REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PROCTER & GAMBLE ASIA PTE. LTD., Petitioner,	**CTA CASE NO. 7820**
- versus -	Members: **CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** and **GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 2 2 2010 8:15 a.m.

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DECISION

CASANOVA, *J.*:

Before Us is a Petition for Review filed by petitioner-Procter & Gamble Asia Pte. Ltd., seeking the refund or issuance of a tax credit certificate in the total amount of P165,676,503.88 allegedly representing input VAT attributable to zero-rated sales of petitioner for the fiscal year ending June 30, 2007.

Petitioner is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarters in the Philippines with office address at the 18/F Petron Megaplaza, 358 Sen. Gil Puyat Ave., Makati City, in accordance with the Certificate of Registration and License issued by the Securities and Exchange Commission, to provide management, marketing, technical and financial advisory and other qualified services to related companies.[1]

Respondent is being sued in his official capacity as Commissioner of Internal Revenue and with office address at BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other court processes.[2]

Petitioner is a VAT-registered taxpayer with BIR Certificate of Registration No. 9RC0000071787.[3]

Petitioner renders services to its affiliates in the Philippines and abroad pursuant to Service Agreements with said affiliates.[4] Services rendered by the petitioner to its affiliates in the Philippines were billed by the petitioner through the issuance of BIR registered debit/credit memos while services rendered to its affiliates abroad were billed through the issuance of BIR-registered VAT zero-rated debit/credit memos.[5]

As a service provider and a VAT-registered entity, petitioner files its Quarterly Value-Added Tax (VAT) Returns based on its sales and, had filed Quarterly VAT Returns for the fiscal year ending June 30, 2007, which reflected the following:

[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 185
[2] Par. 2, Ibid, p. 186
[3] Par. 3, Ibid
[4] Par. 5, Petition for Review, Docket, p. 3
[5] Par. 8, Ibid, p. 4

Quarter Ending	Receipts from Affiliates Abroad	Receipts from the Philippines	Total Amount Billed
July 1 to September 30, 2006[6]	P776,645,548.92	P 32,568,117.58	P809,213,666.50
October 1 to December 31, 2006[7]	P625,400,170.13	P113,432,482.75	P738,832,652.88
January 1 to March 31, 2007[8]	P664,552,353.14	P 40,855,397.33	P705,407,750.47
April 1 to June 30, 2007[9]	P671,299,517.77	P 43,421,067.00	P714,720,584.77

The aforementioned Quarterly VAT Returns likewise showed petitioner's accumulated input taxes on its domestic purchases of capital goods, goods other than capital goods and services and refundable input VAT for the period July 1, 2006 to June 30, 2007, in the total amount of P196,137,890.63 and P165,676,503.88, respectively, broken down as follows:[10]

Quarter Ending	Input Taxes	Refundable Input Taxes
July 1 to September 30, 2006	P 40,782,424.78	P 36,746,141.23
October 1 to December 31, 2006	P 63,968,910.18	P 47,475,217.58
January 1 to March 31, 2007	P 41,405,141.91	P 37,071,528.35
April 1 to June 30, 2007	P 49,981,413.76	P44,383,616.72
TOTAL	**P196,137,890.63**	**P165,676,503.88**

On April 15, 2008, petitioner filed its Applications for Tax Credits/Refunds and letter request with the Revenue District Office (RDO) No.

[6] Annex "D" to Petition for Review; Exhibit "H"
[7] Annex "G" to Petition for Review; Exhibit "K"
[8] Annex "J" to Petition for Review; Exhibit "D"
[9] Annex "M" to Petition for Review; Exhibit "R"
[10] Memorandum (For the Petitioner), par. 2-3, Docket, p. 480

49-North Makati-BIR for its unutilized input VAT attributable to its zero-rated sales covering the quarters ending September 30, 2006, December 31, 2006, March 31, 2007 and June 30, 2007.[11]

Due to respondent's inaction on its Application/s for Tax Credits/Refunds and in order to toll the running of the two-year prescriptive period, petitioner thus filed the instant Petition for Review on August 8, 2008.[12]

On September 29, 2008, respondent filed his Answer and interposed the following Special and Affirmative Defenses[13], to wit:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 6. Petitioner's claim for refund or issuance of tax credit certificate in the aggregate amount of **Php165,676,503.88** as alleged unutilized input VAT paid attributable to its zero-rated sales of goods and services for the fiscal year ending June 30, 2007 were not fully substantiated by proper documents such sales invoices, official receipts and others.
>
> 7. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim.

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[11] Ibid, par. 1, Docket, p. 481
[12] Ibid, par. 2
[13] Answer, pars. 3-12, Docket, pp. 157-158

> 8. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT.
>
> 9. The amount subject of the claim for refund of petitioner do not pertain in full to its input VAT attributable to its zero-rated sales of goods and services for the fiscal year ending June 30, 2007.
>
> 10. Petitioner failed to comply with the substantiation requirements under BIR Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the Tax Code.
>
> 11. It is incumbent upon the petitioner 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.
>
> 12. 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**)*."

Petitioner filed its Pre-Trial Brief (For Petitioner)[14] on October 28, 2008 while Respondent's Pre-Trial Brief[15] was filed on November 12, 2008.

On December 3, 2008, the parties filed their Joint Stipulation of Facts and Issues[16] which was subsequently approved by the Court per Resolution[17] promulgated on December 10, 2008.

After presentation of its testimonial and documentary evidence, petitioner filed its Formal Offer of Evidence (Exhibits) For the Petitioner[18] on

[14] Docket, pp. 159-172
[15] Ibid, pp. 181-183
[16] Ibid, pp. 185-189
[17] Ibid, p. 190

September 22, 2009, which was admitted by the Court per Resolution[19] dated November 26, 2009, while respondent manifested, in his Omnibus Motion, filed on April 7, 2010, that he is just submitting the case for decision based on the pleadings.

On May 24, 2010 petitioner filed its Memorandum (For the Petitioner)[20] while respondent filed his Memorandum on June 22, 2010.

In a Resolution[21] promulgated on August 12, 2010, the case was deemed submitted for decision.

The parties have jointly stipulated on the following issues[22] for this Court's resolution:

> "1.) Whether or not petitioner's sales of services to its affiliates abroad that are not doing business in the Philippines in the amount of P2,737,897,589.96 for the fiscal year July 1, 2006 to June 30, 2007 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 July 1 to September 30, 2006, October 1 to December 31, 2006, January 1 to March 31, 2007 and April 1 to June 30, 2007, and applied the same amount in full to its output VAT liability for the said periods, if any.
>
> 3.) Whether or not the amounts of P36,746,141.23, P47,475,217.58, P37,071,528.35 and P44,383,616.72 or a total of **P165,676,503.88** being claimed by petitioner as unutilized input VAT for the periods July 1 to September 30, 2006, October 1 to December 31, 2006, January 1 to March 31, 2007 and

[18] Ibid, pp. 393-443
[19] Ibid, pp. 445-446
[20] Ibid, pp. 477-495
[21] Ibid, p. 496
[22] Ibid, p. 188

April 1 to June 30, 2007, respectively, pertain in full to its zero-rated sales of services.

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

5.) Whether or not petitioner is entitled to its claimed refund or issuance of tax credit certificate in the amounts of P36,746,141.23, P47,475,217.58, P37,071,528.35 and P44,383,616.72 as alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales, for the periods July 1 to September 30, 2006, October 1 to December 31, 2006, January 1 to March 31, 2007 and April 1 to June 30, 2007, respectively, or a total of **P165,676,503.88**.

The subject of the instant claim, in the total amount of P165,676,503.88, are the input value-added taxes attributable to petitioner's alleged zero-rated sales and purchases of goods and services for the four quarters of the fiscal year 2007.

Petitioner duly filed its Quarterly VAT Returns with the Bureau of Internal Revenue (BIR) declaring its zero-rated sales and input VAT on purchase of goods and services for the four quarters of the fiscal year 2007, as shown below:[23]

	1st Qtr ***(Exh. H)***	**2nd Qtr** ***(Exh. L)***	**3rd Qtr** ***(Exh. O)***	**4th Qtr** ***(Exh. R)***
Taxable Sales	P 32,568,117.58	P 113,432,482.75	P 40,855,397.33	P 43,421,067.00
Output Tax	P 3,908,174.11	P 13,611,897.93	P 4,902,647.68	P 5,210,528.04
Zero-rated Sales	P 776,645,548.92	P 625,400,170.13	P 664,552,353.14	P 671,299,517.77
Input Taxes:				
Carried over from previous quarter	P -	P -	P -	P -
Deferred input tax on purchases of capital goods exceeding P1 million from previous quarter	3,737,664.44	3,865,773.88	6,747,568.58	6,178,534.46
From purchase of capital goods not exceeding P1 million	-	8,035.71	-	166,940.13
From purchase of capital goods exceeding P1 million	417,346.61	3,357,563.17	-	1,043,239.72

[23] Exhibits "H", "L", "O", and "R"

From purchase of goods other than capital goods	444,993.28	297,957.97	1,707,273.93	606,528.59
Importation of goods	-	-	-	-
Domestic purchase of services	39,920,084.89	60,123,708.39	39,697,867.98	48,164,705.32
Services rendered by non-residents	-	181,644.94	-	-
Total input tax	P 44,520,089.22	P 67,834,684.06	P 48,152,710.49	P 56,159,948.22
Deductions from input tax:				
Deferred input tax on purchases of capital goods exceeding P1 million	P 3,865,773.88	P 6,747,568.55	P 6,178,534.46	P 6,565,803.46
VAT Refund/TCC Claimed	36,746,141.23	47,475,217.58	37,071,528.35	44,383,616.72
Total deductions	P 40,611,915.11	P 54,222,786.13	P 43,250,062.81	P 50,949,420.18
Allowable input tax	P 3,908,174.11	P 13,611,897.93	P 4,902,647.68	P 5,210,528.04
Net VAT Overpayment	**P 3,908,174.11**	**P 13,611,897.93**	**P 4,902,647.68**	**P 5,210,528.04**

Petitioner's claim for refund or issuance of tax credit certificate is anchored on Sections 110(B) and 112 (A) of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337, the provisions of which are all herein below quoted:

> "**SEC. 110. Tax Credits. –**
>
> **(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: Provided, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: Provided, however, That any input tax attributable 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.
>
> **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 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: 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."

Thus, pursuant to the afore-quoted provisions, the following requisites must be complied with in order to be entitled to a refund or tax credit of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, viz:

> 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 or effectively zero-rated sales;
>
> 4) that the input taxes were not applied against any output tax liability; and
>
> (5) that the administrative claim for refund was filed within the two-year prescriptive period.

This Court shall first determine the timeliness of the filing of the instant Petition for Review as it will determine whether or not it is necessary to resolve petitioner's compliance with the other requisites for input VAT refund.

Petitioner filed its administrative claim for refund with the Bureau of Internal Revenue (BIR) on April 15, 2008[24], which is well within the two-year prescriptive period counting from September 30, 2006, December 31, 2006, March 31, 2007 and June 30, 2007, the close of the taxable quarters when the relevant sales pertaining to the claimed input VAT were made.

However, on August 8, 2008, petitioner filed its Petition for Review. Pursuant to the most recent ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[25], compliance with the 120-30 day period under Section 112(D) of the 1997 National Internal Revenue is crucial.

The Supreme Court ruled as follows:

> "**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. –
>>
>> 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**

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[24] Admitted Facts, par. 17, Joint Stipulation of Facts and Issues, Docket, p. 187
[25] G.R. No. 184823, October 6, 2010

> **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.
>
> 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.

Considering, therefore, that the judicial claim (the instant Petition for Review) was filed on August 8, 2008, or only 115 days from April 15, 2008 (the administrative claim filed with the BIR), petitioner, clearly, did not wait for the decision of the CIR or the lapse of the 120-day period, thus, the filing of the instant Petition for Review with this Court is premature.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for being 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

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