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. 8003

Members:

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

Promulgated:

APR 0 1 2011 10:00 a.m.

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RESOLUTION

This resolves respondent's "**Motion To Dismiss**" filed on February 24, 2011, with petitioner's "**Comment (On Respondent's Motion to Dismiss)**" filed on March 11, 2011.

Respondent prays that the instant petition for review be dismissed on the ground of lack of jurisdiction.

Respondent argues that this Court has no jurisdiction to act upon the instant petition since the filing thereof was premature and in contravention with the provisions of Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner's judicial claim on December 2, 2009 was filed only forty (40) days after it filed its administrative claim with the One Stop Shop Center of the Department of Finance on October 23, 2009. In support of her contention, respondent cites the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc (Aichi case)*[1] wherein the Supreme Court held that "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."

Respondent further argues that petitioner's filing of the judicial claim without waiting for the expiration of the 120-day period is tantamount to a wanton disregard of the doctrine of exhaustion of administrative remedies.

Finally, respondent avers that tax refunds are a derogation of the State's taxing power; hence, like tax exemptions they are construed strictly against taxpayers and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.

On the other hand, petitioner counters that the motion to dismiss was filed late pursuant to Section 1, Rule 16 of the Rules of Court, as amended, because it was filed after the filing of the Answer, after the pre-trial was concluded, after petitioner had completed presenting its evidence, and after petitioner had made its formal offer of evidence and was admitted by this Court.

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

Petitioner also agues that respondent is deemed to have waived her defense of premature filing because she failed to raise the same as a special and affirmative defense in her Answer. It is noteworthy that section 1, Rule 9 of the Rules of Court, as amended, provides in part, that: "*[D]efenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived*".

Petitioner further claims that before the promulgation of the *Aichi case*, this Court had consistently ruled that a claim for refund or tax credit of excess and unutilized input Value Added Tax (VAT) is timely filed as long as both the administrative claim and the judicial claim are filed within the two-year prescriptive period. Petitioner continues that when the instant petition for review was filed on December 2, 2009, the aforementioned ruling was then prevailing. Had it waited for the lapse of the 120-day period (from the filing of the administrative claim on October 23, 2009), it could have filed the petition only between February 21 and March 22, 2010, which is already way beyond the two-year prescriptive period.

Lastly, petitioner argues that since the law is anchored on fair play and justice, the ruling in the *Aichi case* should not be applied retroactively to cases that were filed prior to its promulgation on October 6, 2010.

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

The ground to dismiss based on lack of jurisdiction may be raised anytime, pursuant to Section 1, Rule 9, of the Rules of Court. Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.[2] Thus, respondent is not precluded from raising such ground to dismiss the instant case at this stage of the proceedings.

Anent the determination of whether or not the instant petition was prematurely filed, the Supreme Court in the more recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc (Aichi case)*[3] held 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.

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[2] Fernanda Geonzon vda. De Barrera and Johnny Oco, Jr. vs. Heirs of Vicente Legaspi, represented by Pedro Legaspi, G.R. No. 174346, September 12, 2008.
[3] *Supra*, note 1.

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 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 the instant case, it is undisputed that petitioner did not exhaust the 120-day period provided under Section 112(C) of the NIRC of 1997, as amended. Petitioner filed the instant judicial claim on December 2, 2009 or forty (40) days after it filed its administrative claim for refund or tax credit on October 23, 2009. In other words, the judicial claim was filed eighty days (80) days earlier prior to the expiration of the 120-day period on February 20, 2010. Accordingly, following the ruling in the *Aichi case*, this Court has not acquired jurisdiction over the instant case for having been prematurely filed.

As to petitioner's allegation that it merely followed in good faith the prevailing rulings of this Court prior to the promulgation of the *Aichi case*, suffice it to say that this Court has to bend to the principle of *stare decisis*.

The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines which provides, thus:

> "ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

The doctrine enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[4]

In time, this Court sees no reason to depart from the judicial pronouncement in the *Aichi case*.

WHEREFORE, premises considered, respondent's ***Motion to Dismiss*** is hereby **GRANTED**. Accordingly, the Petition for Review docketed as CTA Case No. 8003 is **DISMISSED** for having been prematurely filed.

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] Lazatin, *et al.* vs. Desierto, G.R. No. 147097, June 5, 2009 .