REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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HEDCOR SIBULAN, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8212

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:
MAY 16 2012
10:30 a.m.

x - x

DECISION

CASANOVA, *J*.:

The instant Petition for Review[1] seeks the issuance of a tax credit certificate (TCC) or refund in the total amount of P39,075,520.39, allegedly representing petitioner's unutilized input Value-Added Tax (VAT) on purchases of goods and services for the fourth quarter of calendar year (CY) 2008 attributable to its zero-rated sales of generated power to Davao Light and Power Company, Inc. (DLPCI).

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Sta. Cruz, Davao Del Sur[2].

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among

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[1] Docket, pp. 000005-000021.
[2] Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, par. 2, Docket, p. 000215.

others, the power to decide, approve and grant refunds or tax credits of internal revenue taxes that have been erroneously or illegally received, paid or collected, or of any sum that have been excessively or in any manner wrongfully received, paid, or collected as provided for by law with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

Petitioner was incorporated on December 2, 2005, the primary purpose of which is "to engage in the business of owning, developing, constructing, operating, repairing, and maintaining of hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations."[4]

As shown in the Power Supply Agreement (PSA)[5] between petitioner and DLPCI dated March 7, 2007, petitioner is principally engaged in the business of power generation through hydropower and the subsequent sale of generated power to DLPCI[6].

Petitioner was registered with the BIR as a VAT taxpayer in accordance with Section 236 of the NIRC of 1997, with Taxpayer Identification No. (TIN) 005-633-984-VAT[7].

On June 25, 2010, petitioner filed with the Revenue District Office (RDO) No. 115, Davao its written application for the refund or issuance of a TCC and its

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[3] JSFI, Admitted Facts, par. 3, Docket, p. 000215.
[4] *Ibid.* par. 4, Docket, p. 000215.
[5] Exhibit "C".
[6] JSFI, Admitted Facts, par. 5, Docket, p. 000216.
[7] *Ibid.*, par. 7, Docket, p. 000216.

Application for Tax Credits/Refunds (BIR Form No. 1914)[8] for its unutilized input VAT for the fourth quarter of CY 2008 in the amount of P39,075,520.39[9].

Since respondent has not acted on its claim, petitioner, thus, filed the instant Petition for Review on December 30, 2010.

In her Answer[10] filed on January 26, 2011, respondent averred the defenses:

> "7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.
>
> 8. The amount of Php39,075,520.39 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of capital goods other than capital and services for the 4th quarter of CY 2008 is not properly documented.
>
> 10. Petitioner must prove that it has complied with the provisions of Section 112 (A) and (C) of the National Internal Revenue Code of 1997 (1997 Tax Code), as amended, on the prescriptive period for claims for VAT refund/credit.
>
> 11. Petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma. Further, Section 112(C) of the 1997 Tax Code, as amended, requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the Petition for Review.

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[8] Exhibit "E" and "E-2".
[9] JSFI, Admitted Facts, par. 8, Docket, p. 000217.
[10] Docket, pp. 000163-000172.

12. Petitioner must likewise prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations No. 7-95.

13. In an action for refund/tax credit, the ***onus probandi*** is on the taxpayer to establish its right to refund/tax credit, and failure to sustain the burden is fatal to its claim for refund/tax credit. **(ASIATIC PETROLEUM CO. VS. LLANES, 49 PHIL. 466 cited in COLLECTOR OF INTERNAL REVENUE VS. MANILA JOCKEY CLUB, INC., 98 PHIL. 670)**.

14. Claims for refund are construed in **strictissimi juris** against the claimant for the same partake the nature of exemption from taxation **(COMMISSIONER OF INTERNAL REVENUE VS. LEDESMA, 31 SCRA 95)** and as such, they are looked upon with disfavor **(WESTERN MINOLCO CORP. VS. COMMISSIONER OF INTERNAL REVENUE, 124 SCRA 1211)**.

15. The Honorable Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of petitioner to comply with the provision of Section 112 (C) of the 1997 Tax Code, as amended, which provides, thus:

> "**Section 112. Refunds or Tax Credits of Input Tax**
>
> Xxx xxx xxx xxx
>
> (C) **Period within which refund or tax Credit of Input Taxes shall be made.** – In proper cases, the Commissioner shall grant refund or issue 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 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).

16. As stated in the petition, petitioner filed the administrative claim for refund with respondent on June 25, 2010. Subsequently on December 30, 2010 the instant petition was filed. The 30 days given to petitioner to appeal the decision or unacted claim after the expiration of the 120-day period with the Court of Tax Appeals have already lapsed when the petition was filed. Hence, it must be dismissed for lack of jurisdiction and/or lack of cause of action.

17. Petitioner did not observe or comply with the conditions required by said provision of the 1997 Tax Code, as amended. Hence petitioner is *estopped* from questioning the belated filing of its claim for refund with the Honorable Court."

During trial, petitioner presented its testimonial and documentary evidence to prove its case. Respondent's counsel, on the other hand, manifested during the hearing held on November 21, 2011[11] that he is submitting this case for decision based on the pleadings. This Court subsequently ordered both parties to file their respective Memorandum within thirty (30) days from the said hearing. In a Resolution[12] dated January 9, 2012, the case was submitted for decision, taking into consideration petitioner's Memorandum[13] filed on January 5, 2012, sans respondent's memorandum.[14]

[11] Minutes of the Hearing, November 21, 2011, Docket, p.000307.
[12] Docket, p. 000340.
[13] Docket, pp. 000312-000338.
[14] Records Verification dated January 6, 2012, Docket, p. 000339

The issues[15], as jointly stipulated by the parties, are the following:

1. Whether or not petitioner has excess and unutilized input VAT for the Fourth Quarter of CY 2008 amounting to P39,075,520.39 that arose from domestic purchases of goods and services duly substantiated by documentary evidence;

2. Whether or not petitioner's excess and unutilized input VAT for the Fourth Quarter of CY 2008 amounting to P39,075,520.39 was applied or credited against any output VAT of the petitioner in the same quarter and subsequent taxable quarter or quarters;

3. Whether or not the excess and unutilized input VAT on petitioner's domestic purchases of goods and services for the Fourth Quarter of CY 2008 is attributable to its zero-rated sales of generated power to DLPCI;

4. Whether or not the instant petition was filed within the prescriptive period under the Tax Code and the Revised Rules of the Court of Tax Appeals;

5. Whether or not petitioner exhausted administrative remedies prior to the filing of the instant petition;

6. Whether petitioner is entitled to a refund or issuance of TCC in the amount of P39,075,520.39 representing unutilized input VAT for the Fourth Quarter of CY 2008.

Pertinent to the resolution of this case is Section 112(A), in relation to Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which respectively provide:

> **"SEC.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

[15] JSFI, Stipulated Issues for Trial, Docket, p.000217-000218.

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: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

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 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."

Pursuant to the afore-quoted provision of Section 112(A), for a VAT taxpayer to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with:

1. there must be zero-rated or effectively zero-rated sales;

2. that input taxes were incurred or paid;

3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. that the input taxes were not applied against any output VAT liability; and

5. that the claim for refund was filed within the two-year prescriptive period.

This Court finds it appropriate to determine first the timeliness of the filing of the instant claim.

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.),*[16] held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made.

The present claim pertains to input VAT incurred for the fourth quarter of CY 2008. Reckoned from December 31, 2008, the close of the fourth taxable quarter of CY 2008, petitioner had until December 31, 2010, within which to file its administrative claim. Thus, petitioner's administrative claim filed on June 25, 2010 was timely filed.

Notwithstanding the timely filing of petitioner's administrative claim, this Court still cannot entertain petitioner's judicial claim filed on December 30, 2010, as it has no jurisdiction over the same on the ground that the instant petition was filed beyond the thirty (30) day period provided under Section 112(C) of the NIRC of 1997.

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

The Supreme Court, in the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (*Aichi case*) [17], interpreted Sec. 112(C) of the NIRC of 1997 in this wise:

> **"Section 112 (D) of the NIRC clearly provides that 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 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 CTA within 30 days."** (emphasis supplied).

As shown by the records of this case, the administrative claim was filed on June 25, 2010. Hence, applying the above-cited ruling to the present case, respondent has 120 days from June 25, 2010 or until October 23, 2010 to act on the said claim. Since respondent did not act on petitioner's administrative claim, petitioner has 30 days from October 23, 2010 or until November 22, 2010, within which to file its appeal before this Court. However, considering that the petition was filed only on December 30, 2010, or thirty-eight (38) days beyond the 30-day prescriptive period, this Court, therefore, acquires no jurisdiction to act on the said judicial claim as the same has already prescribed.

In view of the foregoing, the discussion of the other issues is deemed unnecessary considering the findings of prescription.

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

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for having been filed beyond the 30-day prescriptive period to appeal.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice