REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

CHEVRON HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 7776 & 7813

Members:

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

Promulgated:

JUN 06 2012 ; 2:00 p.m.

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DECISION

ACOSTA, *P.J.*

Before the Court are consolidated petitions of Chevron Holdings, Inc. involving claims for tax refund or issuance of tax credit certificate in the amount of Five Million Three Hundred Ninety One Thousand Two Hundred Fifty Two Pesos and Four Centavos (₱5,391,252.04) for the first quarter of taxable year 2006 and Thirty One Million Four Hundred Eleven Thousand Seven Hundred Four Pesos and Sixty-Eight Centavos (₱31,411,704.68) for the second to fourth quarters of the same taxable year 2006, allegedly representing unutilized input value-added tax ("VAT"). The total amount of unutilized input VAT for the period covering January 1, 2006 to December 31, 2006 is Thirty Six Million Eight Hundred Two Thousand Nine Hundred Fifty Six Pesos and Seventy-Two Centavos (₱36,802,956.72).

THE FACTS

Petitioner Chevron Holdings, Inc. is a corporation organized and existing under the laws of the State of Delaware, United States of America,[1] and has an office address at 33/F Yuchengco Tower I, RCBC Plaza, 6819 Ayala Avenue, Makati City, where it may be served with summons and other court processes.[2] Petitioner is also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under OCN 9RC0000136077.[3]

Respondent Commissioner is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve, and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes, with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes.[4]

Petitioner posits that for taxable year 2006, it rendered services to its affiliates, subsidiaries or branches both in the Philippines and abroad. It claimed that for services rendered to its foreign affiliates, the transactions are subject to zero percent VAT pursuant to Section 108 (B)(2) of the 1997 Tax Code while, on the other hand, services rendered to its Philippine affiliates are subject to 12% VAT.

Petitioner alleged that in the same taxable year 2006, it incurred and paid input taxes on its purchases of goods and services subject to VAT, summarized as follows:

Quarter	Zero-Rated Sales	Sales Subject to 12% VAT	Output Tax	Purchases	Input Tax
1st	308,477,292.31	4,687,290.75	469,047.07	138,964,203.52	5,473,352.33
2nd	237,013,773.09	35,386,665.52	3,852,895.48	71,796,630.97	6,843,948.53
3rd	271,095,515.06	28,405,325.59	3,408,639.07	102,044,300.16	7,144,030.57
4th	459,971,366.03	41,180,817.13	4,941.698.06	247,874,770.08	20,690,791.66

Petitioner further alleged that it paid the above input taxes in the course of its trade and business, as supported by invoices and official receipts. The purchases of

[1] Joint Stipulation of Facts and Issues (JSFI),Par. II – (2), docket p. 233.
[2] JSFI, Par. II- (3), docket, p. 233.
[3] JSFI, Par. II- (4), docket, p. 233.
[4] JSFI, Par. II- (1), docket, p. 233.

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petitioner's capital goods were treated in its Audited Financial Statements and General Ledger as depreciable assets.

Petitioner claims that input taxes generated on purchases for the four quarters of taxable year 2006 were not utilized against output taxes in the same quarters and in the subsequent quarters because it had substantial amounts of input taxes carried forward from the previous quarters.

Petitioner likewise avers that the proceeds of the services rendered by Chevron Holdings, Inc. to its foreign affiliates were inwardly remitted in US dollars and were duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

Believing that it is entitled to claim for tax refund or issuance of tax credit on the unutilized input VAT for taxable year 2006, petitioner filed its administrative claim for refund on March 28, 2008.[5]

Following the inaction of the respondent on its administrative claim, petitioner filed on April 24, 2008, a Petition for Review docketed as CTA Case No. 7776 (and raffled to the Court of Tax Appeals Second Division) for refund or issuance of tax credit certificate covering unutilized input taxes for the first quarter of taxable year 2006[6]. Subsequently, on July 23, 2008, petitioner again filed a Petition for Review docketed as CTA Case No. 7813 (raffled to the Court of Tax Appeals First Division) for refund or issuance of tax credit certificate covering unutilized input taxes for the second to fourth quarters of taxable year 2006.[7]

On June 20, 2008, respondent filed her Answer[8] in **CTA Case No. 7776** and interposed the following counter-arguments:

> "6. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by the Bureau of Internal Revenue;

[5] Exhibit "LL"
[6] JSFI, Par. II- (5), docket, p. 233.
[7] JSFI, Par. II- (6), docket, p. 234.
[8] Docket, pp.172-181.

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7. Petitioner must prove that it paid the alleged VAT input taxes for the period in question;

8. Petitioner must prove that the same alleged input VAT was not utilized against any output VAT liability;

9. Petitioner must prove that its sales are VAT zero-rated as provided under Sec. 112 (A) of the Tax Code of 1997;

10. Petitioner's assertion that its services rendered to its foreign affiliates are subject to 0% value-added tax (VAT) cannot be accorded weight. Plain allegations without support will not justify petitioner's claim for refund;

In an action for refund, it is a working rule that petitioner as taxpayer-claimant, has the burden of proof to show that it is entitled to refund of the amount claimed as refundable. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund (Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd. 244 SCRA 336). Failure to present the necessary evidence is fatal to his claim;

11. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its VAT zero-rated sales;

12. Petitioner must prove that the claim was filed within the period prescribed by law;

13. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with law and the rules and regulations, and the burden to prove otherwise is upon petitioner;

14. It is a well-settled principle *(sic)* tax refunds are in the nature of tax exemptions and are to be construed in *strictissimi juris* against the entity claiming the same (Filinvest Development Corporation vs. Commissioner of Internal Revenue, et. al. GR No. 146941, August 9, 2007). To be exempted from payment of taxes, it is the taxpayer's duty to justify the exemption by words too plain to be mistaken and too categorical to be misinterpreted (Davao Gulf Lumber Corp. vs. Commissioner of Internal Revenue and Court of Appeals, GR No. 117359, July 23, 1998).

15. The claim of petitioner in the amount of ₱5,391,252.04 allegedly representing accumulated and unutilized value-added tax (VAT) input taxes paid by it for the first quarter of 2006 is not properly documented. To support its claim, it is indispensable for petitioner to prove the following:

a. The registration requirements of a value-added taxpayer in compliance with Section 9.236-1(a) of Revenue Regulations No. 16-2005 and Section 236 of the 1997 Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT in

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compliance with the provisions of Section 113 and 114 of the 1997 Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance of Section 9.236-1 (a) of Revenue Regulations No. 16-2005, Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provisions of Section 229 of the Tax Code, as amended. It is important to note that Section 112 (C) of the Tax Code as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply and before petitioner could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants the dismissal of the instant petition for review; and

d. That petitioner's administrative and judicial claims for tax refund was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and 229 of the 1997 Tax Code, as amended.

16. Petitioner's judicial claim was certainly premature, hence, the Honorable Court has no jurisdiction to take cognizance of the present case.

Section 112 (C) of the 1997 Tax Code, as amended, provides that:

SEC. 112. Refunds or Tax Credits of Input Tax. –

(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. (Italics ours).

17. The provisions of the law regarding said periods are jurisdictional, compliance with which is essential for this Honorable Court to exercise authority over the instant case. Such statutes or rules are construed as mandatory as they have been absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business, and are

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necessary incident to the proper, efficient and orderly discharge of official functions (Alvero vs. Dela Rosa, 76 Phil. 428).

18. Petitioner enunciated in its Petition for Review that it filed its administrative claim for refund/and or issuance of tax credit on March 28, 2008. Said claim for refund was in the amount of ₱5,391,252.04 allegedly representing accumulated and unutilized input VAT for the first quarter of 2006. Subsequently, it filed its judicial claim for refund on April 24, 2008 or only 27 days after it filed its administrative claim for refund;

19. Based on the above-stated provision, Section 112 (C) of the *(sic)* of 1997 Tax Code, as amended, that is, Respondent has 120 days or until July 26, 2008 to resolve the administrative claim for refund. As clearly provided for by law, it is only after the expiration said 120 days that petitioner is given 30 days or until 25 August 2008 within which to raise its claim before the Honorable Court of Tax Appeals. Since petitioner filed its judicial claim on April 24, 2008, the same was manifestly filed before the period prescribed by law, thus, the Honorable Court cannot acquire jurisdiction over the immediate case.

