REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DIAGEO PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7778

Members:
CASTAÑEDA, JR., *Chairperson;*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:
APR 20 2011 9:45 A.m.

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DECISION

CASANOVA, *J.*:

The instant Petition for Review seeks the issuance of a tax credit certificate or refund in the total amount of P11,442,722.60, allegedly representing unutilized/excess input VAT attributable to its VAT zero-rated export sales for the period covering January to March 31, 2006.

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

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippine with business address at 111 Technology Avenue, Laguna Technopark, Binan, Laguna[1].

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of the said office including, among others, the

[1] Joint Stipulation of Facts (JSFI), par. 4.1, Docket, p. 111-112

power to decide, approve and grant tax refunds/credits of erroneously or excessively paid taxes.[2]

On 28 June 2007, the petitioner filed a claim for Tax Credit/Refund of its excess input VAT covering the period of January to March 2006 in the amount of Eleven Million Four Hundred Forty-Two Thousand Seven Hundred Twenty-Two Pesos and Sixty Centavos (Php 11,442,722.60).[3]

Petitioner manufactured alcohol products and exported the same from January to March 2006 using the raw material purchased from its suppliers.[4]

Respondent, however, did not act on the petitioner's administrative claim for refund, thus, petitioner filed the instant Petition for Review on April 25, 2008.

In his Answer[5] filed on July 7, 2008, respondent averred the following Special and Affirmative Defenses:

> "5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.
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> 6. A claim for refund partakes of the nature of an exemption which cannot be allowed unless granted in the most categorical language. These claims are construed strictly against the petitioner and liberally in favor of the taxing authority. (Commissioner of Internal Revenue V. Manila Mining Corp., 468 SCRA 571). This being so, the claim for refund of creditable VAT input taxes in the amount of Php11,442,722.60 for the period from 01 January 2006 to 03 March 2006 must be strictly construed and petitioner has the burden of proving that the following requirements were met or complied with:
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> a. The registration requirements of a value-added taxpayer in compliance with Section 9.236-1(a)

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[2] JSFI, par. 4.2, Docket, p. 112
[3] JSFI, par. 5.1, Docket, *Ibid.*
[4] JSFI, par.5.2, Docket, *Ibid.*
[5] Docket, pp. 60-67

of Revenue Regulations No. 16-2005, and Section 236 of the NIRC of 1997, as amended;

b. The invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the NIRC of 1997, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, Revenue Memorandum Order No. 53-98. Otherwise, there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the NIRC of 1997, as amended. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above stated requirements warrants the dismissal of the petition for review; and

d. That petitioner's administrative and judicial claims for tax refund was filed within two (2) years after the close of taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the NIRC of 1997, as amended.

7. Petitioner failed to show proof of compliance with the above requirements. Hence, the petition should be denied.

8. Moreover, petitioner did not give respondent ample time to resolve its administrative claim for refund based on Section 112 (C) of the NIRC of 1997, which states:

"Section 112. Refunds or Tax Credits of Input Tax

(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." (Italics ours)

9. Hence, when petitioner filed its administrative claim for tax refund with the respondent's Excise Taxpayer's Assistance Division on 28 June 2007, respondent had 120 days within which to decide on petitioner's claim for tax refund. And in case of full or partial denial of the claim or failure of respondent to act on the application within the 120 day period, petitioner has 30 days to appeal the decision or inaction with the Court of Tax Appeals. Thus, respondent had to render a decision within 120 days from 28 June 2007 or until 26 October 2007. In the event that respondent failed to act upon petitioner's claim for tax refund, petitioner has 30 days from 26 October 2007 or until 25 November 2007 to appeal the unacted claim with the Court of Tax Appeals.

10. Petitioner filed the instant petition for review with the Court of Tax Appeals only on 25 April 2008, more than one month after the lapse of the period allowed by law to file judicial claim for tax refund with the Court of Tax Appeals. Clearly, the instant petition for review was filed out of time.

11. The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions (Agpalo, Statutory Construction, Third Edition 1995, pa. 266). For this reason, the courts construe

these provisions of statutes as mandatory (ibid., citing Alvero vs. De la Rosa, 76 PHIL. 428, 434).

12. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for tax refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. (Asiatic Petroleum Co. V. Llanes, 49 Phil 466).

13. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with law and the rules and regulations, and the burden to prove otherwise is upon the petitioner.

14. Based on the foregoing, the petitioner's claim for tax refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of cause of action and jurisdiction."

During trial, petitioner presented testimonial and documentary evidence to prove its case. Respondent's counsel, on the other hand, manifested in open Court during the hearing held on April 5, 2010[6] that he will no longer present evidence. On June 9, 2010[7], this Court ordered the parties to file their respective Memorandum within thirty days from receipt of the said Resolution. In a Resolution dated September 30, 2010, the case was submitted for decision, taking into consideration respondent's Memorandum filed on August 27, 2010 and petitioner's Memorandum posted on August 4, 2010[8].

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[6] Minutes of the hearing, April 5, 2010, Docket, p. 480
[7] Resolution dated June 9, 2010, docket, pp. 515-516
[8] Memorandum, Docket, pp. 523-544

The lone issue raised by petitioner is whether or not petitioner is entitled to the issuance of a tax credit certificate of Eleven Million Four Hundred Forty Two Thousand Seven Hundred Twenty Two and 60/100 Pesos (Php 11,442,722.60).

Pertinent to the resolution of this case is Section 112(A) in relation to Section 112(D) of the NIRC of 1997, as amended, which provide:

> **"SEC.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: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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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) 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 expiration of the one

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

Pursuant to the afore-quoted provisions of Section 112(A), for a VAT taxpayer to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the administrative claim for refund was filed within the two-year prescriptive period.

This Court finds it appropriate to determine first the timeliness of the filing of the instant claim.

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.),*[9] held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made.

The present claim pertains to input VAT incurred for the period covering January to March 2006. Reckoned from March 31, 2006, the close of the taxable quarter covering the period January to March 2006, petitioner had until March 31, 2008, within which to file its administrative claim. Thus, petitioner's administrative

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[9] G.R. No. 172129, September 12, 2008, 565 SCRA 154

claim for refund/tax credit certificate filed with the Bureau of Internal Revenue on June 28, 2007 was filed on time.

However, notwithstanding the timely filing of petitioner's administrative claim, this Court finds petitioner's judicial claim filed on April 25, 2008, to have prescribed.

As held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[10], Section 112 (D) of the NIRC clearly provides that 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 respondent, 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 respondent 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.

Based on the above ruling, it is clear that respondent has 120 days from the submission of the complete documents supporting petitioner's claim within which to decide on petitioner's claim. In case of denial or inaction of respondent, petitioner then has 30 days within which to file an appeal before this Court.

In the present case, petitioner filed its administrative claim on June 28, 2007. Counting 120 days from the filing of the said administrative claim, respondent had until October 26, 2007, within which to decide on the same. Since respondent did not act on petitioner's administrative claim, petitioner had 30 days from October 26, 2007 or until November 25, 2007, within which to file its appeal before this Court, as provided under Section 112(D) [now Section 112(C)] of the NIRC of 1997. But since

[10] G.R. No. 184823, October 6, 2010. The Aichi case Decision has become final on December 6, 2010, per Resolution of the Supreme Court First Division.

November 25, 2007 fell on a Sunday, petitioner had until November 26, 2007, the next working day to file its judicial claim for refund before this Court[11].

Considering that petitioner filed its judicial claim only on April 25, 2008, which is way beyond the period provided by law, this Court finds the judicial claim of petitioner to have prescribed.

WHEREFORE, petitioner's claim for refund or issuance of tax credit certificate is hereby **DISMISSED** for being filed out of time.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

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[11] Rule 22
Computation of Time
Section 1. How to compute time – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. In the last day of the period, as thus computed, falls on a Saturday, a Sunday, or legal holiday in the place where the court sits, the time shall not run until the next working day.

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice