REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHIVIDEC INDUSTRIAL AUTHORITY, Petitioner,	CTA CASE NO. 10077
	Members:
- versus -	DEL ROSARIO, *P.J., Chairperson*, FABON-VICTORINO, *and* MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 12 2020 . 2:43 p.m.

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RESOLUTION

In his Motion for Early Resolution dated October 31, 2019, respondent avers that the issue of the jurisdiction of the Court is one that requires evidence as it can be resolved based on the allegations in the Petition, thus, the same should be resolved immediately.

Respondent believes that the Court is without jurisdiction over the instant Petition hinged on petitioner's admission that it is a government instrumentality vested with corporate powers. Per Presidential Decree (PD) 242 now embodied in Chapter 14, Book IV of Executive Order (EO) No. 292, otherwise known as the Administrative Code of 1987, and established jurisprudence, disputes or controversies involving government offices, agencies and instrumentalities, including government-owned or controlled corporations, fall under the jurisdiction and should be adjudicated by the Secretary of Justice.

Since the conflict is between petitioner, admittedly, a government instrumentality, and respondent, a government agency, the case falls within the competence of the

Secretary of Justice and over which the Court cannot exercise jurisdiction.

Even assuming that EO No. 292 does not apply, still the Court did not acquire jurisdiction as the Petition for Review was filed beyond the mandatory 30-day period of appeal as provided under Section 112 of the 1997 National Internal Revenue Code (NIRC), as amended, which applies to the present claim for refund of excess input value-added tax (VAT).

Petitioner filed two administrative claims for refund, the first on April 27, 2004, and the second, on May 3, 2005. Respondent, however, denied them through a letter which petitioner received on March 28, 2019. On April 29, 2019, petitioner filed its judicial claim before the Court.

For respondent, the period for the filing of the judicial claim should be from the lapse of the 120-day period as provided under Section 112 of the NIRC, as amended, and not from the petitioner's receipt of the decision denying its claim for refund. Thus, from the filing of the administrative claims on April 27, 2004 and May 3, 2005, the 120+30 days would be until September 24, 2004 and October 1, 2005, respectively.

In other words, the instant Petition for Review was filed out of time on April 29, 2019, depriving the Court of jurisdiction over it.

Despite notice, petitioner failed to file comment[1], hence, respondent's Motion for Early Resolution on the Issue of Jurisdiction was submitted for resolution.[2]

Section 112 of the 1997 NIRC, as amended, pertinently provides, as follows:

> Section 112. Refunds or Tax Credits of Input Tax.

[1] Records Verification dated January 22, 2020 of the Judicial Records Division of the Court.
[2] Resolution dated January 28, 2020.

> (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 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
>
> (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. x x x

Evident from the above provision that respondent had 120 days from the filing of the administrative claim for refund within which to grant or deny the same. Upon receipt of the CIR's adverse decision or ruling, or upon the expiration of the 120-day period without action from the CIR, the taxpayer may within thirty (30) days file a petition for review with the CTA.[3]

Per the petitioner's allegations, it filed its first administrative claim on April 30, 2004,[4] for the period covering the 2nd quarter of 2002 until the 4th quarter of the year 2003. Respondent however claims that it was filed on April 27, 2004. The misapprehension was apparently due to

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[3] Commissioner of Internal Revenue vs. Hedcor Sibulan, Inc., G.R. No. 209306, September 27, 2017.

[4] Par. 10, Petition for Review dated April 29, 2019, docket p. 21.

the date appearing in petitioner's letter-application constituting its administrative claim which was April 27, 2004[5] but which the BIR actually received on April 30, 2004, which was deemed to be the date of such filing.

Thereafter, petitioner filed another administrative claim for refund covering the four quarters of the year 2004 through a Letter[6] dated May 3, 2005.

While there is a stamp in the upper right portion of the letter which could possibly be the date of receipt by the BIR, the same however is not legible. However, the Petition for Review states that the Letter dated May 3, 2005 was sent to the BIR, indicating that the date of filing was also on May 3, 2005.[7]

Note however that the 120-day period is not always reckoned from the filing of the administrative claim. The plain reading of Section 112 of the NIRC, as amended, provides that "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." Thus, as applicable to this case, the start of the 120-day period is reckoned from the submission of supporting documents. But it must also be emphasized that the submission of documents in support of the application for refund is not left to the discretion of the parties, but subject to certain limitations.

It has been held that the 120-day period is to be reckoned from the date of submission of supporting documents which must be made within 30 days from the filing of the administrative claim, or within the period granted by respondent, but in both cases, such submission of supporting documents must be within the 2-year reglementary period for filing an administrative claim. The pertinent jurisprudence held thus:

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[5] Par. 9, Petition for Review dated April 29, 2019, docket p. 20.
[6] Annex 10, Petition for Review dated April 29, 2019, docket p.76.
[7] Par. 15, Petition for Review dated April 29, 2019, docket pp. 23-24.

> To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.
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> It bears mentioning at this point that the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014, such as the claim at bench.[8]

In this case, from the filing of the first administrative claim on April 30, 2004, petitioner, in compliance with the BIR requirements, submitted supporting documents on September 20, 2004,[9] and November 30, 2004.[10]

This administrative claim covers the period from the 2nd quarter of year 2002 until the 4th quarter of the year 2003. In other words, both submissions of supporting documents were within the 2-year reglementary period for the filing of the administrative claim. Thus, the 120-day period for the first administrative claim shall commence from November 30, 2004, the date of the filing of supporting documents.

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[8] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.
[9] Par. 12, Petition for Review dated April 29, 2019, docket p. 22.
[10] Par. 13, Petition for Review dated April 29, 2019, docket p. 23.

Anent the second administrative claim filed on May 3, 2005 covering the four quarters of the TY 2004, in the absence of any indication that petitioner submitted any supporting documents, the 120-day period shall be reckoned from May 3, 2005 when the administrative claim was filed.

Thus, from November 30, 2004 and May 3, 2005, respondent had 120 days or until March 30, 2005 and August 31, 2005, respectively, to act on the administrative claims, and with his inaction, petitioner had 30 days or until April 29, 2005 and September 30, 2005, respectively, to seek judicial intervention.

Beyond any doubt, the instant Petition for Review posted through registered mail on April 29, 2019 was filed out of time, depriving the Court of jurisdiction to entertain the same.

The Letter dated March 27, 2019 denying the administrative claim which petitioner received on March 28, 2019,[11] and is being impugned in the instant Petition for Review, could not be the reckoning point for the 30-day period for the filing of the judicial claim or appeal to the Court.

While petitioner reckoned the 30-day period to appeal from its receipt of the Letter of March 27, 2019 on March 28, 2019, under Section 112 of the NIRC, as amended, respondent could not decide a claim after or beyond the 120-day period.

The second paragraph of Section 112(D)[12] 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.[13]

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[11] Annex 2, Petition for Review dated April 29, 2019, docket pp. 48-49.
[12] Now Section 112(C).
[13] Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 06, 2010.

Section 112 of the NIRC, as amended, provides that respondent CIR is mandated to issue a decision on the administrative claim before the lapse of the 120-day period, for after the lapse of the said 120-day period, such would already be considered as inaction by respondent, and the administrative claim would be deemed denied.

Inaction by the CIR in cases involving the refund of creditable input tax, arises only after the lapse of 120 days. Thus, prior thereto and without a decision of the CIR, the CTA, as a court of special jurisdiction, has no jurisdiction to entertain claims for the refund or credit of creditable input tax. "The charter of the CTA also expressly provides that if the Commissioner fails to decide within **"a specific period"** required by law, such **"inaction shall be deemed a denial"** of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review." Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, both periods are hereby rendered jurisdictional. Failure to observe 120 days prior to the filing of a judicial claim is not a mere non-exhaustion of administrative remedies, but is likewise considered jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether the CIR renders a decision (which must be made within 120 days) or there was inaction, the period of 120 days is material.[14]

Concomitantly, the CTA also has the power to decide an appeal because the CIR's inaction within the 120-day waiting period shall be deemed a denial of the taxpayer's application for refund or tax credit.[15]

Evidently, there is no option to await the decision of respondent <u>after</u> the lapse of the 120-day period from which date the taxpayer can appeal to the Court, as was done in this case.

