REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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NOKIA (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8256

Members:

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

Promulgated:

NOV 22 2011 4:10 P.m.

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RESOLUTION

This resolves respondent's **"Motion to Dismiss"** filed on October 18, 2011, with petitioner's **"Comment"** filed on October 28, 2011.

Respondent prays that the instant petition for review be dismissed on the ground of lack of jurisdiction.

In support thereof, respondent avers that the appealed case involves a claim for refund of excess input tax attributable to zero-rated sales for the first quarter of 2009. Accordingly, the period of filing judicial claims of such excess input tax is governed by Section 112(D) *[now 112(C)]* of the *National Internal Revenue Code*

(NIRC) of 1997, as amended, which states that the taxpayer affected may, within thirty (30) days from 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 this Court; and this requirement is jurisdictional, failing thus, this Court could not acquire jurisdiction over the instant case, citing the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[1] *(Aichi case).* Respondent claims that the present action was prematurely filed on March 31, 2011 or 30 days from the filing of the administrative claim on March 1, 2011, before the expiration of the period prescribed by law.

Respondent also contends that in claims for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

On the other hand, in summary, petitioner counter-argues that it has until March 31, 2011 to file its judicial claim in accordance with Section 112(C) in relation to Section 229 of the NIRC of 1997, as amended, thus, it was constrained to file the instant petition to toll the running of the two-year prescriptive period; that the argument of prematurity has already been rejected in Bobcock-Hitachi and AMI Philippines cases; that the period in Section 112(C) should not be interpreted to extend the two-year period stated in Section 112(A); that if the two-year period in Section 112(A) is about to lapse, the taxpayer may no longer wait for the action of the Commissioner; that Section 112(C) is permissive as it neither compels nor

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

demand the taxpayer to elevate its case in court and the same provision cannot be read in isolation but must always be read in harmony with Section 229; that the 120-day period under Section 112(C) should yield to the mandatory period of two years under Section 229 being the latter provision; that the holding of the Supreme Court in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[2] and in *Aichi* case that Section 229 does not apply in VAT refund cases, but only to instances of erroneous payment or illegal collection of internal revenue taxes did not only over-rule a tax doctrine that has been in place for years, but also disregarded *Article VIII, Section 4(3) of the 1987 Philippine Constitution*; and that the Supreme Court in the *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[3] *(Atlas case)* already held that *Section 229 of the NIRC* embraces even VAT refund cases, thus, the *Mirant and Aichi* cases should not be taken as the last word on the matter.

After a careful evaluation of the arguments, this Court finds respondent's *Motion* meritorious.

Sections 112(A) and (C) *[before 112(D)]* of the National Internal Revenue Code (NIRC) of 1997, as amended by *R.A. 9337* are the pertinent provisions concerning refund or tax credit of input tax, *viz.*:

> "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 issuance of a tax credit certificate

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[2] G.R. No. 172129, September 12, 2008
[3] G.R. Nos. 141104 & 148763, June 8, 2007

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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales.

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(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**."

(*Emphasis supplied*)

In *Aichi* case[4] the Supreme Court discussed the afore-quoted provisions of the NIRC in this wise:

"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

[4] Note 1, *supra*

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 "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.

> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
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> 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**."
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> (*Emphasis supplied*)

In this case, petitioner did not dispute the fact that it did not exhaust the 120-day period provided under Section 112(C) of the NIRC. Petitioner filed on March 1, 2011 its administrative claim for refund, but thirty (30) days thereafter, or on March 31, 2011, it filed the instant Petition for Review, which is ninety days (90) days earlier prior to the expiration of the 120-day period on June 29, 2011. The filing of the instant Petition for Review without waiting for the expiration of the aforesaid 120-day period warrants a dismissal inasmuch as no jurisdiction was acquired by this Court following the ruling in the Aichi case.

There is no reason to depart from the decision of the Supreme Court in the *Aichi case* which applied the provision of Section 112(D) of the NIRC following the doctrine of *stare decisis et non quieta movere.* The said doctrine enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[5]

Lastly, petitioner's reliance on the ruling of the Atlas case[6] is misplaced considering that its claim is covered by the 1997 NIRC*, as amended*. The Atlas case was decided under the then 1977 Tax Code;[7] hence, it should not be applied in the present case.

It is noteworthy that the first VAT law is found in Executive Order (EO) No. 273, which amended several provisions of the old NIRC.[8] The refund of input tax then was sanctioned by Section 106 of the old NIRC, as amended by EO 273. Unlike Section 112, particularly under subsection (C) of the present NIRC which provides for the 30-day period within which to appeal the decision or inaction of the Commissioner with the CTA, Section 106 of the old NIRC, as amended, did not provide for the same period of limitation. Thus, in the Atlas case involving a claim covered by the old NIRC, the Supreme Court held that the two-year prescriptive period under Section 230 *(now 229)* of the NIRC may also apply to the Petition involving claims for refund/credit of input tax. In view, however, of the amendments introduced in our VAT law, particularly under Section 112(C) of the NIRC, and taking into consideration the pronouncement in the Aichi case, the ruling in the aforesaid Atlas case finds no application to the present case.

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[5] Lazatin vs. Desierto, G.R. No. 147097, June 5, 2009 *citing Fermin vs. People, G.R. No. 157643, March 28, 2008*
[6] Note 3, *supra*
[7] Commissioner of Internal Revenue vs. Team Energy Corporation, CTA EB No. 603, July 7, 2011 Resolution
[8] Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 158885 and 170680, April 2, 2009

WHEREFORE, premises considered, respondent's *Motion to Dismiss* is hereby **GRANTED**. Accordingly, the Petition for Review docketed as CTA Case No. 8256 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice