REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

HEDCOR SIBULAN, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8166

Members:

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

Promulgated:
APR 1 2 2011 3:30 p.m.

x- x

RESOLUTION

For resolution are respondent's **"Motion to Dismiss"** filed on March 9, 2011 and petitioner's **"Comment/Opposition (Re: Respondent's Motion to Dismiss dated March 4, 2011)** filed on April 5, 2011.

In its motion, respondent moves for the dismissal of the case on the ground that the premature filing by petitioner of its judicial claim for refund amounts to lack of jurisdiction. In support thereof, respondent cites the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[1]

---

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

On the other hand, petitioner counter argues the following:

a. Non-exhaustion of administrative remedies does not necessarily result in the dismissal of action as a matter of course;

b. The Tax Code; Regulations and Circulars issued by the respondent; and jurisprudence expressly confirm that the 120-day period under Section 112(D), Tax Code, was not considered mandatory and jurisdictional and that Section 229, Tax Code, should still be complied with; and

c. The prospective application of the Aichi Doctrine in this case is reasonable and founded on the Civil Code, and prevailing jurisprudence.

Based on the arguments of both parties, We resolve in favor of respondent.

Jurisdiction is a matter of substantive law because it is conferred by law. In this light, Section 7 of Republic Act (RA) No. 1925 as amended by RA No. 9282 defines the appellate jurisdiction of this Court. The said provision of law provides:

> "SEC. 7. Jurisdiction – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeals herein provided:
>
> xxx xxx xxx
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;"

One of the inactions contemplated under the said law is found under Section 112 of the 1997 Tax Code, as amended by RA No. 9337 which reads:

"**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 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.**

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 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. xxx"

Based on the foregoing provision of law, a taxpayer has two years from the close of the taxable quarter within which the sale were made, to apply for tax refund or credit with the Commissioner of Internal Revenue (CIR). The CIR, in turn, has one hundred twenty (120) days to decide the claim. Should the CIR deny the claim within the 120-day period or fails to act upon the claim, the taxpayer may, within thirty (30) days from the denial or inaction, appeal the claim before this Court.

The 120-day period provided under Section 112 of the 1997 Tax Code, as amended, is a mandatory requirement. Non-compliance thereof will result to the dismissal of the case on the ground of lack of jurisdiction. In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* [2], the Supreme Court ruled, to quote:

> 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.
>
> xxx xxx xxx
>
> **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**

[2] *Supra*, note 1. Resolution, December 6, 2010.

> **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.**
>
> With regard to Commissioner of Internal Revenue v. Victorias Milling, Co., Inc. relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
>
> **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.** (*Emphasis supplied.*)

In this case, petitioner filed its administrative claim for refund on June 25, 2010 and filed its judicial claim on September 30, 2010. In other words, petitioner filed its judicial claim ninety-six (96) days after it filed its administrative claim for refund. Clearly, the 120-day period provided under the law and jurisprudence is not complied; which would warrant the dismissal of this case for lack of jurisdiction.

With respect to petitioner's argument on the prospective application of the *Aichi doctrine*, We find the same untenable. The instant case falls within the coverage of the 1997 Tax Code, as amended, which took effect on January 1, 1998. In the *Aichi case*, the Supreme Court merely made an outright application of the terms of Sections 112(A) and (D) of the said Code. The Supreme Court's application thereof is part of the said law as of the date of its enactment since it merely establishes the contemporary legislative intent that the construed law purports to carry into effect.[3]

WHEREFORE, premises considered, the instant **"Petition for Review"** is **DISMISSED** for being prematurely filed.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

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

---

[3] Phil. Constitution Association vs. Enriquez, G.R. No. 113105, August 19, 1994.