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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

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SUMISETSU PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7925

Members:

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

Promulgated:
APR 5 2011
[signature] 3:25 p.m.

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RESOLUTION

For resolution are:

1) respondent's "**Motion to Dismiss for Lack of Jurisdiction**" posted on November 11, 2010;

2) petitioner's "**Opposition (to the Motion to Dismiss dated 8 November 2010)**" filed on November 25, 2010; and

3) respondent's "**Motion to Admit Compliance** filed on February 2, 2011.

On December 23, 2010, this Court issued a Resolution holding in abeyance the *Motion to Dismiss* filed by respondent, with petitioner's *Opposition*, while ordering respondent's counsel to submit to this Court, his proof of compliance or exemption from the MCLE requirement within fifteen days from receipt of the said resolution.

On February 2, 2011, respondent filed a **Motion to Admit Compliance**, attaching therewith a photocopy of her counsel's *3rd MCLE Certificate of Compliance* dated March 31, 2010.

Considering the foregoing, this Court hereby **GRANTS** respondent's *Motion to Admit compliance* and **ADMITS** respondent counsel's *MCLE Certificate of Compliance.*

This Court will now proceed in resolving respondent's *Motion to Dismiss.*

The main contention of respondent is that the instant Petition for Review should be dismissed on the ground of lack of jurisdiction. In support of her contention, respondent cites Section 112 (C) of the 1997 Tax Code, as amended and Section 4.112-1(d) of Revenue Regulations (RR) No. 16-2005, which provides:

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

"Revenue Regulations No. 16-05

Section 4.112-1

(d) *Period within which refund or tax credit certificate/refund of input taxes be made*

In proper cases, the Commissioner shall grant a tax credit certificate/refund 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) above.

In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within (30) days from the receipt of said denial, otherwise the decision shall become final. <u>However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the submission of the application with complete documents, the taxpayer may appeal to the CTA within thirty days from the lapse of the 120-day period."</u> (Underscoring supplied)

To further boost her main contention, respondent cites the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc*[1]., where the High Court enunciated:

"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 <u>within 30 days</u>**". (Emphasis supplied)

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

Respondent points out that petitioner filed its administrative claim for refund on July 30, 2008 and filed the instant Petition for Review on April 24, 2009, which is way beyond the thirty-day period, following the lapse of the 120-day period. Thus, respondent insists that this Court has no jurisdiction to entertain the instant case considering that it failed to comply with the periods provided by law.

On the other hand, petitioner counter-argues the following:

"I.

THE CASE OF COMMISSIONER OF INTERNAL REVENUE V. AICHI FORGING COMPANY OF ASIA, INC. ('AICHI') IS INAPLICABLE IN THE PRESENT CASE AS IT DOES NOT CONSTITUTE AS JURISPRUDENCE THAT OUGHT TO BE APPLIED AS A JUDICIAL PRECEDENT UNDER THE PRINCIPLE OF *STARE DECISIS*. NOT HAVING BEEN DECIDED BY THE SUPREME COURT *EN BANC*, *AICHI* CANNOT OVERTURN PREVAILING JURISPRUDENCE ON THE PRESCRIPTIVE PERIOD WITH RESPECT TO FILING JUDICIAL CLAIMS FOR VAT REFUNDS.

II.

ASSUMING THAT *AICHI* HAS OVERTURNED THE PREVAILING RULE ON THE PRESCRIPTIVE PERIOD WITH RESPECT TO FILING JUDICIAL CLAIMS FOR VAT REFUNDS, THE SAME CANNOT BE APPLIED RETROACTIVELY TO CASES FILED BEFORE ITS PROMULGATION.

III.

RESPONDENT'S MOTION TO DISMISS MUST BE EXPUNGED FROM THE RECORDS.

A. RESPONDENT'S COUNSEL, CONTRARY TO BAR MATTER NO. 1922, FAILED TO INDICATE THE NUMBER AND DATE OF ISSUE OF HIS MCLE CERTIFICATE OF COMPLIANCE FOR THE THIRD COMPLIANCE PERIOD.

B. RESPONDENT VIOLATED THE RULE 15, SECTION 5 OF THE RULES OF COURT, WHICH REQUIRES THAT A NOTICE OF HEARING MUST INDICATE THE DATE OF THE HEARING TO BE NOT LATER THAN TEN (10) DAYS AFTER THE FILING OF THE MOTION."

This Court agrees with respondent.

The legal basis on which respondent anchors her argument is *Section 112 (C) of the 1997 National Internal Revenue Code (NIRC),* as amended, which specifically provides:

"**Section 112**. *Refunds or Tax Credits of Input 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 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."

The Supreme Court ruled in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[2] that Section 112 (D) of the NIRC clearly provides that the Commissioner of Internal Revenue (CIR) has "120 days, from

[2] *Supra*, note 1.

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 respondent, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the CIR. However, if after the 120-day period, respondent fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days.

In the present case, petitioner filed the administrative claim on July 30, 2008, counting 120 days from the filing of the said administrative claim, respondent had until November 27, 2008 within which to decide and from November 27, 2008, the expiration of the 120-day period from the filing of the administrative claim, petitioner had 30 days or until December 27, 2008, within which to file its appeal before this Court, as provided under Section 112(D) of the NIRC of 1997, as amended. However, since December 27, 2008 fell on a Sunday, petitioner had until December 28, 2008, the next working day, as provided by Section 1, Rule 22 of the Rules of Court[3], to appeal.

Considering the foregoing, this Court finds that the instant *Petition for Review*, which was filed on April 24, 2009, was filed way beyond the 30-day prescribed period to appeal.

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[3] Rule 22
Computation of Time
Section 1. How to compute time – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. In the last day of the period, as thus computed, falls on a Saturday, a Sunday, or legal holiday in the place where the court sits, the time shall not run until the next working day.

WHEREFORE, premises considered, respondent's "**Motion to Dismiss**" is hereby **GRANTED**. Accordingly, the instant *Petition for Review* is hereby **DISMISSED** for being filed out of time.

SO ORDERED.

(With Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice