REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

PROCTER & GAMBLE ASIA, PTE. LTD., Petitioner,	**C.T.A. CASE NOS. 7581 & 7639**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 17 2010 4:30 p.m.

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DECISION

UY, J.:

This case is a consolidation of two (2) Petitions for Review filed by petitioner, Procter and Gamble Asia, Pte. Ltd., against respondent, Commissioner of Internal Revenue, seeking the refund or issuance of tax credit certificate in its favor of its alleged unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to zero-rated sales for the periods covering January 2005 to March 2005 in C.T.A. Case No. 7581 and April 2005 to June 2005 in C.T.A. Case No. 7639, detailed as follows:

CTA Case No.	Period Covered	Amount of Claim
7581	January to March 2005	₱ 23,090,729.17
7639	April to June 2005	19,006,753.58
	TOTAL	**₱ 42,097,482.75**

THE FACTS

Culled from the parties' pleadings, evidence on record, and as stipulated by the parties, these are the facts of the case.

Petitioner, Procter and Gamble Asia, Pte., Ltd., is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarter in the Philippines, with office address at the 18/F Petron Megaplaza, 358 Sen. Gil Puyat Ave., Makati City. It provides management, marketing, technical and financial advisory, and other qualified services to related companies as specified by its Certificate of Registration and License issued by the Securities and Exchange Commission.[1] It is a VAT-registered taxpayer and is covered by Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.[2]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the duty to act upon and approve claims for refunds or tax credits as provided by law. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

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[1] Exhibit "A"; Paragraph 1, Admitted Facts by Petitioner and Respondent, Consolidated Joint Stipulation of Facts and Issues (CJSFI), Docket, p. 239.
[2] Exhibit "B".

Petitioner filed its Monthly VAT Declarations and Quarterly VAT Returns on the following dates:[3]

VAT RETURN/DECLARATION	DATE FILED (ORIGINAL)	DATE FILED (AMENDED)	EXHIBIT
January (Monthly)	February 21, 2005		E
February (Monthly)	March 18, 2005		F
Ending March (Quarterly)	April 25, 2005	March 19, 2007	I and J
April (Monthly)	May 20, 2005		G
May (Monthly)	June 21, 2005		H
Ending June (Quarterly)	July 26, 2006	March 20, 2007	K and L

On March 22, 2007 and May 2, 2007, petitioner filed applications and letters addressed to the BIR Revenue District Office (RDO) No. 49, requesting the refund or issuance of tax credit certificates of its input VAT attributable to its zero-rated sales covering the taxable periods of January 2005 to March 2005, and April 2005 to June 2005, respectively.[4]

Considering that petitioner's claims for refund or tax credit remain unresolved by the Commissioner of Internal Revenue, petitioner filed two separate Petitions for Review before this Court, as follows:

1) ***CTA Case No. 7581*** was filed on March 28, 2007 seeking the refund or the issuance of a tax credit certificate in the amount of ₱ 23,090,729.17, representing petitioner's input VAT paid on goods or services attributable to its zero-rated sales for the taxable period covering January 2005 to March 2005;

2) ***CTA Case No. 7639*** was filed on June 8, 2007 seeking the refund or the issuance of tax credit certificate in its favor in the amount of ₱ 19,006,753.58 representing petitioner's unutilized input VAT paid on goods and services

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[3] Paragraphs 4-11, Admitted Facts by Petitioner and Respondent, CJSFI, Docket, p. 240.
[4] Exhibits "V", "V-1", "W", and "W-1"; Paragraph 12, Admitted Facts by Petitioner and Respondent, CJSFI, Docket, p. 240.

attributable to its zero-rated sales for the taxable period from April 2005 to June 2005.

In the separate Answers filed on May 28, 2007 for C.T.A. Case No. 7581[5] and on August 30, 2007 for C.T.A. Case No. 7639[6], respondent similarly interposes the following Special and Affirmative Defenses, summarized as follows:

1. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/ examination by the respondent's Bureau;

2. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

3. Petitioner's claim for refund or issuance of tax credit certificate in the amounts of : **P23,090,729.17 in C.T.A. Case No. 7581,** and **P19,006,753.58** in **C.T.A. Case No. 7639,** as its alleged unutilized input VAT attributable to its zero-rated sales of goods and services for the taxable periods from January to March 2005, and from April to June 2005, respectively, were not fully substantiated by proper documents;

4. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

5. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT;

6. The amount subject of the claim for refund do not pertains in full to its input VAT attributable to its zero-rated sales of goods and services for the period covering January to March 2005;

7. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the Tax Code;

8. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund;

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[5] CTA Case No. 7581, Docket, Vol. I, pp. 179-180.
[6] CTA Case No. 7639, Docket, pp. 164-167.

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue 124 SCRA 1211)***.

On July 30, 2007, this Court granted petitioner's Motion to Consolidate CTA Case No. 7581 with 7639, inasmuch as the two cases involve the same parties and common questions of law and/or facts.[7]

After pre-trial held on October 18, 2007[8], the parties filed their Consolidated Joint Stipulation of Facts and Issues on October 31, 2007[9], which was subsequently approved in the Resolution dated November 14, 2007.[10]

During trial, petitioner presented testimonial and voluminous documentary evidence primarily aimed at proving its supposed entitlement to the refund or issuance of a tax credit certificate representing petitioner's alleged unutilized input taxes for the period covering January 2005 to June 2005. On the other hand, respondent submitted the case for decision based on the pleadings for lack of investigation report, as the claim for refund of petitioner was still pending before the BIR Revenue District Office No. 40.[11]

In the Resolution dated December 2, 2009[12],, these cases were submitted for decision taking into consideration petitioner's Memorandum filed on November 6, 2009 only as respondent failed to file her Memorandum.

Hence, this Decision.

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[7] Resolution dated July 30, 2007, CTA Case No. 7639, Vol. 1, p.207.
[8] Minutes of Pre-trial held on October 18, 2007, Docket, Vol. 1, p. 238
[9] Docket, C.T.A. Case No. 7581, Vol. I, pp. 239-242.
[10] Docket, C.T.A. Case No. 7581, Vol. I, p. 256.
[11] Minutes of the hearing held on October 7, 2009, C.T.A. Case No. 7581, Vol. II, Docket, p. 1408.
[12] C.T.A. Case No. 7581, Vol. II, Docket, p. 1426.

THE ISSUES

As jointly stipulated by the parties, these are the submitted issues for the resolution of this Court :

"1.) Whether or not petitioner's sales of services are zero-rated for VAT purposes under Section 108(B)(2) of the 1997 Tax Code.

2.) Whether or not petitioner has carried-over to the succeeding taxable quarter or quarters the alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales for the periods covering January 2005 to March 2005 and April 2005 to June 2005.

3.) Whether or not the amounts of **Php23,090,729.17** and **Php19,006,753.58** being claimed by petitioner as unutilized input VAT for the period covering January 2005 to March 2005 and April 2005 to June 2005, respectively, pertains in full to its zero-rated sales of services.

4.) Whether or not petitioner's sales of services to non-resident foreign corporations qualify as zero-rated sales.

5.) Whether or not petitioner complied with the substantiation requirements prescribed under Revenue Regulation No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

6.) Whether or not petitioner is entitled to its claimed refund or tax credit in the amounts of **Php23,090,729.17** and **Php19,006,753.58**, as alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales, for the periods covering January 2005 to March 2005 and April 2005 to June 2005, respectively[13]."

Being closely intertwined, We simplify the foregoing issues as follows: Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in its favor in the amounts of : ₱ 23,090,729.17 in C.T.A. Case No. 7581, and ₱ 19,006,753.58 in C.T.A.Case No. 7639, representing petitioner's alleged unutilized input VAT paid on purchases of goods and services attributable to zero-rated sales

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[13] Paragraphs 1-6, Issues To Be Resolved, CJSFI, C.T.A. Case No. 7581, Vol. I, Docket, p. 241.

for the periods covering January 2005 to March 2005, and April 2005 to June 2005, respectively, pursuant to Sections 110 and 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

THE COURT'S RULING

In these consolidated cases at bench, petitioner seeks the refund or issuance of tax credit certificate of its unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the taxable quarters covering January to March 2005, and April to June 2005 broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
7581	January to March 2005	₱ 23,090,729.17
7639	April to June 2005	19,006,753.58
	TOTAL	**₱ 42,097,482.75**

The basis for the filing of petitioner's claims for the refund/ issuance of tax credit certificates of its Input VAT allegedly arose from its purchases of goods from VAT registered suppliers, as well as purchases of services from VAT registered service providers,[14] attributable to petitioner's zero-rated sales allegedly arising from services it rendered to its affiliates in the Philippines and abroad pursuant to Service Agreements with said affiliates. The affiliates abroad to whom petitioner renders services by virtue of their Service Agreements are allegedly entities whose businesses are conducted outside of the Philippines. These services which are allegedly paid for in acceptable foreign currency and accounted for in accordance with the rules of the Bangko Sentral Ng Pilipinas (BSP), are transactions allegedly subject to zero percent (0%) rate by virtue of Section 108 (B) of the National Internal Revenue Code, as amended.

[14] Petition for Review: CTA Case No. 7581, Docket, Vol. I, pp.6; CTA Case No. 7639, Docket, pp.5-6.

Relative thereto, for the subject taxable quarters of fiscal year 2005, petitioner admittedly e-filed with the BIR its Original Quarterly VAT Returns for the quarters ending March 31, 2005 and June 30, 2005[15], and subsequently amended the same by way of Amended Quarterly VAT Returns for the same quarters[16], declaring, among others, zero-rated sales and input VAT on purchases of goods and services, as shown below[17] :

	3rd Quarter		4th Quarter	
Taxable sales		P 48,479,117.30		P 72,650,418.00
Zero-rated sales		399,547,952.30		575,117,751.74
Total sales		P 448,027,069.60		P 647,768,169.74
Output tax		P 4,847,911.73		P 7,265,041.80
Input tax carried over from previous quarter		P 4,628,169.62		P 2,801,711.69
Input tax from:				
Domestic purchases-Capital Goods	P -		P 393,775.56	
Domestic purchases-Goods other than Capital Goods	1,590,903.11		605,143.67	
Domestic purchases-Services	24,521,279.86		24,872,148.59	
Services rendered by Non-Resident	-	26,112,182.97	-	25,871,067.82
Total available input tax		P 30,740,352.59		P 28,672,779.51
Less: Any VAT Refund/TCC Claimed	P23,090,729.17		P19,006,753.58	
Excess input tax carried over to succeeding quarter	-	23,090,729.17	-	19,006,753.58
Net creditable input tax		P 7,649,623.42		P 9,666,025.93
Net VAT Payable		P (2,801,711.69)		P 2,400,984.13)
Tax overpayment		**P (2,801,711.69)**		**P (2,400,984.13)**

Petitioner anchors its subject claims on Section 110 of the NIRC of 1997, as amended, the pertinent provisions of which read:

"**SEC. 110.** ***Tax Credits***. –

(A) Creditable Input Tax . –

[15] Exhibits "I" and "K", respectively.
[16] Exhbits "J" and "L", respectively.
[17] Ibid.

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against output tax:

(a) Purchase or importation of goods:
xxx xxx xxx

(b) Purchase of services on which a value-added tax has been actually paid.
xxx xxx xxx

The term **'input tax'** means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the use transitional input tax determined in accordance with Section 111 of this Code.

(B) ***Excess Output or Input Tax***. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. **Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may *at his option* be refunded or credited against *other* internal revenue taxes, subject to the provisions of Section 112** (*Emphasis and underscoring supplied*)."

Clearly from the foregoing, the exercised option of petitioner to claim for the refund/issuance of tax credit for its alleged input taxes paid on its purchases of capital goods and services attributable to zero-rated sales is subject to the provisions of Section 112 of the NIRC of 1997, the pertinent provisions of which read as follows:

"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.

(B) *Capital Goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

xxx xxx xxx

(D)[18] ***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 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)*

Based on the foregoing provisions, any VAT-registered person may apply for the refund/tax credit of excess input VAT in two instances, namely: when the excess input VAT is attributable to zero-rated or effectively zero-rated sales[19]; or when the excess input VAT refer to payment for capital goods imported or locally purchased, to the extent that both input taxes have not been applied against output taxes.[20] In

[18] Changed to Section 112(C) upon effectivity of Republic Act No. 9337 on November 1, 2005.
[19] Section 112 (A) of the NIRC of 1997
[20] Section 112 (B) of the NIRC of 1997

both instances, the claim must be filed within two (2) years after the close of taxable quarter when the sales were made.

Moreover, in claiming a refund or tax credit under Section 112 (A), petitioner must comply with the following criteria:

(1) the taxpayer is VAT registered;
(2) the taxpayer is engaged in zero-rated or effectively zero-rated sales;
(3) the input taxes are due or paid;
(4) the input taxes are not transitional input taxes;
(5) the input taxes have not been applied against output taxes during and in the succeeding quarters;
(6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
(7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
(8) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
(9) **the claim is filed within two years after the close of the taxable quarter when such sales were made.**[21]

Material to petitioner's claims in these consolidated cases is the last requisite in the above enumerations – the requirement that petitioner's refund claims must have been filed within two (2) years after the close of the taxable quarter when such sales were made. However, Section 112 (A) and (B) do not specify at what level will the two-year prescriptive period apply : whether at the administrative level only, or at both levels, administrative and judicial level, relative to the filing of an application for

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[21] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009, 605 SCRA 536, at p. 555.

the refund or issuance of tax credit certificate representing input VAT attributable to zero-rated sales.

In the most recent case of ***Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.***[22], the Supreme Court held that the two-year period refers to applications for refund/credit filed with the Commissioner of Internal Revenue at the administrative level, and not to appeals filed before this Court. It clarified as follows:

> "xxx, it is clear that Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made pertaining to the creditable input VAT xxx.
>
> xxx xxx xxx
>
> (S)ubsection (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.** xxx" (*Emphasis and underscoring supplied*)

Clearly therefore, the two-year prescriptive period applies to administrative claims filed before the Commissioner of Internal Revenue for the issuance of a tax credit certificate or refund of input VAT reckoned from the close of the taxable quarter when the relevant zero-rated sales were made.

Counting the two-year prescriptive period from the close of the taxable quarters when the relevant sales or purchases were made in the instant cases, specifically on : March 31, 2005 for CTA Case No. 7581 and June 30, 2005 for

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

CTA Case No. 7639, petitioner had until March 31, 2007 and June 30, 2007, respectively, within which to file its administrative claim for refund. Evidently, the administrative claims for refund in the instant cases filed on March 22, 2007, covering the taxable quarter from January 2005 until March 2005 and May 2, 2007, covering the taxable quarter from April 2005 until June 2005, were filed with the Commissioner of Internal Revenue within the two-year prescriptive period provided by law.

However, a perusal of the records reveal that both the judicial appeals filed with this Court in CTA Case No. 7581[23], and in CTA Case No. 7639[24] were filed prematurely on March 28, 2007 and on June 8, 2007, respectively, in violation of the provisions of Section 112(D) of the NIRC of 1997, as amended, thereby resulting in petitioner's failure to exhaust administrative remedies.

In the same ***Aichi case,*** the Supreme Court interpreted the provisions of Section 112 (D) in the recent case of in this wise, and We quote:

> "***The filing of the judicial claim was premature***
>
> However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:
>
> > SEC. 112. Refunds or Tax Credits of Input Tax. -
> >
> > xxx xxx xxx
> >
> > (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**

[23] For taxable quarter from January 2005 until March 2005.
[24] For taxable quarter from April 2005 until June 2005.

> **the application filed in accordance with Subsections (A) and (B) hereof.**
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> 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.)

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 xxx 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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> xxx xxx xxx
>
> 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 Ours)*

In light of the foregoing jurisprudential pronouncements, Section 112(D) of the NIRC of 1997, as amended, directs the Commissioner of Internal Revenue to act on administrative claims for refund/applications for issuance of the tax credit certificate within a period of one hundred twenty **(120) days** from submission of complete supporting documents. Upon partial or full denial of such claim, or the expiration thereof without any action by the Commissioner on said claim, the taxpayer only has a period of thirty **(30) days** within which to seek judicial recourse from the adverse decision or inaction of the Commissioner before the Court of Tax Appeals.

Thus, it becomes incumbent upon the taxpayer-claimant to comply, not only with the two-year period within which to file a refund/tax credit claim with the Bureau of Internal Revenue, but must also give the Commissioner of Internal Revenue a period of one hundred twenty (120) days to either partially or fully deny the claim.

Subsequently, upon denial of the claim, or after the expiration of the 120 day without any action by the Commissioner thereon, only then may the taxpayer-claimant seek judicial recourse to appeal the Commissioner's action or inaction on a refund/tax credit claim, within a period of 30 days therefrom.

In the cases at bench, the following dates must be considered in determining whether or not petitioner's judicial claims were properly and timely filed within the prescriptive periods mentioned in Section 112 of the NIRC of 1997, as amended:

CTA Case No.	Period Covered (2005)	Date of filing the Administrative Claim for Refund	Date of filing the Petitions for Review	Date of Expiration of the 120-day period
7581	January-March	March 22, 2007	March 28, 2007	July 20, 2007
7639	April-June	May 2, 2007	June 8, 2007	August 30, 2007

From the foregoing facts, it appears that the instant judicial claims filed on March 28, 2007 (CTA Case No. 7581) and June 8, 2007 (CTA Case No. 7639) reckoned from the filing of the applications at the administrative level on March 22, 2007 and May 2, 2007 were prematurely filed, being only six (6) days and thirty-seven (37) days, respectively away from the filing of its administrative claims. In fact, in the Answers filed by respondent herein, it is raised, as one of respondent's special and affirmative defenses, that petitioner's alleged claims for issuance of tax credit certificate were still subject to administrative routinary investigation/ examination by the respondent's Bureau;

Indubitably, petitioner miserably failed to observe the 120-day period under Section 112(D) of the NIRC of 1997, as amended, to give the Commissioner of Internal Revenue the opportunity to act on its refund claim. Correspondingly, the premature filing of the instant cases warrants a dismissal inasmuch as no jurisdiction was acquired by this Court.

WHEREFORE, in view of the foregoing considerations, the instant Petitions for Review docketed as CTA Case Nos. 7581 and 7639 are hereby **DISMISSED** for having been prematurely filed.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice