

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ELIXIR GAMING TECHNOLOGIES
PHILIPPINES, INC.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

CTA CASE NO. 7972

Members:

ACOSTA, Chairperson

UY, and

FABON-VICTORINO

Promulgated:

MAR 01 2010 1:43 p.m.

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RESOLUTION

Before the Court is the Motion to Dismiss dated November 18, 2009, filed by respondent Commissioner of Internal Revenue on November 20, 2009.

Respondent claims that the instant Petition for Review filed by petitioner Elixir Gaming Technologies Philippines, Inc., hinged on alleged inaction on its claim for VAT refund in the amount P28,271,548.55, should be dismissed for lack of cause of action due to petitioner's failure to exhaust all administrative remedies available under the law.

In support of his position, respondent cited Section 112 of the National Internal Revenue Code (NIRC) which gives him a period of 120 days from the date of submission of complete documents for the application for tax refund, within which to rule on the matter. After the said period, the taxpayer affected by his ruling may, within 30 days from notice, or after the expiration of the 120-day period, elevate the adverse decision or his inaction before the Court of Tax Appeals.

According to respondent, petitioner filed its application for refund/or issuance of tax credit in the amount of PHP28,271,548.55, representing VAT input tax it paid for the third to the fourth quarters of the taxable year 2007, on August 24, 2009. Thus, he had until December 22, 2009, within which to act on the matter. Thereafter, petitioner had 30 days to appeal his adverse ruling or inaction before this Court. However, petitioner prematurely filed the instant Petition for Review on September 28, 2009 or before the expiration of the 120-day period allowing him to take the corresponding action, rendering the petition dismissible for lack of cause of action.

In rejecting the motion, petitioner argues that Section 112 of the Tax Code, as amended by Section 112 (A) of R.A. 9337 allows a Vat-registered person whose sales are zero-rated to apply for a refund or issuance of Tax Credit Certificate (TCC) within two (2) years after the close of taxable quarter when the sales were made. Moreover, the Supreme Court, in the case of the *Commissioner of Internal Revenue v. Victorias Milling Co. Inc.*, 22 SCRA 12, has ruled that "the claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two year period. If, however, the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of said collection". Following the above ruling, petitioner's two-year prescriptive period to file a judicial claim for refund with this Court would end on September 30, 2009. Precisely it filed the instant petition on September 28, 2009, without waiting for the 120-day period allotted to respondent to lapse.

In Reply, respondent posits that the two year period within which to file an appeal with this Court should not be read separate and distinct from the portion of Section 112 of NIRC giving him 120 days within which to act on the claim for refund. To do so will allow the taxpayer the discretion to pre-empt the period granted

effectively depriving him of due process to act on the matter. Further, the jurisprudence cited in the case of *Commissioner vs. Victorias Mining Co., Inc.*, supra, was decided on January 3, 1968 or before the existence of the VAT and involved specific tax on manufactured oil, hence, not on all fours with the case at bar. Besides, Section 112 indicates no exception justifying deviation from the required 120-day period granted unto him to resolve the claim for refund. Finally, petitioner had two years within which to file its application for refund yet it waited until the last moment to act which obviously deprived him of the opportunity to act accordingly. Such delay on the part of petitioner should not be rewarded with a grant of exception from the requirements of the law.

Did petitioner correctly file the present Petition for Review without waiting for the ruling of respondent or the expiration of the 120 days allotted to the latter to act on the former's claim for VAT refund?

The answer is in the negative.

Section 112 of the National Internal Revenue Code (NIRC), as amended, states that:

"Section 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 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"

Clearly, any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit certificate or refund of creditable input tax within two years after the close of the taxable quarter when the sales were made. On the other hand, respondent, who is vested with the authority to act on the matter, has a period of 120 days, within which to grant or deny the application. In case of adverse decision or inaction on the part of respondent within the prescribed period, the aggrieved taxpayer – the petitioner in this case – has thereafter a period of 30 days to appeal via petition for review with this Court.

The two-year prescriptive period sets the limitation only on the filing of the application for a tax refund or for issuance of tax credit certificate with respondent and not resort to Court action. This position is illustrated in the case of *Intel vs. CIR*,¹ to wit:

Under Sections 106 (A)(2)(a)(1) in relation to 112(A) of the Tax Code, **a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for a refund or issuance of a tax credit certificate for input taxes paid attributable to such sales upon complying with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated (like export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were**

¹ G.R. No. 166732, April 27, 2007

made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), Section 106(B), and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations.

Therefore, only upon denial or inaction on the application for tax refund or issuance of tax credit certificate by respondent Commissioner of Internal Revenue may a taxpayer appeal the matter to this Court, within 30 days from notice.

Settled is the rule that "the Court may not construe a statute that is free from doubt. Where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. The Court has no choice but to see to it that its mandate is obeyed."² In this case, the provision invoked by petitioner is clear as a day.

Also as correctly pointed out by respondent, a disregard of the provision to follow petitioner's interpretation of the Section 112 of the NIRC will undoubtedly lead to undesirable results and unimaginable chaos. A taxpayer desirous to resort directly to the Court can effectively bypass respondent by filing administrative claim for refund only days before the expiration of the 2-year prescriptive period then immediately thereafter, on the pretext of the "inaction" of respondent and that the prescriptive period will lapse, file a corresponding petition for review with the Court. Such course of action will render nugatory the authority granted by law upon respondent to act accordingly on the claims for refund.

WHEREFORE, the Motion to Dismiss dated November 18, 2009, filed by respondent, is GRANTED. Consequently, the Petition for Review dated September 25, 2009, filed by petitioner Elixir

² CIR vs. American Express, G.R. No. 152609, June 29, 2005

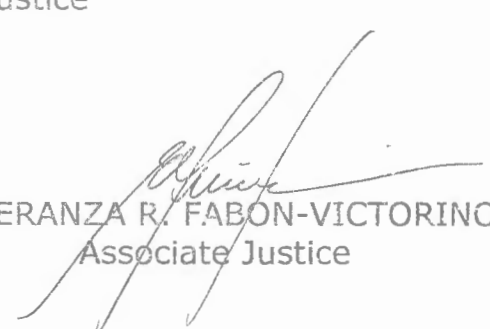
Gaming Technologies Philippines, Inc. is hereby DISMISSED,
without prejudice.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

WITH DISSENTING OPINION

ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice