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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

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PHIL. GOLD PROCESSING AND REFINING CORP., Petitioner,	**CTA CASE NO. 8048**
	Members:
-versus-	**BAUTISTA,** *Chairperson* **PALANCA-ENRIQUEZ,** and **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** DEC 2 3 2010

x- 3:45 p.m. - -x

RESOLUTION

For this Court's resolution are respondent's "**Special and Affirmative Defense**" raised in her Answer praying for the dismissal of the Petition for Review on the ground of lack of cause of action and petitioner's "**Comment/Opposition (To Respondent's Affirmative Defense)**" filed on November 2, 2010.

Respondent claims that petitioner failed to comply with the requirements under Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended. Allegedly, the instant petition was prematurely filed on March 29, 2010, which was long before the expiration of the 120 – day period granted to the Commissioner of Internal Revenue to act on its claim. Respondent concludes that petitioner violated the doctrine of

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exhaustion of administrative remedies; thus, the instant petition should be dismissed for lack of cause of action.

Petitioner counter argues that it need not wait for the 120 days to expire before filing the Petition for Review and what is mandatory is that both the written claim for refund and the Petition for Review must be filed within the 2-year period provided under Section 229 of the NIRC of 1997, as amended. Since the instant petition was filed within the 2 year prescriptive period provided under Section 229, the same should not be considered as prematurely filed.

We rule in favor of the respondent.

First, the issue on the application of Section 229 of the NIRC of 1997, as amended, in determining the timeliness of claims for VAT refund has already been settled in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc.*[1] where the Supreme Court ruled:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, where we ruled that **Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as 'both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes."**

From the foregoing, it is clear that the provision invoked by petitioner, specifically Section 229 of the NIRC of 1997, as amended, is not the applicable provision in the instant case.

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

In determining whether or not the instant petition was prematurely filed, this Court find instructive the provision under Section 112 (D) [now Section 112 (C)] of the NIRC of 1997, as amended, the pertinent portion of which reads:

> "**SEC. 112.** *Refunds or Tax Credits of Input Tax.* –
>
> x x x x
>
> (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 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).
>
> 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."

Significantly, in the same case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[2] the Supreme Court emphasized the mandatory nature of the periods provided in Section 112 (D) [now Section 112 (C)] of the NIRC of 1997, as amended, to wit:

> **"Section 112(D) 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

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[2] *Supra*, note 1.

> the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> xxx
>
> 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.**" (*Emphases supplied.*)

Taking into consideration the importance of the periods provided under Section 112 (D) [now Section 112 (C)] of the NIRC of 1997, as amended, this Court has no recourse but to strictly apply the said provision in this case.

Records show that petitioner filed its administrative claim for refund on March 1, 2010, which is presumably the date when petitioner submitted the complete documents in support of its application for refund. Thereafter, petitioner immediately filed the instant Petition for Review on March 29, 2010, which is merely twenty eight (28) days from the filing of its administrative claim for refund. Obviously, petitioner filed its judicial appeal before this Court without waiting for the lapse of the 120-day period provided under Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended.

Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reason of law, comity and convenience, will not entertain a case unless the available remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[3] If a litigant goes to court without first pursuing his administrative remedies, his action is premature or he has no cause of action to ventilate in court. His case is not ripe for judicial determination.[4]

WHEREFORE, premises respondent's prayer for the dismissal of the instant case is hereby **GRANTED.** Accordingly, the instant Petition for Review is hereby **DISMISSED** for having been prematurely filed.

SO ORDERED.

(w/ dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[3] Teotico vs. Agda, G.R. No. 87437, May 29, 1991.
[4] Aboitiz vs. Collector of Customs, No. L-29466, May 18, 1978.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHIL. GOLD PROCESSING AND REFINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8048

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

DEC 2 3 2010

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DISSENTING OPINION

BAUTISTA, J.:

In upholding my opinion that both the administrative and judicial claims must be made within the settled two (2)-year prescriptive period, I must point out my nonconcurrence on the dismissal of the present Petition for Review.

With all due respect to the elucidations made by the members of this Court, I maintain that the judicial recourse under Section 112(C)[1] of the 1997 National Internal Revenue Code ("NIRC") is directory and permissive and not mandatory nor jurisdictional, subject to the 2-year prescriptive period provided under Sections 112(A) and 229 of the same Code.

[1] As amended by Republic Act No. 9337.

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In the case of *Commissioner of Internal Revenue v. Toledo Power, Inc.*,[2] this Court aptly penned as follows:

> It is true that Section 112(D) [*now Section 112(C)*] of the abovementioned provision applies to the present case. However, what the petitioner failed to consider is Section 112(A) of the same provision. The respondent is also covered by the two (2) year prescriptive period. We have repeatedly held that the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period.
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> Accordingly, the Supreme Court held in the case of Atlas *Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* that the two-year prescriptive period for filing a claim for input tax is reckoned from the date of the filing of the quarterly VAT return and payment of the tax due. If the said period is about to expire but the BIR has not yet acted on the application for refund, the taxpayer may interpose a petition for review with this Court within the two year period.
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> In the case of *Gibbs vs. Collector*, the Supreme Court held that if, however, the Collector (now Commissioner) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.
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> Furthermore, in the case of *Commissioner of Customs and Commissioner of Internal Revenue vs. The Honorable Court of Tax Appeals and Planters Products, Inc.*, the Supreme Court held that the taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect. It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector (now Commissioner) of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Collector (now Commissioner) of Internal Revenue, would have, at his personal convenience, given his go signal.
>
> This Court ruled in several cases that once the petition is filed, the Court has already acquired jurisdiction over the claims and the Court is not bound to wait indefinitely for no reason for whatever action

[2] CTA EB No. 321 (CTA Case Nos. 6805 & 6851), May 7, 2008.

> respondent (herein petitioner) may take. At stake are claims for refund and unlike disputed assessments, no decision of respondent (herein petitioner) is required before one can go to this Court.

Clearly, the claim for refund filed with the Bureau of Internal Revenue ("BIR") and the subsequent appeal to this Court must be made within the 2-year prescriptive period.

Stated otherwise, if the 2-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the one hundred twenty (120)-day period before the taxpayer can lodge its appeal with this Court;[3] if not, claims for refund of unutilized input tax attributable to zero-rated sales or effectively zero-rated sales will be time-barred.

Further, Revenue Memorandum Circular No. 49-03,[4] dated August 15, 2003, provides as follows:

> In response to request of selected taxpayers for adoption of procedures in handling refund cases that are aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law, certain provisions of RMC No. 42-2003 are hereby amended and new provisions are added thereto.
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> In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:
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> I.) A-17 of Revenue Memorandum Circular No. 42-2003 is hereby revised to read as follows:

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[3] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB No. 416, February 4, 2009, Commissioner of Internal Revenue *v.* San Roque Power Corporation, CTA EB No. 408, March 25, 2009, Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.

[4] Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

> In cases where the taxpayer has filed a "Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.
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> If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office.

Pursuant to the foregoing, petitioner has 2-years within which to file both its administrative and judicial claims.

At the time of the filing of petitioner's administrative claim with the BIR on March 1, 2010, and the present Petition for Review on March 29, 2010, the prevailing jurisprudence is the case of *Commissioner of Internal Revenue v. Mirant Pagbilao*

Corporation (formerly Southern Energy Quezon, Inc.),[5] wherein the reckoning of the 2-year prescriptive period is from the close of the taxable quarter when the relevant sales were made.

Based on the records of the case, petitioner's claim for refund or issuance of tax credit certificate for its unutilized input value-added tax involves the period from January 1 to March 31, 2008 - the third quarter of the fiscal year ending June 30, 2008; thus, counting from then said dates, the 2-year period within which petitioner can file its claim for refund/tax credit, reckoned from the close of the said taxable quarter, is until March 31, 2010.

It follows then that petitioner's judicial claim with this Court on March 29, 2010 was timely made within the 2-year prescriptive period.

Accordingly, I vote that the Petition for Review be given its due course.

LOVELL R. BAUTISTA
Associate Justice

[5] G.R. No. 172129, September 12, 2008, 565 SCRA 154.