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[14] Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue, G.R. No. 184266, November 11, 2013.
[15] Harte-Hanks Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 205721, September 14, 2016.

In fine, the Commissioner of Internal Revenue (CIR) is given 120 days to decide an administrative claim for refund/credit of unutilized or unapplied input Value Added Tax (VAT) attributable to zero-rated sales. In case of a decision rendered or inaction after the 120-day period, the taxpayer may institute a judicial claim by filing an appeal before the Court of Tax Appeals (CTA) within 30 days from the decision or inaction. Both 120-and 30-day periods are mandatory and jurisdictional.[16]

WHEREFORE, the Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated October 31, 2019 filed by respondent is hereby **GRANTED**.

Consequently, the instant Petition for Review dated April 29, 2019 is **DISMISSED**, for lack of jurisdiction.

SO ORDERED.

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[16] Aichi Forging Company of Asia, Inc. vs. Court of Tax Appeals – En Banc and Commissioner of Internal Revenue, G.R. No. 193625, August 30, 2017.

REPUBLIC OF THE PHILIPPINES
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FIRST DIVISION

PHIVIDEC INDUSTRIAL AUTHORITY, *Petitioner,*	**CTA CASE NO. 10077**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **FABON-VICTORINO**, and **MANAHAN**, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	
	Promulgated: ~~MAR 1 2 2020~~ 2:43pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I submit that the Court has no jurisdiction over the present case as it involves a dispute solely between a government instrumentality vested with corporate powers and a government bureau.

In *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue1 ("PSALM")*[1], the Supreme Court *En Banc* is categorical in declaring that the resolution of **ALL** disputes solely between departments, bureaus, offices, agencies and instrumentalities of the National Government shall be **administratively settled** or adjudicated by the Secretary of Justice. The pertinent portions of the Supreme Court's disquisition read:

> "Xxx, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government-owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants.** There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree**

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[1] G.R. No. 198146, August 8, 2017.

No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

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The law is clear and covers ***"all disputes, claims and controversies solely*** **between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements."** When the law says "all disputes, claims and controversies solely" among government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to** **lessen the clogged dockets of the courts**. xxx xxx xxx.

PD 242 is only applicable to disputes, claims, and controversies **solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. **In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations.**

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Xxx since this case is a dispute **solely** between PSALM and NPC, both government-owned and controlled corporations, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case.

It is only proper that intra-governmental disputes be settled administratively since the **opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision**.

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Furthermore, it should be noted that the 1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges. **On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities**.

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Thus, even if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to intra-governmental disputes." *(Additional underscoring and boldfacing supplied)*

The doctrine laid down in *PSALM* was reiterated by the Supreme Court in *Commissioner of Internal Revenue vs. The Secretary of Justice and Metropolitan Cebu Water District (MCWD).*[2]

Jurisdiction is vested by law. Since the Supreme Court has reconciled and interpreted the provisions of Presidential Decree (PD) No. 242 and Republic Act (RA) No. 1125, as amended, and declared in *PSALM* and reiterated in *MCWD*, in no uncertain terms, that all controversies involving government offices, bureaus, agencies and instrumentalities fall within the jurisdiction of the Secretary of Justice -- such interpretation must be respected by all courts.

Since the present case involves a dispute between Phividec Industrial Authority (a government instrumentality vested with corporate powers established and existing under Presidential Decree No. 538, as amended) and the CIR, the same falls within the exclusive jurisdiction of the Secretary of Justice.

Moreover, even assuming that the Court has jurisdiction over the subject matter of the dispute, I concur with the *ponencia* that the Petition for Review must be dismissed for petitioner's failure to file the same within thirty (30) days from the lapse of the 120-day period.

All told, I VOTE to: (i) GRANT respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court; (ii) DISMISS the Petition for Review for lack of jurisdiction; and, (iii) REFER the case to the Department of Justice for adjudication.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] G.R. No. 209289, July 9, 2018.