REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Petitioner,	**C.T.A. CASE NO. 7808**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 0 1 2011 10:45 a.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review filed on July 14, 2008 by petitioner, pursuant to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA), in relation to Rule 4 thereof, to appeal the inaction of the respondent Commissioner of Internal Revenue over petitioner's administrative claim for tax refund or issuance of tax credit certificate (TCC) in the amount of P22,084,718.84, representing unutilized input value-added tax (VAT) incurred from its purchases of goods and services attributable to its zero-rated sales for the period covering second (2nd) to fourth (4th) quarters of calendar year 2006.

Petitioner-Deutsche Knowledge Services, Pte. Ltd. is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with its registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048583.[1]

It is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines by the Securities and Exchange Commission (SEC) on April 25, 2005 pursuant to the Omnibus Investment Code of 1987, as amended by Republic Act No. 8756 and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[2]

Petitioner acts as a shared services center, which handles regional as well as global accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control. Petitioner purchased goods and services in the course of rendering services in the Philippines as a shared services center to entities engaged in business conducted outside the Philippines.[3]

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[1] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 82; Exhibit "A"
[2] Exhibit "A" SEC Certificate of Registration and License; Exhibit "CC" Judicial Affidavit of Michael Praxedes dated November 27, 2008.
[3] Exhibit "IIII", Judicial Affidavit of Ms. Andrea S. Peralta dated April 30, 2009.

It is registered with the Bureau of Internal Revenue (BIR) as a value-added (VAT) taxpayer, with Taxpayer's Identification Number (TIN) 238-763-115-000 as evidenced by its Certificate of Registration OCN 9RC0000155974.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, with the authority to act as such, including the power to decide, approve and grant claims for issuance of tax credit certificate or refund of overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its original Quarterly VAT Returns for the 2nd, 3rd and 4th Quarters of taxable year 2006 on the following dates:

Exhibit	Year 2006	Date Filed
C	2nd Qtr	July 25, 2006
D	3rd Qtr	October 25, 2006
E	4th Qtr	January 25, 2007

On June 30, 2008, petitioner filed an administrative claim with the BIR Revenue District Office No. 47, Makati City for the refund/issuance of TCC in the amount of P22,084,718.84, representing its unutilized input VAT attributable to zero rated sales, for the 2nd, 3rd and 4th Quarters of taxable period 2006.[5]

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period on the said administrative claim for refund, petitioner filed this instant Petition for Review on July 14, 2008.

On August 12, 2008, respondent filed his Answer[6] interposing the following Special and Affirmative Defenses:

[4] Exhibit "B"; Par. 4, Admitted Facts, JSFI, docket, p. 82.
[5] Exhibits "O" and "P"; Par. 6, Admitted Facts, JSFI, Docket, p. 83.
[6] Docket, pp. 47- 50.

"**SPECIAL AND AFFIRMATIVE DEFENSES**:

"5. Granting *arguendo* that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

6. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been or erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.

8. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.

9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206).

10. Claims for refund are construed strictly against the claimant, 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 121)."

On January 29, 2009, this Court, upon Motion[7] of petitioner, appointed Mr. Romeo A. De Jesus, Jr. as Independent Certified Public Accountant.

During trial, petitioner presented the following witnesses: Mr. Michael Praxedes, its Chief Financial Officer;[8] Mr. Romeo A. De Jesus[9], the Independent Certified Public Accountant (CPA) duly commissioned by this Court; Ms. Andrea

[7] Docket, pp. 110-113 and Minutes, Docket, p. 123.
[8] Minutes, Docket, p. 121.
[9] Minutes, Docket pp. 123 and 186.

S. Peralta, its then Legal Entity Controller;[10] and Ms. Aileen Felix-Romano, its Legal Entity Controller.[11] Thereafter, on May 7, 2010, it filed its Formal Offer of Evidence,[12] which this Court admitted in the Resolution[13] dated August 13, 2010.

In the Resolution[14] dated December 23, 2010, the case was submitted for decision taking into consideration petitioner's Memorandum filed on December 6, 2010 and the Report dated December 21, 2010 of the Records Division that no memorandum has been filed for the respondent.

The following are parties' jointly stipulated issues[15] submitted for this Court's resolution:

> "1. Whether or not petitioner has timely and duly filed its administrative and judicial claims for the refund or issuance of a tax credit certificate for unutilized input taxes attributable to zero-rated sales.
>
> 2. Whether or not Petitioner is entitled to the claim for refund or issuance of tax credit certificate of excess or unutilized input VAT in the amount of Php22,084,718.84.
>
> 3. Whether or not petitioner's unutilized input taxes in the amount of Php22,084,718.84 have not been carried over to succeeding quarters and have not been utilized against any output tax."

The foregoing issues boil down to one issue: "Whether or not petitioner is entitled to a tax refund or issuance of tax credit certificate in the amount of Php22,084,718.84, representing unutilized input VAT from its purchases of goods and services attributable to its zero-rated sales, for taxable period 2nd to 4th quarters of calendar year 2006".

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[10] Minutes, Docket pp. 198, 209, and 225.
[11] Minutes, Docket p. 248.
[12] Docket, pp. 257-278.
[13] Docket, pp. 280-281.
[14] Docket, p. 333
[15] Stipulated Issues for Resolution, JSFI, Docket, pp. 83-84.

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, *as amended*, lays down the requisites for refunds or issuance of a tax credit certificate of input tax due or paid attributable to zero-rated or effectively zero-rated sales, which reads 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: *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."

From the foregoing, petitioner must comply with the following requisites to be entitled to a refund or tax credit of input taxes attributable to zero-rated or effectively zero-rated sales:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

The Court will first resolve petitioner's compliance with the fifth requirement pertaining to prescription.

Anent the fifth requisite, Section 112(A) of the NIRC of 1997 requires that the taxpayer's application for refund or tax credit certificate of unutilized or excess creditable input VAT arising from its domestic purchases of goods and services subject to VAT, which are attributable to its zero-rated or effectively zero-rated sales, must be made within two years after the close of the taxable quarter when such sales were made.

In the case of ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.),***[16] the Supreme Court aptly stated that:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
>> (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:...(Emphasis ours.)
>
> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input

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[16] G.R. No. 172129, September 12, 2008.

> VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed."

Based on the above-quoted provision of law and jurisprudence, the reckoning of the two-year prescriptive period for the filing of a claim for refund/credit of input VAT on zero-rated sales is reckoned not from the date of filing of the corresponding Quarterly VAT return and payment of the tax but **from *the close of the taxable quarter*** when the pertinent sales or transaction was made.

The present claim pertains to input VAT on zero-rated sales incurred for the taxable period 2nd, 3rd and 4th Quarters of taxable period 2006. Petitioner had until the following dates to file its administrative claim for refund or issuance of tax credit certificate:

Year 2005	Close of Taxable Quarter for Filing	Last Day for Filing Administrative claim
2nd Qtr	June 30, 2006	June 30, 2008
3rd Qtr	September 30, 2006	September 30, 2008
4th Qtr	December 31, 2006	December 31, 2008

Records reveal that petitioner filed its administrative claim[17] on June 30, 2008. Clearly, petitioner's administrative claim for the 2nd, 3rd and 4th quarters of 2006 was timely filed well within the two-year prescriptive period.

The Court will now proceed to determine whether petitioner's judicial claim for tax refund/credit for the 2nd, 3rd and 4th quarters of 2006 was timely filed pursuant to Section 112(C) of the NIRC of 1997, *as amended* which provides that:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> x x x x
>
> (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 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, the taxpayer has thirty (30) days from its receipt of the decision denying the claim for refund or issuance of tax credit certificate or after the expiration of the one-hundred twenty (120) day period from the date of submission of complete documents to appeal the decision or the inaction of the CIR with this Court.

In applying the provision of Section 112(C) of the NIRC of 1997, which was formerly 112(D) prior to its amendment by R.A. 9337, the Supreme Court in

[17] Exhibits "O" and "P".

the more recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc (Aichi case)*[18] 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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> **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**

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

> **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*)

Based on the Aichi case, the 120-day period mentioned in Section 112(C) of the NIRC of 1997, as amended, is crucial in filing a judicial claim for the refund/credit of input VAT.

It is undisputed that petitioner filed its administrative claim for refund or issuance of tax credit certificate together with the supporting documents before respondent CIR on June 30, 2008. Hence, counting from June 30, 2008, respondent CIR has until October 28, 2008 to act upon the said administrative claim under Section 112(C) of the NIRC of 1997, as amended. However, petitioner filed on July 14, 2008 the instant Petition for Review, or one hundred six (106) days earlier prior to the expiration of the said 120-day period on October 28, 2008. The filing of the instant Petition for Review without waiting for the expiration of the aforesaid 120-day period is fatal. Thus, following the ruling in the *Aichi case,* the premature filing of petitioner's judicial claim warrants the dismissal of the same.

It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention. Exhaustion of administrative remedies should be done in order to give the administrative agency an opportunity to decide the matter correctly and prevent unnecessary and premature resort to the court.[19]

In view of the foregoing, this Court deems it no longer necessary to resolve other issues raised in this case.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** on the ground that it was prematurely filed.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

[19] Asia International Auctioneers, Inc. and Subic Bay Motors Corporation vs. Hon. Guillermo L. Parayno, Jr., *et al.* G.R. No. 163445, December 18, 2007.

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, Second Division

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