REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

ADVANCED CONTACT SOLUTIONS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8100

Present:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:
SEP 13 2010
ABFernandez 9:48 a.m.

x -- x

RESOLUTION

PALANCA-ENRIQUEZ, J.:

This resolves:

1) respondent CIR's "Motion to Dismiss" filed on June 15, 2010 anchored on the ground that petitioner failed to appeal the inaction of respondent CIR, within thirty (30) days from the expiration of the 120-day period from the date of submission of complete documents in support of petitioner's administrative claim; and

2) petitioner's "Comment (to Respondent's Motion to Dismiss dated June 8, 2010)" filed on July 21, 2010.

Petitioner, on the other hand, in its Comment counter-argues that *Section 229 of the NIRC of 1997, as amended*, gives the taxpayer the benefit of the full two-year period from the date of payment of the tax within which to bring a suit or action to recover taxes erroneously or illegally, or in any manner excessively or wrongfully collected. The mandatory legal effect of said provision cannot be ignored, in relation to the permissive language of *Section 112(C) of the NIRC of 1997, as amended.*

We find the *Motion to Dismiss* meritorious.

Section 112(C) of the NIRC of 1997, as amended, provides:

> "(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)*

From the above provision, it is clear that the CIR has 120 days from the submission of supporting documents to decide the claim for refund. In case of full or partial denial, or inaction of the CIR, the taxpayer may file an appeal with the CTA, within 30 days from receipt of the decision, or from the lapse of the 120-day period from the submission of the supporting documents. It must be emphasized that the phrase "may appeal" provided in *Section 112 (c) of the NIRC of 1997, as amended*, does not mean that the judicial recourse within 30 days from the lapse of the 120-day period is directory and permissive, and not mandatory. The phrase "may appeal" simply means that appeal to the CTA is dependent on the option of the claimant, since it is a procedural right extended to the taxpayer, which he may or may not exercise based on his judgment.

In this case, records show that:

1) On April 25, 2008 and July 25, 2008, petitioner filed its quarterly VAT returns for the first and second quarters of 2008, respectively;
2) On September 10, 2008, petitioner applied for an administrative claim for refund of unutilized input VAT with the CIR, which is within the two-year prescriptive period from the close of the quarter when such sales were made;

3) From September 10, 2008, which is also presumably the date petitioner submitted the supporting documents, together with the aforesaid application for refund, the CIR has 120 days or until January 8, 2009, within which to decide the claim for refund;

4) Within 30 days from the lapse of the 120-day period or from January 9, 2009 until February 9, 2009 (February 8, 2009 being a Sunday), petitioner should have elevated its claim for refund to the CTA;

5) However, petitioner filed its Petition for Review with this Court only on April 23, 2010, which is 438 days way beyond the 30-day period prescribed by law.

Clearly, the present Petition for Review was filed 438 days late.

Settled is the rule that courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings *(Ace Publications vs. Commissioner of Customs, 11 SCRA 147).*

For all the foregoing, the Court has no alternative, but to grant respondent CIR's "Motion To Dismiss".

WHEREFORE, premises considered, respondent's "Motion to Dismiss" is hereby **GRANTED.** Accordingly, the present Petition for Review is hereby **DISMISSED** for being filed late.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO -MANALASTAS
Associate Justice