REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

PANAY POWER CORPORATION (Formerly: Avon River Power Holdings Corporation),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7402

Members:

ACOSTA, *Chairperson*
BAUTISTA, *and*
CASANOVA, *JJ.*

Promulgated:
DEC 06 2010 ; 4:00 pm

x - x

AMENDED DECISION

CASANOVA, *J.*:

On March 10, 2010, petitioner filed its *Motion for Reconsideration (Re: Decision dated February 18, 2010) with Motion for Leave to Submit Supplemental Evidence with Reservation to Present Additional Evidence*, praying for the granting by this Court of the following:

> "1. On the basis of law and evidence, reverse and set aside the Decision and issue an amended decision in favor of Petitioner granting the refund of input VAT on capital goods amounting to P14,122,347.21;
>
> 2. Grant Petitioner leave to submit and offer supplemental evidence and allow the admission of its audited financial

statements and/or to recall Ms. Reymonda Aida Obrero to identify the documents;

3. Grant Petitioner's prayer for reservation of the right to present additional evidence in support of its claim; and

4. On the basis of the supplemental evidence submitted or to be submitted, consider the same as sufficient and competent to prove that Petitioner's claim for refund of input VAT on capital goods is duly substantiated."

On April 30, 2010, a *Resolution*[1] was issued by this Court granting the *Motion for Leave to Submit Supplemental Evidence with Reservation to Present Additional Evidence.*

After presentation and formal offer of petitioner's supplemental evidence, specifically, Exhibits "R" to "U", the same were admitted in evidence as per *Resolution*[2] dated August 31, 2010. In the same *Resolution*, petitioner's *Motion for Reconsideration* filed on March 10, 2010 was submitted for resolution.

After a close scrutiny of the arguments as well as the pertinent doctrine and jurisprudence applicable in this case, this Court is constrained to give a second hard look on the facts surrounding the case and the findings in the assailed *Decision*, specifically, regarding the issue on prescription.

In the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[3], the Supreme Court explained how the periods mentioned in Section 112 of the National Internal Revenue Code (NIRC) of 1997 should be applied in determining the timeliness of the filing of a claim for

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[1] Docket, pp. 921-922
[2] Docket, pp. 1242-1243
[3] G.R. No. 184823, October 6, 2010

refund of unutilized input value-added tax (VAT). The pertinent portions of the said decision are quoted as follows:

> "xxx. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.
>
> xxx xxx xxx
>
> Bearing this in mind, we shall now proceed to determine whether the administrative claim was timely filed.
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> xxx xxx xxx
>
> Applying this to the present case, the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. Hence, respondent's administrative claim was timely filed.
>
> xxx xxx xxx
>
> xxx. 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**. xxx" (*Emphasis supplied*)

In the present case, petitioner seeks the refund or the issuance of tax credit certificate for its unutilized input VAT on its purchases of capital goods and services made during the fourth quarter of 2003. Considering the above-stated jurisprudence, the reckoning date of the two-year prescriptive period for filing of the administrative claim for tax refund was the close of the fourth taxable quarter of 2003 or December 31, 2003.

In order to compute the two-year prescriptive period for the filing of an administrative claim for refund, this Court deems it necessary to quote the significant parts of the Supreme Court's decision in the case of *Commissioner of Internal Revenue, et al. vs. Primetown Property Group, Inc.*[4], to wit:

> "Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter — the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.
>
> There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*
>
> Applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987 to this case, the two-year prescriptive period (reckoned from the time respondent filed its final adjusted return on April 14, 1998) consisted of 24 calendar months, computed as follows:

Year 1	1st	calendar month	April 15, 1998	to	May 14, 1998
	2nd	calendar month	May 15, 1998	to	June 14, 1998
	3rd	calendar month	June 15, 1998	to	July 14, 1998
	4th	calendar month	July 15, 1998	to	August 14, 1998
	5th	calendar month	August 15, 1998	to	September 14, 1998
	6th	calendar month	September 15, 1998	to	October 14, 1998
	7th	calendar month	October 15, 1998	to	November 14, 1998
	8th	calendar month	November 15, 1998	to	December 14, 1998
	9th	calendar month	December 15, 1998	to	January 14, 1999
	10th	calendar month	January 15, 1999	to	February 14, 1999
	11th	calendar month	February 15, 1999	to	March 14, 1999
	12th	calendar month	March 15, 1999	to	April 14, 1999
Year 2	13th	calendar month	April 15, 1999	to	May 14, 1999
	14th	calendar month	May 15, 1999	to	June 14, 1999
	15th	calendar month	June 15, 1999	to	July 14, 1999
	16th	calendar month	July 15, 1999	to	August 14, 1999
	17th	calendar month	August 15, 1999	to	September 14, 1999
	18th	calendar month	September 15, 1999	to	October 14, 1999
	19th	calendar month	October 15, 1999	to	November 14, 1999
	20th	calendar month	November 15, 1999	to	December 14, 1999

[4] G.R. No. 162155, August 28, 2007

21st	calendar month	December 15, 1999	to	January 14, 2000
22nd	calendar month	January 15, 2000	to	February 14, 2000
23rd	calendar month	February 15, 2000	to	March 14, 2000
24th	calendar month	March 15, 2000	to	April 14, 2000

> We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period."

Based on the foregoing, two (2) years is equivalent to twenty-four (24) calendar months, regardless of the number of days, for purposes of computing legal periods. On such basis, petitioner may only file a claim for refund in the administrative level until December 31, 2005. Clearly, petitioner seasonably filed its administrative claim for refund on December 29, 2005.

After determining the timeliness of the filing of the administrative claim for tax refund, this Court shall now proceed with the determination of the timeliness of the filing of the judicial appeal before this Court.

This Court finds instructive the provision of Section 112(D) [now Section 112(C) of the NIRC of 1997, as amended] of the NIRC of 1997, the pertinent portion of which reads:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (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) 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.**" (*Emphasis supplied)*

Significantly, in the same case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[5], the Supreme Court emphasized the mandatory nature of the periods provided in Section 112(D) [now Section 112 (C)] of the NIRC of 1997, in the following manner:

> "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 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 xxx xxx
>
> 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 on the claim.
>
> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which

[5] *Supra.*

> 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.**" (Emphasis supplied)

Accordingly, counting from the filing of the administrative claim on December 29, 2005, which presumably is also the date when petitioner submitted the complete documents supporting its claim, the Revenue Commissioner has one hundred twenty (120) days or until April 28, 2006 within which to decide on the said claim. After the lapse of the said period, without a decision on its administrative claim, the said inaction shall be deemed a denial of the claim and such denial may be appealed before this Court within thirty (30) days or until May 26, 2006. Nevertheless, petitioner filed its judicial claim on January 20, 2006 or merely twenty-two (22) days from the filing of the administrative claim. Obviously, petitioner prematurely filed the instant *Petition for Review* without waiting for the lapse of the 120-day period. Thus, petitioner's non-observance of the 120-day period, in violation of Section 112(D) of the NIRC of 1997, would mean that this Court cannot take cognizance of the instant *Petition for Review*.

Consequently, petitioner's motion to reconsider this Court's *Decision* and the consideration of its supplemental evidence are now rendered moot by the finding that this Court did not acquire jurisdiction over the present case.

WHEREFORE, premises considered, the instant *Motion for Reconsideration* is hereby **DENIED**; while the *Petition for Review* is hereby **DISMISSED** for being prematurely filed.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division