REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

TeaM SUAL CORPORATION (Formerly: Mirant Sual Corporation and Southern Energy Pangasinan, Inc.),
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7620

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

SEP 16 2010

4:15 p.m.

x -- x

AMENDED DECISION

PALANCA-ENRIQUEZ, J.:

This resolves:

1) a) petitioner TeaM Sual's "Motion for Partial Reconsideration" filed on May 13, 2010; and

b) Report of the Judicial Records Division dated June 22, 2010 stating that respondent CIR failed to file his comment on petitioner's "Motion for Partial Reconsideration", despite notice; and

2) a) respondent CIR's "Motion for Partial Reconsideration" filed on May 12, 2010; and

b) petitioner's "Comment/Opposition (To Respondent's Motion for Partial Reconsideration)" filed on June 3, 2010.

Respondent CIR's
"Motion for Partial Reconsideration"

Considering the arguments of both parties' in their respective motion, the Court deems it necessary to first resolve respondent CIR's "Motion for Partial Reconsideration".

In his motion, respondent CIR contends that the instant Petition for Review failed to comply with the prescribed period under *Section 112 (D) of the NIRC of 1997, as amended;* that petitioner failed to observe the rule on exhaustion of administrative remedies as it did not wait for the lapse of the 120-day period before appealing to this Court; respondent was not given an opportunity to act on the matter within the period prescribed, thus, it renders the present action premature.

Petitioner, on the other hand, maintains that the allegation of non-exhaustion of administrative remedies is baseless and bereft of merit.

After taking a second hard look on the factual circumstances of this case and the applicable laws and jurisprudence, we rule for respondent CIR.

As previously ruled in Our original decision, petitioner's administrative claim filed on December 21, 2006 *(Exhibit "B")* was filed within the prescriptive period of two (2) years, pursuant to *Section 112 (A) of the NIRC of 1997, as amended.* However, the issue now is the timeliness of petitioner's judicial claim.

In this regard, even if the instant claim was filed prior to the effectivity of *R.A. 9337*, the same is still covered by *Section 112 (D) of the NIRC of 1997, as amended*, which provides:

> **"SEC. 112. Refunds or Tax Credits of Input Tax.** —
>
> xxx xxx
>
> (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.
>
> 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 above-quoted provision, the Commissioner has 120 days from the submission of supporting documents to decide the claim for refund. In case of full or partial denial, or inaction, the taxpayer may appeal to this Court, within 30 days from receipt of the decision or from the lapse of the 120-day period.

Considering that petitioner filed its administrative claim on December 21, 2006, the Commissioner had until April 20, 2007, within which to decide petitioner's claim for refund. However, records show that petitioner filed the instant Petition for Review on April 18, 2007, when the Commissioner's 120-day period had yet to expire on April 20, 2007. Clearly, petitioner did not wait for the lapse of the 120-day period prior to the filing of its appeal with this Court. As a consequence thereof, petitioner's judicial claim was prematurely filed, since respondent was not given the full opportunity to decide petitioner's claim.

It bears emphasis that the filing of an administrative claim with the Commissioner is a condition precedent to the filing of a judicial claim for refund with the CTA. Thus, failure of petitioner to comply with *Section 112 (D)*, particularly with the 120-day period, is tantamount to non-exhaustion of administrative remedies. Consequently, this Court should not have entertained the Petition for Review.

In the case of *Castro vs. Gloria (363 SCRA 417),* the Supreme Court held that the doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts for review. The rationale behind this principle is for reasons of practical considerations, comity and convenience.

Well-settled is the rule that if a remedy is very much available within the administrative machinery of the administrative agency, then this alternative should first be utilized before resort can be made to the courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to avoid the very pernicious evil the doctrine itself seeks to prevent – the unnecessary and premature resort to courts and the clogging of its dockets (*National Electrification Administration vs. Val L. Villanueva, G.R. No. 168203, March 9, 2010*).

Since the doctrine of exhaustion of administrative remedies is a condition precedent to the filing of a case with this Court, non-observance thereof is a ground for the dismissal of an action under *Section 1(j) of Rule 16 of the 1997 Rules of Civil Procedure, as amended.* Hence, petitioner's failure to comply with *Section 112 (D)* is fatal to its claim.

Thus, the instant Petition for Review must necessarily fail for failure to comply with a condition precedent under *Section 112 (D) of the*

NIRC of 1997, as amended, and accordingly dismissed, pursuant to *Section 1 (j) of Rule 16 of the 1997 Rules of Civil Procedure, as amended.*

<u>Petitioner TeaM Sual's</u>
<u>"Motion for Partial Reconsideration"</u>

In view of the foregoing, we find no need to resolve petitioner's "Motion for Partial Reconsideration" for being moot and academic.

WHEREFORE, premises considered, respondent CIR's "Motion for Partial Reconsideration" is hereby **GRANTED.** Accordingly, our Decision dated April 23, 2010 is hereby **RECALLED** and **SET ASIDE,** and a new one is hereby entered dismissing the Petition for Review for failure to comply with a condition precedent.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
With Dissenting Opinion

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended 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

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 Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice