Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8089

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, JJ.

Promulgated:

APR 14 2011 2:00 P.M.

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RESOLUTION

This resolves respondent's Motion to Dismiss filed on March 9, 2011, with petitioner's Comment (To: Motion to Dismiss) dated March 28, 2011, praying that the Petition for Review filed by petitioner be dismissed for lack of jurisdiction.

Respondent argues that this Court has no jurisdiction to try the instant case on the ground that the judicial claim was prematurely filed pursuant to the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi Case).[1] According to respondent, the Petition for Review was filed with the Court of Tax Appeals (CTA) thirty-five (35) days after petitioner filed its administrative claim which was in contravention of the provision of Section 112 (C) of the 1997 Tax Code, as

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

amended and the same was tantamount to a wanton disregard of the doctrine of exhaustion of administrative remedies.

On the other hand, petitioner counters that the respondent's insistence on the application of the Aichi case is contrary to due process and violated the vested rights of petitioner. Petitioner claims that at the time the instant Petition for Review was filed, the applicable law and jurisprudence allowed the filing of both the administrative and judicial claims for refund or credit of input VAT with the Bureau of Internal Revenue (BIR) within two (2) years from the close of the taxable quarter when the sales were made. Petitioner further argues that respondent is now estopped to question the jurisdiction of the court after the issues have been joined and all defenses have been asserted beforehand; hence, other defenses raised at this point are deemed waived. Lastly, petitioner claims that the exception to the doctrine of exhaustion of administrative remedies should be applied in the instant case.

After a careful evaluation of the arguments, this Court finds respondent's motion meritorious.

As correctly pointed out by respondent, the applicable jurisprudence in the instant case is the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., which reiterated the ruling in the case of Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, (Mirant case),[2] where the Supreme Court held that:

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

"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 on Input Tax.-
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> xxxx
>
> (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 (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 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 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.

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> In fine, 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."

Based on the aforequoted decision, the 120-day period must be observed before filing a judicial claim pursuant to the provision of Section 112 (D) of the Tax Code, as amended; otherwise, the taxpayer runs the risk of having the judicial claim dismissed by the CTA on the ground of premature filing.

In the instant case, petitioner filed its administrative claim for tax credit/refund for the 1st , 2nd , 3rd and 4th quarters of 2008 with the One Stop Shop Center of the Department of Finance on March 15, 2010 and its judicial claim with the CTA on April 20, 2010, with only an interval of thirty-five (35) days. Thus, the Petition for Review filed with the CTA on April 20, 2010 was prematurely filed and, therefore, will necessarily result in its dismissal due to premature filing. Hence, petitioner's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as the administrative and judicial claims are filed within the 2-year prescriptive period has no legal basis.

With respect to the contention of petitioner that respondent is estopped from questioning the jurisdiction of the court, the same deserves scant consideration. The ground to dismiss based on lack of jurisdiction may be raised anytime even on appeal. Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at anytime when it appears from the pleadings or the evidence on record that any of the grounds exists, even if they were not raised in the answer or in a motion to dismiss.[3]

Lastly, petitioner argues that the doctrine of exhaustion of administrative remedies should be applied in the instant case; however, it only offered vague and general averments unsupported by allegations of fact or law which would prima facie bring its case within any of the accepted exceptions to the rule. In this case, petitioner merely enumerated the exceptions to the non-exhaustion of administrative remedies without pointing, specifically, which one of those mentioned exceptions would be applicable to it. Hence, there is no sufficient basis for petitioner to invoke its exception to the rule on exhaustion of administrative remedies which may be considered by the Court in deciding this case.

In light of the foregoing recent Decision, We have no option but to uphold and apply the ruling of the Supreme Court, it being the ultimate arbiter of justifiable controversy.

> "The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings."[4]

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[3] Fernanda Geonzon vda. de Barrera and Johnny Oco, Jr. vs. Heirs of Vicente Legaspi, represented by Pedro Leagaspi, G.R. No. 174346, September 12, 2008

[4] Commissioner of Internal Revenue vs. Michael J. Lhuiller Pawnshop, Inc., G.R. No. 150947, July 15, 2003, citing the case of GSIS vs. Court of Appeals, 334 Phil. 163, 175; 266 SCRA 187 (1997)

WHEREFORE, premises considered, respondent's Motion to Dismiss is hereby **GRANTED** and the Petition for Review dated April 20, 2010 is hereby **DISMISSED** due to premature filing.

SO ORDERED.

J. C. Castaneda Jr.
JUANITO C. CASTANEDA, JR.
Chairperson

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro Grulla
CIELITO N. MINDARO GRULLA
Associate Justice