REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8110

Members:

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

Promulgated:

MAR 28 2011 8:30 A.M.

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RESOLUTION

For resolution is respondent's **"Motion to Dismiss"** filed on March 8, 2011 with petitioner's **"Comment"** filed on March 11, 2011.

Respondent claims that the filing of the instant Petition for Review is premature for petitioner violated Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. As such, respondent moves that the instant case be dismissed for lack of jurisdiction.

On the other hand, petitioner moves for the denial of the motion to dismiss on the following grounds: (a) the motion was filed late; (b) respondent waived her defense of premature filing of the Petition for Review; and (c) assuming that the motion was not filed late, still it should be denied because the Petition for Review was not prematurely filed on the basis of prevailing jurisprudence that petitioner relied upon in good faith at the time it filed the Petition for Review.

Petitioner posits that the non-compliance of the 120-day period is dismissible for failure to state a case of action and respondent waived her right to raise the said defense when she failed to raise the same in her Answer and that the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[1] *(Aichi case)*, which is the basis of respondent's motion, should be applied prospectively.

This Court cannot agree with petitioner. In the aforesaid *Aichi case*[2], the Supreme Court stated:

> **"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.**
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> xxx xxx xxx
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> 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.
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> 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 phrase "within two (2) years x x x apply

[1] G.R. No. 184823, October 6, 2010.
[2] *Supra*, note 1.

> 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.
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> xxx xxx xxx
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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"** (Emphases supplied)

Pursuant to Section 112 of the NIRC of 1997, as amended, and the aforequoted ruling, a party adversely affected by the inaction of the Commissioner of Internal Revenue with respect to tax refund for excess or unutilized input VAT, may appeal his case with this Court within 30 days after the expiration of the 120-day period. On the other hand, judicial recourse on the part of the taxpayer without waiting for the lapse of the 120-day period would warrant the dismissal of the action for lack of jurisdiction.

In this case, petitioner filed its administrative claim for refund on June 16, 2010 and its judicial claim before this Court on June 24, 2010. The judicial claim was filed only upon the lapse of 8 days from the filing of the administrative claim. As such, the premature filing of this case warrants its dismissal for lack of jurisdiction.

With respect to petitioner's allegation that respondent had already waived her right to raise the defense of prematurity; courts are bound to take notice of the limits of their authority and they may, by their motion, even though the question is not raised by the pleadings or not even suggested by counsel, recognized the want of jurisdiction and act accordingly by staying proceedings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[3]

Furthermore, a cursory reading of the *Aichi case* would show that it merely made an outright application of Section 112(A) and (D) of the NIRC of 1997, as amended; hence, it should be applied immediately. A court's interpretation of the law is part of the law as of the date of its enactment since the court's interpretation merely establishes the contemporary legislative intent that the construed law purports to carry into effect.[4]

WHEREFORE, the Motion to Dismiss is hereby **GRANTED** and the instant petition for review is **DISMISSED** for lack of jurisdiction.

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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[3] Ace Publications, Inc. vs. Commissioner of Customs, *et. al.*, G.R. No. L-18808, May 29, 1964.
[4] Philippine Constitution Association, *et. al.* vs. Enriquez, *et. al.*, G.R. No. 113105, August 19, 1994.