REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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PAN CENTURY SURFACTANTS, INC., Petitioner,	**CTA CASE NO. 8210**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 02 2012 9:30 a.m.

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RESOLUTION

For resolution is respondent's **"MOTION TO DISMISS"** filed on November 10, 2011, without petitioner's Comment/Opposition, despite notice.

Respondent moves for the dismissal of the instant *Petition for Review* on the ground of lack of jurisdiction for failure on the part of petitioner to file its petition for review within the period provided by law.

In support of her *Motion*, respondent states that the specific provision of law governing the period for filing judicial claims of excess unutilized input taxes attributable to zero-rated sales is Section 112(D) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "**Section 112**. *Refunds or Tax Credits of Input Tax.* –
>
> (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 Subsection (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)

To further boost its claim, respondent cites the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[1] According to the respondent the Supreme Court, in that case, held that the non-observance by the taxpayer of the periods provided in Section 112 of the NIRC of 1997 is fatal.

This Court agrees with respondent.

To begin with, it is noteworthy that the instant Petition for Review is being brought by the petitioner pursuant to Section 112 of the NIRC.[2] Thus, respondent is correct when she contends that the specific provision governing the period for filing judicial claims of excess/unutilized input tax attributable to zero-rated sales is Section 112(D) of the NIRC, as amended.

As held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[3], Section 112(D) of the NIRC clearly provides that 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-

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[1] G.R. No. 184823, October 6, 2010
[2] Docket, p. 5
[3] *Supra.*

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.

A perusal of the records reveal that petitioner's administrative claims for refund of its alleged erroneously paid input VAT for the periods covering April to June 2008 and July to December 2008 were filed on September 9, 2008 and April 1, 2009, respectively. Thus, counting 120 days from the filing of the said administrative claims, respondent has until January 7, 2009 and July 30, 2009, respectively, within which to act thereon. Considering that respondent has not responded to petitioner's administrative claims for refund within the 120-day period, petitioner then has 30 days or until February 6, 2009 and August 31, 2009[4], respectively, within which to file its appeal before this Court pursuant to Section 112(D) of the NIRC, as amended. Considering, further, that the instant *Petition for Review* was filed only on December 29, 2010, the same was made beyond the thirty-day period required under Section 112 (D) of the NIRC, amended.

WHEREFORE, premises considered, respondent's *Motion to Dismiss* is hereby **GRANTED**. Accordingly, the instant *Petition for Review* is hereby **DISMISSED** for being filed out of time.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

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[4] August 29, 2009 fell on a Saturday