REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

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PROCTER & GAMBLE ASIA, PTE. LTD., Petitioner,	**CTA CASE NO. 7982**
	Members:
-versus-	**BAUTISTA,** *Chairperson* **PALANCA-ENRIQUEZ,** and **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 23 2011

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RESOLUTION

For resolution is respondent's "**Motion To Dismiss**" filed on March 4, 2011, with petitioner's "**Comments/Opposition to the Motion to Dismiss**" filed on March 16, 2011 and "**Supplement to the Comments/Opposition to the Motion to Dismiss**" filed on March 21, 2011.

Respondent prays for the dismissal of the instant case for lack of cause of action and lack of jurisdiction. Respondent argues that the filing of the instant Petition for Review with this Court on September 30, 2009, violates the provision of Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent avers that the Commissioner of Internal Revenue (CIR) has 120 days from the date of submission of complete documents within which to rule on a taxpayer's application for tax refund or credit. After the lapse of this period and without any action on his part, the aggrieved party may elevate the case to this Court within 30 days, prior thereto, this Court has no competence to entertain the appeal.

Pursuant to the foregoing, respondent asserts that relative to petitioner's input VAT claim for the quarters ending September 30, 2007 and December 31, 2007, its judicial claim was filed beyond the 30-day reglementary period, and with respect to its input VAT claim for the quarters ending March 31, 2008 and June 30, 2008, petitioner prematurely filed its judicial claim before the lapse of the 120-day period and which effectively deprived the CIR of the opportunity to rule on its claim for input VAT refund. Hence, respondent claims that the dismissal of the instant case is justified inasmuch as there is no jurisdiction acquired by this Court, citing the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (Aichi case).[1]

Respondent further argues that although Section 112(C) of the NIRC of 1997, as amended, uses the words "may appeal"; it does not mean that the judicial recourse within 30 days after the lapse of the 120-day period is directory and permissive. Rather, it means that an appeal to this Court would be totally dependent upon the discretion of the claimant, since it is a procedural right extended to the taxpayer, which he may or may not

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

exercise, based on his judgment. Respondent avers that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation and that the general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.

Respondent also contends that the defense of lack of jurisdiction may be raised by respondent at any stage of the proceedings.

On the other hand, in its *Comments/Opposition to the Motion to Dismiss*, petitioner raises the following grounds for the objection:

"I

THE DECISION OF THE FIRST DIVISION OF THE SUPREME COURT IN THE AICHI CASE CONTRAVENED ARTICLE VIII, SEC. 4(3) OF THE PHILIPPINE CONSTITUTION, HENCE, IT DOES NOT CONSTITUTE AS PRECEDENT.

II

THE DOCTRINE LAID DOWN IN THE AICHI CASE (assuming it is constitutional) REVERSING EXISTING DOCTRINE PASSED UPON AND APPROVED BY THE SUPREME COURT IN A LONG LINE OF CASES SHOULD NOT BE APPLIED TO PENDING CASES AT THE CTA PRIOR TO AICHI CASE BUT PROSPECTIVELY PURSUANT TO ARTICLE 8 IN RELATION TO ART. 4 OF THE CIVIL CODE AND EXISTING JURISPRUDENCE.

III

THE 120 DAY–30 RULE MENTIONED IN SEC. 112 (D) NOW SEC. 112 (C) OF THE NIRC IS DIRECTORY OR PERMISSIVE, NOT MANDATORY BASED ON EXISTING COURT OF APPEALS AND SUPREME COURT DECISIONS.

IV

THE SUPREME COURT HAS RULED THAT ALTHOUGH REFUNDABLE INPUT VAT MAY NOT BE CONSIDERED AS ILLEGALLY OR ERRONEOUSLY COLLECTED, TAXPAYER MUST BE GIVEN EQUAL OPPORTUNITY IN PURSUING ITS CLAIM. THE CTA HAS JURISDICTION WHEN THE TWO YEAR PRESCRIPTIVE PERIOD IS ABOUT TO EXPIRE.

V

IT IS A WELL SETTLED RULE THAT LITIGATIONS SHOULD, AS MUCH AS POSSIBLE, BE DECIDED ON THEIR MERITS AND NOT FROM TECHNICALITIES. OTHERWISE, THERE WILL BE INJUSTICE OR UNJUST ENRICHMENT.

VI

THE 120-30 DAY RULE WILL UNJUSTLY EXTEND THE PERIOD OF RESOLVING THE CLAIM TO AN INDEFINITE PERIOD BY THE FAILURE OF THE BIR/DOF TO DEFINE WHAT CONSTITUTES 'COMPLETE DOCUMENTS' FOR THE PURPOSE OF COUNTING THE 120-DAY PERIOD TO GRANT OR DENY THE CLAIM; WITHOUT THE DEFINITION, THE PROVISION IS INOPERATIVE."

In the *Supplement to the Comments/Opposition to the Motion to Dismiss*, petitioner avers that the Supreme Court, sitting *en banc,* is the only one that can legally reverse or modify doctrine or principle of law laid down by the Supreme Court in a decision rendered *en banc* or in division.

Petitioner alleges that the Supreme Court decisions in the two recent cases of *Silicon Philippines Inc. (Formerly Intel Philippines Manufacturing Inc.) vs. Commissioner of Internal Revenue (Silicon case)* [2] and *Kepco Philippines Corporation vs. Commissioner of Internal Revenue (Kepco case)* [3] bolster its contention that the *Aichi* decision is either abandoned or applicable to *Aichi* case only – not a precedent to be followed.

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[2] G.R. No. 172378, January 17, 2011.
[3] G.R. No. 179961, January 31, 2011.

Petitioner further avers that in the *Silicon* case, it was on May 21, 1999 when therein petitioner, Silicon Philippines, Inc (Silicon), filed its administrative claim for refund of input VAT attributable to zero rated export sales and capital goods for the period October 1, 1998 to December 31, 1998. Due to respondent's inaction the therein judicial claim was filed with this Court on December 27, 2000.

Petitioner contends that if the doctrine in the *Aichi* case was followed, *Silicon's* claim for refund had already prescribed because it took *Silicon* more than 150-days to go to this Court. However, as alleged by petitioner, the Supreme Court's First Division, the same division that rendered the *Aichi* decision, decided the *Silicon* case on its merits and affirmed the decision of this Court granting *Silicon's* refund of P9,898,967.00, representing input VAT on capital goods but denying the input VAT on zero rated export sales for failure of *Silicon* to comply with the invoicing requirements and to present the Authority To Print Form of the Bureau of Internal Revenue (BIR).

With respect to the *Kepco* case, petitioner posits that it was on January 29, 2001 when therein petitioner, Kepco Philippines Corporation (Kepco), filed its administrative claim for refund or unutilized input VAT, attributable to zero rated or effectively zero rated sales for the four quarters of 2009. Due to the CIR's inaction, *Kepco* filed its judicial claim on April 24, 2010 or 85 days from the filing of its administrative claim. Thus, petitioner claims that if the *Aichi* case was followed, the *Kepco* case should have been dismissed by the Supreme Court for lack of jurisdiction because *Kepco* prematurely filed its appeal with this Court without following the 120-30 day rule. However, the Supreme Court's Second Division decided the case on the merits and affirmed this Court's decision denying the claim for refund for failure of *Kepco* to substantiate its zero rated sales.

After a careful evaluation of the arguments, this Court finds respondent's *Motion* meritorious. However, contrary to respondent's allegation that the instant case is dismissible for lack of cause of action and lack of jurisdiction, the instant petition is dismissible for having been filed late.

Pursuant to Sections 7(a)(2) and 11 of Republic Act (R.A.) No. 1125, as amended, this Court has appellate jurisdiction over a Petition for Review filed by any party adversely affected by a decision, ruling or inaction of the CIR, within thirty (30) days from the receipt of the said decision or ruling, or in the case of inaction of the Commissioner of Internal Revenue (CIR), from the expiration of the period fixed by law to act thereon. Said Sections provide that:

"Section 7. *Jurisdiction.* – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal as herein provided:

xxx xxx xxx

2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds or internal revenue taxes, fees or other charges, penalties in relation thereto**, or other matters arising under the National Internal Revenue 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*)
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> "Section 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**.
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> **Appeal shall 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)*

In relation thereto, Sections 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by *R.A. 9337*, provides for the periods, within which a claim for refund or tax credit of input taxes shall be made, as quoted below:

> "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 sale 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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales.
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> xxx xxx xxx
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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 expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**." (*Emphasis supplied*)

Sections 112(A) and 112(C) of the NIRC of 1997, as amended, prescribe the periods within which certain acts must be done, particularly, when the administrative claim and judicial appeal may be filed. Therefore, compliance with the periods provided therein is imperative and mandatory.

As a general principle, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. By their very nature, these rules are regarded as mandatory.[4]

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[4] Gachon vs. Devera, G.R. No. 116695, June 20, 1997.

The Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc (Aichi case)*[5] applied the provision of Section 112(C) of the NIRC of 1997, formerly Section 112(D), and held as follows:

> "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**.
>
> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
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> **Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.**
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> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two 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.' **The phrase 'within two (2) years x x x apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA**. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in

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[5] *Supra*, note 1.

support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.

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.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, **Section 229 does not apply to refunds/credits of input VAT, such as the instant case**.

In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA." (*Emphasis supplied*)

Based on Section 112(C) of the NIRC of 1997, and as interpreted in the *Aichi case*, **a taxpayer has 30 days within which to file an appeal with this Court in either of the following instances: (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.** If after the lapse of 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 this Court **within 30 days**.

Applying the foregoing to the instant case, the following are the pertinent details:

	Taxable Quarters ending September 30, 2007 & December 31, 2001	**Taxable Quarters ending March 31, 2002 & June 30, 2008**
Filing of Administrative Claim	April 30, 2008	October 31, 2008
Expiration of the 120 days for the Commissioner of Internal Revenue (CIR) to make a ruling on the claim	August 28, 2008	February 28, 2009
Expiration of the 30 days within which petitioner has to file an appeal before this Court	September 27, 2008	March 30, 2009

It is undisputed that the judicial claim for refund or issuance of tax credit certificate (TCC) was filed on September 30, 2009. Petitioner clearly filed the instant petition for review way beyond the 30-day prescribed period to appeal provided under Section 112(C) of the NIRC of 1997, as amended. Hence, the instant Petition for Review was filed late.

With respect to petitioner's argument that the 120-30 day periods in Section 112(C) of the NIRC of 1997, as amended, are directory because of the word "may" in the said provision, it bears stressing that the use of the word "may" in the said Section, simply means that the taxpayer has the option to appeal the CIR decision or the CIR inaction to this Court. It merely gives the taxpayer the option to appeal or not to appeal the adverse ruling or inaction of respondent within the 30-day reglementary period. Again, the phrase "may appeal" does not mean that the judicial recourse within thirty

(30) days from the receipt of the decision/ruling or from the lapse of the 120-day period is directory and permissive.

As to petitioner's allegation that the Supreme Court decisions in the *Silicon case* and *Kepco case* bolster its contention that the *Aichi* decision is either abandoned or applicable to *Aichi* case only; suffice it to say that the issues in the *Silicon case* and *Kepco case* did not include the interpretation of Section 112(C) of the NIRC of 1997, as amended. The Supreme Court did not expressly state that the ruling of the 120-30 day period in *Aichi case* has been abandoned.

In the *Silicon case,* the partial denial of therein petitioner's claim was due to its failure to present its Authority to Print (ATP) and to print the word "zero-rated" on its export sales invoices, and that the items reflected in its Summary of Importation of Goods, such as training materials, office supplies, posters, banners, T-shirts, books, and the other similar items, are not capital goods. In the *Kepco case*, the principal ground for the partial denial of therein petitioner's claim was the absence of the word "zero-rated" on the invoices.

Apparently, the denials in the aforementioned cases were based on therein petitioners' failure to meet the substantiation requirements provided under the pertinent provisions of the NIRC of 1997, as amended, and corresponding revenue regulation.

Besides, respondent had raised in her Answer, as one of her affirmative defenses, the failure of petitioner to comply with the conditions/requirements under Section 112(A)(B)(D) of the NIRC of 1997, as amended, which was neither clearly shown nor discussed in the *Silicon case* and *Kepco case*.

Lastly, the right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[6]

WHEREFORE, premises considered, respondent's "**Motion to Dismiss**" is **GRANTED**. Accordingly, the *Petition for Review* is hereby **DISMISSED** for having been filed late.

SO ORDERED.

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[6] Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.