Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

CRESCENT PARK 19-1 PROPERTY HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 743
(CTA Case No. 8057)

Members:
ACOSTA, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *J.J.*

Promulgated:
DEC 07 2011 Arsapolinario 2:25 p.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on March 28, 2011, by petitioner- Crescent Park 19-1 Property Holdings, Inc., seeking the review and rectification of the following Resolutions of the Court of Tax Appeals (CTA) Third

[1] Petition for Review, CTA En Banc Rollo, pp. 6-41.

Division in CTA Case No. 8057, entitled Crescent Park 19-1 Property Holdings, Inc., vs. Commissioner of Internal Revenue, to wit:

1. Resolution[2] dated March 8, 2011, denying petitioner's Motion for Reconsideration[3]; and

2. Resolution[4] dated November 30, 2010, granting respondent's Motion for Reconsideration and dismissing petitioner's Petition for Review[5] for lack of cause of action due to the premature filing of its judicial claim.

The facts of the case, as culled from the records, are as follows:

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Company Registration Number CS200719730, with principal office address at Third Avenue corner 26th Street, E-Square Crescent Park West, Bonifacio Global City, Taguig City. It is duly registered with the Bureau of Internal Revenue (BIR) as evidenced by BIR Certificate of Registration No. 9RC0000224661 VAT and Taxpayer's Identification Number 006-939-681-000 VAT.[6]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), who is charged with the authority to perform the duties of her office, including inter alia, the power to decide and grant refunds or tax credits of erroneously or illegally collected internal revenue taxes, as provided by law, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[7]

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[2] Petition for Review, Annex "B", Ibid, pp. 55-61.
[3] Division Docket, pp. 166-197.
[4] Petition for Review, Annex "A", CTA En Banc Rollo, pp. 43-47.
[5] Division Docket, pp. 1-14.
[6] Par. 9 and 11 of Petition for Review, CTA En Banc Rollo, pp. 8-9.
[7] Par. 10 of Petition for Review, Ibid, p. 9.

Petitioner was established to buy and acquire by purchase, lease or otherwise, lands, and interest in land and to own, hold, improve, promote, develop, subdivide and manage any land owned, held or occupied by the corporation or belonging to them, to construct, erect and manage or administer buildings such as condominiums, apartments, hotels, restaurants, stores or other structures now or hereafter erected on any land owned, held or occupied by the petitioner.[8]

On January 5, 2008, petitioner purchased from 19-1 Realty Corporation (19-1 RC) a parcel of land (referred as "subject land") located at 3rd Ave., corner 26th St. E-Square Crescent Park West, Bonifacio Global City, Taguig City, consisting of 1,643 square meters and covered by Transfer Certificate Title No. 1752-P issued by the Registry of Deed of Taguig City. In the Deed of Sale, the land was sold for P225,699,440 with a corresponding VAT of P27,083,932.80. 19-1 RC is a domestic corporation, registered with the Philippine Economic Zone Authority (PEZA) with Registration Certificate No. 01-001-F as Ecozone Facilities Enterprise, engaged in leasing of building spaces.[9]

After the sale, petitioner and 19-1 RC entered into a long term lease agreement whereby the entire subject land was leased by petitioner to 19-1 RC to be used by the latter for the purpose of building and/or maintaining thereon a PEZA-registered a

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[8] Par. 12 of Petition for Review, Ibid, p. 9.
[9] Par. 13 & 14 of Petition for Review, Ibid. p. 10.

information technology building or facility. The term of the lease is 25 years with automatic renewal for another 25 years.[10]

Believing that it is entitled to a refund/credit of its unutilized input VAT, petitioner filed its administrative claim with the Revenue District Office No. 44, Taguig-Pateros on March 29, 2010 in the amount of P 27,083,932.80[11]

Subsequently, two (2) days from the time it filed its administrative claim, petitioner filed the instant Petition for Review with the CTA on March 31, 2010.

Respondent, on the other hand, filed his Answer[12] on May 27, 2010, incorporating therein his Motion to Dismiss, and interposed the following Special and Affirmative Defenses:

> "4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 5. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
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> 6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 7. Petitioner's claim for refund or issuance of tax credit certificate in the amount of **P27,083,932.80,** as alleged unutilized input VAT on purchase of land attributable to its zero-rated sales for taxable year 2008 were not fully substantiated by proper documents, such sales invoices, official receipts and others. (sic)
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> 8. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to

[10] Par. 15 of Petition for Review, Ibid, p. 10.
[11] Par. 16, Petition for Review, Ibid, p. 11.
[12] Division Docket, pp. 44-46.

adduce sufficient proof is fatal to the claim for tax refund/credit. (sic)

9. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT.

10. 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 for taxable year 2008. (sic)

11. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

12. Petitioner failed to comply with the legal requirements under Section 112(C) of the 1997 Tax Code. The instant Petition for Review was prematurely filed with this Honorable Court on March 31, 2010, long before the 120-day period granted unto the CIR to act on its claim has ended. As such, herein respondent was deprived of an opportunity to rule on the application for input VAT refund of petitioner for taxable year 2008. Hence, petitioner clearly violated the **'doctrine of exhaustion of administrative remedies.' (Steag Sate Power, Inc., vs. CIR, CTA Case Nos. 7458 and 7554, August 27, 2009).** Accordingly, the instant Petition for Review should be dismissed for **LACK OF CAUSE OF ACTION** since this Honorable Court has no jurisdiction to entertain the instant case.

13. It is incumbent upon the latter 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.

14. 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).**

Thereafter, on June 9, 2010, petitioner filed its Reply with Motion to Declare Respondent in Default[13] on the ground that the respondent's counsel failed to comply with the requirements under Bar Matter No. 1922 (June 3, 2008), more specifically the MCLE Third Compliance for the period covering April 2007 to April 2010. This was denied by respondent's counsel in his Comment/Opposition (To Petitioner's Motion to Declare Respondent in Default)[14] dated July 5, 2010.

In the Resolution[15] dated August 26, 2010, the CTA Third Division denied respondent's Motion to Dismiss, which was incorporated in her Answer as well as petitioner's Motion to Declare Respondent in Default for lack of merit.

Subsequently, a Supplemental Comment on Respondent's Answer[16] was filed by petitioner on August 31, 2010, but the same was rendered moot and academic in view of the afore-cited Resolution dated August 26, 2010, denying respondent's Motion to Dismiss.

Not satisfied with the said Resolution, respondent filed her Motion for Reconsideration[17] on September 15, 2010, claiming that this Court has no jurisdiction to entertain the instant Petition for failure of petitioner to await the expiration of the 120-day period provided under Section 112 (C) of the 1997 Tax Code, as amended.

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[13] Ibid, pp. 49-59.
[14] Ibid, pp. 74-75.
[15] Ibid, pp. 88-91.
[16] Ibid, pp. 110-119.
[17] Ibid, pp. 122-128.

In compliance with the Resolution[18] dated September 28, 2010, petitioner filed its Comment (On Respondent's Motion for Reconsideration)[19] on October 11, 2010.

On November 30, 2010, the Court issued a Resolution[20] dismissing the instant Petition for lack of cause of action due to the premature filing of petitioner's judicial claim, the dispositive portion of which is as follows:

> "**WHEREFORE**, respondent's **"Motion for Reconsideration"** is hereby **GRANTED.** The assailed Resolution dated 26 August 2010 is hereby **RECALLED AND SET ASIDE,** and another one is hereby entered **DISMISSING** the instant petition for having been prematurely filed.
>
> **SO ORDERED.**"

Unfazed, a Motion for Reconsideration[21] was filed by petitioner on December 16, 2010. Petitioner contends that various decisions of the Supreme Court and of CTA applied the 2-year prescriptive period not only to administrative claim but also to judicial claim; that the applicable provisions of the 1997 Tax Code, as amended, must be reconciled and read in conjunction with the other provisions of the same Code; and lastly, that the subsequent decision promulgated by the Supreme Court in the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., (the "Aichi Case")[22] should be applied prospectively.

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[18] Ibid, p. 131.
[19] Ibid, pp. 134-151.
[20] Ibid, pp. 154-158.
[21] Ibid, pp. 166-197.
[22] G.R. No. 184823, October 6, 2010.

On March 8, 2011, a Resolution[23] was promulgated by the CTA Third Division denying the aforementioned Motion for Reconsideration for lack of merit. Dissatisfied, petitioner elevated the case on appeal before the CTA *En Banc* on April 8, 2011.

Petitioner raised the following grounds in support of the instant petition, to wit:

"I.

> WHETHER OR NOT THE THIRD DIVISION OF THE COURT OF TAX APPEALS ERRED IN RULING AND CONSEQUENTLY IN DISMISSING THE PETITION FOR REVIEW DOCKETED AS CTA CASE NO. 8057 ON THE GROUND THAT THE JUDICIAL CLAIM OF PETITIONER FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) ON UNUTILIZED INPUT VAT, INCURRED FROM TRANSACTIONS FOR THE FIRST QUARTER OF THE TAXABLE YEAR 2008 AND ATTRIBUTABLE TO ZERO-RATED SALES, WAS PREMATURELY FILED.

II.

> WHETHER OR NOT PETITIONER'S SALES IN 2008 ARE SUBJECT TO ZERO PERCENT (0%) VAT.

III.

> WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT FOR THE YEAR 2008 IN THE TOTAL AMOUNT OF TWENTY SEVEN MILLION EIGHTY THREE THOUSAND NINE HUNDRED THIRTY TWO AND 80/100 PESOS (P27,083,932.80) ARISING FROM ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES.

IV.

> WHETHER OR NOT THE UNUTILIZED INPUT VAT ARE ATTRIBUTABLE TO ITS ZERO-RATED SALES.

V.

[23] Division Docket, pp. 200-206.

WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR YEAR 2008 ARE PROPERLY SUBSTANTIATED BY INVOICES AND OFFICIAL RECEIPTS.

VI.

WHETHER OR NOT THE UNUTILIZED INPUT VAT PAYMENTS FOR THE YEAR 2008 WERE CARRIED OVER TO AND UTILIZED IN THE SUCCEEDING TAXABLE QUARTER(S) OR APPLIED AGAINST ANY OUTPUT VAT LIABILITY OF THE PETITIONER.

VII.

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE UNUTILIZED INPUT VAT PAYMENTS IN THE AMOUNT OF TWENTY SEVEN MILLION EIGHTY THREE THOUSAND NINE HUNDRED THIRTY TWO and 80/100 PESOS (P27,083,932.80)."

Afterward, the Court issued a Resolution[24] on May 18, 2011 ordering respondent to file her Comment to the instant Petition which was complied[25] with by respondent on June 21, 2011.

On September 21, 2011, the case was submitted for decision taking into consideration petitioner's Memorandum[26] dated August 9, 2011 and respondent's Manifestation & Motion[27] dated August 10, 2011.

In the case at bench, petitioner is of the view that the harmonization of Sections 112 and 229 of the 1997 Tax Code, as amended, would result to the interpretation that, the two-year prescriptive period applies to both administrative and judicial claims and

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[24] CTA En Banc Rollo, pp. 91-92.
[25] Ibid, pp. 95-103.
[26] Ibid, pp. 107-143.
[27] Ibid, pp. 144- 145.

that the 120 day-period in Section 112 is only directory and need not be complied with when the 2-year prescriptive period is about to expire.[28]

The Court is not persuaded.

Petitioner's contention has been settled otherwise by the Supreme Court in the Aichi Case, whereby the Court categorically emphasized the mandatory requirement to observe the 120-30 day period provided under Section 112(D) of the 1997 Tax Code, as amended, prior to instituting a judicial claim with the CTA. The Supreme Court thus ruled:

> "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. —
> >
> > xxx xxx xxx
> >
> > (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 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.)

[28] Par. 15, Petition for Review, CTA En Banc, p.18.

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 . . . 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.

With regard to Commissioner of Internal Revenue v. Victorias Milling, Co., Inc. relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

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 ours)

In the light of the ruling in the Aichi Case, the CTA Third Division is correct in its findings that petitioner's administrative claim for refund/credit of its unutilized input VAT was timely filed on March 29, 2010. Applying subsections (A) and (D) of Section 112 of the 1997 Tax Code, as amended, CIR has 120-days to decide on the said claim. However, as can be gleaned from the records, petitioner's judicial claim docketed as CTA Case No. 8057 was filed on March 31, 2010; merely two (2) days after it filed its administrative claim. Petitioner did not wait for the 120-day period to lapse before it filed the instant petition. Consequently, this petition lacks cause of action as it was prematurely filed. Apparently, petitioner failed to exhaust the administrative remedy which is a condition precedent before taking judicial action.

The need to exhaust the administrative remedy was thoroughly discussed in the case of Asia International, Inc. and Subic Bay Motors Corporation vs. Hon. Guillermo L. Parayno, Jr., et.al. [29] to wit:

> "x x x It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy with the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on the matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court."

With respect to petitioner's contention that the Aichi Case should be applied prospectively, the same deserves scant consideration.

Being the most recent ruling of the High Tribunal on the matter, *We* have no option but to uphold and apply the ruling of the Supreme Court, it being the final arbiter of justifiable controversy.

> "The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings."[30]

[29] Asia International Auctioneers, Inc. and Subic Bay Motors Corporation vs. Hon. Guillermo L. Parayno., et.al., G.R. No. 163445, December 18, 2007.
[30] Commissioner of Internal Revenue vs. Michael J. Lhuiller Pawnshop, Inc., G.R. No. 150947, July 15, 2003, citing the case of GSIS vs. Court of Appeals, 334 Phil. 163, 175; 266 SCRA 187 (1997).

Furthermore, the Court of Tax Appeals in *CBK Power Company Limited vs. Commissioner of Internal Revenue (CTA Case Nos. 7771 and 7814, December 3, 2010)* justifies the retroactive application of the *Aichi Case* in this wise:

> "To hold otherwise would not only offend the above-cited principles, but would altogether undermine the very foundations upon which the afore-cited principles were pronounced by the Supreme Court in the aforementioned decisions.
>
> Under the principle of *stare decisis et non quieta movere,* past judicial precedents should be followed in subsequent cases by all courts in the land. Hence, the cases of Mirant and Aichi constitute as *stare decisis* to the case at bar."

Following the above-cited principle of *stare decisis et non quieta movere* which simply means follow past precedents and do not disturb what has been settled, it is worthy of emphasis that the principles laid down in *Aichi Case* have been adopted in several recent decisions[31] of the Court of Tax Appeals *En Banc* for the purpose of maintaining consistency in our jurisprudence.

Since the Court *En Banc* has no jurisdiction over the instant Petition for Review, the other issues raised by petitioner becomes inconsequential and need not be resolved by this Court.

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[31] Kepco Ilijan Corporation vs. CIR, CTA EB Case No. 611 (CTA Case No. 6682), June 13, 2011; Crescent Park 18-2 Property Holdings, Inc., vs. CIR, CTA EB Case No. 684 (CTA Case No. 8061), June 8, 2011; CIR vs. Mindanao I Geothermal Partnership, CTA EB Case Nos. 673 & 675 (CTA Case No. 6906), April 19, 2011; CIR vs. Taganito Mining Corporation, CTA EB Case No. 559 (CTA Case No. 6867), April 18, 2011; CIR vs. Team Energy Corporation, CTA EB Case No. 603 (CTA Case No. 7229 & 7298), April 8, 2011.

In sum, there is no cogent reason or justification to disturb the findings and conclusion spelled out in the Resolutions dated March 8, 2011 and November 30, 2010 of the CTA Third Division.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the Resolutions dated March 8, 2011 and November 30, 2010 of the CTA Third Division are hereby **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my Dissenting Opinion as promulgated by the Court in the Assailed Resolutions dated November 30, 2010 and March 8, 2011.)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice