REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PENTA TECHNOLOGICAL PRODUCTS, INC., Petitioner,	C.T.A. CASE NO. 7723
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 21 2011 ; 3:30pm

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DECISION

FABON-VICTORINO, *J.*:

In this Petition for Review filed on January 25, 2008, petitioner Penta Technological Products, Inc. prays for issuance of a tax credit certificate (TCC) in the amount of P672,695.00, allegedly representing its creditable and unutilized input Value-Added Tax (VAT) attributable to its effectively zero-rated sales for the months of November and December of taxable year 2005.

Petitioner states that it is a corporation duly organized and existing under and by virtue of Philippine laws with business address at El Inventor Compound, Amang Rodriguez Avenue, Barangay Dela Paz, Pasig City.[1] It is engaged in the business of distribution of various steel products and related heat treatment services, welding electrodes. About sixty percent (60%) of its sales are generated from PEZA-registered clients.

Petitioner is a registered Value Added Tax (VAT) entity as of May 31, 1989, with Certificate of Registration No. OCN3RC0000269828 issued by the Bureau of Internal Revenue (BIR) District Office No. 043–Pasig City.[2]

On January 25, 2006, petitioner filed its Quarterly VAT Return for the fourth quarter of 2005.[3]

On September 12, 2006, petitioner filed with RDO No. 043 – Pasig City an application for issuance of tax credit certificate on its creditable and unutilized VAT input taxes in the amount of P672,695.00, allegedly representing its input taxes on effectively zero-rated sales for November and December 2005.[4]

Believing that no action was forthcoming, petitioner followed-up its application through a letter dated November 6,

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[1] Exhibit "A".
[2] Exhibit "N"; also admitted by respondent in her Answer dated March 31, 2008.
[3] Exhibit "O".
[4] Exhibit "B".

2006 sent to Revenue District Officer Raul Vicente L. Recto. As the 120-day period was about to lapse, petitioner sent another letter dated January 3, 2007 to Director Merlinda L. Ordoyo of Revenue Region No. 7, and to respondent Commissioner of Internal Revenue (CIR) on June 20, 2007.

On August 10, 2007, petitioner received a Letter of Authority (LOA) from Revenue Officer Pilipina Ocampo dated July 20, 2007, requesting submission of additional requirements to which it complied on August 23, 2007.[5]

In its letter dated October 16, 2007, petitioner expressed hope that its application would soon be acted upon specially considering that it had been consolidated with the examination of its tax returns for the year 2005 under LOA No. 2001-00032385.

Subsequently, petitioner learned upon verification that its application for issuance of tax credit certificate was forwarded to the Assessment Office of Revenue Region No. 7 in Quezon City. As the prescriptive period was to expire on January 25, 2008 without any action from respondent, petitioner filed the instant petition on the said date.

[5] Pars. 5 and 6, Joint Stipulation of Facts and Issues, docket, p. 124; Exhibit "I".

In his Answer[6] dated March 31, 2008, respondent, who is vested with the authority to grant or deny applications for tax refund or credit, among others, raised the following Special and Affirmative Defenses:

> "5. The claim for refund is still under examination by the respondent's Bureau;
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> 6. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
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> 7. The grant of a claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
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> 8. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

During the trial, petitioner presented documentary evidence marked as Exhibits "A" to "BB", which were admitted in a Resolution dated July 29, 2009.

Petitioner further supported its claim through the testimony of its External Auditor Arturo R. Dimaano. The latter

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[6] Docket, pp. 50-51.

testified that petitioner filed its VAT return on January 25, 2006. On September 12, 2006, he personally filed with RDO No. 43-Pasig City petitioner's tax credit application dated September 10, 2006.[7] Since there was no action taken by respondent, petitioner filed the instant Petition for Review on January 25, 2008, which was the last day of the two-year prescriptive period for filing of its application for issuance of tax credit certificate on its input taxes on effectively zero-rated sales for November and December 2005.

He explained that petitioner's claim for tax credit on input taxes stemmed from its effectively zero-rated sales to AICHI FORGING COMPANY ASIA, INC. (AFCAI), a PEZA-registered client.[8] In November and December of 2005, petitioner imported goods most of which were sold to AFCAI. And since all importations were subject to VAT, petitioner paid the input taxes due thereon. The input taxes from domestic purchases and importations for the months of November and December 2005 were substantially apportioned to arrive at the claimed tax credit figure of PHP672,695.00 for the sales pertaining to AFCAI. But since AFCAI is a PEZA-registered entity, it is tax-exempt. The input taxes paid by petitioner remains unutilized to date as the

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[7] Exhs. B, C and O.
[8] Exhibit M.

tax credit being claimed was separately recognized in the books of petitioner. Consequently, there was no output tax for the particular sale with AFCAI covering the periods of November and December 2005 against which its unutilized input taxes may be offset/credited.[9]

After petitioner formally rested its case, respondent, on December 29, 2009, was deemed to have waived his right to present evidence due to his counsel's continuous failure to present any despite the opportunity granted.[10]

In a Resolution dated February 23, 2010, the instant Petition for Review was submitted for decision after petitioner filed its Memorandum on January 8, 2010. Again, respondent failed to file any pleading notwithstanding the Court's directive.[11]

In their Joint Stipulation of Facts and Issues, the parties agreed to submit the following lone issue for the resolution of the Court:

> "Whether or not the petitioner is entitled to be granted its refund or issued certificate of tax credit for input taxes on effectively zero-rated sales in the amount of

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[9] Exhs. V to V-2, Exhs. W to W-140, X to X-12-a and Y to Y-14.
[10] Docket, p. 385.
[11] Resolution dated February 23, 2010, docket, p. 401.

> Php672,695.00 for November and December 2005."[12]

The Court's Ruling

Section 112 of the National Internal Revenue Code of 1997, as amended, provides:

> "Section 112. Refunds or Tax Credits of Input Tax.
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> (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
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> x x x x x x x x x
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> (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.
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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

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[12] Joint Stipulation of Facts and Issues, docket, p. 125.

> expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals. x x x"

From the foregoing, it is clear that any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply with respondent for a refund or issuance of a tax credit certificate within two (2) years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT.

Respondent, on the other hand, has 120 days from the submission of complete documents in support of such claim to grant or deny the same. In case of an adverse decision or failure on the part of respondent to act on the claim within the period granted unto him under the NIRC, as amended, petitioner has 30 days from receipt of the adverse decision or from the expiration of the 120-day period without any action from respondent, to appeal before this Court through a petition for review.

Pursuant to the pertinent provision and counting two years from the close of the fourth taxable quarter of 2005, it is clear that the application for issuance of tax credit filed by petitioner on September 12, 2006 was within the two-year prescriptive period provided under Section 112(A) of the NIRC of 1997, as amended. It must be noted however that the filing of the administrative claim did not coincide with the completion of the required documents to substantiate the application for tax credit. Stated otherwise, the date when the administrative claim was filed was not the date when petitioner completed the documents in support of the application required by respondent in accordance with Section 112(C). In the Letter of Authority dated July 20, 2007,[13] respondent requested petitioner to submit additional supporting papers relevant to its application for issuance of tax credit filed on September 12, 2006. And it was only on August 23, 2007 that petitioner was able to comply.[14]

From the submission of complete documents on August 23, 2007, respondent had 120 days or until December 21, 2007, within which to determine the merit of the application for tax credit. Admittedly, respondent failed to act on the administrative claim.[15] Reckoned from the last day allotted for respondent to rule on the claim for refund, petitioner had 30 days, or until January 20, 2008, within which to assail such inaction of respondent to this Court. Since the last day for filing fell on a

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[13] Exhibit "G" and "H".
[14] Joint Stipulation of Facts and Issues, paragraph 6, Docket page 124.
[15] Joint Stipulation of Facts and Issues, paragraph 9, Docket page 124.

Sunday, petitioner had the next business day or until January 21, 2008, within which to file its judicial claim for refund.

For unknown reason, petitioner belatedly filed its judicial claim only on January 25, 2008, divesting this Court of authority to take cognizance of the instant Petition for Review.

It bears stressing that the Court of Tax Appeals is a court of limited jurisdiction, its jurisdiction to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implication.[16] Hence, the Court can act only on cases clearly within its jurisdiction pursuant to the powers vested upon it by law.

Section 7 of Republic Act No. 1125[17], as amended by Republic Act No. 9282,[18] defines the jurisdiction of the Court, as follows:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[16] Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp., G.R. No. 158540, July 08, 2004.
[17] An Act Creating the Court of Tax Appeals.
[18] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise known as the Law Creating the Court of Tax Appeals, and for other Purposes.

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(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges,** penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**;" (*Emphasis supplied*)

Corollarily, Section 11 of R.A. No. 1125 limits the period within which a Petition for Review must be filed with the Court, to wit:

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**

Appeal should be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed**

> **by law to act thereon**. xxx" *(Emphasis supplied)*

The reglementary period of thirty (30) days to seek judicial intervention, as provided in Section 112 of the Tax Code, and in Sections 7 and 11 of R.A. No. 1125, either on the denial of the claim for refund, or upon the lapse of the allotted 120-day period without any action on the part of respondent, finds support in jurisprudence. The very recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[19] clears all doubts on the period to appeal with this Court, in this wise:

> "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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> **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**

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[19] G.R. No. 184823, October 06, 2010.

> **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." (emphasis ours)

The Supreme Court on several occasions held that "rules of procedure, especially those prescribing the time within which certain acts must be done, have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, x x x failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional."[20]

It is also beyond all telling that the right to appeal is not part of due process but a mere statutory privilege that has to be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail of the same

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[20] Producers Bank of the Philippines vs. Honorable Court of Appeals, *et al.*, G.R. No. 126620, April 17, 2002.

must comply with the requirements of the rules.[21] Failing to do so, the right to appeal is lost.

There being no jurisdiction, the Court will not belabor or even attempt to discuss the lone issue raised by the parties in their Joint Stipulation of Facts and Issues. All actions or proceedings are rendered void *sans* authority on the part of the Court to hear and determine the case.

WHEREFORE, the instant Petition for Review is hereby **DENIED,** for want of jurisdiction.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

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[21] Stolt-Nielsen Marine Services, Inc. (now Stolt-Nielsen Transportation Group, Inc.) vs. NLRC, *et al.*, G.R. No. 147623, December 13, 2005.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice