REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PILIPINAS TOTAL GAS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 776
(C.T.A. CASE NO. 7863)

Members:
ACOSTA, *PJ*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
OCT 11 2012
3:40 pm

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DECISION

Fabon-Victorino, J.:

This is a petition for review of the Decision dated January 13, 2011 and the Resolution dated April 19, 2011 of the Court in Division filed by Pilipinas Total Gas, Inc. on May 10, 2011. The Court in Division denied petitioner's judicial claim for refund or issuance of tax credit certificate (TCC) in the aggregate amount of P7,898,433.98, representing petitioner's alleged unutilized input value added tax (VAT) paid on its purchases of taxable goods and services for the first and second quarters of calendar year 2007. The Court in Division ruled that petitioner failed to submit complete documents at the administrative level making its Petition for Review before it premature.

The facts insofar as pertinent to the present action, are as follows, viz.:

Petitioner is engaged in the sale, transportation, and distribution of industrial gas, as well as sale of gas equipment and other related business as reflected in its Securities and Exchange Commission (SEC) Certificate of Registration Number AS095-011466.

It is also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer as evidenced by BIR Certificate of Registration with Taxpayer Identification Number (TIN) 004-609-538-000.

On April 20, 2007 and July 20, 2007, petitioner filed with the BIR its Original Quarterly VAT Returns for the 1st and 2nd quarters of year 2007, respectively.

Subsequently, petitioner filed with the BIR its Amended Quarterly VAT Returns for the first two quarters of 2007 reflecting petitioner's sales subject to VAT, zero-rated sales, domestic purchases of non-capital goods and services, as follows:

2007 Taxable Quarter	Date of Filing of Amended Return	Current Transactions				
		VATable Sales	Zero-rated Sales (P)	Exempt Sales	Domestic Purchases-Goods Other than Capital Goods (P)	Domestic Purchase-Services (P)
1st	May 20, 2008	1,169,920.98	47,262,774.66	0.00	36,308,089.75	1,462,946.16
2nd	May 20, 2008	713,132.06	31,906,108.49	18,026,481.31	24,661,608.92	5,270,691.44
Total		1,883,053.04	79,168,883.15	18,026,481.31	60,969,698.67	6,733,637.60

For the 1st to 2nd quarters of 2007, petitioner incurred unutilized input VAT credits from its domestic purchases of non-capital goods and services in the total amount of P8,124,400.35, as follows:

	Unutilized Input VAT Credits		
2007 Taxable Quarter	Domestic Purchase-Goods Other than Capital Goods (P)	Domestic Purchases-Services (P)	Total
1st	4,356,970.77	175,553.54	4,532,524.31
2nd	2,959,393.07	632,482.97	3,591,876.04
Total			8,124,400.35

Of the total accumulated input VAT of P8,124,400.35, only the amount of P7,898,433.98 is the excess unutilized input VAT for the 1st to 2nd quarters of 2007.

On May 15, 2008, petitioner filed an administrative claim for refund of unutilized input VAT for the first two quarters of taxable year 2007, inclusive of supporting documents.

In view of respondent's inaction on the claim, petitioner elevated the matter to the Court in Division on January 23, 2009.

In her Answer, respondent interposed the following special and affirmative defenses:

> 5. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim;
>
> 6. Petitioner must prove that it paid the alleged input VAT taxes for the period in question;
>
> 7. Petitioner must prove that the alleged input VAT was not utilized against any output VAT liability;
>
> 8. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the National Internal Revenue Code of 1997 (NIRC of 1997);
>
> 9. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales;

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

11. Petitioner must prove that its claim for the issuance of a tax credit certificate in the amount of P7,898,433.98 representing unutilized input VAT arising from its zero-rated transactions for the period covering (sic) first and second quarters of taxable year 2007 is properly documented. 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 its claim;

12. 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;

13. It is a well-settled principle that the (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, G.R. No. 146941, August 9, 2007)*. Exemptions from taxation are highly disfavoured, so much that they may be odious to the law *(PLDT vs. City of Davao, G.R. No. 143867, August 22, 2001)*. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted *(Davao Gulf Lumber Corporation vs. Commissioner of Internal Revenue and Court of Appeals, G.R. No. 117359, July 23, 1998)*. A state cannot be stripped off this most essential power by doubtful words and of

> this highest attribute of sovereignty by ambiguous language. He who claims an exemption must be able to point the provision creating the said right.

During the trial, petitioner presented Rosalia T. Yu and Richard Go, as witnesses who identified documentary evidence marked as Exhibits A to ZZ-1, inclusive, all of which were all admitted by the Court in Division.

On the other hand, respondent did not adduce any and submitted the case for decision by the Court in Division.

On January 13, 2011, the Court in Division denied the claim for refund on the ground that petitioner failed to submit complete supporting documents at the administrative level, rendering its Petition for Review before the Court in Division premature. The dispositive portion of the said Decision reads, as follows:

> WHEREFORE, premises considered, the present Petition for Review is hereby DENIED DUE COURSE, and, accordingly DISMISSED for having been prematurely filed.
>
> SO ORDERED.

The Motion for Reconsideration subsequently filed by petitioner was denied for lack of merit in the Resolution of April 19, 2011, thus:

> WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby DENIED for lack of merit.
>
> SO ORDERED.

Hence, the instant Petition for Review.

Petitioner contends that the submission of complete supporting documents at the administrative level, or the lack of it, does not make the judicial claim before the Court premature and dismissible for lack of jurisdiction.

According to petitioner, Revenue Memorandum Order (RMO) No. 53-98, which prescribes the requisites for a claim for refund and upon which the Court in Division based its ruling, is a mere internal memorandum issued by respondent applicable only in the administrative and not in the judicial claim for refund. It provides a guide or checklist of documents which should be looked into in the administrative level and which are not binding in the judicial claim governed by the Rules of Court. Thus, only those presented and formally offered in the judicial proceeding should be considered.

Assuming that it failed to submit complete documents in the administrative level, pursuant to Revenue Memorandum Circular (RMC) No. 29-09, it was incumbent upon the BIR to require petitioner to submit additional documents and only then does the 120-day period under Section 112 of the NIRC, as amended, ceases to run. Under the same assumption, the proper course of action under RMC 29-09 was for respondent to deny the administrative claim. Such denial however is not a bar to petitioner's right to appeal to this Court. Moreover, RMC 29-09 was not yet in effect when it filed its administrative claim on May 15, 2008.

Sound policy also dictates that it is the taxpayer who determines the documents necessary to substantiate its claim for refund with respondent. To rule otherwise will result in a never ending conflict on the issue of completeness of documents which will in turn delay the proceeding rendering nugatory the protection in Section 112 of the Tax Code.

Petitioner believes that pursuant to Section 112 of the Tax Code and the doctrine laid down in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc,*[1] the 120-days should commence from August 28, 2008, when it filed its last supporting document with respondent, and not from May 15, 2008, when it filed its administrative claim with respondent. From August 28, 2008, respondent had until December 26, 2008 to act on the claim. From latter date, petitioner had 30 days or until January 25, 2009, to challenge respondent's inaction with the Court in Division. Thus, its Petition for Review was seasonably filed with the Court in Division on January 23, 2009.

Moreover, the prevailing rule at the time petitioner filed its Petition for Review with the Court in Division was that both the administrative and judicial claims must be filed within two years from the close of the taxable quarter when the sales were made. Therefore, its Petition claiming for refund of input VAT for the 1st and 2nd quarters of the taxable year 2007 was filed on time.

Further, immediate judicial recourse is allowed when exhaustion of administrative remedy amounts to nullification of the claim, as in this case.

[1] G.R. No. 184823, October 06, 2010.

Finally, equity and fairness demand that its Petition for Review be given due course on the ground that technicalities must give way to substantive rights and on the principle that the government should not keep money that does not belong to it.

Despite notice, only a Memorandum dated August 15, 2010 was filed by respondent. She argues that pursuant to Section 112 of the Tax Code, petitioner's administrative claim should be filed within the two-year prescriptive period reckoned from the end of the quarter when the pertinent sales were made. From such filing, respondent had 120 days to act on the claim. From the lapse of said 120 day period, or from notice of the adverse decision, petitioner had 30 days to elevate the matter to this Court. Being mandatory in nature, these statutory periods must be strictly complied and for petitioner's failure to do so effectively deprived the Court of jurisdiction to entertain the judicial claim.

Respondent opines that the Court in Division was correct in holding that it did not acquire competence to take cognizance of the instant petition as the judicial claim was premature for failure of petitioner to submit complete supporting documents within the 120 day period granted unto respondent to act in her level.

Petitioner was unable to submit to respondent the certification from the Office of the Board of Investment (BOI), the Department of Finance (DOF), and the Bureau of Customs (BOC) indicating that it did not file any similar claim for refund covering the same period, which documents are among the vital requirements under RMO No. 53-98. While petitioner offered in evidence a certification from the DOF which states that the applicant had no similar previous application for tax credit, the said certification pertains to an entity with a business address different from that of petitioner. Besides, it is insufficient in the absence of a similar certification from the BOI and the BOC.

In addition, Revenue Audit Memorandum Order (RAMO) dated January 11, 1991, and Revenue Memorandum Order (RMO) No. 40-94 provide that the administrative claim is considered received by respondent only upon receipt of all the required documents. Under the obtaining circumstance, petitioner's administrative claim for refund must be deemed not perfected, hence, there can be no inaction or denial on the part of respondent that can be elevated to the Court.

Respondent also points out that petitioner's administrative claim was erroneously filed at Revenue District Office No. 57, San Pedro Laguna, addressed to the Department of Finance attention to a certain Myrna S. Leonida, who had no authority to receive such claim for refund. Only the respondent can legally entertain such claim. This being the case, the administrative claim must be deemed not filed rendering the subsequent judicial claim premature.

As to the other requirements, respondent contends that petitioner was unable to prove that the alleged input taxes which are subject of the refund are directly attributable to its zero-rated transactions. It was also not certain if they pertain to only domestic purchases of goods and services alone. This is not to mention that there are discrepancies in the Audit Report itself. For these reasons and considering that tax refunds are construed strictly against the claimant, the Court in Division rightly dismissed the case.

In rejecting the respondent's arguments, petitioner moved to expunge from the record the issues raised by respondent through its Motion To Expunge Irrelevant Allegations In Respondent's Memorandum With Motion To Admit Attached Reply Memorandum dated September 07, 2011. According to petitioner, the sole issue in the instant appeal is whether the submission of incomplete supporting documents at the administrative level rendered the judicial claim before this Court dismissible for lack of jurisdiction.

After the parties traded pleadings, the Court *En Banc* denied petitioner's Motion to Expunge, but admitted its Reply Memorandum.[2]

In its Reply, petitioner insists that respondent is in error in maintaining that the administrative claim for the 1st quarter should have been filed on March 31, 2009 while on June 30, 2009 for the 2nd quarter. Petitioner posits that there is sufficient compliance with the law if the administrative claim is filed within 2 years from the quarter concerned as in the present case filed on May 15, 2008.

In support of its argument petitioner cites a stream of cases wherein this Court allegedly ruled that non-submission of complete documents within the 120-day period does not make the judicial appeal dismissible.

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[2] Resolution dated December 07, 2011.

From the foregoing exchange of views it appears that there are only two core issues for the determination of the Court *En Banc,* the first, (1). whether petitioner seasonably filed its judicial claim for refund; and the second, (2). whether petitioner was unable to substantiate its administrative claim for refund by failing to submit the required documents that would allow respondent to act on it.

On the first issue, Section 112 of the NIRC, as amended is instructive. It reads as follows:

> 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 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 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. x x x

Clear from the foregoing provision that the two-year prescriptive period for the filing of the administrative claim for refund of input VAT with respondent commences from the close of the taxable quarter when the relevant sales were made. This provision has long been revisited in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao (Formerly Southern Energy Quezon, Inc.).*[3]

In her level, respondent has 120 days from the filing of such application for refund within which to act based on the supporting documents supplied by the applicant. From receipt of the adverse decision or from the lapse of the 120-day period without any action from respondent, as in this case, the aggrieved taxpayer has 30 days, within which to assail the adverse decision or elevate respondent's inaction to the Court. The Supreme Court had put to rest any controversy on the application of the cited prescriptive period in the case of

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[3] G.R. No. 172129, September 12, 2008.

Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.[4] *(Aichi case)*, in this wise:

> 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 for 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, 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.
>
> 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

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[4] G.R. No. 184823, October 06, 2010.

> 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.

The present claim for refund or tax credit covers input VAT incurred for the 1st and 2nd quarters of calendar year 2007. Reckoned from March 31 and June 30, the close of the pertinent taxable quarters of year 2007, petitioner had until March 31, 2009 and June 30, 2009, respectively, within which to file its administrative claim with respondent. Therefore, there is no escaping the fact that petitioner's administrative claim for refund or issuance of tax credit certificate was seasonably filed with the BIR on May 15, 2008.

The same is however not true with the judicial action taken by petitioner via the Petition for Review filed with the Court in Division. It appearing that respondent failed to act on the claim for refund in her level within the 120-day period, the last day of which was on September 12, 2008, petitioner had 30 days or until October 12, 2008, to question such inaction before the Court. But for reason only known to it, petitioner filed its Petition for Review before the Court in Division only on January 23, 2009, effectively depriving it of competence to entertain the judicial action.

Time and again, it has been ruled that the Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[5] This is so because jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[6] Having declared the court *a quo* without jurisdiction over the subject matter of the instant case, any further disquisition would be *obiter dictum*.[7]

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[5] Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 05, 2010.
[6] Sales v. Barro, G.R. No. 171678, December 10, 2008, SCRA 456, citing Venancio Figueroa y Cervantes v. People, G.R. No. 147406, July 14, 2008, 558 SCRA 63.
[7] Asia International Auctioneers vs. Parayno, G.R. No. 163445, December 18, 2007.

To be sure, the Court cannot subscribe to petitioner's contention that the 120-day should commence on August 28, 2008, or the date when it filed its last supporting document with respondent. Section 112 of the Tax Code is very explicit without any provision for suspension or extension of the 120-day prescriptive period. When the language of the law is clear and explicit, there is no room for interpretation, only application.[8] To give way to this interpretation of petitioner is to render the prescriptive periods under Section 112 toothless. Obviously this gives any taxpayer unlimited discretion to indefinitely extend the 120-day period by simply filing additional documents on the pretext that they are additional substantiation to its administrative claim for refund.

It must be stressed at this point that tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same.[9]

Anent the second issue, the Court *En Banc* is in unison with the Court in Division in saying, thus:

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[8] Joselito R. Mendoza vs. Commission on Elections and Roberto M. Pagdanganan, G.R. No. 191084, March 25, 2010.
[9] Philippine Geothermal vs. Commissioner of Internal Revenue, G.R. No. 154028, July 29, 2005.

A careful examination of the evidence on record shows that petitioner failed to prove that it has submitted the complete supporting documents to warrant the granting of the application for tax refund and to reckon the commencement of the 120-day period for the BIR Commissioner to decide its claim for refund, more particularly the submission of the required Summary List of Local Purchases and the certifications from the Office of the Board of Investment, Bureau of Customs, and the Office of the PEZA that the subject taxpayer has not filed any similar claim for refund cover the same period.

Pursuant to the aforequoted *Section 112 (C) of the NIRC of 1997, as amended,* the CIR has 120 days from the submission of the complete supporting documents to decide the claim for refund. Thus, a taxpayer must first submit the complete supporting documents before the 120-day period should commence. The BIR Commissioner cannot decide the claim for refund without the complete supporting documents.

Considering that petitioner failed to submit to the BIR the required complete supporting documents, we find the filing of the instant Petition for Review with this Court premature.

Well settled is the rule that exhaustion of available administrative remedies is a condition precedent before taking judicial action.

In the case of *Lopez vs. City of Manila, 303 SCRA 458,* the Supreme Court ruled that where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts.

WHEREFORE, the Petition for Review filed by petitioner Pilipinas Total Gas, Inc. on May 10, 2011, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my *Dissenting Opinion* on the assailed Decision dated January 13, 2011)
LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice