Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

DENSO TECHNO PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7699

For: Refund or Issuance of a Tax Credit Certificate

Present:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:
JUL 2 8 2011
3:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on October 25, 2007[1] by Denso Techno Philippines, Inc., as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Rule 4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA).

The said Petition is an appeal from respondent CIR's inaction over petitioner's administrative claim for a tax refund or issuance of a

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[1] Docket, p. 1.

tax credit certificate in the amount of P3,026,864.81, allegedly representing its excess and unutilized input value-added tax (VAT) derived from its domestic purchases of goods and services attributable to its zero-rated sales for the period covering September 5, 2005 to March 31, 2007.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at the 21st Floor, BPI Buendia Centre, Sen. Gil Puyat Avenue, Makati City. It is engaged primarily in the business of software programming and development.[2]

Petitioner is also registered with the Bureau of Internal Revenue (BIR) under OCN 9RC0000161945, as a vatable entity, with Tax Identification Number (TIN) 240-430-382-000.[3] It is a wholly-owned subsidiary of Denso Techno Co., Ltd., a corporation duly organized and existing under the laws of Japan.[4]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested with the authority to act as such, including

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[2] Exhibit "A", Docket, p.299
[3] **Ibid**.
[4] Exhibit "M", Docket, p. 358

the power to decide, approve, and grant refunds and/or tax credits of excess and unutilized input value-added tax payments. Respondent holds office at the BIR National Office Building, Diliman, Quezon City.

During the period covering September 5, 2005 to March 31, 2007, petitioner recorded zero-rated sales in the total amount of P3,026,864.81 for its domestic purchases of goods and services attributable to its zero-rated sales.

On August 7, 2007, petitioner filed with the BIR Revenue District Office No. 049-Makati City an Application for Tax Credits/Refunds of its alleged excess and unutilized input VAT derived from domestic purchases of goods and services attributable to its zero-rated sales in the amount of P3,026,864.81, covering the period from September 5, 2005 to March 31, 2007.[5]

The BIR has not acted upon petitioner's Application for Tax Credits/Refunds, prompting petitioner to file the instant Petition for Review on October 25, 2007.

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[5] Exhibit "L"

In an Answer[6] filed on December 14, 2007, respondent interposed the following Special and Affirmative Defenses:

> "4. Granting *arguendo* that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
>
> 5. 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.
>
> 6. Well-settled is the rule that the interpretation placed upon a statute by executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, the courts will not countenance administrative issuances and ruling that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R. No. 112024, 302 SCRA 241, January 28, 1999).
>
> 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.
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> 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).
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> 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

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[6] Docket, pp. 74-77

> upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

In the January 29, 2009 Resolution[7], this Court dismissed the instant Petition for Review for petitioner's failure "to present its case since April 22, 2008, and for failure of petitioner's counsel, Atty. Armando Batarra, to file his formal entry of appearance."

On April 29, 2009, petitioner moved for a reconsideration of this Court's January 29, 2009 Resolution which was granted by this Court in its Resolution on June 4, 2009, thus, petitioner was allowed to present its evidence.[8]

During trial, petitioner presented documentary and testimonial evidence to support its claims and contentions. However, respondent's counsel manifested that respondent will no longer be presenting evidence.[9]

On October 11, 2010, the Court issued a Resolution[10] submitting the case for decision, considering petitioner's Memorandum filed on

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[7] Docket, p. 134
[8] Docket, pp. 160-161
[9] Minutes of the August 11, 2010 hearing, Docket, p. 405
[10] Docket, p. 467

September 17, 2010 [11] and respondent's Memorandum filed on October 7, 2010.[12]

The parties raised the issues[13] as follows:

1. Whether or not petitioner has zero-rated sales transactions;

2. Whether or not petitioner can properly substantiate its claim for refund with the requisite documents; and

3. Whether or not petitioner is entitled to the claim for refund.

The foregoing issues can be summarized as –

> "Whether of not petitioner is entitled to its claimed refund in the amount of P3,026,864.81 as alleged excess and unutilized input tax paid on its purchases of goods and services attributable to its zero-rated sales for the period covering September 5, 2005 to March 31, 2007."

Petitioner claims that it is legally entitled to the refund of its purported excess and unutilized input VAT for the period covering September 5, 2005 to March 31, 2007, pursuant to Sections 112 and 108(B)(2) of the National Internal Revenue Code (NIRC).

Respondent counters that while it is true that the administrative claim for refund of input tax attributable to zero-rated sales is governed

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[11] Docket, pp. 411-446
[12] Docket, pp. 454-466
[13] Docket, p. 418-419

by Section 112(A) of the NIRC of 1997, as amended, which provides that the application for issuance of a tax credit certificate or refund of input VAT must be made within two years from the close of the taxable quarter; however, it merely sets a limitation on the administrative claim to be filed with the BIR and does not suggest that an appeal to this Court must likewise be made within the same two-year period.

On the contrary, the judicial remedy for the refund of input tax attributable to zero-rated sales is laid down under Section 112(C) of the NIRC of 1997, which clearly states that the affected taxpayer may appeal to this Court within thirty (30) days from receipt of the decision or from inaction of the Commissioner of Internal Revenue after the lapse of the prescribed one hundred twenty (120)-day period.

The Court finds no merit in the Petition for Review.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[14], the Supreme Court ruled:

> "***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:

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

SEC. 112. Refunds or Tax Credits of Input Tax. –

x x x x

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

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.
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> 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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> 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."

In the instant case, petitioner filed its judicial claim for refund or issuance of a tax credit certificate with this Court on October 25, 2007, notwithstanding that its administrative claim was filed only on August 7, 2007.

Under Section 112(C) of the NIRC of 1997, as amended, respondent has one hundred twenty (120) days from the date of submission of complete documents in support of the application filed, or until December 5, 2007, within which to decide on the claim for refund of petitioner.

Petitioner filed the instant Petition for Review with this Court on October 25, 2007. Evidently, its filing thereof was premature since the 120-day period for the Commissioner of Internal Revenue to decide on the claim for refund has not yet ended. Accordingly, the premature filing of the instant Petition divests this Court of jurisdiction over the same.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division