**REPUBLIC OF THE PHILIPPINES**
**Court of Tax Appeals**
**QUEZON CITY**

## *FIRST DIVISION*

**DIAGEO PHILIPPINES, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case Nos. 7846 and 7865**

Members:

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

**Promulgated:**
JAN 16 2012 ; 2:00 p.m.

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# DECISION

**UY, J.:**

In these consolidated Petitions for Review, petitioner, Diageo Philippines, Inc., seeks the issuance of a tax credit certificate or refund in the amounts of ₱ 7,499,289.20 (in CTA Case No. 7846) and ₱ 9,352,175.58 (in CTA Case No. 7865), allegedly representing the unutilized input value-added taxes (VAT) attributable to its zero-rated export sales for the periods from July to September 2006, and from October to December 2006, respectively.

**THE FACTS**

Petitioner Diageo Philippines, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with business address at 111 Technology Avenue, Laguna Technopark, Binan, Laguna.[1] It is engaged in the business of distilling, rectifying, blending, manufacture, wholesale and exportation of alcohol products and spirits.[2]

On the other hand, respondent Commissioner of Internal Revenue is authorized under the law to act on claims for refunds, tax credit certificates and other matters involving the enforcement of the National Internal Revenue Code (NIRC).[3]

On June 28, 2007, petitioner filed separate claims for Tax Credit/Refund of its excess input VAT covering the following periods and amounts attributable to its VAT zero-rated export sales, as follows:

a) July to September 2006, in the amount of ₱ 7,499,289.20; and

b) October to December 2006, in the amount of ₱ 9,352,175.58.[4]

Claiming inaction on respondent's part, and upon the notion of suspending the running of the two-year prescriptive period within which to file a judicial claim for tax credit/refund,[5] petitioner filed the instant Petitions for Review on October 24, 2008 and January 29, 2009, docketed as CTA Case Nos. 7846 and 7865, respectively.[6]

In her Answer[7] in CTA Case No. 7846, respondent interposed the following Special and Affirmative Defenses, viz:

> "4. Petitioner's alleged claim for cash refund or issuance of a Tax Credit Certificate in the amount of P7,499,289.20 attributable to its alleged zero-rated sales from July 1, to

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[1] Par. 4.1, Joint Stipulation of Facts (JSF), Docket (CTA Case No. 7846), pp. 214 to 215.
[2] Par. 4.3, JSF, Docket (CTA Case No. 7846), p. 215.
[3] Par. 4.2, JSF, Docket (CTA Case No. 7846), p. 215.
[4] Par. 4.4, JSF, Docket (CTA Case No. 7846), p. 215.
[5] Par. 11, Petition for Review, Docket (CTA Case No. 7846), pp. 5 to 6. Par. 11, Petition for Review, Docket (CTA Case No. 7865), pp. 10 to 11.
[6] Par. 4.5, JSF, Docket (CTA Case No. 7846), p. 215.
[7] Docket (CTA Case No. 7846), pp. 55 to 63.

September 30, 2006 is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.

5. The amount of P7,499,289.20 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of goods and services and importation of goods for the period from July 1 to September 30, 2006 is not properly documented.

6. In an action for refund/tax credit, the *onus probandi* is on the taxpayer to establish its right to refund/tax credit and failure to sustain the burden is fatal to the claim for refund/tax 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. (P.I.) VS. LLANES, 49 PHIL. 466, cited in Collector of Internal Revenue vs. manila Jockey Club, Inc. 98 Phil. 670)

7. Petitioner must show that is has complied with the provisions of Sections 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit.

8. Claims for refund/tax credit are construed strictly against the claimant for the same partake the nature of exemption from taxation (COMMISSIONER OF INTERNAL REVENUE VS. LEDESMA, 31 SCRA 95) and as such, they are looked upon with disfavor (WESTERN MINOLCO CORPORATION VS. COMMISSIONER OF INTERNAL REVENUE, 124 SCRA 1211).

9. To support its claim, it is imperative for petitioner to prove the following, viz:

a) **The registration requirements of a value added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-4(a) of Revenue Regulations No. 7-95 and Section 236 of the Tax Code of 1997, as amended;**

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

c) **Proof of compliance with the prescribed checklist requirements to be submitted**

**involving its claim for VAT refund/tax credit in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative claim for refund/tax credit which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code of 1997, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code 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 intermediate dismissal of the petition for review;**

**d) That the input taxes of P40,904,041.51 allegedly paid by the petitioner on its purchase of goods and services for the period covering the 2nd and 3rd quarters of calendar year ending December 31, 2006 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;**

**e) That petitioner's administrative and judicial claims for refund/tax credit of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112(A) and (D) and 229 of the Tax Code of 1997, as amended;**

**f) That petitioner's domestic purchases of goods and services were made in the course of its trade and business. properly supported by VAT invoices and/or official receipts and other evidentiary documents, such as subsidiary purchase journals, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the Tax Code of 1997, as amended, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);**

g) **Compliance with the requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits).**

10. Although petitioner filed administrative claims for refund with the Large Taxpayers' Audit and Investigation Division-II of the BIR for tax credit/refund, on June 28, 2007 in the amount of P7,499,289.20 for the three (3) months from July to September 30, 2006, yet petitioner has miserably failed to show that it has substantially complied with the above-stated requirements to support its claim for refund/tax credit. This warrants the dismissal of the petition.

11. Section 112(D) of the NIRC of 1997, as amended, is clear, thus:

> **'SECTION 112. Refunds or Tax Credits of Input Tax. –**
>
> **xxx xxx xxx**
> **xxx xxx xxx**
> **xxx 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 tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of <u>submission of complete documents in support of the application</u> filed in accordance with Subsection (A) and (B) hereof.**
>
> **In cases 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.**
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> **xxx xxx xxx.'**

12. Hence, when petitioner filed its administrative claim for tax refund/credit with the Bureau of Internal Revenue ('BIR') Large Taxpayers Audit and Investigation Division II ('LTAID II') on June 28, 2007, respondent had 120 days within which to decide on petitioner's claim for tax refund/credit. 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 had 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 July 28, 2007 or until October 26, 2007. In the event that respondent failed to act upon petitioner's claim for tax refund/credit, petitioner had up to 30 days from October 26, 2007 or until November 25, 2007, to appeal the unacted claim with the Court of Tax Appeals. Petitioner filed the instant Petition for Review with the Court of Tax Appeals only on October 24, 2008, after the lapse of the period allowed by law to file the judicial claim for tax refund/credit with the Court of Tax Appeals. This being so, the instant petition for review was clearly filed out of time.

13. 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, p. 266)*. For this reason, the courts construe these provisions of statutes as mandatory *(Ibid., citing Alvero vs. De la Rosa, 76 Phil. 428, 434)*. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people *(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690)*. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within the certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

14. Moreover, petitioner relied on the provisions of Section 229 of the NIRC of 1997, as amended, in filing its instant petition for review of its claim or tax refund/tax credit, using the 2-year period within which to seek redress with the Honorable Court. Such application of Section 229 of the NIRC of 1997, as amended, is highly misplaced. The said provisions of the law covers all taxes erroneously filed of illegally collected, and provides a 2-year period within which a judicial claim for refund/tax credit may be made. The applicable law in the instant case is Section 112 of the same code, which specifically covers VAT and provides for the 120-day period within which respondent shall grant a refund or issue a tax credit certificate from the date of submission of complete documents. Thereafter, petitioner has 30 days from receipt of the decision denying the claim or after the expiration of the one hundred twenty (120) day period, within which petitioner could appeal the decision on the

unacted claim with the CTA. This, petitioner clearly failed to do so, hence, petitioner's right to file its petition for review has already lapsed, and therefore, calls for its dismissal.

15. Our courts are uniform and consistent in stressing and restressing that claims for refund/tax credit are in the nature of tax exemptions (COMMISSIONER OF INTERNAL REVENUE VS. PROCTER AND GAMBLE PHILIPPINE MANUFACTURING CORPORATION, 204 SCRA 7 (1991), and are regarded as in derogation of sovereign authority and to be construed *in strictissimi juris* against the person claiming the exemption (COMMISSIONER OF INTERNAL REVENUE VS. S.C. JOHNSON AND SONS, INC. et. al, 209 SCRA 87 (1999).

16. Finally, tax exemptions, as a general rule, are construed strictly against the grantee and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed. The party claiming exemption must therefore be expressly mentioned in the exempting law or at least be within the purview by clear legislative intent (CALTEX PHILIPPINES, INC. VS. THE HONORABLE COMMISSION ON AUDIT, HONORABLE COMMISSIONER BARTOLOME C. FERNANDEZ AND HONORABLE COMMISSIONER ALBERTO P. CRUZ, G.R. NO. 92585, May 8, 1992)."

As regards respondent's Answer filed in CTA Case No. 7865, the following Special and Affirmative Defenses were raised therein[8], to wit:

"4) Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

5) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

6) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable;

7) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended upon which its claimed for refund is premised;

8) In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said

[8] Docket (CTA Case No. 7865), pp. 44 to 46.

> burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, P. 206);*
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> 9) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, these are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).*"

On February 23, 2009, petitioner moved for the consolidation of CTA Case Nos. 7846 and 7865.[9] The Court granted the motion in the Resolution[10] promulgated on March 19, 2009.

During trial, petitioner presented documentary and testimonial evidence, while respondent's counsel, Atty. Leo Mauricio, manifested during the hearing held on July 5, 2011[11] that he will not present evidence for the respondent and the Court directed both parties to file their respective Memorandum within thirty (30) days from receipt of the Court's resolution of the new summary of petitioner's exhibits.

Petitioner filed its Memorandum on October 12, 2011[12], while respondent filed a Manifestation on October 14, 2011[13] alleging that respondent intends to adopt the relevant facts, proceeding, issue and discussion specifically declared in her Answer filed on December 23, 2008, with emphasis on paragraph 12, at pages 5 to 6 thereof, raising as one of her affirmative defenses the lapse of petitioner's right to file its judicial claim with

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[9] Docket (CTA Case No. 7846), pp. 165 to 167.
[10] Docket (CTA Case No. 7846), p. 172.
[11] Docket (CTA Case No. 7846), p. 426.
[12] Docket (CTA Case No. 7846), pp. 439 to 458.
[13] Docket (CTA Case No. 7846), pp. 460 to 463.

the Court of Tax Appeals, as her Memorandum in these cases. Subsequently, these cases were considered submitted for decision in the Resolution dated October 18, 2011.[14]

Hence, this Decision.

**THE ISSUE**

The parties jointly stipulated on the following issue[15], for this Court's resolution, to wit:

> "Whether or not the petitioner is entitled to the issuance of a tax certificate in the amounts of Seven Million Four Hundred Ninety Thousand Two Hundred Eighty Nine Pesos and 20/100 (Php 7,499,289.20) and Nine Million Three Hundred Fifty Two Thousand One Hundred Seventy Five and 58/100 (Php 9,352,175.58)."

***Petitioner's arguments***

Petitioner contends that contrary to respondent's claim, non-submission of supporting documents at the administrative level is not fatal to a judicial claim for refund. According to petitioner, it has submitted the following documents to the Bureau of Internal Revenue (BIR) in relation to its claim for input VAT refund for the period of July to December 2006, viz: Summary of Inward Remittances; Receipts for Second Quarter of 2006; and Hard copy and CD copy of summary list of Purchases and Input Taxes.[16]

And as allegedly held in the case of *CIR v. CE Luzon Geothermal Power Company, Inc.*[17], a careful reading of Section 112(C) reveals that although the submission of the complete supporting documents is necessary for the granting of refund or tax credit certificate, the non-submission of the

[14] Docket (CTA Case No. 7846), p. 465
[15] Par. 6.1, JSF, Docket, p. 216.
[16] Par. 30, Petitioner's Memorandum, Docket (CTA Case No. 7865), p. 446.
[17] CTA EB Case No. 474, September 1, 2009, Docket (CTA Case No. 7865), p. 447.

same with the BIR does not make the administrative claim for refund or tax credit certificate invalid or *pro forma*, the effect of which makes the judicial appeal dismissible for lack of jurisdiction. It is therefore petitioner's view that since it had submitted all the necessary documents to the Court in support of its claim for Input VAT Refund, the dismissal of the instant Petition for Review is not warranted under the circumstances.

Petitioner further contends that it is entitled to a refund of its input VAT attributable to its export sales for the period of July to December 2006 based on the examination conducted by the independent certified public accountant (ICPA), Mary Ann Capuchino, who found petitioner to be entitled to an input VAT refund in the amount of ₱ 13,308,440.97.

***Respondent's counter-arguments***

Respondent counter-argues that it is imperative for petitioner to show proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order (RMO) 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.

Furthermore, according to respondent, Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the BIR 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 said requirements warrants the immediate dismissal of the petition for review.

Respondent stresses that the instant Petition for Review was filed out of time, applying Section 112(D) of the NIRC of 1997.

**THIS COURT'S RULING**

After taking a hard look at the prevailing circumstances in the instant consolidated cases, We are constrained, before considering the lone issue raised by the parties, to look into the Court's jurisdiction to entertain the present appeal.[18] Thus, the Court shall first make a determination whether or not it jurisdiction to resolve these consolidated cases.

Needless to state, to obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties.[19] Corollarily, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[20]

***This Court is without jurisdiction to entertain the present appeal.***

In order to ascertain whether a court has jurisdiction or not, the provisions of the law should be inquired into.[21]

Section 7 of Republic Act No. (RA) 1125[22], as amended by RA 9282[23], enumerates over which cases this Court has exclusive appellate jurisdiction. In part, it provides:

[18] In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. [Rule 14, Section 1 (second paragraph), Revised Rules of the Court of Tax Appeals]
[19] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[20] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[21] *Soller, et al. vs. Sandiganbayan, et al.*, G.R. Nos. 144261-62, May 9, 2001.
[22] AN ACT CREATING THE COURT OF TAX APPEALS.
[23] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL

> "SEC. 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 of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, <u>in which case the inaction shall be deemed a denial</u>**; *(Emphases and underscoring supplied)*
> xxx xxx xxx."

Furthermore, Section 11 prescribes how the said appeal should be taken, *viz*:

> "SEC. 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**.
>
> **Appeal should 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 *(Emphases supplied)*
> xxx xxx xxx."

One of the *"inaction*(s) *by the Commissioner of Internal Revenue"* being contemplated in the above-quoted provisions is that found in Section

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JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

112 of the NIRC of 1997, as amended by RA 9337,[24]—the provision to which petitioner anchors the instant claim for refund or issuance of a tax credit certificate—wherein it *"provides a specific period of action"*, *i.e.*, a period of 120 days from the date of submission of complete documents for the Commissioner of Internal Revenue, to grant, in proper cases, a refund or to issue a tax credit certificate for creditable input taxes due or paid attributable to zero-rated or effectively zero-rated sales, to wit:

> "SEC. 112. *Refund 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: xxx
> xxx xxx xxx
>
> (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 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**.
> xxx xxx xxx." *(Emphases supplied)*

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[24] 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.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[25] the Supreme Court held:

> "A taxpayer is entitled to a refund either by authority of a statute expressly granting such right, privilege, or incentive in his favor, or under the principle of *solutio indebiti* requiring the return of taxes erroneously or illegally collected. In both cases, **a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim**.
>
> xxx xxx xxx
>
> Section 112(D)[26] 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.**
>
> 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

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[25] G.R. No. 184823, October 6, 2010.
[26] Now Section 112(C), as renumbered by RA 9337.

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)[27] of the NIRC, which already provides a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D)[28] 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 no jurisdiction was acquired by the CTA.**

xxx xxx xxx." *(Emphases supplied)*

In these consolidated cases, it is undisputed that petitioner timely filed on June 28, 2007, its administrative claim for refund in the total amount of ₱ 16,851,464.78,[29] supposedly representing the unutilized input VAT on its purchases attributable to its VAT zero-rated sales for the period July to December 2006.[30] Thus, respondent had one hundred twenty (120) days or until October 26, 2007 to resolve the claim. And in case of inaction on the

[27] Id.
[28] Id.
[29] ₱ 7,499,289.20 + ₱ 9,352,175.58.
[30] Par. 4.4, JSF, Docket (CTA Case No. 7846), p. 215.

part of respondent, which was what transpired herein, petitioner had thirty (30) days from October 26, 2007, or until November 25, 2007, within which to seek judicial relief.

However, the Petitions for Review filed in these cases were **belatedly** filed on October 24, 2008 and January 29, 2009, thus, way beyond the thirty (30) day period to appeal prescribed under Section 112(C) of the NIRC of 1997. For clarity, We tabulate the pertinent dates involved in these cases, as follows:

| *Periods covered* | *Filing date of administrative claim* | *End of 120-day period under Sec. 112(C) reckoned from the filing of administrative claim* | *30-day period to seek judicial relief under Sec.112(C), NIRC of 1997, as amended by RA 9337, & Sec. 11, RA 1125,as amended by RA 9282* | *Filing dates of the instant Petitions for Review* |
|---|---|---|---|---|
| ***3rd Quarter of 2006*** | ***June 28, 2007*** | ***October 26, 2007*** | ***October 27, 2007 until November 25, 2007*** | ***October 24, 2008 (CTA Case No. 7846)*** |
| ***4th Quarter of 2006*** | | | | ***January 29, 2009 (CTA Case No. 7865)*** |

***No mandatory list of documents for submission to the BIR in support of application for refund claims***

Respondent insists that it is imperative for petitioner to show proof of compliance with the prescribed checklist requirements to be submitted involving a claim for VAT refund/tax credit in accordance with the requirements set forth under RMO No. 53-98, which is allegedly 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.

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Moreover, respondent maintains that Section 112 (D) of the NIRC of 1997 requires the submission of complete documents in support of a refund claim filed with the BIR before the 120-day audit period shall begin to run.

The term "complete documents" under Section 112(C) should be understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that respondent ought to know the tax records of all taxpayers.[31]

Anent the supposed application of RMO No. 53-98[32], the same is explicit in its objective, to *"(i)dentify the documents to be required from a taxpayer* ***during audit****"*[33]. However, it does not require that the list of documents therein stated, insofar as Value Added Tax is concerned, should be submitted in connection with an application for refund or tax credit certificate under the said Section 112. Notably however, respondent herein never required petitioner to submit any document, much less was it shown that an audit was ever conducted on petitioner's application for refund or tax

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[31] See the cases of *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.* (G.R. No. 122480, April 12, 2000), and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation* (G.R. No. 180042, February 8, 2010).

[32] SUBJECT: Checklist of Documents to be Submitted by a Taxpayer **upon Audit** of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket. *(Emphasis supplied)*

[33] Emphasis supplied.

credit certificate as evidenced by the lack of BIR records on petitioner's administrative claims for refund.

With respect to the supposed submission of complete documents by petitioner at the administrative level, apart from its bare allegation that is submitted certain documents to the BIR,[34] the evidence proffered by petitioner is bereft of any indication that it did so. Hence, We shall reckon the 120-day period from the filing of its administrative application for refund on June 28, 2007 on the presumption that petitioner has opted not to submit additional documentary evidence to support its refund claims.

Consequently, when petitioner respectively filed its appeal by way of the instant Petitions for Review on October 24, 2008 in CTA Case No. 7846, and on January 29, 2009 in CTA Case No. 7865, the appellate jurisdiction of this Court had already expired, because it sought judicial recourse way beyond the reglementary thirty (30) day period to appeal.

As aptly held in *Yao vs. Court of Appeals, et al.*[35]:

> "The right to appeal is **not** a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. Since the right to appeal is not a natural right nor a part of due process, **it may be exercised only in the manner and in accordance with the provisions of law**. Corollarily, **its requirements must be strictly complied with**.
>
> "**That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional**. Non-compliance with such legal requirements is fatal, for it renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision." *(Emphases supplied)*

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[34] Par. 30, Petitioner's Memorandum, Docket (CTA Case No. 7865), p. 446.
[35] G.R. No. 132428, October 24, 2000.

Parenthetically, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[36] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[37] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[38]

It should be recalled that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[39] Relative thereto, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[40]

In fine, petitioner's claim for tax refund should be denied for having been filed in violation of Section 112(C) of the NIRC of 1997, as amended by RA 9337.

**WHEREFORE**, premises considered, the consolidated Petitions for Review are hereby **DISMISSED** for having been belatedly filed.

**SO ORDERED**.

**ERLINDA P. UY**
Associate Justice

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[36] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[37] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[38] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.
[39] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, supra.
[40] Section 1, Rule 9, Rules of Court.

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

## CERTIFICATION

I hereby certify that the 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**
Presiding Justice