REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

****

SMCC PHILIPPINES, INC.,
Petitioner,

-versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8046

Members:

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

Promulgated:

MAY 17 2011
ABFernando 11:37 a.m.

x- -x

RESOLUTION

For resolution is respondent's "**Motion to Dismiss for Lack of Jurisdiction**" filed on February 28, 2011. In opposition thereto, petitioner reiterates and re-pleads its allegations in its "**Opposition (To Respondent's Manifestation dated 3 February 2011)**" filed on February 24, 2011

In its motion, respondent explains that the promulgation by the Supreme Court of its decision in the case of *Commissioner of Internal Revenue v. Aichi Forging Co. of Asia, Inc.*[1] (*Aichi case*), prompted her to file the instant motion despite the denial of her previous motion to dismiss in a Resolution dated June 2, 2010. Respondent prays that the Petition for

---

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

Review be dismissed on the ground of lack of jurisdiction, asserting that the instant Petition for Review was prematurely filed.

On the other hand, petitioner claims that the Court had already settled in its June 2, 2010 Resolution that it has jurisdiction and petitioner has a cause of action. Petitioner continues that the said Resolution had already attained finality and may be considered as the "law of the case" between the parties.

This Court finds that the arguments proffered by respondent in the instant motion deserve scant consideration.

Foremost, the instant motion is a second motion to dismiss, nonetheless, this Court finds it proper to dispose the instant motion on the merits, taking into consideration the recent development in jurisprudence which is pertinent to the case. Moreover, in the case of **PHILIPPINE NATIONAL BANK vs. THE INTESTATE ESTATE OF FRANCISCO DE GUZMAN, represented by HIS HEIRS: ROSALIA, ELEUTERIO, JOE, ERNESTO, HARRISON, ALL SURNAMED DE GUZMAN; and GINA DE GUZMAN**[2], the Supreme Court had the occasion to declare that *"there is actually no rule prohibiting the filing of a pro forma motion against an interlocutory order as the prohibition applies only to a final resolution or order of the court".*

The June 2, 2010 Resolution was promulgated prior to the ruling of the Supreme Court in the *Aichi case.* Therein, this Court denied respondent's

---

[2] G. R. No. 182507, June 18, 2010.

previous motion to dismiss on the ground that the instant petition was not prematurely filed.

However, in the *Aichi case*, the Supreme Court ruled that the filing of an appeal from the Commissioner of Internal Revenue's (CIR) inaction, prior to the 30-day prescriptive period provided in Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, will render the appeal premature and prevents this Court from acquiring jurisdiction to entertain the appeal. Pertinent portions of the said decision are quoted, to wit:

> "**Section 112(D)[3] 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.**
>
> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. **For this reason, we find the filing of the judicial claim with the CTA premature.**
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> 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 x x x 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

[3] Now, Section 112 (C).

> '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 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.
>
> x x x x
>
> **In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.**" [*Emphases supplied.*]

In our system of judicial administration, the Supreme Court has the last word on what the law is, and that its decisions applying or interpreting the laws or the Constitution form part of the legal system of the country, all other courts should take their bearings from the its decisions.[4] It is the duty of lower courts to obey the decisions of the Supreme Court and render obeisance to its status as the apex of hierarchy of courts.[5]

Thus, this Court is duty-bound to consider the aforecited ruling in disposing the instant motion.

Likewise relevant here is Section 112 (A), in relation to Section 112 (C) of the NIRC of 1997,[6] as amended:

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

---

[4] Caram Resources Corp. vs. Judge Maximo C. Contreras, Metc, Branch 61, Makati, Metro Manila, A.M. No. MTJ-93-849, October 26, 1994, 237 SCRA 725.

[5] Commission on Higher Education vs. Atty. Felina S. Dasig, G.R. No. 172776, December 17, 2008, 574 SCRA 227.

[6] As amended by Republic Act No. 9337 entitled "*An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other Purposes.*"

> (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 tax credit certificate or refund 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 x
>
> (C) *Period within which to 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 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**. [*Emphases supplied.*]

From the foregoing, it is clear that a taxpayer may apply for an administrative claim for refund of its unutilized input Value-added Tax (VAT) payments "within two (2) years reckoned from the close of the taxable quarter when the relevant sales were made." The Commissioner of Internal Revenue (CIR) has 120 days to act on the claim and the taxpayer has 30 days to file a judicial claim before this Court, from the denial of its claim or expiration of the 120-day period, in case of the CIR's inaction.

In this case, petitioner filed its Petition for Review before this Court barely a month after it submitted its administrative claim and supporting documents before respondent. As the counting of the thirty-day period to appeal before this Court has not even commenced to run, the appellate jurisdiction of this Court as provided under Section 7 of Republic Act No. 1125, as amended, has not yet ripened.

Verily, pursuant to Section 112 of the NIRC of 1997, as amended, and the Supreme Court ruling in the *Aichi case*, the filing of the instant Petitions for Review by petitioner without waiting for the expiration of the aforesaid 120-day period renders the judicial claim for the issuance of refund or tax credit certificates for its unutilized input VAT premature.

However, while *We* agree with respondent that the judicial claim of petitioner was prematurely filed, *We* do not assent to the argument that prematurity is a ground for dismissal for lack of jurisdiction. This Court is of the well-considered view that the premature filing of judicial claim for refund or non- observance of the doctrine of exhaustion of administrative remedies is not jurisdictional.

Petitioner's premature filing of its judicial claim before this Court is a violation primarily of the doctrine of exhaustion of administrative remedies. This failure to observe the doctrine of exhaustion of administrative remedies is fatal to one's cause of action, and thus, in the absence of any waiver or *estoppel*, the case is susceptible of dismissal for *lack of cause of action*[7] .

The failure to exhaust administrative remedies, however, does not affect the jurisdiction of the court. Non-exhaustion of administrative remedies only renders the action premature, that the claimed cause of action is not ripe for judicial determination[8].

---

[7] *Montanez* vs. PARAD, et al., G. R. No. 183412, September 17, 2009.
[8] Merida Water District , et al. vs. Fraancisco Bacarro, et al., G. R. No. 165993, September 30, 2008 citing *Rosario v. Court of Appeals*, G. R. No. 89554, July 10, 1992, 211 SCRA 384, 387; *Carale v. Abarintos*, G.R. No. 120704, March 3, 1997, 269 SCRA 132, 141.

Considering that premature filing of claim for refund/tax credit or the non-exhaustion of administrative remedies is not jurisdictional and, at the most, only renders the case susceptible of dismissal for lack of cause of action, such defense is waivable or may be considered waived pursuant to Section 1, Rule 9 of the Rules of Court.

Given that respondent alleged the premature filing of petitioner's judicial claim for refund or issuance of tax credit certificate in her *First Motion to Dismiss*, as a special and affirmative defense in her *Answer*, it cannot be said that respondent waived such defense of premature filing; thus, said defense was properly raised for the consideration of this Court as a valid ground for dismissal.

With respect to petitioner's arguments that the June 2, 2010 Resolution of the Court constitutes the "law of the case" between the parties, this Court cannot agree.

The *law of the case* doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court for further proceedings; the question settled by the appellate court becomes the *law of the case* at the lower court and in any subsequent appeal. It means that whatever is irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which the legal rule or decision was predicated continue to be the facts of the case before the court. [9]

---

[9] Vios vs. Pantangco, Jr., G.R. No. 163103, February 6, 2009.

Here, petitioner's reliance on the "law of the case" doctrine is clearly misplaced. Evidently, no ruling has been made on a former appeal, which can be considered as the controlling legal rule between the parties and neither was there any case remanded to a lower court. Hence, the said Resolution cannot be considered as the "law of the case" between the parties.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for having been prematurely filed.

SO ORDERED.

(With Separate Opinion)
LOVELL R. BAUTISTA
Associate Justice

I concur in the result.

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice