REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PERCEPTION GAMING, INC.,
Petitioner,

-*versus*-

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8509

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:

NOV 12 2014
4:04 p.m.

x -- x

DECISION

BAUTISTA, J:

The Case

This is a claim for refund of Value-Added Tax payments paid by petitioner for the periods April to December of taxable year 2010 and January to December of taxable year 2011, amounting to a total of Nine Million Forty-Nine Thousand Two Hundred Sixty-Six Pesos and 85/100 (Php9,049,266.85)[1]

The Parties[2]

Petitioner Perception Gaming, Inc. ("PGI") is a corporation existing by virtue of Philippine laws, with principal place of business of the 24th Floor, 6750 Ayala Avenue, Makati City.

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[1] *Records*, CTA Case No. 8509, pp. 221.
[2] *Id.*, p. 6.

Respondent is the Bureau of Internal Revenue, Revenue District Office 47, with principal place of business at 4th Floor, Sen. Gil Puyat Ave., Makati City.

The Facts

As stated in the Memorandum submitted by petitioner through registered mail on December 17, 2013,[3] incorporating the Joint Stipulation dated October 29, 2012,[4] the factual antecedents of this case are as follows:

> "4.1. Petitioner was incorporated on December 8, 2006, the primary purpose of which is to, among others, lease goods and commodities, including but not limited to casino gaming products, machines, equipment, software and technology.
>
> 4.2. Specifically, Petitioner is engaged in the business of supplying and leasing out gaming machines to entities authorized by the Philippine Amusement and Gaming Corporation (PAGCOR) to operate gaming centers ("PAGCOR-Authorized Bingo Operators").
>
> 4.3. Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of National Internal Revenue Code of 1997 (the "Tax Code"), with Taxpayer Identification No. 006-582-145-000.
>
> 4.4. On the following dates, Petitioner filed with the BIR its Quarterly VAT Returns for the 2nd to 4th quarters of CY 2010 and 1st to 4th quarters of CY 2011:

Document	Date of Filing	eFPS Filing Reference No.
Original Quarterly VAT Return for the 2nd Quarter of CY 2010	July 20, 2010	101000003947728
Original Quarterly	October 26, 2010	101100004425954

[3] *Id.*, pp. 1389-1419.
[4] *Id.*, p. 189-190.

VAT Return for the 3rd Quarter of CY 2010		
Original Quarterly VAT Return for the 4th Quarter of CY 2010	January 25, 2011	101100004707984
Original Quarterly VAT Return for the 1st Quarter of CY 2011	July 25, 2011	101100004966565
Original Quarterly VAT Return for the 2nd Quarter of CY 2011	October 19, 2011	101100005215874
Original Quarterly VAT Return for the 3rd Quarter of CY 2011	January 20, 2012	101200005526961
Original Quarterly VAT Return for the 4th Quarter of CY 2011	March 2, 2012	101200005685502

4.5 Based on the VAT Returns for the period covering the 2nd to 4th quarter of CY 2010 and 1st to 4th quarter of CY 2011, Petitioner's sales, output VAT, purchases and input VAT are summarized below:

Period	Effectively Zero-Rated Sales (₱)	Output VAT (₱)	Purchases (₱)	Input VAT (₱)
2nd Quarter CY 2010	5,409,553.92	649,146.47	1,310,617.42	157,274.09
3rd Quarter CY 2010	7,167,210.18	860,065.22	1,954,571.61	234,548.59
4th Quarter CY 2010	7,820,736.42	938,488.37	1,338,920.77	160,670.49
1st Quarter CY 2011	8,058,429.24	967,011.51	1,346,753.04	161,610.36
2nd Quarter CY 2011	8,868,456.85	1,042,374.82	1,199,714.25	143,965.71
3rd Quarter CY 2011	8,191,657.48	982,998.90	1,059,008.17	127,080.98
4th Quarter CY 2011	9,762,050.39	1,171,446.05	12,277,799.83	1,473,335.98
TOTAL	**55,096,094.48**	**6,611,531.34**	**20,487,386.09**	**2,458,486.20**

4.6. For the 2nd to 4th quarter of CY 2010 and 1st to 4th quarters of CY 2011, Petitioner subjected its gross receipts from the sales of services to both PAGCOR and PAGCOR-Authorized Bingo Operators to 12% output VAT in the aggregate amount of P6,590,780.65. Petitioner shouldered and paid such output tax. Petitioner also incurred input VAT in the total amount of P2,458,486.20.

4.7. On June 27, 2012, Petitioner filed with the BIR-Revenue Region (RR") No. 8 an Application for Tax Credit/Refund (BIR Form No. 1914) of its output VAT and input VAT for the 2nd to 4th quarter of CY 2010 and 1st to 4th quarters of CY 2011 in the amount of P9,049,266.85, together with the relevant documents.

4.8. To date, Respondent has yet to act on Petitioner's administrative claim for refund of erroneously paid output VAT and unutilized input VAT for the 2nd to 4th quarter of CY 2010 and 1st to 4th quarters of CY 2011. Due to Respondent's inaction on Petitioner's administrative claim for refund, Petitioner was constrained to file a Petition for Review with this Honorable Court on June 28, 2012."

On September 10, 2012, respondent filed her Answer,[5] interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses.

5. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue.

6. Petitioner failed to demonstrate that the tax, which is the Subject of this case, was erroneously or illegally collected.

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable.

8. It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended.

9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim

[5] *Id.*, pp. 56-72.

(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Abad, Law of Basic Taxation in the Philippines, let Edition, p. 206).

10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).*

11. It is an established principle that refunds and tax credits are in the nature of tax exemptions, hence, strictly construed against the taxpayer. The taxpayer claiming for tax refund or credit has the burden of proving that he is entitled for such refund or credit by providing evidence of compliance of certain conditions of the law under which the privilege of exemption is granted. In a refund process, the taxpayer is bound to comply not only with substantiation requirements but also with the procedural due process to prove its entitlement to the refund. The more critical of these rules are the 2-year prescriptive period and the proper observance of the 120+30 day rule within which to file the refund claim.

12. In the case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*** G.R. No. 184823 dated October 6, 2010, the Supreme Court held:

> 'However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:
>
> 'SEC. 112. Refunds or Tax Credits of Input Tax.
>
> x x x x
>
> '(D) 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 enacted claim with the Court of Tax Appeals.** (Emphasis supplied.)

'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 or 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, so 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.

x x x x

> 'In fine, the premature filing of respondent's claim for respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."

13. The ***Aichi*** case is squarely applicable in the instant petition. In this case, the administrative claim for refund was filed on June 27, 2012 and the judicial claim was filed before the Court of Tax Appeals on June 28, 2012. By doing so, the petitioner did not wait for the decision of the respondent or the lapse of the 120-day period. For this reason, the filing of the judicial claim with the Honorable Court is premature. The non-observance of the 120-day period is fatal to the filing of a judicial claim. The premature filing of petitioner's claim for refund/credit of Input VAT before the Honorable Court warrants a dismissal inasmuch as no jurisdiction was acquired by the Honorable Court.

14. Further, It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. However, being an indirect tax, it can be shifted or passed on to the buyer/purchaser, transferee or lessees of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services.

15. In the present case, petitioner's leased of gaming equipment to 'PAGCOR Operators' are subject to 12% VAT which can be passed on to 'PAGCOR Operators' as additional cost of the gaming equipment being leased by the latter because VAT, being an indirect tax may be shifted or passed on to the buyer of goods, services or lease of properties (PAGCOR Operators), pursuant to Section 105 of the Tax Code.

16. In the case of PAGCOR vs. BIR, GR No. 172087, it was held that:

> 'Although the law does not specifically mention PAGCOR's exemption from indirect taxes, PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations.'

17. The pronouncement of the Highest Magistrate in holding that PAGCOR is exempt from indirect taxes by granting tax exempt status to persons dealing with PAGCOR in casino operations, which are the PAGCOR Operators in the present case. The unmistakable conclusion is that PAGCOR is not liable for VAT and neither the PAGCOR Operators as the latter are effectively subject to zero percent (0%) rate under Section 108 (B) (3) of the 1997 Tax Code, as amended. While the 'PAGCOR Operators' are exempt from taxes, its exemption only covers taxes for which it is directly liable. The exemption does not cover the VAT passed on by petitioner. The shifting of the VAT to the PAGCOR Operators which are tax-exempt entities does not make them the person directly liable and therefore, the PAGCOR Operators cannot invoke their tax exemption privilege to avoid the passing on or shifting of the VAT.

Moreover, the Supreme Court undoubtedly extends the tax exemption only to those persons or entities directly contracting with PAGCOR in casino operations such as PAGCOR Operators and not to those who are directly contracting with PAGCOR Operators. In this case, Petitioner is an entity not dealing or contracting directly with PAGCOR but with the PAGCOR Operators. Hence, PAGCOR's exemption does not extend to Petitioner. Thus, petitioners leased of gaming equipments to PAGCOR Operators are subject to 12% VAT under Section 108 of the Tax Code. Accordingly petitioner cannot claim refund/credit of its VAT payment."

On October 29, 2012, the parties filed their Joint Stipulation of Facts and Issues ("JSPI"),[6] and a Pre-Trial Order was issued by the Court on November 16, 2012.[7]

[6] *Id.*, pp. 189-190.
[7] *Id.*, pp. 221-227.

On July 5, 2013, petitioner filed its Formal Offer of Evidence,[8] which was resolved by the Court on August 27, 2013.[9]

On September 11, 2013, petitioner filed a Motion for Reconsideration over the Resolution promulgated on August 27, 2013,[10] which was resolved on October 8, 2013.[11]

On December 20, 2013, petitioner filed its Memorandum through registered mail,[12] while respondent filed her Manifestation (in lieu of Submission of Memorandum) through registered mail on December 17, 2013.[13] Thus on January 3, 2014, the Court promulgated a Resolution[14] submitting the case for Decision.

Hence, this Decision.

The Issue

Based on the Joint Stipulation of Facts and Issues[15] filed by the parties, the sole issue to be resolved is:

> "IS PETITIONER ENTITLED TO A VAT REFUND OF P[HP]9,049,266.85 FOR THE PERIOD APRIL TO DECEMBER 2010 AND JANUARY TO DECEMBER 2011"

The Ruling of the Court

The Court finds no merit in the Petition for Review filed by petitioner Perception Gaming, Inc.

The 1997 National Internal Revenue Code, as amended, ("1997 NIRC") provisions pertinent to a claim for issuance of tax credit certificate or refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales is Sections 112(A), which provide:

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[8] *Id.*, pp. 1072-1108, with attachments.
[9] *Id.*, pp. 1364-1365.
[10] *Id.*, pp. 1365-1367.
[11] *Id.*, p. 1370.
[12] *Id.*, pp. 1389-1419.
[13] *Id.*, pp. 1421-1422.
[14] *Id.*, p. 1425.
[15] *Id.*, pp. 189-190.

> "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 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."

Based on the said provision, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. that the claim for refund was filed within the two-year prescriptive period.

Before delving on the merits of petitioner's claim for refund or issuance of Tax Credit Certificate amounting to Php9,049,266.85, the Court finds it appropriate to address first the fifth requisite pertaining to the timeliness of the filing of petitioner's administrative and judicial claim.

Pursuant to the above cited provision, a taxpayer must file an application for refund or tax credit certificate within two (2) years after the close of the taxable quarter when the transactions were made.

As for the judicial claim, the applicable provision is Section 112(C) of the 1997 NIRC, which reads as follows:

> "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."

Thus, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the decision or from inaction of the Commissioner of Internal Revenue after the lapse of the one hundred twenty (120)-day period *via* a Petition for Review.

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* ("*Aichi case*"), the Supreme Court emphasized that failure to await the decision of the Commissioner or the lapse of 120-day period prescribed in Section 112(C) of the 1997 NIRC amounts to a premature filing of a judicial claim. And the premature filing of a claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

In the consolidated case of *Commissioner of Internal Revenue v. San Roque Power Corporation; Taganito Mining Corporation v. Commissioner of Internal Revenue; and Philex Mining Corporation v. Commissioner of Internal Revenue,*[16] the Supreme Court emphasized that a condition to a valid judicial claim of refund or credit for VAT is compliance with the 120+30-day mandatory and jurisdictional periods. To resort to the courts before the said period is viewed as a patent violation of the doctrine of exhaustion of administrative remedies. The cited case only provides for a period spanning December 10, 2003 to October 6, 2010, which was the period from the issuance of BIR Ruling No. DA-489-03 until the *Aichi case* was adopted, as the only exemption to this rule.

In the present case, it is clear from the table summary below that the administrative claim was filed within the period prescribed under the 1997 NIRC:

Taxable Year	**Quarter**	**End of Quarter**	**Administrative Claim Filed**
2010	2nd	June 30, 2010	June 27, 2012
	3rd	September 30, 2010	
	4th	December 31, 2010	
2011	1st	March 31, 2011	
	2nd	June 30, 2011	
	3rd	September 30, 2011	
	4th	December 31, 2011	

On the other hand, the judicial claim was clearly filed prior to the expiry of the 120 days allowed by the 1997 NIRC for the Commissioner to decide on the claim:

End of 120 days for the Commissioner to decide on the claim	**End of 30 days from the expiration of the 120 days**	**Judicial Claim Filed**
October 25, 2012	November 24, 2012	June 28, 2012

[16] G.R. Nos. 187485, 196113, 197156, February 12, 2013.

Technical rules of procedure are designed not to frustrate the ends of justice, rather, they are intended to effect the proper and orderly disposition of cases,[17] and thus strict compliance with procedural rules is required to facilitate the orderly administration of justice.[18]

Due to petitioner's filing of a judicial claim before the lapse of the mandatory 120-day period under Section 112(C) of the 1997 NIRC, the Court finds no other recourse but to dismiss the petition on the ground of the lack of jurisdiction. The Court finds no need to delve further into the other issues presented by the parties.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division

LOVELL R. BAUTISTA
Associate Justice
Chairperson

[17] *Ismael V. Santos, Alfredo G. Arce and Hilario M. Pastrana v. Court of Appeals, Pepsi Cola Products Phils., Inc., Luis Lorenzo, Jr. and Frederick Dael*, G.R. No. 141947, July 5, 2001, 360 SCRA 512.
[18] *PET Plans, Inc. v. Court of Appeals*, G.R. No. 148287, November 23, 2004, 443 SCRA 510.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice