REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8082 & 8106

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JAN 2 0 2011
9:07 A.m.

x -- x

RESOLUTION

This resolves respondent's "**Motion to Dismiss**" filed on December 7, 2010, with petitioner's "**Comment/ Opposition (To Respondent's Motion to Dismiss)**" filed on December 28, 2010.

Respondent seeks for the dismissal of the instant Petition for Review on the ground that the pleading asserting the claim states no cause of action.

Respondent alleges that petitioner filed its administrative claim for refund or tax credit of its unapplied and unutilized input taxes only after 107 days had elapsed since petitioner filed its administrative claim for refund with the Bureau of Internal Revenue (BIR). Hence, it is respondent's stance that petitioner prematurely filed its Petition for Review since it was filed before the lapse of the 120 day period provided for under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent claims that in the case of *CIR v. Aichi Forging Company of Asia, Inc.*[1], the Supreme Court held that the non-observance of the 120-day period provided under Section 112(C) is fatal to therein petitioner's claim for refund and that the premature filing of a claim for refund/ credit of input Value-Added Tax (VAT) warrants a dismissal inasmuch as no jurisdiction was acquired by this Court.

In opposition, petitioner posits that the claim for refund with the BIR and the filing of the Petition for Review with this Court must be made within the two-year prescriptive period. It further claims that the doctrine laid down in the case of CIR vs. *Aichi* cannot be applied retroactively to the present case considering that the said case was not yet promulgated when the Petition for Review was filed with the Court.

This Court finds for respondent.

Section 112 of the NIRC of 1997,[2] as amended, explicitly provides for the period within which a taxpayer should file its administrative claim for refund as well as its appeal before this Court, *viz*:

> "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)**

---

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

[2] As amended by Republic Act No. 9337 entitled "*An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other Purposes.*"

> **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:
>
> x x x x
>
> (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.**" [Emphasis supplied]

From the foregoing, it is clear that a taxpayer may apply for an administrative claim for refund of its unutilized input VAT payments "within two (2) years reckoned from the close of the taxable quarter when the relevant sales were made." Thereafter, the taxpayer must wait for the expiration of the 120-day period from the submission of the complete documents in support of such claim before it may file a Petition for Review before this Court.

The aforequoted provision was interpreted by the Supreme Court in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[3] and ruled that the expiration of the 120-day period is crucial before a taxpayer may file its appeal with this Court, to wit:

> "**Section 112(D)[4] 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

---

[3] G.R. No. 184823, October 6, 2010.
[4] Now, Section 112(C).

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.**

x x x x

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.

x x x x

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]

In the instant case, petitioner filed its administrative claim on December 28, 2009. Respondent had 120 days therefrom or until April 27, 2010 to act on petitioner's claim and petitioner, in turn, has 30 days to appeal with this Court counted from the denial of its claim or in case respondent failed to act on its claim, from the expiration of the 120-day period. Petitioner filed the petition on March 30, 2010, which is prior to the expiration of the 120-day period. Consequently, the instant petition was filed prematurely.

WHEREFORE, premises considered, respondent's **Motion to Dismiss** is hereby **GRANTED** on the ground that the instant Petition for Review was filed prematurely.

SO ORDERED.

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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