

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

**SANKYU LOGISTICS
PHILIPPINES, INC.,**
Petitioner,

CTA CASE NO. 8098

~ versus ~

Members:

Acosta, *PJ*,
Uy, and
Fabon-Victorino, *JJ*.

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

AUG 13 2010 ; 3:15 pm

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RESOLUTION

This resolves respondent's "Motion to Dismiss" posted on May 20, 2010, which was received by the Court on May 26, 2010, including petitioner's "Comment" thereto filed on June 29, 2010.

In the said "Motion to Dismiss", respondent moved that the Petition for Review filed by petitioner on April 23, 2010 be dismissed for lack of cause of action considering that it was pre-maturely filed in violation of Section 112(C) of the 1997 National Internal Revenue Code (NIRC). Accordingly, under the foregoing provisions of the NIRC, respondent is given one hundred twenty (120) days from the filing of the claim for refund within which to process and decide the same and after the last day of the said period the taxpayer is given

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thirty (30) days within which to elevate the case to the Court of Tax Appeals (CTA). Respondent believes that since the petition for review on April 23, 2010 was filed immediately a day after filing the administrative claim with the Bureau of Internal Revenue (BIR), petitioner violated the doctrine of exhaustion of administrative remedy.

In its Comment, petitioner prayed for the denial of such Motion to Dismiss on the following grounds:

- a. The 2-year prescriptive period provided for in Section 229 in relation to Section 112(A) of the Tax Code mandatorily applies not only to the filing of an administrative claim but also to the judicial recourse of filing a Petition for Review with the Court of Tax Appeals (CTA), hence, the need to file the instant Petition for Review before the lapse of said 2-year period citing as basis the cases of P.J. Kiener Co. Ltd. vs. Saturnino David (G.R. No. L-5163, April 22, 1953); Koppel Philippines, Inc. vs. CIR (G.R. No. L-10550, September 19, 1961); Allison J. Gibbs and Esther K. Gibbs vs. CIR (G.R. No. L-13453, February 29, 1960);
- b. The 2-year prescriptive period provided for in Section 229 of the Tax Code mandatorily applies to all kinds of claims for refund or tax credit with the BIR, including claims for unutilized input value-added tax (VAT) attributable to VAT zero-rated sales under Section 112(A) of the Tax Code citing as basis the cases of Muller & Phipps (Manila), Ltd. vs. CIR (G.R. NO. L-10694, March 20, 1958), CIR vs. Insular Lumber Company and CTA (G.R. No. L-24221, December 11, 1967), CIR vs. Victorias Milling Co., Inc. and CTA (G.R. No. L-24108, January 3, 1968), and CIR vs. National Power Corporation (G.R. No. L-18874, January 30, 1970);
- c. The 120-day period mentioned in Section 112(C) of the Tax Code is not mandatory and must bow to the mandatory 2-year prescriptive period requirement provided for in Section 229 of the Tax Code; and
- d. To make mandatory the 120-day period under Section 112(C) of the Tax Code will effectively and inevitably result to an inequitable, unfair and absurd situation wherein claimants are forever unable to file a Petition for Review with and thus elevate their judicial claims to the CTA.

After weighing the arguments presented by the parties, this Court hereby rules in favor of the respondent.

While it is already settled that in claims for refund pursuant to Section 229 of the National Internal Revenue Code (NIRC), the petition for review must also be made within the two (2) year prescriptive period; nevertheless, this rule is not applicable to refund of input



tax, which is already specifically governed by Section 112 of the NIRC, as amended. To sustain the view of the petitioner would limit the application of the one hundred twenty (120) day waiting period and the thirty (30) day appeal period provided in Section 112(C) of the NIRC within the bounds of the two (2) year prescriptive period under Section 112(A) in relation to Section 229 of the NIRC, and render the provisions of Section 112(C) useless.

Reliance by the petitioner on the ruling of the Supreme Court that (a) within two years the claimant may proceed with his suit without waiting for the Collector's decision¹; (b) the time for bringing an action for a refund of income tax, fixed by statute, is not extended by the delay of the Collector of Internal Revenue in giving notice of the rejection of such claim²; and (c) if the Collector takes time in deciding the claim and the period of two (2) years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector³ is misplaced because those cases involved a claim for refund of tax (*other than value-added tax*) pursuant to Section 306 (*now Section 229*) of the NIRC.

It should be emphasized that Section 229⁴ of the 1997 NIRC⁵, which deals only with the recovery of tax erroneously or illegally collected, has been present even prior to the introduction of the value-added tax (VAT) system in our country. Said provisions of the NIRC does not apply to refund of input tax considering that the erroneous, illegal, or

¹ P.J. Kiener Co. Ltd. vs. David, No. L-5163, April 22, 1953.

² Koppel (Philippines), Inc. vs. Collector of Internal Revenue, No. L-10550, September 19, 1961.

³ Gibbs vs. Collector of Internal Revenue, No. L-13453, February 29, 1960.

⁴ Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

⁵ Previously found in Section 306 of Commonwealth Act No. 466; Section 292 of the 1977 NIRC (Presidential Decree No. 1158); Section 230 of the NIRC (PD) No. 1158(Amended).

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wrongful payment angle does not enter the equation as regards the refund for any unutilized creditable input VAT.⁶

The first VAT law took effect on January 1, 1988 by virtue of Executive Order No. 273 (*E.O. 273*), which amended several provisions of then 1986 NIRC (*Old NIRC*).⁷ The provisions providing for the refund of input tax then was found in Section 106 of the old NIRC, as amended by EO 273. Unlike Section 112 of the present NIRC [*Republic Act (RA) No. 8424, as amended by RA 9337*] which governs the case at hand, Section 106 of the old NIRC, as amended by EO 273 does not provide for a period within which to appeal the adverse decision or inaction of the Commissioner of Internal Revenue with the Court of Tax Appeals (*CTA*). It merely provides the two (2) year prescriptive period to apply for an administrative claim and the sixty (60) day period [*became one hundred twenty (120) day period under RA 8424*] within which refund may be made by the Commissioner from the date of such application. The period then to elevate the unsuccessful or unacted administrative claim for refund or tax credit of input tax with the CTA is confined to the two-year prescriptive period provided in Section 229 of the NIRC, which served as the general provision governing claim for refund in the absence of a more specific provision of law. Thus, in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*⁸ which involves a claim for refund of input tax attributable to zero-rated sales for years 1990 and 1992, the Supreme Court applied Section 230 (*now 229*) of the NIRC and held that the two-year prescriptive period for claims for refund of illegally or erroneously collected tax may also apply to the Petition involving claims for refund/credit of input tax. However, there is no reason to continuously apply Section 229 to cases involving the

⁶ Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2008. (Supreme Court Third Division). Respondent's Motion for Partial Reconsideration was denied in a Resolution dated November 26, 2008 by the Supreme Court Second Division.

⁷ Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 158885, April 2, 2009. .'

⁸ G.R. Nos. 141104 & 148763, June 8, 2007.

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“issuance of tax credit/refund of excess/unutilized input tax” with the amendment in our VAT law, particularly introduced in Section 106(d) of RA 7716 (*later became Section 112(D) under RA 8424 and presently as Section 112(C) of RA 9337*), which already provides for the thirty (30) day appeal period with the CTA. Section 112(A) and (C) is comprehensive and specific enough to cover refund/tax credit of input tax both in the administrative and judicial levels.

The administrative remedy to claim for the refund of input tax attributable to zero-rated sales is provided in Section 112(A) of the 1997 NIRC, *as amended*, which provides:

“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 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.”

Said provisions of the NIRC plainly provides that a VAT-registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax attributable to zero-rated sales within two years after the close of the taxable quarter when the sales were made. Apparently, it merely sets a limitation for the application of the administrative claim with the BIR and does not suggest that an appeal to this Court must likewise be made within the same two-year period. On the contrary, the judicial remedy for the refund of input tax attributable to zero-rated sales is laid down under Section 112(C) of the NIRC, *as amended*, which provides:

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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.”

Section 112 (C) of the NIRC clearly states that the affected taxpayer may appeal to the CTA within thirty (30) days from receipt of the decision or from inaction of the Commissioner of Internal Revenue after the lapse of the one hundred twenty (120) day period. The words “may appeal” therein does not mean that the judicial recourse within thirty (30) days after the lapse of the one hundred twenty (120)-day period is directory and permissive. It however means that an appeal to the Court would be totally dependent upon the discretion of the claimant since it is a procedural right extended to the taxpayer which he may or may not exercise based on his judgment. It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.⁹

The case at hand reveals that petitioner applied for refund with the BIR on April 22, 2010 representing its alleged unutilized input tax attributable to zero-rated sales for the four (4) quarters of taxable year 2008. While petitioner’s administrative claim *(except for the first quarter of 2008 which had already prescribed considering that it has only until March*

⁹ Commissioner of Internal Revenue v. Julieta Ariete, G.R. No. 164152, January 21, 2010 citing *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 159610, 12 June 2008 and *Commissioner of Internal Revenue v. Court of Appeals*, 338 Phil. 322

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31, 2010 to make an application for refund with the BIR¹⁰) was made within the two year prescriptive period pursuant to Section 112(A) of the NIRC, nevertheless, its appeal before this Court on April 23, 2008, a day after its application with the BIR, is premature since there was yet no adverse decision or inaction of the Commissioner as contemplated under Section 112(C) of the NIRC, from which the appellate jurisdiction of the CTA under Section 7(a)(1) and (2) of Republic Act No. 9282 can properly be invoked. This is a clear violation of the rule on exhaustion of administrative remedies.

The rule on exhaustion of administrative remedies before resorting to the court means that there should be an orderly procedure which favors a preliminary administrative sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process has run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance.¹¹ A party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to court action.¹²

Settled is the rule that the non-exhaustion of administrative remedies is not jurisdictional and it renders only the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.¹³ The premature invocation of the court's intervention, *like the instant Petition for*

¹⁰ In accordance with the ruling of the Supreme Court in the case of Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2008.

¹¹ Abe-Abe vs. Manta, L-4827, May 31, 1979; 90 SCRA 524.

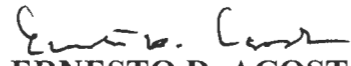
¹² Commissioner of Internal Revenue vs. Rosemarie Acosta, G.R. No. 154068, August 3, 2007.

¹³ Carale vs. Abarintos, G.R. No. 120704, March 3, 1997.

Review, is fatal to one's cause of action; and the case is susceptible of dismissal for failure to state a cause of action.¹⁴

WHEREFORE, respondent's Motion to Dismiss is hereby **GRANTED**. The instant Petition for Review is hereby **DISMISSED** for failure to state a cause of action.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:


(with Separate Opinion)
ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

¹⁴ Ilo-ilo City Zoning Board of Adjustment and Appeals vs. Gegato-Abecia Funeral Homes, Inc. G.R. No. 157118, December 8, 2003.

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Petitioner,

C.T.A. CASE NO. 8098

- versus -

**Members:
Acosta, *Chairperson*,
Uy, *and*
Fabon-Victorino, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

AUG 13 2010 ; 3:15 pm

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SEPARATE OPINION

UY, J:

With all due respect to my esteemed colleagues, although I join with the majority opinion in dismissing the instant Petition for Review filed on April 23, 2010, I find it essential to express a separate opinion as to the proper interpretation of the applicable provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, particularly Section 112, to wit:

“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 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: xxx

xxx

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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.**” (*Emphasis and underscoring supplied*)

As correctly pointed out by the majority view, said provisions of the NIRC provide that a VAT-registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax attributable to zero-rated sales within two (2) years after the close of taxable quarter when the sales were made.

However, contrary to the majority view, it is my humble submission that the two-year period is a limitation of action not only in submitting the written claim for refund to the Commissioner of Internal Revenue, but likewise in instituting an action with the Court of Tax Appeals.¹ A different interpretation would necessarily allow an extension of the prescriptive period, for as long as the 120-day period had not elapsed from the filing of the administrative claim for refund, regardless of whether or not the two-year period had lapsed.

Notably, there is nothing in Section 112 which states or implies that the periods under paragraphs (A) and (B) thereof, are limited to administrative claims only, while it is more evident that the periods (120 days and 30 days) mentioned in paragraph (C) are for the taxpayer’s guidance on the requisite exhaustion of

¹ Tax Law and Jurisprudence, 2nd Ed., Justice Jose Vitug and Judge Ernesto D. Acosta, p.306.



administrative remedies prior to seeking judicial recourse. Thus, the two-year period granted under Section 112 cannot be concluded to refer only to administrative claims for the reason that the law does not limit the same.

Relevant thereto, the 120-day period mentioned in Section 112 (C) is evidently addressed to the Commissioner of Internal Revenue within which to grant a refund or issue a tax credit certificate for creditable input taxes from date of submission of complete documents in support thereof. And the thirty (30) day period mentioned in the second paragraph of Section 112 (C) is the period granted to the taxpayer within which to seek judicial recourse before the Court of Tax Appeals reckoned from the lapse of the 120-day period mentioned in the first paragraph of the same Section. To my mind, however, both periods must still be within the two-year period after the close of the taxable quarter when the sales were made.

This view has actually been settled in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*,² the pertinent portion of the Decision reading as follows:

“The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:

(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 or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the

² G.R. No. 172129, September 12, 2008.



extent that such input tax has not been applied against output tax: xxx. (Emphasis Ours)

The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer **must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. xxx"** (*Emphasis supplied*)

Based on the foregoing jurisprudential pronouncement, the reckoning of the two-year prescriptive period mentioned under Section 112 (A) of the NIRC of 1997, as amended, shall commence from the close of the taxable quarter when the relevant sales were made pertaining to input VAT, regardless of whether said tax was paid or not. **Nowhere therein was it provided that the taxpayer must wait for the expiration of the 120-day period regardless of whether or not the two (2) year period was about to expire.**

It bears mentioning that similar to the majority's view, the Supreme Court also ruled in the aforequoted *Mirant case*, that a taxpayer-claimant for refund representing unutilized input VAT cannot avail itself of the provisions of either Section 204(C)³ or Section 229⁴ of the NIRC of 1997, as amended, which for the

³ SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*
- The Commissioner may - x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by

purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor, and that both Sections apply only to instances of erroneous payment or illegal collection of internal revenue taxes.

Clearly therefore, as expressed in the *Mirant case*, “Sec. 112(A) of the NIRC of 1997, as amended, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the creditable input VAT, applies to the instant case, and not to other actions which refer to erroneous payments”. Hence, even if Section 229 of the NIRC of 1997, as amended, is not applicable to any claim for refund or tax credits of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the mandatory nature of the two-year period is still recognized under Section 112 of the same Code.

Applying the foregoing discussion in the case at bench, the subject claim for the issuance of a tax credit certificate in favor of petitioner in the aggregate

the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

⁴ **SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: x x x



amount of P20,101,949.00 allegedly represents petitioner's unutilized input VAT on its purchases attributable to effectively VAT zero-rated sales for the 1st quarter until the 4th quarter of taxable year 2008.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the reckoning of the two-year prescriptive period shall commence from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless of whether said tax was paid or not. Thus, counting from March 31, 2008, the close of the 1st quarter of the taxable year 2008, both the administrative claim and the Petition for Review filed on April 22, 2010⁵ and April 23, 2010, respectively, were filed beyond the two-year prescriptive period.

On the other hand, counting from June 30, 2008 (2nd quarter), September 30, 2008 (3rd quarter), and December 31, 2008 (4th quarter), the close of each taxable quarters of the year 2008, although it appears that they fall within the two-year prescriptive period, the immediate filing of the instant Petition for Review before this Court on April 23, 2010 without awaiting the lapse of the 120-day period makes the instant judicial action premature because the two-year prescriptive period is not about to expire.

In other words, immediate judicial recourse prior to the expiration of the 120-day prescriptive period given to the Commissioner of Internal Revenue to act on a pending claim for refund or tax credits under Section 112 of the NIRC of 1997, as amended, should only be allowed in instances when the two-year prescriptive period is about to expire. Otherwise, taxpayer-claimant must wait for the expiration of the 120-day period in order to give the Commissioner the

⁵ As alleged in paragraph 10 of the Petition for Review.



opportunity to discharge his function and exercise the administrative authority reposed upon him by law.

In view of the foregoing, I vote to grant the instant Motion to Dismiss filed by respondent on the following reasons: (a) both the administrative and judicial claims for the tax credit of its alleged unutilized input VAT for the 1st quarter of 2008 were filed beyond the two-year prescriptive period; and (b) the subject judicial claims covering the periods from the 2nd quarter to 4th quarter of taxable year 2008 were prematurely filed considering that the two-year prescriptive period is not about to prescribe, a clear violation of the doctrine of exhaustion of administrative remedies.

Accordingly, petitioner's claims for the issuance of tax credit of its alleged unutilized input VAT for the 1st quarter of 2008 is **DISMISSED** on the ground of prescription; while petitioner's claim covering the periods from the 2nd quarter to 4th quarter of taxable year 2008 is **DISMISSED** on the ground of prematurity.


ERLINDA P. UY
Associate Justice