Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PROCTER AND GAMBLE ASIA, PTE. LTD.
Petitioner,

C.T.A. CASE NOS. 7523 and 7556

Members :

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 17 2011 10:59am

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D E C I S I O N

UY, *J.*:

This case is a consolidation of two separate Petitions for Review filed by Procter and Gamble Asia, Pte. Ltd., as petitioner, against the Commissioner of Internal Revenue, as respondent, to seek the issuance of tax credit certificate or refund of the amounts of **P17,117,309.41** in C.T.A. Case No. 7523 and **P15,589,137.30** in C.T.A. Case No. 7556, allegedly representing petitioner's unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to zero-rated sales for the periods covering July to September 2004 and October to December 2004, respectively.

THE FACTS

Petitioner, Procter and Gamble Asia, Pte., Ltd., is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarter in the Philippines, with office address at the 18/F Petron Megaplaza, 358 Sen. Gil Puyat Ave., Makati City. It provides management, marketing, technical and financial advisory, and other qualified services to related companies as specified by its Certificate of Registration and License issued by the Securities and Exchange Commission.[1] Petitioner as a VAT-registered taxpayer, is covered by a Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the duty to act upon and approve claims for refunds or tax credits as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

For the periods covering the quarters from July to September 2004, and from October to December 2004, petitioner allegedly rendered services to its affiliates in the Philippines and abroad pursuant to its Service Agreements. For its services abroad, petitioner was paid in the form of

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[1] Exhibit "A"
[2] Exhibit "B"

foreign currency, which was allegedly accounted for in accordance with the rules of the *Bangko Sentral ng Pilipinas* (BSP).

During the same period, petitioner purchased goods and services from VAT-registered suppliers and services providers, supported by invoices and official receipts, with input VAT in the following amounts:[3]

Period	Goods	Input VAT	Services	Input VAT
July to September	P8,836,426.36	P883,642.64	P291,883,815.09	P29,188,381.51
October to December	P3,676,074.12	P367,607.41	P273,651,709.60	P27,365,170.96

On the belief that it is entitled to a refund of its alleged unutilized input VAT, petitioner filed applications and letter-requests[4] with the BIR Revenue District Office (RDO) No. 49 for the refund or tax credit of its input tax attributable to its zero-rated sales, covering the periods of July to September 2004 and October to December 2004, on the following dates:

Period of Claim	Filing Date of Administrative Claim	Input Tax
July to September 2004	September 26, 2006	P17,117,309.41
October to December 2004	December 13, 2006	P15,589,137.30

As respondent has not yet issued any decision regarding its refund claims, petitioner filed the instant Petitions for Review for the periods covering July to September 2004 and October to December 2004 on the following dates:

CTA CASE NO.	PERIOD OF CLAIM	FILING DATE OF PETITION FOR REVIEW	Amount of Claim
7523	July to September 2004	October 2, 2006	P17,117,309.41
7556	October to December 2004	December 29, 2006	P15,589,137.30

[3] Exhibits "I" and "J"
[4] Exhibits "N" and "O"; Annexes "K" and "L", Petition for Review, CTA Case No. 7523; Annexes "L" and "M", Petition for Review, CTA Case No. 7556

In the separate Answers filed in C.T.A. Case No. 7523[5] on November 27, 2006, and in C.T.A. Case No. 7556[6] on February 27, 2007, except for the amounts involved and the periods covered by the claims, respondent similarly interposes the following Special and Affirmative Defenses, summarized as follows:

> 1. Respondent reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 2. Petitioner's alleged claim for refund or issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent Bureau;
>
> 3. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 4. Petitioner's claim for refund or issuance of tax credit certificate in the amounts of : **P17,117,309.41** for CTA Case No. 7523 and **P15,589,137.30** for CTA Case No. 7556, as alleged unutilized input VAT attributable to its zero-rated sales of goods and services for the periods covering: July 2004 to September 2004, and October to December 2004, respectively, were not fully substantiated by proper documents.
>
> 5. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.
>
> 6. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT.
>
> 7. The amount subject of the claim for refund of petitioner do not pertain in full to its input VAT paid attributable to its zero- rated sales of goods and services for the periods covering July 2004 to September 2004 in CTA Case No. 7523 and October to December 2004 in CTA Case No. 7556.
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> 8. Petitioner's right to claim for refund/ tax credit of the alleged unutilized input VAT attributable to its zero-rated sales

[5] CTA Case No. 7523, docket, pp. 142-143
[6] CTA Case No. 7556, docket, pp. 168-169

of goods and services for the period covering July 2004 to September 2004 have already prescribed pursuant to Section 112 of the NIRC.

9. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

10. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

11. Claims for refund are construed strictly 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)***."

In the Resolution dated July 9, 2007[7], this Court granted petitioner's motion to consolidate these two cases to expedite the resolution thereof and in the interest of justice. During trial, both parties presented their respective documentary and testimonial evidence. Thereafter, upon submission of both parties' respective Memorandum[8], these consolidated cases were submitted for decision on July 12, 2010.[9]

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[10] for this Court's resolution:

"1) Whether or not Petitioner's sales of goods and services are zero-rated for VAT purposes under Section 108 (B)(2) of the 1997 Tax Code.

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[7] CTA Case No. 7523, docket, p. 260
[8] CTA Case No. 7523, docket, pp. 2085-2101 and pp. 2105-2112
[9] CTA Case No. 7523, docket, p. 2114
[10] CTA Case No. 7523, docket, pp. 165-166

2) Whether or not Petitioner has carried-over to the succeeding taxable quarter(s) or year(s) the alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales, for the period covering July 2004 to September 2004 (and October 2004 to December 2004), and applied the same amount in full to its output VAT liability for the said period.

3) Whether or not the amount of P17,117,309.41 (and P15,589,137.30), being claimed by Petitioner as unutilized input VAT, for the period covering July 2004 to September 2004 (and October 2004 to December 2004), pertains in full to its zero-rated sales of goods and services.

4) Whether or not Petitioner's sales of services to non-resident foreign corporations qualify as zero-rated VAT.

5) Whether or not Petitioner complied with the substantiation requirements prescribed under Revenue Regulation No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

6) Whether or not petitioner is entitled to its claimed refund or tax credit in the amount of P17,117,309.41 (and P15,589,137.30), as alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales, for the period covering July 2004 to September 2004 (and October 2004 to December 2004)."

THE COURT'S RULING

Petitioner seeks the issuance of tax credit certificate or refund of unutilized input VAT paid on purchases of goods and services attributable to zero-rated sales for the periods covering July to September 2004 and October to December 2004. It anchors its claim for refund or issuance of tax credit certificate on Sections 110(B) and 112(A) of the National Internal

Revenue Code (NIRC) of 1997, as amended, the pertinent provisions of which are quoted hereunder, to wit:

> "**SEC. 110.** ***Tax Credits.*** –
>
> xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided*, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."
>
> "**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 of 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."

Based on the foregoing provisions, to be entitled to a refund or tax credit of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

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 tax liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

The Court reckons that it would be more appropriate to determine first the timeliness of the filing of the instant claims as it will determine the necessity of resolving petitioner's compliance with the other requirements of input VAT refund.

The Supreme Court in the landmark case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc.*[11] explained that the Tax Code provides a period of two years after the close of the taxable quarter when the sales were made, within which a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may file an administrative claim for the issuance of tax credit certificate or refund of its unutilized input tax. Should the Revenue Commissioner deny the claim or fail to act on the claim within one hundred twenty (120) days from the filing of the administrative claim and submission of supporting documents, the affected taxpayer is granted a period of thirty (30) days from the denial or inaction within which to appeal his case before this Court.

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

In the present case, petitioner filed applications and letter-requests with the BIR for the refund or tax credit of its input tax attributable to its zero-rated sales covering the periods from July to September 2004 on September 26, 2006, and for the periods from October to December 2004 on December 13, 2006. Considering that the subject taxable quarters closed on September 30, 2004 and December 31, 2004, the administrative claims filed on September 26, 2006 and December 13, 2006 were filed within the two-year period prescribed by law. However, although the administrative claims were filed within the two-year prescriptive period, this Court is constrained to deny the instant claims because judicial recourse before this Court have been prematurely resorted to by petitioner.

In the same case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc.*[12], the Supreme Court emphasized the importance of the periods provided under Section 112(D) of the NIRC of 1997, in the determination of the timeliness of filing of an appeal with this Court, to wit:

> "***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. -
> >
> > xxx xxx xxx
> >
> > (D) Period within which Refund or Tax Credit of Input Taxes shall be made. - In proper

[12] *Supra*, footnote no. 11

> 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 xxx 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.**

xxx xxx xxx

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**." *(Emphasis supplied)*

In the cases at bench, the administrative claims for refund were filed on **September 26, 2006** for the period from July to September 2004, and on **December 13, 2006** for the period from October to December 2004. Thus, respondent had 120 days from September 26, 2006 or until January 24, 2007, and from December 13, 2006 or until April 12, 2007, respectively, to decide on petitioner's claims. In case of inaction thereon, as what transpired in the instant cases, petitioner must wait for the lapse of the 120-

day reglementary period from submission of complete documents, before it can seek judicial recourse within a period of thirty (30) days therefrom. We presume that complete documents were simultaneously filed by petitioner on the date of filing of the administrative claims with respondent on September 16, 2006 and December 13, 2006.

In other words, petitioner was not allowed to resort to judicial action prior to the following periods: January 24, 2007 in C.T.A. Case No. 7523, and April 12, 2007 in C.T.A. Case No. 7556. Unfortunately, C.T.A. Case No. 7523 was filed before this Court on October 2, 2006 while C.T.A. Case No. 7556 was filed on December 29, 2006, clearly without waiting for the expiration of the 120-day period given to respondent within which to decide petitioner's administrative claims.

Evidently, petitioner's failure to observe the 120-day period prescribed under Section 112(D) of the NIRC of 1997, the filing of the Petitions for Review in C.T.A. Cases Nos. 7523 and 7556 are deemed to be premature. Consequently, this Court has no jurisdiction to entertain the instant cases.

Thus, resolution of the other issues raised herein becomes unnecessary.

WHEREFORE, the instant Petitions for Review are hereby **DISMISSED** for being prematurely filed.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice