REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HARTE-HANKS PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 8124**
	Members:
-versus-	**CASTAÑEDA,** *Chairperson* **CASANOVA,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 0 1 2011 2:20 P.M.

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RESOLUTION

This resolves respondent's "**Motion to Dismiss for Lack of Jurisdiction**" filed on March 28, 2011, with petitioner's "**Comment/ Opposition (To Respondent's Motion to Dismiss for Lack of Jurisdiction)**" filed on April 29, 2011.

Respondent seeks the dismissal of the present case on the ground that the Court has no jurisdiction over the subject matter since petitioner filed its Petition for Review before the lapse of the 120-day period granted by Section 112(C) of the National Internal Revenue Code (NIRC) of 1997 to act on a taxpayer's claim for refund or issuance of tax credit certificate of unutilized/excess input Value Added Tax (VAT). Thus, no inaction can be attributed to respondent over which the court can take cognizance.

Petitioner counters that the administrative and judicial claims must be filed within the two-year period under Section 229 of the NIRC of 1997. It asserts that if the two-year period is to lapse soon, a taxpayer may file his judicial claim for VAT refund even though the 120-day period for respondent to act on the administrative claim is still on-going.

We agree with respondent.

Section 112(A) and (C) of the NIRC of 1997 explicitly provides:

> (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 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:
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> x x x x
>
> (C) *Period within which to 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 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 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.*]

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[1](**Aichi**), the Supreme Court ruled that the premature filing of a Petition for Review before this Court in claims for refund or credit of input VAT warrants a dismissal inasmuch as no jurisdiction was acquired by this Court. The rationale for this rule was explained by the Supreme Court 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.
>
> 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.

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

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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." (*Emphasis and underscoring supplied.*)

Likewise the Supreme Court laid down that respondent 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 respondent, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of respondent's decision. However, if after the 120-day period respondent fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of respondent to this Court within 30 days.

In the present case, it is clear that petitioner failed to comply with the "120-30" day period. Records of the case show that petitioner filed its administrative claim for refund on March 23, 2010 and thereafter filed its Petition for Review on June 29, 2010 or before the lapse of the 120-day period on July 21, 2010. Consequently, the instant Petition for Review was prematurely filed and this Court lacks jurisdiction.

Time and again, this Court has ruled that being a court of special jurisdiction, "it can only take cognizance of matters as are within its jurisdiction."[2] As the Court has no jurisdiction to decide the present case on the merits for petitioner's failure to comply with Section 112(C) of the NIRC of 1997, the Court has no other alternative but to GRANT respondent's Motion to Dismiss.

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[2] *Ker & Company, Ltd. v. Court of Tax Appeals, et. al.*, G.R. No. L-12396, January 31, 1962.

WHEREFORE, premises considered, the petition for review is hereby **DENIED** for being 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