REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

DAICOLOR PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and ONE-STOP-SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER, DEPARTMENT OF FINANCE,
Respondents.

C.T.A. CASE NO. 7759

Members:

ACOSTA, *P.J.*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:
DEC 16 2010; 2:40pm

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DECISION

UY, J.:

Before the Court is a Petition for Review filed by petitioner, Daicolor Philippines, Inc., seeking the refund or the issuance of tax credit certificate in the amount of ₱ 3,360,079.32, allegedly representing its unutilized input value-added tax (VAT) arising from its zero-rated transactions for the period covering January to December 2006.

THE FACTS

Petitioner Daicolor Philippines, Inc., is a corporation duly existing under the laws of the Philippines, with business address at Lot 7 D-8, Canlubang Industrial

Estate, Canlubang, Calamba City, Laguna.[1] Its primary purpose is to make, manufacture, assemble, export, wholesale, buy, trade or otherwise deal in plastic compounds, master batches, dry colors, colorants and compounds for plastics, pigment products, chemical products, polymer products, general printing products and other related products of any kind or description whatsoever.[2] It is registered with the Board of Investments as a non-pioneer enterprise,[3] and with the Bureau of Internal Revenue (BIR) as a value-added taxpayer.[4]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed officer empowered to perform the duties of said office, including among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

Co-respondent is the duly created One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSS-DOF) with authority, among others, to accept applications for tax credits and/or duty drawbacks and evaluate and grant the same. Its office address is at the 3rd Floor, Executive Tower Building, BSP Complex, Manila.[6]

Petitioner filed its original Quarterly VAT Returns for taxable year 2006 on the following dates:

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[1] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 121.
[2] Exhibit "A".
[3] Exhibit "B".
[4] Exhibit "C".
[5] Par. 2, Facts Admitted, JSFI, Docket, p. 121.
[6] Par. 3, Facts Admitted, JSFI, Docket, p. 121.

Period	Dates filed
First Quarter of 2006	April 19, 2006[7]
Second Quarter of 2006	July 25, 2006[8]
Third Quarter of 2006	October 23, 2006[9]
Fourth Quarter of 2006	January 24, 2007[10]

On March 24, 2008, petitioner filed before the OSS-DOF an application for the issuance of tax credit certificates (TCC) in its favor for alleged excess input taxes in the amount of ₱ 3,360,079.32 for taxable year 2006.[11]

Thinking that the OSS-DOF has failed to act on the said application,[12] petitioner filed before this Court the instant Petition for Review was on April 11, 2008.

On June 2, 2008, respondent Commissioner of Internal Revenue filed her Answer[13], interposing the following Special and Affirmative Defenses:

> "12. As petitioner states in its petition before this Honorable Court, the subject of its claim for refund, are alleged accumulated excess input taxes attributable to its alleged VAT zero-rated revenue for the period covering January 2006 to December 2006 in the amount of P3,360,079.32. Corollary thereto, it filed its administrative claim for refund with respondent on 25 March 2008. Then it filed the present case on 11 April 2008. Respondent submits that the institution of the judicial claim was premature;
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> 13. The specific provision of law governing the periods for filing judicial claims of excess unutilized input taxes attributable to VAT zero-rated sales after the filing of an administrative claim is Section 112 (D) of the National Internal Revenue Code (NIRC) of 1997. The said section provides:
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> **'SEC. 112. Refunds of Tax Credits of Input Tax. –**
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> (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

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[7] Exhibit "F".
[8] Exhibits "I' and "I-1".
[9] Exhibit "L".
[10] Exhibit "O".
[11] Par. 11, Facts Admitted, JSFI, Docket, p. 122. Exhibit "P".
[12] Exhibit "L".
[13] Docket, pp. 57 to 65.

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.'

14. The administrative claim of petitioner is not acted upon with finality by respondent until the lapse of 120 days from 25 March 2008 or on 23 July 2008. Thereafter, the law provides that petitioner has 30 days or until 22 August 2008, within which to elevate its claim before the Honorable Court of Tax Appeals. However, the present action was prematurely filed on 25 March 2008, clearly, way before the period prescribed by law. This requirement is jurisdictional, failing thus, the Honorable Court cannot acquire jurisdiction over the instant case;

15. The instant case involves a claim for refund or tax credit of alleged unutilized and/or unapplied input Value-Added Tax (VAT) hence, Section 112 (D) of the NIRC of 1997 should apply as regards the prescriptive period for filing a claim for refund;

16. First, distinctions should be made in the application of Sections 112 (D) and 229 of the NIRC of 1997. Section 112 (D) specifically refers to refunds or tax credits of 'creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that said input tax has not been applied against output tax', while Section 229 of the same Code refers to 'any national internal revenue taxes alleged to have been erroneously or illegally assessed or collected.'

Second, Section 112 (D) provides for a specific period within which the claim for refund or tax credit of input VAT shall be made. It is clearly provided in said Section that in case of failure on the part of the Commissioner to act on the application, the claimant only has thirty (30) days from the expiry of the 120-day period within which to file the petition for review before the Honorable Court. There is no such specific period provided under Section 229 which merely provides for two (2) years from the date of payment of any national internal revenue tax;

17. Clearly, from the foregoing, Section 112 (D) is specific as to the prescriptive period for claiming refunds of excess or unutilized VAT attributable to zero-rated or effectively zero-rated sales;

18. In the case at bar, respondent seeks for a refund of its unutilized excess input tax. Hence, respondent can appeal to this Honorable Court only

after the expiration of the 120-day period granted by law or within thirty days from the decision of petitioner denying its claim for refund;

19. As held in **Commissioner of Customs vs. Court of Tax Appeals, G.R. No. L-41861, 23 March 1987**:

> 'A special and specific provision prevails over a general provision irrespective of their relative position in the statue. *Generalia specialibus non derogant*. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment. It is a principle in statutory construction that where two statutes are of equal theoretical application to a particular case, the one specially designed for said case must prevail over the other.'

20. 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 statues as mandatory (*Ibid, citing Alvero vs. De la Rosa, 76 Phil. 428, 434*);

21. Clearly, the mandatory and jurisdictional condition *sine qua non* of filing an application for tax refund in due form and substance was blatantly ignored by petitioner by immediately filing an appeal before the Court of Tax Appeals. In the case of **Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 24 April 2007**, the Supreme Court ruled thus:

> 'From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings **but inaction as well of the Commissioner of Internal Revenue**. The decisions, ruling or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or **within 30 days after the expiration of the 180-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its assessments**. Such period is not merely directory but **mandatory** and it is beyond the power of the courts to extend the same. (Emphasis supplied)
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Although the above-decision is based on the provision of Section 228 of the NIRC of 1997, it may be applied to Section 112 (D) of the same Code on the basis of substantive justice and uniformity in the rules of taxation;

22. It bears stressing that the mandate under the said Section in filing an appeal before this Honorable Court, if not strictly complied with, would render the same inutile and impotent. It would again open the floodgates of confusion and chaos in the interpretation and implementation of filing judicial claims for refund, much like what happened to Section 228 of the NIRC of 1997; and

23. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer. **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459)**."

On the other hand, respondent OSS-DOF, through the Solicitor General, filed its Answer[14] on June 2, 2008, raising its own affirmative defenses:

"12. Petitioner filed its administrative claim for issuance of tax credit certificates in accordance with Section 112 of the NIRC. As such, the provisions of the NIRC under **Section 112** thereof, and not Section 229 of the same Code, govern petitioner's claim for the issuance of tax credit certificates.

13. The instant petition is premature since a taxpayer's right to institute an action in the Court of Tax Appeals relative to refund/tax credit claims filed in accordance with Section 112 of the NIRC **arises** only upon: (1) receipt by the taxpayer of the decision denying the claim, or (2) after the expiration of 120 days from date of submission by the taxpayer of complete documents in support of such claims. This is clearly evident from Section 112(C) of the NIRC, which states:

> SEC. 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.
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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**

[14] Docket, pp. 67 to 77.

> **decision denying the claim, or after the expiration of the one hundred twenty day period, appeal the decision or the unacted claim within the Court of Tax Appeals.** (Emphasis supplied)

It is not disputed that there is as yet no decision from the Commissioner of Internal Revenue denying the Petitioner's claim. The only question, taking into consideration Section 112(C) of the NIRC, is whether inaction may be attributed to the Respondent OSS-DOF.

Here, petitioner filed its application for issuance of tax credit certificates on March 25, 2008. Granting arguendo that petitioner had submitted complete documents upon filing of said application on that date, respondents still have a period of 120 days counted from March 25, 2008 within which to act on the claim. When petitioner filed the instant petition on April 25, 2008, the required 120 day period had yet to lapse.

14. Petitioner hence failed to exhaust its administrative remedies by filing the instant petition before the expiration of the 120-day period. In ***Magbuhos vs. Lanzanas***, the Supreme Court held:

> **The settled rule is before a party may seek the intervention of the courts, he should first avail of all the means afforded by administrative processes.** Hence, if a remedy within the administrative machinery is still available, with a procedure prescribed pursuant to law for an administrative officer to decide the controversy, a party should first exhaust such remedy before resorting to the courts. **The premature invocation of a court's intervention renders the complaint without cause of action and dismissible on such ground.** (Emphasis supplied)

Until the 120-day period lapses, an administrative remedy remains available to petitioner which precludes resort to this Honorable Court. Petitioner should have first awaited the decision of the CIR, or the expiration of the 120-day period, *i.e.,* exhaust all possible administrative remedies, before filing the instant petition.

15. The Honorable Court has no jurisdiction over the instant petition pursuant to the pertinent provisions of Republic Act No. 1125, as amended.

Section 7(a)(2) of RA 1125 provides:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal as herein provided:
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> 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

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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.)

Section 11 of the same law states:

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 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 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 such 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)

For administrative claims under Section 112 of the NIRC, the law expressly fixes a period of 120 days from date of submission of complete documents within which the CIR shall act thereon. Since petitioner filed the instant petition **before the expiration of said 120-day period,** the Honorable Court remains devoid of jurisdiction over the case since petitioner's right to file an action has yet to accrue.

Moreover, R.A. No. 1125, as amended, is explicit as to the procedural requirements for filing an appeal to the Court of Tax Appeals, namely, that in case of inaction, the appeal shall be **filed after the expiration of the period** fixed by law necessary for the CIR to act thereon. Such procedure should be strictly complied with. In ***PEZA vs. Fernandez,*** the Supreme Court held:

'The right to appeal is not a natural right or a part of due process. It is merely a procedural remedy of statutory origin and may be exercised only in the manner prescribed by the provisions of law authorizing its exercise. Hence, its requirements must be strictly complied with.'

16. Petitioner's reliance on ***Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corporations,*** CTA EB No. 123 dated January 17, 2006, which in turn relied on the decision of the Supreme Court in ***Commissioner of Internal Revenue vs. Victorias Milling*** is misplaced.

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17. The factual milieu in ***CIR vs. Victorias Milling*** is not on all fours with the present case. ***CIR vs. Victorias Milling*** involved the refund of specific taxes for which the NIRC **did not provide a specific period of action** within which the Commissioner of Internal Revenue shall act on the claim for refund or tax credit. The same is true for the refund of erroneously paid income taxes involved in the case of ***CIR vs. Mirant.***

On the other hand, the NIRC, under Section 112 thereof, is **specific both as to the period of action <u>within which the CIR shall act on a claim for refund/tax credit of creditable input taxes</u> as well as the period for <u>commencing an appeal to the Court of Tax Appeals,</u>** In this light, the periods of limitation under section 112(C), which expressly apply to claims under Section 112(A), should prevail over the general provision under Section 229 of the NIRC.

The two (2) year prescriptive period under Section 229 is intended to apply to suits or proceedings for the recovery of taxes, penalties or sums erroneously, excessively, illegally or wrongfully collected. Accordingly, a claim for tax credit, authorized by law, would instead prescribe in ten (10) years under Art. 1144 of the Civil Code [***Victorias Milling Co. vs. Central Bank***], **except when otherwise expressed by the Tax Code itself such as in value-added taxes in respect to the claim or application for tax refund or credit.**

18. In relation to the CTA's statutory jurisdiction, Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> 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 or other applicable law provides a specific period for action**: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed

> assessments beyond the one hundred eighty day-period above-mentioned, the taxpayer may appeal such final decision to the Court under section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code.'

The foregoing rule clearly refers to a specific period of action provided by the NIRC in reference to inaction by the CIR. There is also nothing therein which provides that the specific period of action fixed by law may be shortened by Section 229 of the NIRC. Consequently, the specific period for action fixed under Section 112(C) of the NIRC, not Section 229 of the same Code, should apply to the instant case.

19. Claims for tax refund/tax credit are construed in '*strictissimi juris*' against the taxpayer since claims for refund/credit partake the nature of an exemption from tax. It is, therefore, incumbent upon the taxpayer to prove that it is indeed entitled to the refund/credit sought.

For the foregoing reasons, there would be no basis for the Respondent to determine if petitioner has duly proved that it is entitled to the tax credit sought if Respondent is deprived of the specific period fixed by law (*i.e.,* Section 112(C) of the NIRC) for Respondent to act on a claim filed in accordance with Section 112(A) of the NIRC.

Petitioner's filing of the instant petition for review pursuant to Section 229 of the NIRC, very clearly, deprives the Respondent of the specific period to act on a claim as provided for under Section 112(C) of the NIRC."

On June 10, 2008, petitioner filed its Reply[15] to respondents' Answers. Thereafter, this case was set for pre-trial conference on June 13, 2008, but was reset to June 27, 2008 due to absence and non-filing of Pre-trial Brief by co-respondent OSS-DOF's counsel. Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[16] on July 9, 2008 and the same was approved in the Resolution dated July 17, 2008.[17]

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[15] Docket, pp. 78 to 85.
[16] Docket, pp. 121 to 123.
[17] Docket, p. 125.

During trial, the parties presented documentary and testimonial evidence to support their respective claim. On January 8, 2010, this case was submitted for decision,[18] taking into consideration petitioner's "Memorandum"[19] filed on November 23, 2009, respondent OSS-DOF's "Memorandum"[20] posted on December 21, 2009, and respondent CIR's "Memorandum (for Respondent)"[21] posted on December 22, 2009.

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[22] for this Court's resolution:

"1. Whether or not Petitioner exhausted its administrative remedies before the Commissioner of Internal Revenue as to clothe the Honorable Court with jurisdiction over the instant case.

2. Whether or not Petitioner is entitled to its claim for refund or issuance of TCC on its unutilized input tax in the amount of P3,360,079.32, incurred in the taxable year 2006."

Petitioner's arguments

Petitioner argues that there is no legal impediment in filing the administrative claim for refund with the BIR simultaneously with the petition for review in this Court as long as these two acts fall within the two-year prescriptive period under Section 229 of the Tax Code; and that since the two-year prescriptive period provided under the said Section 229 is about to prescribe, it filed the instant petition in order to preserve its right to claim for refund for excess input VAT it has incurred for taxable year 2006.

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[18] Resolution dated January 8, 2010, Docket, p. 645.
[19] Docket, pp. 570 to 596.
[20] Docket, pp. 609 to 625.
[21] Docket, pp. 628 to 642.
[22] Docket, p. 122.

Further, petitioner submits that the instant petition was not prematurely filed and that it did not fail to exhaust its administrative remedies before the Commissioner of Internal Revenue. The administrative claim for refund of petitioner before the respondent OSS-DOF was validly filed and that the same was filed within the two-year prescriptive period provided under Section 112(A) of the Tax Code.

According to petitioner, it has sufficiently adduced evidence to prove that it did not fail to exhaust the administrative remedies before the Commissioner of Internal Revenue and that it is entitled to its claim for refund or issuance of TCC on its unutilized input tax in the amount of ₱ 3,360,079.32.

Respondents' counter-arguments

Respondent Commissioner of Internal Revenue asserts that this Court is bereft of jurisdiction to try the instant case on account of the premature filing of the judicial claim. Additionally, respondent argues that petitioner is not entitled to its claim for refund or issuance of tax credit certificate incurred for taxable year 2006 for its failure to submit complete documents allegedly despite repeated written notices to do so, and to prove by sufficient and convincing evidence its entitlement thereto.

Co-respondent One Stop Shop – Department Of Finance submits that Sections 7(a)(2) and 11 of Republic Act (R.A.) No. 1125, as amended, and not Section 229 of the National Internal Revenue Code (NIRC), set out the proper remedy of a taxpayer in cases where his administrative claim for unutilized input VAT is not acted upon by the Commissioner of Internal Revenue. Petitioner's failure to submit complete supporting documents for its refund or tax credit application in derogation of Section 112(C)(2) did not allegedly clothe this Court with jurisdiction over the instant appeal hence rendering it dismissible for being premature.

THE COURT'S RULING

Courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[23]

With this responsibility in mind, this Court deems it necessary to squarely determine whether or not it has jurisdiction to entertain the present appeal.

Section 7 of R.A. No. 1125[24], as amended by R.A. No. 9282[25], defines the appellate jurisdiction of the CTA. The said provision, in part, reads:

> "SEC. 7. *Jurisdiction*. - The CTA shall exercise:
>
> a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> (1) Decisions of 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;
>
> (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**

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[23] *Ace Publications, Inc. vs. The Commissioner of Customs, et al.*, G.R. No. L-18808, May 29, 1964.

[24] AN ACT CREATING THE COURT OF TAX APPEALS.

[25] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL 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.

provides a specific period for action, in which case the inaction shall be deemed a denial;"*(Emphasis supplied)*

Furthermore, Section 11 of the same law prescribes how the said appeal should be taken, to wit:

"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)*

One of the "inactions" contemplated in the above-quoted provisions, pertinent to the instant case, is found in Section 112 of the NIRC of 1997, as amended by R.A. No. 9337[26], which states:

"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:

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**

[26] 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.

> **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**.
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> xxx xxx xxx." *(Emphasis supplied)*

Based on the foregoing provision, prior to seeking judicial recourse before this Court, a VAT-registered person must file an administrative claim for refund or tax credit of his input VAT attributable to zero-rated or effectively zero-rated sales, within two (2) years from the close of the taxable quarter when the said sales were made.

As stated in Section 112 (C), it is the Commissioner (of Internal Revenue) who shall grant a refund or issue the tax credit certificate. In this case, while the administrative claim of petitioner was filed with co-respondent OSS-DOF, the approval thereof still rests on the representative of the Commissioner, in accordance with the Memorandum dated July 27, 2007[27] of then Commissioner Lilian B. Hefti which provides in part:

> "'To expedite the claims for tax credits or refund, The New Paradigm in Meeting Collection Target, as circularized thru Revenue Memorandum Circular No. 32-2007, is hereby revised to reflect the following changes:
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> xxx xxx xxx
>
> 'III. *For VAT claims filed in the One-Stop-Shop Center of the DOF the following procedures are to be observed:*
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> - Claims amounting to Ten Million (10M) Pesos and below filed in the OSS-DOF shall be reviewed and processed by the Assessment

[27] SUBJECT: REVISIONS ON THE PARADIGM IN MEETING COLLECTION TARGERT. As circularized in Revenue Memorandum Circular No. 51-07 dated July 30, 2007.

Service. **The ACIR-Assessment Service shall be the approving official claims involving these amounts.**

- Claims exceeding Ten Million (10M) Pesos shall be reviewed and recommended by the ACIR-Assessment Service **to the Deputy Commissioner-Operations Group for final approval.**

- Dockets reviewed by the Assessment Service involving said claims which it would transmit back to OSS-DOF for compliance with certain requirements need not pass through the review of the ODCIR-OG. The ACIR-Assessment Service shall send it back to the originating office for immediate compliance to avoid further delay in the claims.'"

Thus, after the filing of the administrative claim for refund, the VAT-registered person must wait for either of the following: (a) the decision or ruling of denial, in full or in part, of such claim; or, (b) the expiration of the 120-day period from the submission of complete documents in support of such claim without any action thereon by the Commissioner of Internal Revenue. It is only then, may the Vat taxpayer file before this Court, a Petition for Review, within 30 days from receipt of the said decision or ruling, or from the expiration of the said 120-day period, as the case may be. As for the latter case, the expiration of such period is necessary because it is only after the lapse of the 120-day period that the "inaction shall be deemed a denial".[28]

In the very recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[29] 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.**

[28] Section 7(a)(2), R.A. No. 1125, as amended by R.A. No. 9282.
[29] G.R. No. 184823, October 6, 2010.

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Section 112(D)[30] 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.

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 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.

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[30] Now Section 112(C) of the NIRC of 1997, as amended by R.A. No. 9337.

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 this case, it is undisputed that petitioner timely filed its administrative claim on March 24, 2008 for the issuance of TCC in its favor for alleged excess input taxes in the amount of ₱ 3,360,079.32 for taxable year 2006.[31]

However, the instant petition for review was **prematurely** filed on April 11, 2008, or only eighteen (18) days from the date of filing of the administrative claim on March 24, 2008. Evidently, it was filed without waiting for the lapse of the 120-day period prescribed under Section 112(C) of the NIRC of 1997, as amended by R.A. No. 9337. Thus, the counting of the thirty-day period to appeal before this Court has not even commenced to run on April 11, 2008.

For clarity, a summary of the pertinent dates involved in this case is presented as follows:

Taxable year 2006	*Filing date of administrative claim*	*Last day of the 120-day period under Section 112(D) from the filing of the administrative claims*	*Last day of the 30-day period within which to file a petition for review under Section 112(C), NIRC of 1997, as amended RA 9337, and Section 11, RA 1125, as amended by RA 9282*	*Filing date of the instant petition for review*
1st Quarter	*March 24, 2008*	*July 22, 2008*	*August 21, 2008*	*April 11, 2008*
2nd Quarter				
3rd Quarter				
4th Quarter				

Although it would seem, from the wordings employed under Section 112 of the NIRC of 1997, that the date of filing of the administrative claim is separate and distinct, albeit subsequent, from the date of submission of the complete documents

[31] Par. 11, Facts Admitted, JSFI, Docket, p. 122. Exhibit "P".

in support thereof, it is also possible that the VAT taxpayer, herein petitioner, upon the filing of its administrative claim, simultaneously submitted complete documents in support thereof, absent any evidence contrary thereto.

The simultaneous submission of complete documents is presumed to have happened in the filing of petitioner's administrative claim[32] based on the following statements, *viz*:

> "**In support of our request, please find attached the following documents**:
>
> 1. Claimant Information Sheet (notarized with doc. Stamps)
> 2. Three (3) copies of application for Tax Credit (BIR Form 1914 for ITS RDOs)
> 3. Copy of VAT Registration Payment for year of claim (BIR Form0605)/Annual Registration
> 4. Copy of Monthly and Quarterly VAT Returns for taxable year 2006
> 5. Copy of 2006 Annual Income Tax Return
> 6. Audited Financial Statements complete with Notes to Financial Statements duly received by BIR/AAB for taxable year 2006
> 7. Sworn statements issued by Daicolor Philippines, Inc.
> 8. Verification of Delinquent Accounts and Non-Availment from Revenue District Office (RDO)
> 9. Special Power of Attorney authorizing Aranas Consunji Barleta Law Offices to apply for instant claim for refund
> 10. Schedule of Purchases for each quarter
> 11. Diskette containing the Schedule of Purchases per quarter (MS Excel)
> 12. Schedule of Zero-rated, Taxable and Exempt Sales per quarter
> 13. Diskette containing the Schedule of Zero-rated Taxable and Exempt Sales per quarter (MS Excel)
> 14. Reconciliation of Export Sales and Dollar Remittances
> 15. Copy of Daicolor's BPI and RCBC Passbooks with indication of clients name and invoice number to prove forex receipts
> 16. Inventory of Used and Unused Official Receipts and Invoices
> 17. Schedule of Importation for taxable year 2006
> 18. Diskette containing schedule of importation
> 19. Copy of Import Entry and Internal Revenue Declarations duly validated by the Bank with O.R.
> 20. Copy of the BOC receipts/confirmation receipts evidencing payment of VAT.

[32] Exhibit "P".

We trust that you find the foregoing in order. Your prompt attention the matter will be highly appreciated." *(Emphasis supplied)*

In view thereof, this Court finds that the reckoning date of the 120-day period under Section 112(C) of the NIRC of 1997, as amended by R.A. No. 9337, commenced simultaneously with the filing of petitioner's administrative claim on March 24, 2008. Thus, when the instant Petition for Review was filed on April 11, 2008, the appellate jurisdiction of the Court in Division has not ripened, as the 120-day period has not lapsed.

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,[33] 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.[34] 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.[35]

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.[36] 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.[37]

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[33] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 7, 1968.
[34] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[35] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.
[36] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[37] Section 1, Rule 9, Rules of Court.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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