REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

KELPHIL, INC., Petitioner,	**CTA CASE NO. 8045**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 2 3 2011 8:35 a.m.

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RESOLUTION

For this Court's resolution is respondent's **"Motion to Dismiss"** filed on March 8, 2011 with petitioner's **"Comment (On Respondent's Motion to Dismiss)"** filed on March 11, 2011.

Respondent maintains that pursuant to Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, the examination and verification of documents supporting a claim for refund require 120 days from their submission. Respondent avers that petitioner filed its administrative claim for refund on March 24, 2010 and its judicial claim on March 29, 2010 or with only an interval of five (5) days; hence, respondent claims that the instant Petition for Review was prematurely filed and should be dismissed.

Petitioner opposes the instant *Motion to Dismiss* and avers that it should be denied for it was filed late on the basis of Section 1, Rule 16 of the Rules of Court, as amended. Petitioner also contends that respondent is deemed to have waived her defense of prematurity and that even assuming that the motion was not filed late, petitioner posits that it should still be denied because the Petition for Review was not prematurely filed on the basis of prevailing jurisprudence relied upon in good faith by petitioner at the time it filed the Petition for Review.

This Court shall first determine whether or not the instant petition was filed within the periods prescribed by law. In relation thereto, Section 112 (D) [now Section 112 (C)] of the NIRC of 1997, as amended, provides that:

> "**SEC. 112.** *Refunds or Tax Credits of Input Tax.* –
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> *(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)
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> 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."

From the foregoing, it is clear that after the filing of the administrative claim for refund, a VAT-registered person must await the granting or denial of such claim, whether full or partial, or the expiration of the 120-day period from the submission of the complete documents in support of such claim, before filing a petition for review with this Court within 30 days from receipt of the said decision, or from the expiration of the said 120-day period, as the case may be.

Significantly, in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi case),*[1] the Supreme Court emphasized the mandatory nature of the periods provided in Section 112 (D) [now Section 112 (C)] of the NIRC of 1997, as amended, and the consequence of failure to abide thereto, to wit:

> **"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.
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> 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.**
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> **In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a**

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

dismissal inasmuch as no jurisdiction was acquired by the CTA." (*Emphases supplied*)

In view of the mandatory nature of the periods provided under Section 112 (D) [now Section 112 (C)] of the NIRC of 1997, as amended, and the ruling of the Supreme Court in the aforesaid case that the premature filing of respondent's claim for refund/credit of input VAT before this Court would warrant a dismissal in as much as no jurisdiction is acquired; this Court has no recourse but to strictly apply the said provision in this case.

As jointly stipulated by the parties, petitioner filed the administrative claim for refund on March 24, 2010,[2] which presumably is the date when petitioner submitted the complete documents in support of its application for refund. Thereafter, petitioner immediately filed the instant Petition for Review on March 29, 2010, barely five (5) days from the filing of its administrative claim for refund. Obviously, petitioner filed its judicial appeal before this Court without waiting for the lapse of the 120-day period provided for under Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended.

This Court is mindful of the fact that in our system of judicial administration, the Supreme Court has the last word on what the law is, and that its decisions applying or interpreting the laws or the Constitution form part of the legal system of the country, all other courts should take their bearings from the decisions of the Supreme Court.[3] It is the duty of lower courts to obey

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[2] Summary of Facts Admitted, Stipulation of Facts, Par. 7, docket, p. 58.
[3] Caram Resources Corp. vs. Judge Maximo C. Contreras, Metc, Branch 61, Makati, Metro Manila, A.M. No. MTJ-93-849, October 26, 1994.

the decisions of the Supreme Court and render obeisance to its status as the apex of hierarchy of courts.[4]

The Supreme Court in the *Aichi case* clearly established the significance of Section 112 (D) [now Section 112 (C)] of the NIRC of 1997, as amended, in the ascertainment of the timeliness of an appeal filed before this Court. Hence, it is but proper for this Court to sternly apply the said jurisprudence and provisions of law to the facts of the instant case.

With all the foregoing, petitioner's failure to observe the periods provided under Section 112 (C) of the NIRC of 1997, as amended, by prematurely filing the Petition for Review on March 29, 2010, effectively removes the instant Petition for Review from the ambit of this Court's jurisdiction.

WHEREFORE, the respondent's ***Motion to Dismiss*** is hereby **GRANTED**. Accordingly, the instant Petition for Review is **DISMISSED** on the ground for having been prematurely filed.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

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

[4] Commission on Higher Education vs. Atty. Felina S. Dasig, G.R. No. 172776, December 17, 2008.