REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

SOUTHERN PHILIPPINES POWER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 6336

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
AUG 02 2012
3:05 p.m.

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RESOLUTION

For resolution is respondent's **"MOTION TO DISMISS"** filed on June 18, 2012, with petitioner's **"COMMENT/OPPOSITION TO RESPONDENT'S MOTION TO DISMISS"** filed on July 12, 2012.

Records show that on April 26, 2006, the Court of Tax Appeals (CTA) Second Division rendered a Decision[1] denying the Petition for Review. Thereafter, petitioner filed its Motion for Reconsideration on May 19, 2006 which was denied in a Resolution promulgated on August 15, 2006. Dissatisfied, petitioner filed its Petition for Review before the Court *en banc*.

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[1] *Rollo*, pp. 342-354.

On July 31, 2007, the CTA *en banc* promulgated a Decision dismissing the petition for review and affirmed the findings of the CTA Second Division. The subsequent Motion for Reconsideration being denied on September 19, 2007, petitioner elevated the matter before the Supreme Court via a Petition for Review under Rule 45 of the Rules of Court. On October 19, 2011, the High court decided on the merits and accordingly remanded the case to this Court for further proceedings.

On May 9, 2012, this Court issued a Resolution setting this case for hearing on May 15, 2012. However, considering that both parties sought for the resetting of the scheduled hearing, this Court reset the same to June 19, 2012.

On June 18, 2012, respondent filed her Motion to Dismiss citing lack of cause of action and/or lack of jurisdiction. On June 19, 2012, upon motion of the petitioner before the open court, the latter was granted a period of fifteen (15) days from receipt of the Motion to Dismiss to file its comment and respondent's reply to petitioner's comment within a period of ten (10) days from receipt thereof. On July 16, 2012, the Court considered this case submitted for Resolution. Hence, this Court's Resolution.

In her Motion to Dismiss, respondent prays for the dismissal of the instant *Petition for Review* on the ground of lack of cause of action and/or lack of jurisdiction. Respondent argues that this Court, being a court of special jurisdiction can take cognizance only of matters that are clearly within its jurisdiction as provided under Section 7 of Republic Act (R.A.) No. 9282, which includes, among other things, the exclusive appellate jurisdiction to review by appeal, inaction of the Commissioner of Internal Revenue (CIR) in cases involving refunds of internal revenue taxes.

Respondent further contends that pursuant to Section 112 (D) of the National Internal Revenue Code (NIRC) of 1997, as amended, which is the basis for petitioner's claim for refund, she has 120 days from petitioner's submission of complete documents supporting the latter's claim, within which to rule on the said claim. In the event of inaction, petitioner has 30 days from the lapse of the 120-day period to elevate its claim with this Court. Prior thereto, this Court has no jurisdiction to entertain a case.

In this case, respondent posits that the filing of the instant Petition for Review violated Section 112 (D) of the NIRC of 1997, as amended, *that is*, relative to petitioner's claim for the 3rd and 4th quarter of taxable year 1999 the petition was filed 315 days late, while with respect to its claim for the four quarters of taxable year 2000s, the petition was 77 days prematurely filed.

Lastly, respondent contends that the defense of lack of jurisdiction may be raised at any stage of the proceedings since if indeed the instant Petition for Review was filed prematurely, then, this Court has no jurisdiction to take cognizance of the instant case. Consequently, the case will be dismissed.

In its Comment/Opposition, petitioner interposes the following arguments:

> "1) The jurisdiction of a court, whether in criminal or civil cases, once attached cannot be ousted by subsequent happenings or events, although of a character which would have prevented jurisdiction from attaching in the first instance, and it retains jurisdiction until it finally disposes of the case;
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> 2) Retroactive application of Aichi would defeat the present and existing policy being protected by EPIRA, a specific and later law; and
>
> 3) The Honorable Supreme Court, in ordering the remand of the case to this Honorable Court for scrutiny of petitioner's evidence, in effect acknowledged the acquisition of this Honorable Court of jurisdiction over the case."

After a careful evaluation of the arguments presented by both parties, this Court finds merit in respondent's *Motion*.

Time and again, lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time or stage of the proceedings. As held in the case of *Francel Realty Corporation vs. Sycip*[2], "a court's lack of jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. Moreover, jurisdiction is determined by the averments of the complaint, not by the defenses contained in the answer." Hence,

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[2] G.R. No. 154684, September 8, 2005.

respondent is not precluded to raise lack of jurisdiction and move for the dismissal of the instant case even at this stage of the proceedings.

With respect to respondent's argument that this Court is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction, this Court agrees with respondent. Section 7 of R.A. 9282[3], enumerates the cases under the exclusive jurisdiction of this Court, *viz*:

> "SEC. 7. Jurisdiction. – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
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> xxxx"

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[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes

In relation thereto, Section 11 of R.A. 9282 provides:

> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to Section 7(a)(2) herein.
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> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxxx"

Apparently, this Court has exclusive jurisdiction to review, by appeal, inaction of the CIR on cases involving refunds of internal revenue taxes.

The instant case is a claim for refund or issuance of tax credit certificate in the amount of P8,636,126.75, allegedly representing petitioner's unutilized input taxes paid on its domestic purchases of goods and services attributable to zero-rated sales for the 3rd and 4th quarter of taxable year 1999 and for all the quarters of taxable year 2000.

Therefore, the applicable law is Section 112 (A) and (D) of the NIRC of 1997, 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 tax, to the extent that such input tax has not been applied against output tax: xxx.
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> *(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."

Based on the afore-quoted provisions, the aggrieved taxpayer may file its appeal before this Court within thirty days from receipt of the unfavorable decision or after the expiration of the one hundred twenty day-period in case of inaction by respondent.

In applying Section 112 (D) of the NIRC of 1997, as amended, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[4], held that:

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

"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.

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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.

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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"** (*Emphases supplied.*)

A perusal of the records reveal that the administrative claim for refund or issuance of tax credit certificate for the 3rd and 4th quarters of taxable year 1999 was filed on June 20, 2000, while the administrative claim for refund or issuance of tax credit certificate for the four quarters of 2000 was filed on July 13, 2001.

Thus, counting 120 days from the filing of petitioner's administrative claims on June 20, 2000 and July 13, 2001, respectively, respondent had until October 18, 2000 and November 10, 2001, respectively, within which to decide. Considering that respondent has not acted upon petitioner's administrative claim for refund within the 120-day period, petitioner then had 30 days from October 18, 2000 and November 10, 2001, respectively, or until November 17, 2000 and December 10, 2001, respectively, within which to file its appeal before this Court, as provided under Section 112(D) of the NIRC of 1997, as amended.

Considering that petitioner filed the instant *Petition for Review* on September 28, 2001, it is apparent that petitioner's filing of its judicial claim for refund for the 3rd and 4th quarters of taxable year 1999 was made beyond the reglementary period provided under Section 112 (D) of the NIRC of 1997. On the other hand, its claim for the four quarters of taxable year 2000 was prematurely filed. Hence, the belated filing of petitioner's claim for the 3rd and 4th quarters of taxable year 1999 and the premature filing of petitioner's claim for the four quarters of taxable year 2000 warrants the dismissal of the instant claim.

With respect to petitioner's allegation that the retroactive application of the Aichi case would defeat the present and existing policy of the EPIRA law, which is a later law, this Court has to bend to the principle of *stare decisis.*

The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines[5] which provides:

> "ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."

The 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

[5] Lazatin vs. Desierto, G.R. No. 147097, June 5, 2009.

has been examined and decided, it should be deemed settled and closed to further argument.[6]

This Court sees no reason to depart from the interpretation afforded by the Supreme Court in the Aichi case. Also, the Supreme Court merely made an outright application of the terms of Sections 112 (A) and (D) of the 1997 NIRC, as amended, which took effect on January 1, 1998. Let it be emphasized that the Supreme Courts interpretation or construction establishes the contemporaneous legislative intent of the law; the latter as so interpreted and construed would thus constitute a part of that law as of the date the statute is enacted. It is only when a prior ruling of this Court finds itself later overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith in accordance therewith under the familiar rule of *"lex prospicit, non respicit"*.[7] Let it be stressed that the EPIRA law took effect only on June 26, 2001.

WHEREFORE, in view of the foregoing, respondent's *Motion to Dismiss* is hereby **GRANTED**. Accordingly, the instant *Petition for Review* is hereby **DISMISSED**.

SO ORDERED.

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

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[6] Fermin vs. People, G.R. No. 157643, March 28, 2008.
[7] Pesca vs. Pesca, G.R. No. 136921, April 17, 2001

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice