

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

M+W PHILIPPINES INC.,
Petitioner,

CTA CASE NO. 8047

Members:

- versus -

ACOSTA, Chairperson
UY, and
FABON-VICTORINO

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

AUG 24 2010; 1:31 pm

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RESOLUTION

Fabon-Victorino, J.:

Presented to the Court for resolution is the Motion to Dismiss dated May 05, 2010, filed by respondent Commissioner of Internal Revenue on the ground of lack of cause of action for failure of petitioner M + W Philippines, Inc. to exhaust all administrative remedies justifying outright dismissal of its Petition for Review filed on March 29, 2010. The instant Petition seeks for the refund or the issuance of a tax credit certificate in the amount of P18,848,143.28, representing input VAT paid on domestic purchases of goods and services attributable to effectively zero-rated sales covering four quarters of taxable year 2008.

Respondent claims that by filing the instant Petition for Review on March 29, 2010, petitioner effectively deprived him of the opportunity to act on its administrative claim for refund filed with the BIR RDO 48 West Makati on December 14, 2009. Under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, he allegedly had 120 days from submission of complete documents or until April 14, 2010 to act on petitioner's administrative claim for refund or credit. The latter, on the other hand, had 30 days from notice of the adverse ruling, or after the expiration of the 120-day period, which fell on May 13, 2010, to seek review of his decision or inaction. Clearly, petitioner prematurely sought this Court's intervention in violation of the doctrine of exhaustion of administrative remedies. In view thereof, the present Petition for Review should be dismissed.

In opposition, petitioner argues that respondent violated Section 5, Rule 6 of the Revised Rules of Court of Tax Appeals when it filed a Motion to Dismiss instead of the required answer wherein he could raise the same ground by way of affirmative defense. Consequently, it did not toll the running of the period to file a responsive pleading. And for failure to file answer within the reglementary period pursuant to Section 3, Rule 9 of the Revised Rules of Court, respondent should be declared in default.

Moreover, respondent misinterpreted Section 112(C) of the Tax Code, which should be read with Section 112(A) of the same Code. Section 112(A) clearly provides that claims for refund must be made within 2 years after the close of the taxable quarter when the relevant sales were made. Considering that Section 112(A) does not say that the 2-year prescriptive period applies to administrative claim only, it should include judicial claim as well. Section 112(C) should yield to the prescriptive period provided in Section 112(A) which provides that claims for refund must be made within 2 years from the close of the taxable quarter. Otherwise, the 2-year prescriptive period would be extended with the addition of the 120 days for respondent to act on administrative claim and 30 days for appeal, contrary to the dictate of Section 112(A) of the Tax Code.

Following the 2-year prescriptive period in Section 112(A), the filing of the claim for refund of unutilized input VAT for the four quarters of 2008 must be made on or before March 31, 2010. Applying Section 112(A) of the NIRC, the present appeal was not prematurely filed on March 29, 2010, hence there is no violation of the doctrine of exhaustion of administrative remedies.

With respondent's failure to file a Reply within the period granted, the Motion to Dismiss was submitted for resolution.

The mandate of Section 112 of the NIRC, as amended, is explicit, to wit:

"Section 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 x x x

(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. x x x"

From the foregoing provision, any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit certificate or refund of creditable and

unutilized input tax within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.¹ The record reveals that petitioner's administrative claim for refund for the four quarters of the year 2008 was seasonably filed on December 14, 2009, or within two years from the close of the relevant taxable quarter. Henceforth, respondent has 120 days, or until April 13, 2010, within which to grant or deny the claim. From receipt of the adverse decision or the expiration of the allowable 120 days in the administrative level, petitioner had 30 days or until May 13, 2010, within which to file appeal via a petition for review with this Court. We apply the 120-day rule in as much as there is no adverse decision made by the Commissioner of Internal Revenue. Since the Petition for Review was filed on March 29, 2010, the same is prematurely filed.

To repeat, it is only upon denial or the expiration of the allowable period of 120 days without any action on the part of respondent that petitioner may, within the period of 30 days therefrom invoke this Court's jurisdiction by filing a petition for review. Prior to such period, the Court has no competence to entertain the appeal as in this case. The Court of Tax Appeals is a

¹ CIR vs. Mirant, G.R. No. 172129, September 12, 2008

court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.²

In fine, the instant petition for review was prematurely filed, thus dismissable.

Anent petitioner's plea to declare respondent in default for filing a Motion to Dismiss in lieu of an answer, suffice it to say that the same is allowed under the Rules of Court, which is suppletory to the Revised Rules of the Court of Tax Appeals, as amended.³ Section 1, Rule 16 of the Rules of Court states that "Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made x x x."

Section 4, Rule 16 of the Rules of Court also provides that "If the motion is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 x x x." Hence, if the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer within the period prescribed by Rule 11, computed from the time he received notice of the denial or

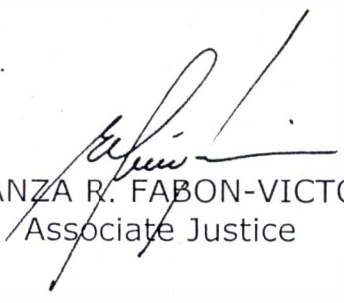
² RCBC vs. CIR, G.R. No. 168498, April 24, 2007

³ Section 3, Rule 1 of the 2005 Revised rules of the Court of Tax Appeals, as amended

deferment, unless the court provides a different period.⁴ By filing a motion to dismiss, respondent is deemed to have filed a responsive pleading, hence, cannot be declared in default.

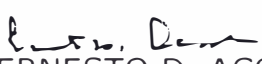
WHEREFORE, premises considered, the Motion to Dismiss dated May 05, 2010, filed by respondent Commissioner of Internal Revenue, is GRANTED. The Petition For Review filed by petitioner M+W Philippines Inc. is hereby DISMISSED, without prejudice.

SO ORDERED.



ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:



ERNESTO D. ACOSTA
Presiding Justice



(with Separate Opinion)
ERLINDA P. UY
Associate Justice

⁴ Bayog vs. Natino, G.R. No. 118691, July 5, 1996