Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

CRESCENT PARK 18-2 PROPERTY HOLDINGS, INC., Petitioner,	C.T.A. EB Case No. 684 (CTA Case No. 8061)
	Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *J.J.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	JUN 08 2011 [signature] 10:20 a.m.

x- -x

DECISION

CASANOVA, J.:

This is an appeal, by way of a Petition for Review, filed by petitioner-Crescent Park 18-2 Property Holdings, Inc., seeking the review and rectification of the following Resolutions of the CTA First Division in CTA Case No. 8061, entitled Crescent Park 18-2 Property Holdings, Inc. vs. Commissioner of Internal Revenue, to wit:

> 1. Resolution dated September 1, 2010, denying petitioner's Motion for Reconsideration;[1] and

[1] CTA En Banc Rollo, pp. 50-56

2. Resolution dated July 2, 2010, dismissing petitioner's Petition for Review for lack of cause of action due to the premature filing of its judicial claim.[2]

The facts of the case, as culled from the records, are as follows:

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Company Registration Number CS200719731, with principal office address at Net One Center, Third Avenue corner 26th Street, E-Square Crescent Park West, Bonifacio Global City, Taguig City;[3]

Respondent is the duly appointed official empowered to perform the duties of her office including, among others, the duty to act on and approve claims for refund or tax credit as provided by law.

Petitioner is a VAT-registered entity evidenced by Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000224660 VAT and Tax Identification Number 006-939-690-000 VAT.[4]

Petitioner was established to buy and acquire by purchase, lease or otherwise, lands and interest in land and to own, hold, improve, promote, develop, subdivide and manage any land owned, held or occupied by the corporation or belonging to them, to construct, erect and manage or administer buildings such as condominiums, apartments, hotels, restaurants, stores or other

[2] Ibid, pp. 32-41
[3] Petition for Review, par. 8, En Banc Rollo, p. 3
[4] Ibid, par. 10, En Banc Rollo, p. 4

structures now or hereafter erected on any land owned, held or occupied by the petitioner.[5]

In January 2008, petitioner bought a parcel of land with an area of 1,643 sq. meters from 18-2 Property Holdings, Inc. ("PHI"), a PEZA-registered entity (with Registration Certificate No. 04-38F as Ecozone Facilities Enterprise) in the amount of P164,300,000.00 with corresponding VAT of P19,716,000.00.

Subsequently, petitioner and "PHI" entered into a long-term lease agreement involving the same property subject of the previous sale. The term of the lease is 25 years with automatic renewal for another 25 years.

Believing that it is entitled to a refund of its unused input VAT, petitioner filed its administrative claim with Revenue District Office No. 44 – Taguig/Pateros on March 29, 2010 and its judicial claim (CTA Case No. 8061) on March 31, 2010;

On April 23, 2010, respondent filed a Motion to Dismiss[6] to which petitioner filed its Opposition To Motion To Dismiss on May 19, 2010[7];

On May 26, 2010, petitioner filed a Supplemental Opposition To The Motion To Dismiss and Motion To Declare Respondent In Default.[8] Respondent, thereafter, filed her Comment/Opposition (Re: Supplemental Opposition To The Motion To Dismiss And Motion To Declare Respondent In Default);

---

[5] Ibid, par. 11
[6] Docket (CTA Case No. 8061), pp. 40-44
[7] Ibid, pp. 48-54
[8] Ibid, pp. 56-60

In a Resolution[9] promulgated on July 2, 2010, the CTA First Division granted respondent's Motion To Dismiss and, consequently, dismissed the Petition for Review dated March 31, 2010 filed by petitioner, without prejudice.

Petitioner filed a Motion for Reconsideration[10] on July 20, 2010, which was subsequently denied, for lack of merit, by the Court per Resolution[11] promulgated on September 1, 2010.

Hence, the instant Petition for Review.

Petitioner raised the following issues for this Court's consideration/resolution:

I

> "Whether or not the First Division of the Court of Tax Appeals erred in ruling and consequently in dismissing the Petition for Review docketed as CTA Case No. 8061 on the ground that the judicial claim of petitioner for refund or issuance of a tax credit certificate (TCC) on unutilized input VAT, incurred from transactions for the first quarter of the taxable year 2008 and attributable to zero-rated sales, was prematurely filed.

II

> Whether or not petitioner's sales in 2008 are subject to zero-percent (0%) VAT.

III

> Whether or not petitioner has unutilized input VAT for the year 2008 in the total amount of Nineteen Million Seven Hundred Sixteen Thousand Pesos (P19,716,000.00) arising from its Domestic Purchases of Taxable Goods and Services.

---

[9] Ibid, pp. 68-77
[10] Ibid, pp. 86-99
[11] Ibid, pp. 109-115

IV

> Whether or not the unutilized input VAT are attributable to its zero-rated sales.

V

> Whether or not the unutilized creditable input taxes for year 2008 are properly substantiated by invoices and official receipts.

VI

> Whether or not the unutilized input VAT payments for the year 2008 were carried over to and utilized in the succeeding taxable quarter(s) or applied against any output VAT liability of the petitioner.

VII

> Whether or not petitioner is entitled to a refund and/or issuance of tax credit certificate for the unutilized input VAT payments in the amount of Nineteen Million Seven Hundred Sixteen Thousand Pesos (P19,716,000.00).

Petitioner contends that the two(2)-year prescriptive period in filing a claim for refund/tax credit certificate applies both to the administrative and judicial claims; that the filing of its Petition for Review with the CTA prior to the lapse of the 120-day period does not render the petition premature as said 120-day period is not mandatory but only directory and permissive; that when the law speaks of the two-year prescriptive period for filing of the refund/issuance of tax credit certificate of input taxes, it refers not only to the administrative claim but also to the judicial claim; that, pursuant to the rulings of the Supreme Court in the *Atlas*[12] and *San Roque*[13] cases, the 120-day period for filing judicial claims, was not included as one of the requirements, as enumerated by the Supreme Court, for tax refunds under Section 112(A) of the Tax Code; and, lastly, that the subsequent decision promulgated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010 (the "Aichi Case") should be applied prospectively.

This Court shall first resolve the first issue as it will determine whether or not it is necessary to resolve the other issues raised by the petitioner.

On March 29, 2010, petitioner filed its administrative claim for refund of its unutilized input VAT for the first quarter of 2008 in the amount of P19,716,000.00 and, on March 31, 2010, petitioner filed CTA Case No. 8061 with this Court in division.

While petitioner's administrative claim is well within the two-year prescriptive period, counting from March 31, 2008 (the close of the taxable quarter when the relevant sales pertaining to the claim input VAT were made), its judicial claim (CTA Case No. 8061), which was filed on March 31, 2010, was, however, prematurely filed.

Petitioner's argument that the 120-30 day period under Section 112(D) of the 1997 Tax Code is not mandatory but merely directory and permissive has been settled otherwise by the Supreme Court in the Aichi Case.

The Supreme Court ruled as follows:

---

[12] Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007

[13] San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009

"**The filing of the judicial claim was premature.**

However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:

> SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> x x x x
>
> (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)

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.

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.

Going now to petitioner's contention that the Aichi Case should be applied prospectively, We quote with approval the following excerpts from the Resolution dated September 1, 2010 of the CTA First Division, to wit:

> "Finally, 'Judicial' interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative

intent that the interpreted law carried into effect.[14] Therefore, any new interpretation by the Court must be implemented immediately. The ruling of the Supreme Court in the following case is most instructive, to wit:

> In *Serrano v. National Labor Relations Commission*, an argument was raised similar to the case under consideration. Private respondent therein argued that the new doctrine pronounced by the Court should only be applied prospectively. Said postulation was ignored by the Court when it ruled:
>
>> While a judicial interpretation becomes a part of the law as of the date that law was originally passed, this is subject to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.
>>
>> It is apparent that private respondent misconceived the import of the ruling. The decision in Columbia Pictures does not mean that if a new rule is laid down in a case, it should not be applied in that case but that said rule should apply prospectively to cases arising afterwards. Private respondent's view of the principle of prospective application of new judicial doctrines would turn the judicial function into a mere academic exercise with the result that the doctrine laid down would be no more than a dictum and would deprive the holding in the case of any force.
>>
>> Indeed, when the Court formulated the Wenphil doctrine, which was reversed in this case, the Court did not defer application of the rule laid down imposing a fine on the employer

---

[14] Eagle Realty vs. Republic of the Philippines, G.R. No. 151424, July 31, 2009

> for failure to give notice in a case of dismissal for cause. To the contrary, the new rule was applied right then and there. x x x."[15]

In sum, We find no cogent reason and justification to disturb the findings and conclusion spelled out in the Resolutions dated July 2, 2010 and September 1, 2010 of the CTA First Division.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the Resolutions dated July 2, 2010 and September 1, 2010 of the CTA First Division are hereby **AFFIRMED** *in toto*

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

---

[15] Cemco Holdings, Inc. vs. National Life Insurance Company, G.R. No. 171815, August 7, 2007

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CRESCENT PARK 18-2 PROPERTY HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 684
(CTA Case No. 8061)

Present:

Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

JUN 08 2011 Acostolivario 10:20 a.m.

x--x

DISSENTING OPINION

BAUTISTA, J.:

The Court dismissed the Petition for Review filed by Crescent Park 18-2 Property Holdings, Inc., finding that the judicial claim was filed prematurely, applying the doctrine elucidated in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*[1] in relation to Section 112(C) of the 1997 National Internal Revenue Code ("NIRC").

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

With all due respect to my esteemed colleagues, I must dissent on the Decision made by the Court.

It is my opinion that the declaration of the two (2)-year prescriptive period under Section 112 of the 1997 NIRC must be in accordance with Section 229 of the same Code. The judicial recourse to this Court allowed by Section 112(C) of the 1997 NIRC is merely directory and permissive, and not mandatory nor jurisdictional, for so long as it is made within the settled two (2)-year prescriptive period.[2]

A taxpayer-claimant *may* file an appeal within thirty (30) days, either from the lapse of the one hundred twenty (120)-day period within which the CIR shall decide on the claim, or after the receipt of the decision denying the same, so long as it is within the two (2)-year prescriptive period.

Section 112 (C) of the 1997 NIRC states that:

> SEC. 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

[2] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB No. 416, February 4, 2009.

> 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 cited provision will show that it contains the word "may," thus indicating that it is merely permissive and operates to confer discretion.[3] It gives the taxpayer-claimant an option to pursue the claim with this Court, provided that the claim is filed within the prescriptive period.

This issue had been thoroughly addressed in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[4] to wit:

> **It bears stressing that the use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Section 229 of the NIRC**. It is a well-settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.
>
> Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year prescriptive period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated in this wise:
>
>> "It appears therefore, **that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case**. This is so because of the positive mandate of

---

[3] Bersabal v. Salvador, G.R. No. L-35910, July 21, 1978, 84 SCRA 176, *citing Dizon v. Encarnacion, G.R. No. L-18615, December 24, 1963, 9 SCRA 714.*

[4] CTA EB No. 408 (CTA Case No. 6647), March 25, 2009.

> Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
>
> Incidentally, **the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal.** The law fixed the same period — two years — for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court. Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Boldfacing supplied*)

Therefore, there is no need to wait for the denial of the claim by the CIR or even his inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court,[5] for claims for refund or tax credit, both in the administrative and judicial fora must be filed within the 2-year period.[6] Beyond that period, the taxpayer can no longer appeal to this Court.[7]

---

[5] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.
[6] Commissioner of Internal Revenue *v.* Victorias Milling Co., Inc., No. L-24108, January 3, 1968, 22 SCRA 12.
[7] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.

Based on the records of the case, petitioner filed its administrative claim for refund of its unutilized input VAT for the first quarter of the taxable year 2008 on March 29, 2010, while the judicial claim was filed with the Court of Tax Appeals on March 31, 2010. I find that both the administrative and judicial claims were filed within the two (2)-year prescriptive period, counting from March 31, 2008, or the close of the taxable quarter.

Accordingly, I vote that the Petition for Review filed by Crescent Park 18-2 Property Holdings, Inc. be given due course.

LOVELL R. BAUTISTA
Associate Justice