REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SANKYU CONSTRUCTION PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 8097**
	Members:
- versus -	**CASTAÑEDA,** Chairman **CASANOVA,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 0 9 2011 8:20 a.m.

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RESOLUTION

This resolves respondent's "**Motion to Dismiss**" filed on March 10, 2011, without comment/opposition from petitioner despite notice, seeking for the dismissal of the instant Petition for Review on the ground of lack of cause of action and that this Court has no jurisdiction to entertain the instant case.

Respondent avers that petitioner failed to comply with the mandate of Section 112 of the National Internal Revenue Code (NIRC) of 1997 that petitioner may only file an appeal with this Court after the lapse of the 120-day period, which is given to respondent to decide petitioner's claim for input Value Added Tax (VAT) refund. In support thereof, respondent cites, among others, the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[1](Aichi).

The instant motion is meritorious.

Section 112[2] of the NIRC of 1997 explicitly provides that a taxpayer may apply for an administrative claim for refund of its unutilized input VAT payments within **two years reckoned from the close of the taxable quarter when the relevant sales were made**. Then, the taxpayer may file a Petition for Review before this Court within 30 days from receipt of the decision of the Commissioner of Internal Revenue (CIR), or in case of the latter's inaction, from the expiration of the 120-day period from submission of the complete documents in support of its claim.

The following ruling of the Supreme Court in Aichi is relevant, to wit:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, where we ruled that **Section 112(A) of the NIRC is**

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

2 "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 tax credit certificate or refund 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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(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**." [Emphases supplied]

the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as 'both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.' We explained that:

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In view of the foregoing, we find that the CTA En Banc erroneously applied Sections 114 (A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. To be clear, 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.

xxx xxx xxx

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.

<u>**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**</u>. 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." (*Emphases and underscoring supplied.*)

Applying the foregoing, the two-year period for the filing of an administrative claim for refund for the four quarters of 2008 expired on March 31, 2010; June 30, 2010; September 30, 2010 and December 31, 2010. Clearly, when petitioner filed its administrative claim on April 22, 2010, its claim for the first quarter had already prescribed. However, its claim for the second to the fourth quarter of 2008 was still within the two-year prescriptive period.

As to petitioner's judicial claim, respondent has 120 days from April 22, 2010 or until August 20, 2010, within which to make a ruling on petitioner's claim. However, petitioner immediately filed a Petition for Review before this Court on April 23, 2010 or merely a day after it filed its administrative claim for refund. Thus, petitioner prematurely filed its petition.

Accordingly, petitioner's claim for the first quarter of 2008 is **DENIED** on the ground of prescription and petitioner's claim for the second to the fourth quarter of 2008 is **DENIED** for having been prematurely filed.

WHEREFORE, respondent's "**Motion to Dismiss**" filed on March 10, 2011 is hereby **GRANTED**.

SO ORDERED.

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

(On Wellness Leave)
CAESAR A. CASANOVA
Associate Justice

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