration were similar to those previously submitted except for two. Therefore in petitioner's mind, **the documents submitted on March 11, 2011 were not enough or complete to meet the requirements for a favorable ruling that it had to submit additional documents on July 1, 2011** if only to ensure victory. Petitioner claims that the second group of documents submitted on July 1, 2011 were similar to those filed on March 11, 2100 is also incorrect for it admitted that two were not.

Even granting that the second group of documents were similar to those first submitted, still they would be examined evaluated as a matter of course to justify respondent's subsequent action on the claim. Necessarily, it would interrupt the 120-day period granted unto respondent to rule on petitioner's claim for refund/credit.

Lastly, the allegation in paragraph 10[6] of the Petition for Review dated August 5, 2011 and the tenor of the transmittal letter, completely belie petitioner's assertion that the additional documents are submitted in compliance with the Letter of Authority No. LOA-047-2011-00000087.

WHEREFORE, respondent's *motion to dismiss,* incorporated in her Answer filed on October 17, 2011, is hereby **GRANTED**. Accordingly, the *Petition for Review*, dated August 5, 2011, filed by petitioner, is hereby **DISMISSED,** for being prematurely filed.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

[6] Paragraph 10. On 11 March 2011, Petitioner filed its application for the refund of unutilized input VAT for fiscal year ended 31 March 2010 in the amount of PhP21,818,942.57 with Revenue District No. (*sic*) 47 ("RDO 47") and submitted the supporting documents on even date. **Additional documents in support of the claim were likewise submitted to RDO 47 on 1 July 2011**. xxx xxx xxx