REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7739

Members:

CASTANEDA, Chairperson,
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

DEC 0 2 2010
1:45 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

"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." *(Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010).*

THE CASE

This is a Petition for Review filed by CE Casecnan Water and Energy Company, Inc. (hereafter "petitioner") praying for the refund or issuance of a tax credit certificate (TCC) for its unutilized input value-added taxes (hereafter "input VAT") in the aggregate amount of P26,066,286.96, representing unutilized input VAT paid on its domestic purchases of taxable goods and services, importation of non-capital goods and local purchases of capital goods for the 1st to 4th quarters of calendar year 2006.

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THE PARTIES

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Pantabangan, Nueva Ecija.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He may be served with summons, pleadings and other legal processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The antecedent facts of the case, as culled from the records, are as follows:

Petitioner was incorporated on September 21, 1994, the primary purpose of which is to design, develop, construct, erect, assemble, commission and operate hydro-electric power plants and related facilities for the conversion into electricity of water provided by and under contract with the Philippine Government or any subdivision, instrumentality or agency thereof, or any government owned or controlled corporation, or other entity engaged in the development, supply or distribution of energy. Petitioner has been accredited and certified to as such by the Department of Energy, as evidenced by its DOE Certificate of Accreditation [No. 95-07-12*(Exhibit "B")*] issued on July 20, 1995. Petitioner is a registered value added tax (VAT) taxpayer with the BIR as evidenced by its Certificate of Registration with Tax Identification Number 004-500-931-000 *(Exhibit "C")*.

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for the first to fourth quarters of 2006, respectively:

Taxable Quarter	Date of Filing of Original Return
1st	April 25, 2006
2nd	July 25, 2006
3rd	October 25, 2006
4th	January 25, 2007

On the following dates, petitioner filed with the BIR its Amended Quarterly VAT Returns for the first to fourth quarters of 2006, reflecting its zero-rated sales, domestic purchases of non-capital, capital goods and services, services rendered by non-residents and importation of non-capital goods:

2006 Taxable Quarter	Date of Filing of Amended Return	Current Transactions					
		Zero-rated Sales (P)	Domestic Purchases-Goods Other than Capital Goods (P)	Domestic Purchases-Capital Goods (P)	Importation-Goods Other than Capital Goods (P)	Domestic Purchases-Services (P)	Services Rendered by Non-Residents (P)
1st	February 22, 2007	1,341,558,865.27	3,581,742.21	0.00	123,680.00	150,386,858.26	1,077,238.16

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2nd	February 22, 2007	522,116,319.35	6,549,876.93	0.00	902,870.00	92,395,180.78	51,217.42
3rd	July 25, 2007	1,192,234,577.80	7,697,153.25	2,857,142.86	2,336,042.17	76,522,257.78	0.00
4th	July 25, 2007	1,141,214,397.86	6,928,368.33	0.00	8,136,116.67	42,472,854.83	1,113,855.75
Total		4,197,124,160.28	24,757,140.72	2,857,142.86	11,498,708.84	361,777,151.65	2,242,311.33

For the first to fourth quarters of 2006, petitioner incurred unutilized input VAT credits from its domestic purchases of non-capital goods, capital goods and services, services rendered by non-residents, and importation of non-capital goods in the total amount of P45,445,453.76:

2006 Taxable Quarter	Unutilized Input VAT Credits					Total
	Domestic Purchases-Goods Other than Capital Goods (P)	Domestic Purchases-Capital Goods (P)	Importation-Goods Other than Capital Goods (P)	Domestic Purchases-Services (P)	Services Rendered by Non-Residents (P)	
1st	379,544.56	0.00	12,368.00	15,507,614.62	129,268.58	16,028,795.76
2nd	785,961.65	0.00	90,287.00	11,084,959.24	6,146.09	11,967,353.98
3rd	923,658.39	5,714.29	280,325.06	9,184,319.94	0.00	10,394,017.68
4th	831,404.20	17,142.87	976,334.00	5,096, 742.58	133,662.69	7,055,286.34
Total	2,920,568.80	22,857.16	1,359,314.06	40,873,636.38	269,077.36	45,445,453.76

Of the total accumulated input VAT of P45,445,453.76, the amount of P26,066,286.96 is attributable to petitioner's zero-rated sales of power generation services to the National Irrigation Administration for the first to fourth quarters of 2006.

On September 26, 2007, petitioner filed its administrative claim for refund of unutilized input VAT for the four quarters of taxable year 2006.

In view of respondent's inaction, on March 14, 2008, petitioner filed its judicial claim for refund with this Court, docketed as C.T.A. Case No. 7739.

In his Answer, respondent alleged by way of special and affirmative defenses:

> "5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue;
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> 6. The amount of P26,066,286.96 being claimed by petitioner as alleged unutilized input VAT for the first to fourth quarters of calendar year 2006 is not properly documented. To support its claim, it is imperative for the petitioner to prove the following:
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> 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 Tax Code, as amended;
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> b. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payments of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;
>
> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, Revenue Memorandum Order

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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 provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) 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 the taxpayer 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 immediate dismissal of the petition for review;

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 (D) and 229 of the Tax Code, as amended;

7. Petitioner exploited to its advantage Section 6 of RA No. 9136, alleging that sales of generated power are VAT zero-rated. However, 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. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. *(Asiatic Petroleum Co. vs. Llanes, 49 PHIL 466);*

8. Prescription has set in regarding petitioner's claim for refund based on Section 112(C) of the Tax Code, which states:

"Section 112. Refunds or Tax Credits of Input Tax –

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(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 Tax Appeals." (Italics ours)

9. Hence, when petitioner filed its administrative claim for tax refund with the respondent's Large Taxpayers Audit and Investigation Division I on September 26, 2007, respondent had 120 days within which to decide on petitioner's claim for tax refund. And in case of full or partial denial of the claim or failure of respondent to act on the application within the 120-day period, petitioner has 30 days to appeal the decision or inaction with the Court of Tax Appeals. Thus, respondent had to render a decision within 120 days from 26 September 2007 or until 24 January 2008. In the event that respondent failed to act upon petitioner's claim for tax refund, petitioner has 30 days from 24 January 2008 or until 23 February 2008 to appeal the unacted claim with the Court of Tax Appeals.

10. Petitioner filed the instant petition for review with the Court of Tax Appeals only on 14 March 2008, more than one month after the lapse of the period allowed by law to file the judicial claim for tax refund with the Court of Tax Appeals. Clearly, the instant petition for review was filed out of time.

11. The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a

competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions *(Agpalo, Statutory Construction, Third Edition 1995, pa. 266).* For this reason, the courts construe these provisions of statutes as mandatory *(ibid., citing Alvero vs. De la Rosa, 76 PHIL 428, 434);*

12. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people *(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667).* Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its case;

13. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and liberally in favor of the taxing authority *(Commissioner of Internal Revenue vs. Manila Mining Corp., 468 SCRA 571);*

14. 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 the petitioner."

Petitioner presented Leilah Yasmin E. Alpad and Jerome Antonio B. Constantino, as witnesses, and documentary evidence, marked as Exhibits *"A"* to *"P"*, inclusive of their submarkings, which were all admitted by the Court. ObP

On the other hand, respondent presented Emma A. Dulfo, as a witness, and documentary evidence, marked as Exhibits *"1" to "2"*, inclusive of their submarkings, which were admitted by the Court.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich the case shall be deemed submitted for decision.

Both parties having complied thereto, the petition was deemed submitted for decision on November 03, 2009.

On April 26, 2010, petitioner filed an "Urgent Motion for Leave to Present Witness".

On April 28, 2010, the Court ordered respondent Commissioner to comment on petitioner's motion, but respondent failed to file her comment despite notice.

On July 19, 2010, the Court granted petitioner's "Urgent Motion for Leave to Present Witness" and the Resolution dated November 3, 2009 submitting the case for decision was recalled and set aside.

As additional evidence, petitioner presented Leilah Yasmin E. Alpad, as witness.

On August 16, 2010, petitioner was granted ten (10) days to submit its Supplemental Offer of Evidence, and respondent was granted ten (10) days from receipt of a copy thereof to file her comment.

