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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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UCPB PROPERTIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6543

x - x

UCPB PROPERTIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6589

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JUN 24 2009, 1:30pm

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DECISION

CASANOVA, ***J.*:**

Before the Court are consolidated cases filed by petitioner, seeking for the issuance of a tax credit certificate or refund of unutilized input VAT paid on purchases of capital goods in the sum of FIFTEEN MILLION TWO HUNDRED EIGHTY-EIGHT THOUSAND SEVEN

HUNDRED EIGHTY-FIVE PESOS AND FIFTEEN CENTAVOS (P15,288,785.15) for the third and fourth quarters of the taxable year 2000, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
6543	3rd qtr. - 2000	P 10,176,254.15
6589	4th qtr. - 2000	5112531.00
	TOTAL	**P 15,288,785.15**

THE FACTS

As stipulated by the parties, the facts of the case are as follows:[1]

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office at 8th Floor, UCPB Building, 7907 Makati Avenue, Makati City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credit of overpaid internal revenue taxes as provided by law with office at the BIR National Office Building, Diliman, Quezon City, where he may be served summons and other court processes.[3]

Petitioner is principally engaged in the business of home building and home development, real estate buying and selling, subdividing and developing lands and other properties.[4]

As such, it is registered as a Value-Added Tax ("VAT") taxpayer in accordance with Section 236 of the Tax Reform Act of 1997 ("Tax Code") with Taxpayer Identification Number ("TIN") 000-172-912-000 and with Bureau of Internal Revenue ("BIR") Certificate of Registration No. 15797.[5]

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[1] Stipulation of Facts of the *Joint Stipulation of Facts and Issues*; docket, pp. 69-70.
[2] *Id.*, Paragraph 1.
[3] *Id.*, Paragraph 2.
[4] *Id.*, Paragraph 3.
[5] *Id.*, Paragraph 4.

For the period July 1, 2000 to September 30, 2000, petitioner filed its Quarterly VAT Return on October 12, 2000, and reflected therein its current input taxes arising from domestic purchases in the total amount of P17,591,169.71.[6]

For the period October 1, 2000 to December 31, 2000, petitioner filed its Quarterly VAT Return on January 24, 2001, and reflected therein its current input taxes arising from domestic purchases in the total amount of P9,180,142.60.[7]

On September 27, 2002, petitioner filed an administrative claim for refund or issuance of a tax credit certificate of unutilized input VAT with the BIR in the amount of P10,176,254.15 covering the period July 1, 2000 to September 30, 2000.[8]

On December 18, 2002, petitioner filed an administrative claim for refund or issuance of a tax credit certificate of unutilized input VAT with the BIR in the amount of P5,112,531.00 covering the period October 1, 2000 to December 31, 2000.[9]

On October 3, 2002, petitioner filed before this Court a Petition for Review praying for a judgment ordering respondent to refund or to issue a tax credit certificate in the amount of P10,176,254.15, representing unutilized input taxes paid on its purchases of capital goods for the period July 1, 2000 to September 30, 2000.[10]

On January 21, 2003, petitioner filed before this Court a Petition for Review praying for a judgment ordering respondent to refund or to issue a tax credit certificate in the amount of P5,112,531.00, representing unutilized input taxes paid on its purchases of capital goods for the period October 1, 2000 to December 31, 2000.[11]

On December 3, 2002, respondent filed his Answer in C.T.A. Case No. 6543 and raised the following Special and Affirmative Defenses:

[6] *Id.*, Paragraph 5.
[7] *Id.*, Paragraph 6.
[8] *Id.*, Paragraph 7.
[9] *Id.*, Paragraph 8.
[10] Docketed as C.T.A. Case No. 6543.
[11] Docketed as C.T.A. Case No. 6589, pp. 1-3.

"4. Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16(c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;

5. Petitioner failed to show that the alleged creditable VAT was not carried over and unutilized against the value-added tax liability of the petitioner in the succeeding quarters or year;

6. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

7. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

8. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable."[12]

On March 6, 2003, respondent filed his Answer in C.T.A. Case No. 6589 and raised the same Special and Affirmative Defenses.

On April 8, 2003, upon motion of the petitioner, this Court issued a Resolution consolidating the above-captioned cases.[13]

Trial proceeded, and petitioner presented its testimonial and documentary evidence. On the other hand, respondent was declared to have waived his right to present further evidence,[14] and to formally offer his evidence marked and identified during trial.[15]

The cases were considered submitted for decision on December 24, 2008, after petitioner filed its Memorandum on December 5, 2008.[16]

THE ISSUES

Submitted for the Court's resolution are the following issues:[17]

[12] Docket, pp. 32-33.
[13] Docket, p. 52.
[14] Resolution dated November 13, 2007. Docket, p. 624.
[15] Resolution dated February 20, 2008. Docket, p. 627.
[16] Docket, p. 975.
[17] Stipulation of Issues of the *Joint Stipulation of Facts and Issues*; docket, p. 71.

1. Whether petitioner incurred and has unutilized VAT input taxes in the amounts of P10,176,254.15 and P5,112,531.00 for the 3rd and 4th Quarters of 2000, respectively, arising from its purchases of capital goods, which are therefore proper objects of a claim for refund or tax credit pursuant to Section 112 (B) of the Tax Code, as amended;

2. Whether or not the unutilized VAT input taxes in the amounts of P10,176,254.15 and P5,112,531.00 generated from petitioner's purchases of capital goods during the 3rd and 4th Quarters of 2000, respectively, are properly substantiated by documentary evidence in the form of invoices and official receipts;

3. Whether or not the amounts of P10,176,254.15 and P5,112,531.00 representing the unutilized VAT input taxes generated from the petitioner's purchases of capital goods during the 3rd and 4th Quarters of 2000, respectively, remained unapplied against any output tax liability of the petitioner in the same and/or subsequent taxable quarters; and

4. Whether or not the instant Petitions were filed within the two-year prescriptive period as provided for in Section 112 (B) of the Tax Code.

THIS COURT'S RULING

It is necessary to determine first the timeliness of the filing of the instant Petitions before this Court may proceed to resolve the remaining issues.

Section 112(B) of the Tax Code reads:

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

xxx.

(B) *Capital Goods.* - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. **The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.**" (Emphasis supplied.)

Pursuant to the above-quoted section, the reckoning of the two (2)-year prescriptive period within which to file for the issuance of a tax credit certificate or refund of input taxes starts from the close of the taxable quarter when the importation or purchase was made.

Counting from September 30, 2000 and December 31, 2000, close of the third and fourth quarters of 2000, petitioner had until September 30, 2002 and December 31, 2002 within which to file its claim for the issuance of a tax credit certificate or refund of input taxes for the 3rd and 4th Quarters of 2000, respectively, both in the administrative and judicial levels. While the administrative claims were filed within the two-year prescriptive period, the Petitions for Review filed on October 3, 2002 and January 21, 2003 were belatedly filed. Thus, petitioner is barred to claim for the issuance of a tax credit certificate or refund of input taxes for the 3rd and 4th Quarters of 2000 in the amounts of P10,176,254.15 and P5,112,531.00, or a total of P15,288,785.15.

As petitioner's claim for the issuance of a tax credit certificate or refund of input taxes for the 3rd and 4th Quarters of 2000 is barred by prescription, the resolution of the remaining issues is now **MOOT.**

WHEREFORE, the Petitions for Review are hereby **DENIED** on the ground of prescription.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairperson, First Division
Presiding Justice

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Members:

ACOSTA, *P.J.*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JUN 24 2009; 1:30pm

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CONCURRING AND DISSENTING OPINION

The majority denied the instant consolidated Petitions on the ground of prescription. They ruled that the administrative claims are filed within the two-year prescriptive period pursuant to Section 112 (B) of the National Internal Revenue Code (NIRC) of 1997 but the petitions are belatedly filed.

I am in accord with the denial of the petitions. However, I proffer a different ground for the dismissal. The Petitions for Review are prematurely filed for failure of petitioner to wait for the expiration of the 120-day period provided under Section 112 (D) of the same code before availing the said judicial recourse. The consolidated petitions should be dismissed for failure to state a cause of action.

The majority interprets that the two-year period in Section 112 (B) of the NIRC of 1997, includes the time for filing the administrative claim before the Commissioner of Internal Revenue and the recourse before this Court.

With due respect, I cannot join this submission. Section 112 (B) of the NIRC of 1997[1] merely sets a limitation on the period on when to file an administrative claim. It excludes the time of recourse before this Court.

First, a reading of the Section 112 (B) suggests a different interpretation. The said section reads:

> **"SEC. 112.** *Refunds or Tax Credits of Input Tax.* -
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> xxx xxx xxx
>
> **(B)** *Capital Goods.* - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

Apparently, the afore-quoted section uses the word "apply" which connotes the filing of an administrative claim. A taxpayer does not apply a claim for refund before this Court but rather files an "appeal" on the decision or inaction of the

[1] Prior to its amendment by Republic Act No. 9337, "AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES"; effective July 1, 2005.

Commissioner. If Congress intends the two-year period to include both the administrative and judicial recourse, then the word "files" should have been used. Moreso, the next sentence uses the word "application" which obviously refers to the administrative claim indicated in the first sentence.

Second, if we adhere to the majority's interpretation that the two year period includes the judicial appeal before us, the periods (*120-day period for the Commissioner to decide and 30 days within which to file an appeal before this Court*) provided under Section 112 (D) can be rendered inutile. It is possible that taxpayers will file their administrative and judicial claim at a time when the two-year period is about to prescribe, as what have been actually happening in some cases, even without awaiting the expiration of the 120 days, justifying their action on the ground that the two-year period is about to prescribe. Worth emphasizing is the legal fiat that we should avoid, if possible, a construction that renders any part of the statute meaningless or extraneous. A law should be interpreted with a view to upholding rather than destroying it.[2]

In addition, since the claims are not decided administratively due to the immediate appeal before us, we become an indirect avenue for processing such claims, which function rightfully, belongs to the Commissioner.

On the other hand, limiting the two year period under Section 112 (B) to the filing of administrative claims will, in contrast, promote the concerns of all the parties. Taxpayers will be given a longer time of two years to file their administrative claim *sans* the fear of losing their right to seek judicial relief, the Bureau of Internal Revenue (BIR) will be given 120 days to study the taxpayers claim, and the Court will be limited to reviewing the decisions of the BIR on claims

[2]Ruben E. Agpalo, Statutory Construction, Fifth Edition (2003), Pages 256-257.

for refund of input taxes rather than be bombarded with cases that should have been decided administratively.

Furthermore, Section 112 (B) does not contain a limitation that a taxpayer can no longer have a judcial recourse if the two-year period have already expired, unlike Section 229 of the NIRC of 1997 which clearly sets forth that "*no suit or proceeding shall be filed after the expiration of two years from the date of payment.*" The obvious reason is because Section 112 provides for its own limitation; under Section 112 (D), taxpayers are given 30 days within which they can file an appeal before us. Between the limitations found in Section 112, which provision specifically deals with input taxes, and Section 229 which generally covers refunds of erroneously or illegally collected taxes, logic dictates that we should follow Section 112. Thus, I see no reason behind the rationale that even in cases of claims of refund of input taxes, a taxpayer should file both its administrative and judicial claim within the two year period.

While it is true that this Court had been consistent in ruling that taxpayers should file their adminsitrative and judicial recourse within the two year period, however, I believe that such ruling can no longer be applied indiscriminately under the NIRC of 1997.

It is beyond cavil that Section 106 (now, 112) of the 1977 Tax Code prior to its amendments by Republic Act (RA) No. 7716 otherwise known as "The Expanded Value Added Tax Law" which became effective on May 28, 1994, and later on by Republic Act (RA) No. 8424 otherwise known as "The Tax Reform Act of 1997" which took effect on January 1, 2008, provides no limitation on when a taxpayer can have a judicial recourse before this Court. Below is a comparison of Section 106 before and after its amendment:

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Section 106 before Amendments	Section 106 after being Amended by RA No. 7716
Sec. 106. Refunds or tax credits of input tax. xxx xxx xxx (c) Capital goods. A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input tax has not been applied against output taxes. xxx Provided, however, **That the application is filed not later than two (2) years from the date herein prescribed.** xxx xxx xxx (e) Period within which refund or input taxes may be made by the Commissioner. **The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duty authorized representative. No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.** xxx xxx xxx	Sec. 106. Refunds or tax credits of creditable input tax. — (b) Capital goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. **The application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made.** (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 for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.** xxx xxx xxx *(Emphasis supplied.)*

Under the Tax Reform Act of 1997[3], Section 106 is renumbered as Section 112 and the 60 day period given to the Commissioner to act on claims of refund of input taxes is increased to 120 days.

[3] Prior to its amendment by Republic Act No. 9337, "AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES"; effective July 1, 2005.

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Clearly, prior to its amendment, Section 106 of the 1977 Tax Code merely provides for the period when a taxpayer may file its administrative claim and the period for the Commissioner to act on the claim. It failed to provide a period when a taxpayer may file its appeal before this Court. This is the reason why the period of limitation in Section 230 (now, 229) of the same Code that "no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment" is applied to cases of refund of input taxes. As an example is the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*,[4] where the Supreme Court applied the interpretation accorded to the prescriptive periods under Section 230 (now, Section 229) of the 1977 Tax Code to therein case, involving refund of input taxes and held that:

> "It is already well-settled that the two-year prescriptive period for instituting a suit or proceeding for recovery of corporate income tax erroneously or illegally paid under Section 230 of the Tax Code of 1977, as amended, was to be counted from the filing of the final adjustment return. This Court already set out in ACCRA Investments Corporation v. Court of Appeals, the rationale for such rule, thus – xxx
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> **The very same reasons set forth in the afore-cited cases concerning the two-year prescriptive period for claims for refund of illegally or erroneously collected income tax may also apply to the Petitions at bar involving the same prescriptive period for claims for refund/credit of input VAT on zero-rated sales."** (*Emphasis supplied.*)

Consequently, even in refunds of input taxes, taxpayers are mandated not to await the decision of the Commissioner before elevating their cases to this Court if the two-year period is about to prescribe. Such rule is intended for the benefit of taxpayers who can be deprived of availing judicial recourse if they failed to do so within the two-year period.

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[4] G.R. Nos. 141104 & 148763; June 8, 2007.

However, under Section 112 (D), the probability of losing the right of judicial recourse is not too high-flying because a taxpayer is given two years to file its claim, the Commissioner is given another 120 days to study the claim and the taxpayer has 30 days to appeal the Commissioner's adverse action or inaction. Thus, I do not think that there is still a need to extend the application and basis of the two-year prescriptive period under Section 229 to refund of input taxes. Taxpayers are already afforded with the protection that they need.

Applying the above discussions in the instant case, the filing of the consolidated petitions on October 3, 2002 and January 21, 2003 for the 3rd and 4th quarters of 2000 are premature because they are respectively filed six and 34 days from the filing of the administrative claims. Petitioner failed to wait for the 120-day period to expire. It failed to exhaust the available administrative remedies.

Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[5]

If a litigant goes to court without first pursuing his administrative remedies, his action is premature or he has no cause of action to ventilate in court. His case is not ripe for judicial determination.[6]

FOR ALL THE FOREGOING, it is my stand that in accordance with Section 112 (B) of the NIRC of 1997, a taxpayer has two years to file its administrative claim, counted from the close of the taxable quarter involved.

[5] Teotico vs. Agda, G.R. No. 87437, May 29, 1991.
[6] Aboitiz vs. Collector of Customs, 83 SCRA 265; Abe-Abe vs. Manta, 90 SCRA 524-531.

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However, pursuant to Section 112 (D) of the same code, the Commissioner has 120 days to decide on a taxpayer's claim, and within 30 days upon the expiration thereof in case of inaction or upon receipt of the adverse decision of the Commissioner, a taxpayer can appeal before this Court. Failure to adhere with the 120-day period will render the action/appeal premature, as in the instant case where the claims were not formally acted upon by the Commissioner.

ERNESTO D. ACOSTA
Presiding Justice