REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, ***Petitioner,***	**C.T.A. EB NO. 835** **(C.T.A. CASE NO. 7825)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
TAKASAGO PHILIPPINES, INCORPORATED, ***Respondent.***	**Promulgated:** OCT 15 2012

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DECISION

PALANCA-ENRIQUEZ, J.:

A court's lack of jurisdiction may be raised at any stage of the proceedings, even on appeal *(Francel Realty Corporation vs. Sycip, 469 SCRA 431).*

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter "petitioner CIR") under *Section 11 of RA 9282,* in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended,* which seeks to reverse and set aside the Decision dated May 19, 2011 and Resolution dated September 12, 2011 rendered by the First Division of this Court in C.T.A. Case No. 7825, entitled "Takasago Philippines, Inc. vs. Commissioner of Internal Revenue," the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby ORDERED to ISSUE A TAX CREDIT CERTIFICATE to petitioner in the reduced amount of SEVEN MILLION EIGHT HUNDRED TWENTY NINE THOUSAND TWO HUNDRED SEVENTY FIVE PESOS AND 71/100 CENTAVOS (P7,829,275.71), representing unutilized input VAT attributable to effectively VAT zero-rated sales for the period covering the four (4) quarters of taxable year 2006.
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, premises considered, respondent's **"Motion for Reconsideration"** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR"), with authority, among others, to decide, approve and grant tax credit and/or refund, and holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On the other hand, respondent Takasago Philippines, Inc. (hereafter "respondent Takasago") is a domestic corporation duly organized and existing under Philippine laws, with principal office at 14/F Oledan Square, 6788 Ayala Avenue, Makati City, and may be served with summons and legal processes through its legal counsel.

THE FACTS

The facts of the case, as culled from the records, are, as follows:

Respondent Takasago is a value-added tax (VAT) taxpayer registered with RDO No. 47 – East Makati of the BIR, with VAT Registration/Taxpayer Identification No. 003-982-236-000. Its primary business purpose is to provide general and specialty construction services and other allied businesses, including structural, mechanical, electrical, and other design, construction, erection, installation, repair, and related services.

For the period covering the four (4) quarters of 2006, respondent Takasago filed Monthly VAT Declarations and Quarterly VAT Returns within the period provided under the *NIRC of 1997, as amended*, and then subsequently filed Amended Monthly and Quarterly VAT Returns showing the following:

PERIOD	OUTPUT VAT	INPUT VAT, BEG	INPUT VAT, for the QUARTER	EXCESS
1ST	128,800.00	0.00	2,821,949.29	2,693,149.29
2ND	368,600.00	2,693,149.29	3,156,000.00	5,479,549.30
3RD	249,621.43	5,479,549.30	2,859,523.74	8,089,451.61
4TH	55,202.77	8,089,451.61	3,407,648.27	11,441,897.11

The rest and the bulk of respondent Takasago's sales consist of services rendered to entities registered with the PEZA, which are among the persons or entities whose exemptions under special laws effectively subject the supply of such services to VAT at zero percent (0%) rate; hence, such sales are deemed effectively VAT zero-rated sales and, therefore, have zero output VAT.

On March 31, 2008, respondent Takasago filed with RDO No. 47 a written application for refund or issuance of TCC for its excess and unutilized input VAT in the amount of P11,441,897.11 for the period covering the four (4) quarters of calendar year 2006.

Alleging inaction, on July 25, 2008, respondent Takasago filed a Petition for Review with this Court in Division, docketed as C.T.A. Case No. 7825.

On May 19, 2011, the First Division rendered a Decision partially granting the Petition for Review and ordered herein petitioner CIR to issue a TCC in the reduced amount of P7,829,275.71.

On June 7, 2011, petitioner CIR filed a "Motion for Reconsideration" of the Decision dated May 19, 2011, which was denied for lack of merit by the First Division in its Resolution dated September 12, 2011.

On October 13, 2011, petitioner CIR filed the instant Petition for Review before this *Court En Banc*, raising the following:

ISSUES

I

WHETHER OR NOT THE FIRST DIVISION OF THIS HONORABLE COURT HAS JURISDICTION TO ENTERTAIN THE SUBJECT MATTER OF THE PETITION FOR REVIEW IN CTA CASE NO. 7825.

II

WHETHER OR NOT THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT THE PREMATURE FILING OF RESPONDENT'S JUDICIAL CLAIM IS A MERE VIOLATION OF THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.

III

WHETHER OR NOT THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT PETITIONER CIR WAS ALREADY ESTOPPED FROM BELATEDLY RAISING THE COURT'S LACK OF JURISDICTION OVER THE SUBJECT MATTER OF THIS CASE.

Without necessarily giving due course to the Petition for Review, on December 7, 2011, the Court *En Banc* ordered respondent Takasago to file its comment, not a motion to dismiss, within ten (10) days from notice.

Despite notice, respondent Takasago failed to file its comment thereto.

On January 18, 2012, the Court *En Banc* issued a Resolution ordering both parties to submit their simultaneous memoranda, within a non-extendible period of thirty (30) days from notice; afterwhich the petition shall be submitted for decision.

On March 2, 2012, petitioner CIR filed a "Manifestation and Motion" stating that she is adopting all her legal arguments/positions in her Petition for Review, as well as the factual findings and conclusions of Associate Justice Erlinda P. Uy in her Concurring and Dissenting Opinion dated May 19, 2011, as part of her Memorandum.

Despite notice, respondent Takasago failed to file its Memorandum.

On March 29, 2012, this case was deemed submitted for decision.

THE COURT *EN BANC'S* RULING

We find merit in the petition.

Petitioner CIR contends that the failure of respondent Takasago to comply with the prescribed requisites to perfect an appeal within the statutory period, divests this Court of its jurisdiction over the case since such requirement is not only mandatory, but also jurisdictional; hence, the lack of jurisdiction of this Court over the subject matter of this case cannot be cured by the mere silence, acquiescence, or even by express consent of the parties; the doctrine of exhaustion of administrative remedies cannot be made to apply to cases involving refund claims under *Section 112 of the NIRC of 1997, as amended by RA 9337;* that estoppel cannot be invoked against the petitioner CIR or the State; and respondent's judicial claim for refund/tax credit of alleged excess and unutilized input VAT for the 1st and 2nd quarters of 2006 has already prescribed.

At the outset, respondent Takasago's claim for refund/tax credit of the alleged unutilized input VAT attributable to its effectively zero-rated sales for the period covering the four (4) quarters of taxable year 2006 is subject to the provisions of *Section 112 of the NIRC of 1997, as amended.*

In this regard, in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., 632 SCRA 422*, the Supreme Court interpreted the provisions of Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended, and ruled, as follows:

> "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 xxx 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 the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

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> In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."

In this case, we find that respondent Takasago's administrative claim for refund was filed on March 31, 2008 within the two (2)-year prescriptive period under *Section 112 (A) of the NIRC of 1997, as amended.*

However, respondent Takasago failed to comply with the 120-day period prescribed under *Section 112 (C) of the NIRC of 1997, as amended* and filed the Petition for Review in C.T.A. Case No. 7825 on July 25, 2008, or four (4) days before the lapse of the 120-day period.

Considering that the Petition for Review was prematurely filed, the premature filing of the petition warrants a dismissal inasmuch as no jurisdiction was acquired by the Court in Division.

It is clear that respondent Takasago resorted to the administrative remedy available to it. Records show that on March 31, 2008, respondent Takasago filed an administrative claim for refund with the BIR. However, respondent Takasago did not wait for the lapse of the 120-day period, on July 29, 2008, for the CIR to decide the claim under Section 112 (C) of the NIRC of 1997, as amended, since it filed the Petition for Review in C.T.A. Case No. 7825 on July 25, 2008, four (4) days ahead of the lapse of the 120-day period.

Hence, when respondent Takasago filed the Petition for Review with the Court in Division, there was no inaction yet on the part of the CIR, as the 120-day period to decide has not yet lapsed, neither was there a decision issued by the CIR.

It must be emphasized that under *Section 7 of RA 9282, as amended,* the CTA has exclusive appellate jurisdiction to review by appeal a decision or inaction by the CIR on the claim for refund. Thus:

"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**

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> **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, in which case the inaction shall be deemed a denial;
>
> xxx xxx." *(Emphasis supplied)*

It is clear from the above provision that for the CTA to acquire jurisdiction over refunds of internal revenue taxes, there must be a decision or inaction by the CIR. Otherwise, the CTA will not acquire jurisdiction over the claim for refund or credit.

In this case, records show that when petitioner filed the instant Petition For Review on July 25, 2008, no decision has yet been rendered by the CIR, neither was there inaction on the part of the CIR, as the 120-day period to decide has not yet lapsed. Thus, the CTA in Division has not acquired jurisdiction over the Petition for Review filed in C.T.A. Case No. 7825 for refund or credit of unutilized input VAT for the four (4) quarters of calendar year 2006 for having been prematurely filed.

Considering that this Court in Division has not acquired jurisdiction over the Petition For Review filed in C.T.A. Case no. 7825, *Section 1, Rule 9 of the 1997 Rules of Civil Procedure, as amended*, applies, to wit:

> "SEC. 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter**, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment o0r by statute of limitations, **the court shall dismiss the claim**."

Pursuant to the above provision, when the court has no jurisdiction over the subject matter, the court shall dismiss the claim.

Basic is the rule that a court's lack of jurisdiction may be raised at any stage of the proceedings, even on appeal *(Francel Realty Corporation vs. Sycip, 469 SCRA 431)*.

Equally settled is the rule that dismissal of a case for lack of jurisdiction may be raised at any stage of the proceedings since jurisdiction is conferred by law. The lack of jurisdiction affects the very authority of the court to take cognizance of and to render judgment on the action; otherwise, the inevitable consequence would make the court's discretion a 'lawless' thing.

Considering that the Petition for Review in C.T.A. Case No. 7825 was prematurely filed, thus, the Court in Division has not acquired jurisdiction over the petition, we have no alternative, but to reverse and set aside the assailed Decision dated May 19, 2011.

WHEREFORE, premises considered, the present Petition for Review is hereby **GRANTED.** The assailed Decision dated May 19, 2011 is hereby **REVERSED** and **SET ASIDE**, and another one is hereby entered **DISMISSING** the Petition for Review filed in C.T.A. Case No. 7825 for having been prematurely filed.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

(With Dissenting Opinion)

ERNESTO D. ACOSTA
Presiding Justice

(With Separate Concurring Opinion)

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(I Concur With the Dissenting Opinion of PJ Acosta)

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TAKASAGO PHILIPPINES, INCORPORATED,
Respondent.

CTA EB NO. 835
(CTA Case No. 7825)

Present:

ACOSTA, *PJ.*
CASTAÑEDA, Jr.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

OCT 15 2012 Castpolinario 1:00 p.m.

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DISSENTING OPINION

Acosta, PJ:

With all due respect to my esteemed colleagues, I firmly stand by my original position, as reflected in the Decision dated 19 May 2011 and the Resolution of 12 September 2011, that the failure of petitioner to invoke respondent's violation of the doctrine of exhaustion of administrative remedies at the earliest possible time is deemed a *waiver* of said defense.

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The majority subscribes to the view that the absence of a decision from the Commissioner of Internal Revenue (CIR) prior to the lapse of the one hundred twenty (120) days to decide the claim in the administrative level, provided for by Section 112 (C), as amended, of the National Internal Revenue Code (NIRC), does not constitute *inaction* on the part the CIR that will allow the claim to be elevated to this Court in accordance with Section 7 of Republic Act No. 9282[1], as amended. This view of the majority thus leads to the conclusion that the Court does not have jurisdiction over a prematurely filed judicial refund claim under Section 112 of the NIRC, in line with the pronouncement of the Honorable Supreme Court in the case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*** (GR No. 184823, 06 October 2010).

I beg to disagree.

From the bare facts of the case, it is evident that the judicial claim was filed before the issuance of an adverse decision by the BIR, or the lapse of the one hundred twenty (120) day period mandated by Section 112 (C), as amended, of the NIRC, which covers refund claims of this nature, *viz*:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> ...(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.
>
> <u>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</u>

[1] An Act Expanding the Jurisdiction of the Court of Tax Appeals

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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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(Underscoring supplied.)

In not joining the majority in its disposition of the case, I support the view that the failure of petitioner to comply with the above subsection does not rob this Court of jurisdiction over the claim for refund as such merely constitutes a violation of the doctrine of exhaustion of administrative remedies.

The rule on exhaustion of administrative remedies before resorting to the courts means that there should be an orderly procedure which favors a preliminary administrative sifting process, particularly with respect to matters peculiar within the competence of the administrative agency, avoidance of interference with functions of such administrative agency by withholding judicial action until the administrative process has run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance.[2] A party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to court action.[3]

Unlike a lack of jurisdiction, the non-exhaustion of administrative remedies is *not at all times fatal* to the claimant.

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[2] *Abe-Abe vs. Manta*, L-4827, 31 May 1979.
[3] *Commissioner of Internal Revenue vs. Rosemarie Acosta*, GR No. 154068, 03 August 2007.

In the case of *Castro vs. Gloria*, GR No. 132174, 20 August 2001, the Supreme Court, citing the case of *Vidad vs. RTC of Negros Oriental*, Branch 42[4], declared that—

> Non-exhaustion of administrative remedies implies absence of cause of action. Where a remedy is available within the administrative machinery, this should be resorted to before recourse can be made to the courts. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. (Underscoring supplied.)

Therefore the failure to exhaust available administrative remedies will not rob the courts of its jurisdiction over a case as the same is tantamount only to a judicial petition lacking or failing to state a cause of action. In our jurisdiction, the defense of failing to state a cause of action is not jurisdictional in nature and may be deemed waived if not timely raised in a Motion to Dismiss or in the Answer.[5]

In the case of *Iloilo City Zoning Board of Adjustment and Appeals vs. Gegato Abecia Funeral Homes, Inc.*, GR No. 157118, 08 December 2003, the Supreme Court established that the premature invocation of the court's intervention is only fatal to *one's cause of action*. The case though is susceptible of dismissal for such failure to state a cause of action absent any finding of waiver or estoppel, *viz*:

> The settled rule is that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the court's intervention is fatal to one's cause of action.

[4] 227 SCRA 221.
[5] Sec. 1, Rule 9 of the Rules of Court.

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> Accordingly, absent any finding of waiver or estoppel the case is susceptible of dismissal for failure to state a cause of action. This doctrine of exhaustion of administrative remedies is not without practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[6]

In disregarding ***Aichi*'s**, *supra*, pronouncement on the Court's lack of jurisdiction based on the ground of a premature filing of a judicial claim, I submit and choose to echo past jurisprudence and authority which laid to rest the issue of non-exhaustion of administrative remedies, which, are established doctrines not only in taxation but also in other fields of law. It is my humble opinion that the statement by the Supreme Court in ***Aichi*** that the 'Court has no jurisdiction' is stated in its broadest and generic sense. The Court cannot very well do away with these established doctrines by cutting corners and declaring succinctly that it has no jurisdiction over a case without strict legal basis. In the absence of any waiver or estoppel, a premature recourse to the courts is dismissible. Otherwise, the Court acquires jurisdiction and may properly act on the petition.

Records reveal that respondent timely filed on March 31, 2008 its administrative claim for refund in the amount of P11,441,897.11, allegedly representing the unutilized input VAT arising from its purchases attributable to effectively zero-rated sales for the four quarters of 2006. However, it appears that respondent's judicial filing with the Court was premature. Its judicial claim was filed

[6] Citing *Paat v. Court of Appeals*, 334 Phil. 146, 152–153 (1997)

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on July 25, 2008, four (4) days ahead of the end of the 120 day period provided in Section 112(C) of the 1997 NIRC, as amended. Likewise, though, records prove that petitioner failed to allege in her answer or in a motion to dismiss the premature filing of the instant case in Court. Thus, petitioner herein is considered to have waived said defense.

In view thereof, I dissent to the dismissal of respondent's claims for refund or issuance of a tax credit certificate representing its unutilized input VAT for the four quarters of taxable year 2006 and echo the 12 September 2011 Resolution that states that since petitioner failed to ventilate the prematurity of respondent's judicial filing in her Answer, petitioner is considered to have waived raising such defense. Respondent's judicial claim for its alleged unutilized input VAT arising from purchases attributable to zero-rated sales for the four quarters of 2006 should therefore be cognizable by the Court.

ERNESTO D. ACOSTA
Presiding Justice

I concur:

ESPERANZA R. FABON-VICTORINO
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

TAKASAGO PHILIPPINES, INC.,
Respondent.

CTA EB CASE NO. 835
(CTA Case No. 7825)

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

OCT 15 2012

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SEPARATE CONCURRING OPINION

BAUTISTA, J.:

A second hard look at the factual milieu of the case at bench shows that during its pendency, the Supreme Court issued a ruling wherein the two (2)-year prescriptive period is reckoned, not from the filing of the return, but from the close of the taxable quarter when the sales were made; and yet, another one was issued stating that the two (2)-year period pertains only to administrative claim, and that the taxpayer is merely given a thirty (30)-day period to elevate its claim before this Court, either from the receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.

As borne by the records of the case, respondent filed a written application for refund or issuance of a tax credit certificate for its excess and unutilized input tax on purchases attributable to effectively zero-rated sales covering the four (4) quarters of calendar year 2006, on March 31, 2008; and alleging inaction on the part of petitioner, respondent filed a Petition for Review before this Court on July 25, 2008.

In its Petition for Review, raffled to the then First Division of the Court, docketed as CTA Case No. 7825, respondent cited the then prevailing doctrine, wherein the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return.[1] Further, in the parties' Joint Stipulation of Facts and Issues, the parties agreed that "[f]or the period covering the 1st quarter of 2006 up to the 4th quarter of 2006, [respondent] filed Monthly VAT Declarations (BIR Form No. 2550M) and Quarterly VAT Returns (BIR Form No. 2550Q) within the period provided under the Tax Code, xxx."

And during the pendency of the case at bench, and in not a few instances did this Court rule that the date of filing of the relevant return is the determinative factor, to which respondent had faithfully relied and complied therein.

In this regard, Section 112(A) of the 1997 National Internal Revenue Code ("NIRC"), as amended, which provides that a value-added tax ("VAT")-registered person, whose sales are zero-rated, may apply for the issuance of tax credit certificate or refund, must be construed with Section 114(A) of the same Code, to quote:

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[1] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

> SEC. 114. *Return and Payment of Value-Added Tax* –
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> (A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

Clearly, respondent had until two (2) years from the filing of the relevant returns, or from twenty five (25) days following the close of the respective quarters, within which to file both its administrative and judicial claims.

With the foregoing in mind, I must vote to grant the Petition for Review before the Court *En Banc* filed by the Commissioner of Internal Revenue.

It should be stressed that respondent's claim covers the four (4) quarters of the calendar year 2006, and Section 114(A) of the 1997 NIRC, as amended, expressly provides that the return shall be filed "within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis."

Therefore, I find the records bereft of evidence that respondent filed its claims within the prescribed period. The records of the case show that respondent merely proffered its Amended Quarterly Value-Added Tax ("VAT") Returns.[2] Without the introduction of its Original VAT Returns, it cannot be ascertained whether the claims for the said quarters were timely filed.

It may not be amiss to note that respondent utilized the ruling wherein the reckoning of the two (2)-year prescriptive period is from the filing of the relevant

[2] *Exhibits "A," "B," "C"* and *"D,"* with submarkings.

quarter; hence, it must comply with Section 114(A) of the 1997 NIRC, as amended, which expressly provides for the filing of the required returns. The Court cannot simply ignore the fact that respondent failed to present its Original VAT Returns. Indeed, the interest of justice dictates that the Court considers and resolves issues even though not particularly raised if it is necessary for the complete adjudication of the rights and obligations of the parties and it falls within the issues already found thereof.[3]

In sum, respondent's claim for refund or issuance of a tax credit certificate for its excess and unutilized input tax on purchases attributable to effectively zero-rated sales covering the four (4) quarters of the calendar year 2006 should be disallowed.

Accordingly, I vote that the Petition for Review be **GRANTED.**

LOVELL R. BAUTISTA
Associate Justice

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[3] Insular life Assurance Co., Ltd., Employees Association – NATU, *v.* Insular Life Assurance Co., Ltd., No. L-25291, March 10, 1977, 76 SCRA 50.