On September 6, 2010, respondent Commissioner filed her comment on petitioner's Supplemental Formal Offer of Evidence.

On September 17, 2010, the Court admitted petitioner's supplemental *Exhibits "Q" to "S"*, and ordered both parties to file their simultaneous supplemental memoranda, within fifteen (15) days from notice; afterwhich the case shall be deemed submitted for decision.

On October 12, 2010, petitioner filed its Supplemental Memorandum, while respondent, despite notice, failed to file her Supplemental Memorandum. Hence, the petition was deemed submitted for decision on October 15, 2010.

Hence, this decision.

ISSUES

As stipulated by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE UNUTILIZED INPUT VAT OF THE PETITIONER FOR THE FIRST TO FOURTH QUARTERS OF 2006 AMOUNTING TO P26,066,286.96 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE

IN THE FORM OF INVOICES AND OFFICIAL RECEIPTS.

II

WHETHER OR NOT THE SAID UNUTILIZED INPUT VAT CREDITS OF THE PETITIONER FOR THE FIRST TO FOURTH QUARTERS OF 2006 IN THE TOTAL AMOUNT OF P26,066,286.96 WAS APPLIED AGAINST ANY OUTPUT TAX OF THE PETITIONER IN THE SUBSEQUENT QUARTERS.

III

WHETHER OR NOT THE PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE TOTAL AMOUNT OF P26,066,286.96, REPRESENTING ITS UNUTILIZED INPUT VAT FROM DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS FOR THE FIRST TO FOURTH QUARTERS OF 2006.

IV

WHETHER OR NOT PETITIONER'S CLAIM FOR TAX REFUND/CREDIT WAS FILED WITHIN THE TWO-YEAR (2) PRESCRIPTIVE PERIOD IN ACCORDANCE WITH SECTIONS 112 (A), (B) AND 229, OF THE TAX CODE.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or issuance of a TCC for its excess and unutilized input VAT for the calendar year 2006 in the aggregate amount of P26,066,286.96 on its domestic purchases of non-capital goods and services, domestic purchases of capital goods, purchase of services rendered by non-residents, and importation of non-capital goods.

THE COURT'S RULING

The petition is without merit.

Section 112 of the NIRC of 1997, as amended, provides:

"**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 and also in taxable or exempt sale of goods or 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: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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> *(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."

Pursuant to the above quoted *Section 112(A)*, a taxpayer may apply a claim for refund of unutilized input VAT payments not otherwise used for any internal revenue tax due, within two years reckoned from the close of the taxable quarter when the relevant sales were made.

While, *Section 112 (C)* provides that the CIR has 120 days from the submission of supporting documents to decide the claim for refund. In case of full or partial denial, or inaction of the CIR, the taxpayer may file an appeal with the CTA, within 30 days from receipt of the decision, or from the lapse of the 120-day period.

In the case at bench, records show that on September 26, 2007, petitioner filed its administrative claim for refund for the four (4) quarters of 2006, which is well within the two (2) year prescriptive period.

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Counting 120 days from September 26, 2007, which is also presumed as the date of submission of complete documents in support of the administrative application filed, pursuant to *Section 112(C) of the NIRC of 1997, as amended,* the CIR had until January 24, 2008 to decide petitioner's administrative claim. Since the CIR failed to act on petitioner's claim for refund, pursuant to *Section 112(C) of the NIRC of 1997, as amended,* the taxpayer has 30 days from January 25, 2008, or until February 23, 2008 to appeal the inaction of the CIR to this Court.

In the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., supra,* the Supreme Court ruled that 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.

Records show, however, that petitioner filed the instant Petition for Review only on March 14, 2008, which is 24 days way beyond the prescribed 30-day period to appeal to this Court.

Settled is the rule that courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying the pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings *(Ace Publications vs. Commissioner of Customs, 11 SCRA 147)*.

For all the foregoing, the late filing of petitioner's claim for refund of unutilized excess input VAT for the four quarters of 2006 before this Court warrants a dismissal, as no jurisdiction was acquired by this Court.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and, accordingly **DISMISSED** for having been filed late.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Former Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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.

ERNESTO D. ACOSTA
Presiding Justice