20. Petitioner, therefore, by filing a judicial claim ahead of the prescribed period violated the rules allowed by law within which to institute action before this Honorable Court.

21. Based on the foregoing, the petitioner's claim for tax refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of cause of action."

Likewise, on September 16, 2008, respondent filed her Answer[9] in **CTA Case No. 7813** interposing the following special and affirmative defenses:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The claim of petitioner in the amount of ₱31,411,704.68 being claimed by petitioner as alleged unutilized input VAT incurred for the 2nd to 4th quarter of the year 2006 was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. To support its claim, it is imperative for petitioner to prove the following, viz:

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[9] Docket, pp.172-181.

a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations 6-97 in relation to Section 4.107-a of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provisions of Section 229 of the NIRC of 1997, as amended. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before petitioner could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants the dismissal of the instant petition for review.

d. That the input taxes of ₱20,546,004.87 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters for taxable year 2005 *(sic)* were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was *(sic)* filed within two (2) year *(sic)* after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the NIRC of 1997;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit);

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> g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of Input Tax Credits).
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> 8. The petition for review is premature. Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period started to run on March 28, 2008, the date when it filed its administrative claim for refund. Said period is yet to expire on 26 July 2008. Hence, the 30-day period within which to file the petition for review before this Honorable Court is yet to expire on 25 August 2008. The petition was filed on July 23, 2009. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.
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> 9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCAT 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

On October 10, 2008, petitioner filed Motion to Consolidate CTA Case No. 7776 with CTA Case No. 7813, which was granted in separate Resolutions dated October 31, 2008 by the First Division and by the Second Division dated November 18, 2008. With the petition raffled to the Second Division (CTA Case No. 7776) bearing the lower docket number, CTA Case No. 7813 pending before the First Division was transferred to the Second Division. Subsequently however, in an Order dated January 11, 2010 and pursuant to CTA Administrative Circular No. 01-2010 "Implementing the Fully Expanded Membership in the Curt of Tax Appeals, the instant cases were transferred to the First Division of this Court.

During trial, petitioner presented documentary and testimonial evidence. On the other hand, respondent's counsel manifested that he is dispensing with the presentation of evidence and the parties were thereafter ordered to file their Memorandum.[10]

On November 10, 2011, the case was submitted for decision, considering petitioner's Memorandum[11] filed on October 14, 2011, the parties' Additional Stipulation of Facts filed on October 28, 2008 and sans respondent's Memorandum.

[10] Resolution dated August 4, 2011, docket p. 432-433.
[11] Docket, pp. 446-500.

Hence, this Decision.

THE ISSUES

The issues, as jointly stipulated by the parties, are the following:

"1) Whether petitioner incurred/paid input VAT on its purchases of goods and services for the 1st to 4th quarters of taxable year 2006.

2) Whether the input taxes petitioner paid were unutilized against any of its output VAT liabilities for the succeeding taxable quarters/years.

3) Whether petitioner's sales of services qualify as zero-rated.

4) Whether petitioner's claim for refund and/or issuance of tax credit certificates for the amount of ₱36,802,956.70 representing its unutilized and/or unapplied input VAT for the 1st to 4th quarters of taxable year 2006 are attributable to alleged zero-rated VAT sales.

5) Whether petitioner submitted complete documents in support of its alleged claim for refund.

6) Whether petitioner is entitled to claim for refund and/or issuance of tax credit certificates for the amount of ₱36,802,956.70 representing its unutilized and/or unapplied input VAT for the period covering January 1, 2006 to December 31, 2006.

7) Whether the Honorable Court has jurisdiction on the instant Petition for Review.

8) Whether the claims for refund have prescribed.

THE RULING OF THE COURT

The pivotal issue in this case is whether this Court has jurisdiction to rule on the petitions. Pertinent therefore is a discussion on the basis in law of every application for tax refund or credit of unutilized input VAT.

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<u>Reckoning of the Period to File A Claim for Refund of Input Taxes</u>

An application for refund or tax credit over input taxes is governed by Section 112 of the 1997 National Internal Revenue Code (NIRC).

> **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: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. (Emphasis Ours).
>
> (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 <u>within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A)</u> and (B) 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, <u>within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period</u>, appeal the decision or the unacted claim with the Court of Tax Appeals.** (Emphasis Supplied.)

In the aforementioned provision, specifically Section 112 (A), it is worthy to note that the 1997 Tax Code, as amended, specifically set forth the reckoning of the two-year period for filing a claim for refund/tax credit over input taxes to be the <u>close of the taxable quarter when the sales were made.</u>

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In the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.('Aichi Forging case)*[12], the Supreme Court has cited the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[13] wherein it was ruled that the two-year period to file a refund for input tax arising from zero-rated sales should be reckoned from the close of the taxable quarter when the sales were made, *viz*:

> "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." We explained that:
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> The above proviso [Section 112 (A) of the NIRC] clearly provides in no uncertain terms that **unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.
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> ***Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable***
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> To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a

[12] GR No. 184823, October 6, 2010.
[13] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:

Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

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(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

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Sec. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.

MPC's creditable input VAT not erroneously paid

For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the equation.

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Considering the foregoing discussion, **it is clear that Sec. 112 (A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes.** (Emphasis supplied.)

In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. **To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.**" (Emphasis supplied.)

Thus, it is clear that the reckoning of the two year period on claims for refunds/credit for input tax should be from the close of the taxable quarter when the sales were made.

The Period to File the Administrative Claim and Judicial Claim for Refund of Input Taxes

In the same *Aichi Forging case*, the Supreme Court has applied Section 112(A) in ascertaining whether the taxpayer timely filed its administrative claim for refund, thus:

Applying this to the present case, the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. Hence, respondent's administrative claim was timely filed.

As to the filing of the judicial claim for refund on Sections 112(A) and of the 1997 tax Code, the provision of Section 112(C) thereto is pertinent, *viz*:

> SEC. 112. Refunds or Tax Credits of Input Tax. – x x 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 Subsections (A) and (B) 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 Ours)

Again, in the *Aichi Forging case*, the High Court explained the application of this provision, *to wit*:

> "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.)

Applying the *Aichi Forging* case, this Court observes that with petitioner having filed its administrative claim for refund for unutilized input VAT for the four quarters of the taxable year 2006 on March 28, 2008, the respondent Commissioner had 120 days to act on the claim of petitioner or only until July 26, 2008. Thereafter, petitioner had 30 days or until August 25, 2008 to file its judicial claim for refund following the inaction of the respondent Commissioner. However, petitioner filed its claim before this Court on April 24, 2008 for the first quarter of taxable year 2006 and on July 23, 2008 for the second to fourth quarters of taxable year 2006. Said judicial

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claim did not afford the Respondent-Commissioner the 120-day period required in Section 112(C). In Petition for Review docketed as CTA Case No. 7776, only twenty seven (27) days have lapsed after the filing of its administrative claim, while in Petition for Review docketed as CTA Case No. 7813, one hundred seventeen (117) days had passed after the filing of its administrative claim – both clearly short of the 120-day period afforded to respondent Commissioner as correctly raised by the latter in her Answer.

Clearly then, both petitions filed are premature. In turn, the premature filing of the judicial claim is a violation of the doctrine of exhaustion of administrative remedies. Expounding on the prematurity of the petitions, it is a sound rule that, before one resorts to the courts, the administrative remedy provided by law must first be exhausted.[14] A party seeking an administrative remedy must not merely 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 court action.[15]

This non-exhaustion of administrative remedies renders the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[16] The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel* on the part of respondent Commissioner, the case is susceptible of dismissal for failure to state a cause of action.[17] In the petitions before this Court, no waiver or estoppel can be attributed to respondent Commissioner considering that the defense of prematurity of the petitions were properly raised in the Answers.

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[14] Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals, 100 Phil 580.
[15] Commissioner of Internal Revenue vs. Rosemarie Acosta, G.R. No. 154068, August 3, 2007.
[16] Carale vs. Abarintos, G.R. No. 120704, March 3, 1997.
[17] Paat vs. Court of Appeals, G.R. No. 111107, January 10, 1997; 266 SCRA 167, pp. 175-177.

WHEREFORE, the instant Petition for Review docketed as CTA Case No. 7776 and Petition for Review docketed as CTA Case No. 7813 are hereby **DENIED** for having been prematurely filed and are **DISMISSED** for lack of cause of action. The other issues raised become moot and academic.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

(with Separate Opinion)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

CHEVRON HOLDINGS, INC., Petitioner,	**CTA CASE NOS. 7776 & 7813**
	Members:
- versus -	**ACOSTA,** *Chairperson* **UY,** *and* **FABON-VICTORINO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 06 2012, 2:00 p.m.

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SEPARATE OPINION

UY, J.:

My concurrence to the dismissal of the consolidated petitions is anchored on a legal ground diverse from the majority's opinion. For this reason, with due respect, I am thus impelled to submit this separate opinion.

The instant consolidated Petitions for Review pertains to the exercised option of petitioner, Chevron Holdings, Inc. against respondent, Commissioner of Internal Revenue, to claim for the tax refund or issuance of tax credit for its alleged input taxes paid on its purchases of capital goods and services subject to value-added tax (VAT) attributable to zero-rated sales from the 1st to the 4th Quarters of taxable year 2006, which is subject to the provisions of Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

I concur with the majority's finding that petitioner seasonably filed its administrative claim covering taxable year 2006 on March 28, 2008, well within the two-year prescriptive period provided by law.

Likewise, I am in agreement with the majority's position that the instant judicial claims filed before this Court on April 24, 2008 (docketed as CTA Case No. 7776) and on July 23, 2008 (docketed as CTA Case No. 7813), were prematurely filed as both were done before the lapse of the 120-day period mentioned under Section 112(C) of the NIRC of 1997, as amended. However, begging the indulgence of the majority, I humbly express my varied opinion regarding the ruling that such premature filing was merely a violation of the doctrine of exhaustion of administrative remedies, and therefore, not jurisdictional, which can be waived if not raised as a defense.

Indubitably, petitioner miserably failed to observe the 120-day period under Section 112(C) of the NIRC of 1997, as amended, to give the Commissioner of Internal Revenue the opportunity to act on its refund claim. Correspondingly, and diverse from the majority's opinion, it is my humble submission that the premature filing of the instant case warrants its immediate dismissal inasmuch as no jurisdiction was acquired by this Court. The jurisdictional nature of such premature filing is consistent with the pronouncements made in ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***[1], which is the prevailing jurisprudence on the matter.

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

In said case, the Supreme Court interpreted the provisions of Section 112(C)[2] and pronounced that premature filing of claim for refund/credit of input VAT before this Court warrants its dismissal as no jurisdiction was acquired therein. The High Court said thus:

> "**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 xxx 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.**

[2] Previously Section 112(D) of the NIRC before Republic Act No. 9337 took effect on November 1, 2005.

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In fine, **<u>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</u>**." *(Emphasis and underscoring supplied).*

Clearly therefore, the premature filing of the judicial claim before this Court makes the instant consolidated petitions dismissible as no jurisdiction was acquired by the Court to entertain the instant case. And being jurisdictional in nature, this defense is not waivable. Otherwise, we run the risk of favoring a non-complying taxpayer-claimant, at the mere expedient of failing to invoke the defense of prematurity before this Court at the first instance.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[3] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[4] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[5]

To reiterate, it is my humble submission that the premature filing of the instant cases warrants a dismissal of the present consolidated petitions, not merely

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[3] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[4] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[5] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.

on the ground of lack of cause of action, but more so, because jurisdiction was not acquired by this Court.

All told, I concur with the DISMISSAL of the instant consolidated Petitions for Review for lack of jurisdiction.

ERLINDA P. UY
Associate Justice