REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

HEDCOR, INC., Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA CASE NO. 8129** Members: **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.* **Promulgated:** JAN 1 9 2011 1:07 p.m.

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RESOLUTION

For resolution is respondent's **"Motion to Dismiss"** filed on November 8, 2010, with petitioner's **"Opposition"** filed on December 3, 2010.

Respondent moves for the dismissal of the instant *Petition for Review* on the ground of lack of jurisdiction for failure of petitioner to file it within the period prescribed by law, in violation of Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

According to respondent, a taxpayer who wishes to elevate its claim for refund before this Court may file the same within thirty (30) days from the receipt of the decision or after the expiration of the 120-day period on which the Commissioner of Internal Revenue (CIR) is required to act on its claim.

Respondent contends that petitioner's claim was not acted upon with finality within 120 days from the filing thereof on December 22, 2010 so it had to file its judicial claim within 30 days from the end of the 120-day period. However, it was only after a lapse of 196 days or on July 6, 2010 that petitioner filed the instant petition. Considering so, respondent argues that the instant petition should be dismissed for being filed beyond the period sanctioned by law.

On the other hand, petitioner counter-argues that the 120-day period to act on the application for refund would only start to run after the applicant submitted its complete documents in support of its claim. Petitioner claims that it submitted the required documents to the Bureau of Internal Revenue (BIR) on September 20, 2010; thus, the 120 day period will expire on **January 18, 2011**.

Petitioner argues that in view of the recent ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[1] the proper argument here is whether the case was prematurely filed and not whether the case was filed out of time. Be that as it may, petitioner claims that even if indeed there was prematurity, it should not be punished severely since it only acted in good faith. Petitioner continues that the instant case should not be dismissed outrightly and be required to re-file again and pay docket fees anew for acting in good faith. Petitioner posits that it is more in consonance with justice and fair play to have the case merely suspended or archived so that in case respondent failed to act on or before January 18, 2011, it will just have to revive the instant case.

This Court agrees with respondent.

Respondent anchors her argument on *Section 112 (C) of the NIRC of 1997, as amended*, which specifically provides that:

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

"**Section 112**. *Refunds or Tax Credits of Input Tax*. –

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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."

The Supreme Court ruled in the case of *Commissioner of Intemal Revenue vs. Aichi Forging Company of Asia, Inc.*[2], that Section 112 (D) [now, Section (C)] of the NIRC of 1997, as amended, clearly provides that the Commissioner of Internal Revenue (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 this Court within 30 days from receipt of the decision of the CIR. However, if the CIR failed to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal to this Court within 30 days.

A review of the records of this case shows that the present claim for refund or issuance of a tax credit certificate involves petitioner's alleged unutilized input Value-Added Tax (VAT) on its purchases attributable to its VAT zero-rated sales for the period covering the second quarter of 2008.

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[2] *Supra*, note 1.

On December 28, 2009, petitioner filed its administrative claim for refund through a letter dated December 22, 2009. Counting 120 days therefrom, respondent had until April 27, 2010 within which to decide on petitioner's claim. In case of inaction of respondent, such as the instant case, petitioner had 30 days to file its judicial claim from April 27, 2010 or until May 27, 2010. Clearly, the filing of the instant Petition for Review on July 6, 2010 was filed beyond the 30-day period.

This Court cannot give credence on the allegation of petitioner that it last submitted its documents on September 20, 2010 and said date should be the basis in counting the 120-day period for its failure to show proof thereon. However, even if the counting of the 120-day period begins on September 20, 2010, this Court is still constrained to dismiss the case on the ground of prematurity pursuant to the clear terms of Section 112 (C) of the NIRC of 1997, as amended, and the ruling of the Supreme Court in the above-cited case of *Commissioner of Intemal Revenue vs. Aichi Forging Company of Asia, Inc.*.

WHEREFORE, premises considered, respondent's ***"Motion to Dismiss"*** is hereby **GRANTED**. Accordingly, the instant ***Petition for Review*** is hereby **DISMISSED** for being filed out of time.

SO ORDERED.

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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