REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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NOKIA (PHILIPPINES), INC.,
Petitioner,

CTA CASE NO. 8344

Members:

- versus -

ACOSTA, *Chairperson*
UY, and
FABON-VICTORINO, *JJ*

COMMISSIONER OF INTERNAL REVENUE ,
Respondent.

Promulgated:

APR 02 2012 ; 1:42 p.m.

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RESOLUTION

UY, *J.*:

This resolves respondent's "**Motion To Dismiss**" filed on January 18, 2012, without petitioner's comment despite notice, praying that the instant petition for review be dismissed on ground of lack of jurisdiction for failure of petitioner to file its judicial claim for refund within the period prescribed by law.

Respondent posits that the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc* (*Aichi* case)[1], stressed the mandatory character of Section 112(D) of the National Internal Revenue Code (NIRC) of 1997, as amended, *vis-a-vis* the observance of the 120-day period before the filing of a judicial claim.

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

According to respondent, the administrative claim for refund in this case was filed with the Large Taxpayer Regular Audit Division (LTRAD) 3 of the Bureau of Internal Revenue (BIR) on September 2, 2011, while the judicial claim was filed on September 30, 2011, or merely twenty-eight (28) days after it filed its administrative claim for refund; in violation of the 120-day period mandated by Section 112(D) of the NIRC of 1997 and the Supreme Court's ruling in the *Aichi* case. Hence, respondent contends that the instant petition for review was prematurely filed and that this Court has no jurisdiction to take cognizance of the instant petition and should dismiss the same.

The *Motion* is meritorious.

Sections 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended,[2] provides for the periods within which administrative and judicial claims for refund or tax credit of input taxes shall be made, as quoted below:

> "SEC. 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: *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

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[2] as amended by Republic Act (R.A.) 9337

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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(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**." (*Emphasis supplied*)

Applying Section 112(C)[3] of the NIRC of 1997, the Supreme Court held in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc (Aichi case)*[4] 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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[3] formerly Section 112(D) prior to the amendment introduced by R.A. 9337.
[4] *Supra*, note 1.

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.

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 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*)

In this case, records show that petitioner filed its administrative claim for refund on September 2, 2011, and merely twenty-eight (28) days thereafter, it filed the instant judicial claim on September 30, 2011, or ninety-two (92) days prior to the expiration of the 120-day period on December 31, 2011. The filing of the instant Petition for Review by petitioner without waiting for the expiration of the mandated 120-day period is fatal its claim; and, consistent with the ruling in the *Aichi case,* this Court failed to acquire jurisdiction over the instant case.

WHEREFORE, premises considered, respondent's *Motion to Dismiss* is hereby **GRANTED**. Accordingly, the Petition for Review docketed as CTA Case No. 8344 is hereby **DISMISSED** on the ground of lack of jurisdiction.

SO ORDERED.

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice