REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TAKASAGO PHILIPPINES, INC., Petitioner,	CTA CASE NO. 7689
- versus -	Members: ACOSTA, Chairperson UY, and FABON-VICTORINO
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 10 2010 ; 11:38 a.m.

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DECISION

FABON-VICTORINO, J.:

Submitted for decision is the Petition for Review filed by Takasago Philippines, Inc. praying that after trial, judgment be rendered directing respondent Commissioner of Internal Revenue (CIR) to issue in its favor a tax credit certificate (TCC) in the amount of FOUR MILLION TWENTY FOUR THOUSAND EIGHT HUNDRED SIXTY SIX PESOS and 68/100 (P14,024,866.68) pursuant to Sections 112(A) and 229 of the National Internal Revenue Code of 1997, as amended. The said amount allegedly represents unutilized input value-added tax (VAT) arising from its zero-rated transactions for the period covering July 1, 2005 to December 31, 2005.

STATEMENT OF FACTS

Petitioner Takasago Philippines Inc. is a duly organized corporation duly existing under Philippine laws with principal office at the 4th Floor, Raha Sulayman Building, 108 Benavidez Street, Legazpi Village, Makati City.[1] It is primarily engaged in general and specialty construction services and other allied businesses including structural, mechanical, electrical, and other design, construction, erection, installation, repair, and related services. It is a VAT-registered entity with TIN/VAT No. 003-982-235-000, as evidenced by its Certificate of Registration No. OCN9RC0000050392 dated October 30, 1995.[2]

Respondent CIR, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with authority among others to decide, approve and grant claims for refunds or issuance of TCC, with official address at the BIR National Office Building, Diliman, Quezon City.

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[1] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues, docket, p. 77

[2] Annexes "A", "B", and "C", Petition for Review, docket, pp. 12-13 and 23; Pars. 3 and 4, Facts Admitted, Joint Stipulation of Facts and Issues, docket, p. 78

On October 19, 2005 and January 24, 2006, petitioner filed its original Quarterly VAT Returns for the third and fourth quarters of 2005, respectively.[3] Subsequently, petitioner twice amended the said Quarterly VAT Returns, the first being on June 2, 2006 and the other on September 27, 2007 and indicated the following information in its final amended Quarterly VAT Returns:

EXHIBIT	YEAR 2005	ZERO-RATED SALES	VATABLE SALES	OUTPUT VAT	INPUT VAT	EXCESS INPUT VAT
"F"	3rd Quarter	57,064,008.20	-	-	8,890,120.64	8,890,120.64
"I"	4^{th} Quarter	315,069,043.50	127,272.70	12,727.27	5,147,473.31	5,134,746.04
TOTAL		372,133,051.70	127,272.70	12,727.27	14,037,593.95	14,024,866.68

On September 28, 2007, petitioner filed with the BIR Revenue District Office No. 47 an application for issuance of TCC in the amount of P14,024,866.68, representing unutilized input taxes on its local purchases of goods and services attributable to its zero-rated sales to Philippine Economic Zone Authority (PEZA)-registered enterprises for the period covering July 1, 2005 to December 31, 2005.[4]

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[3] Exhibits "D" and "G"
[4] Exhibit "J"

On October 18, 2007, petitioner filed the instant Petition for Review to prevent the running of the two-year prescriptive period and for failure of respondent to act on the administrative claim.

On February 13, 2008, respondent's motion to admit answer was granted. Consequently, his belatedly filed Answer dated January 25, 2008 was admitted which contained the following Special and Affirmative Defenses:

> "4) Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
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> 5) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
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> 6) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable;
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> 7) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended upon which its claimed *(sic)* for refund is premised;
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> 8) In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206);*
>
> 9) Claims for refund are construed strictly against the claimant, the same partake the nature of

> exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, these are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

On March 24, 2008, the instant case was set for pre-trial conference for which the parties were required to file with the Court and serve upon each other their respective pre-trial briefs at least three days before the scheduled proceeding.[5] Petitioner complied on April 4, 2008,[6] while respondent, on April 10, 2008[7].

On April 24, 2008, the parties submitted their Joint Stipulation of Facts and Issues[8], which the Court approved on May 9, 2008. Consequently, the pre-trial conference was deemed terminated.

On June 19, 2008,[9] the Court, at the instance of petitioner, commissioned Mr. Joseph Cedric V. Calica of AMC & Associates, as Independent Certified Public Accountant (CPA) to conduct the audit and verification of the voluminous documents that petitioner intended to present during the trial on the merits.

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[5] Docket, p. 58
[6] Docket,, pp. 60-72
[7] Docket, pp. 73-75
[8] Docket, pp. 77-81
[9] Docket, p. 137

After formal offer of evidence, petitioner rested its case. Respondent, on the other hand, was deemed to have waived the right to present evidence[10] due to continued failure of counsel to appear during the scheduled hearings, despite due notice.

On January 15, 2010, this case was submitted for decision, taking into consideration the "Memorandum for the Petitioner"[11] filed on December 11, 2009. Notwithstanding directive, respondent failed to file any.

STATEMENT OF ISSUES

Per the parties' Joint Stipulation of Facts and Issues, the following were submitted for the resolution of the Court, to wit: [12]

> "1. Whether or not Petitioner's unutilized input taxes amounting to P14,024,866.68, representing unutilized input taxes on its local purchases of goods and services for the period July 1, 2005 to December 31, 2005, were attributable to Petitioner's zero rated sales for the same period;
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> 2. Whether or not Petitioner has duly substantiated its claim for the issuance of a tax credit certificate amounting to P14,024,866.68, representing unutilized input taxes on its local purchases of goods and services for the period July 1, 2005 to

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[10] Docket, p. 1414
[11] Docket, pp. 1415-1451
[12] Docket, pp. 79-80

December 31, 2005, attributable to its zero- rated sales for the same period;

3. Whether or not Petitioner's unutilized input taxes amounting to P14,024,866.68, on its local purchases of goods and services for the period July 1, 2005 to December 31, 2005, have not been carried over to the succeeding quarters and have not been utilized against any output tax;

4. Whether or not Petitioner had timely and duly filed its administrative and judicial claims for the issuance of a tax credit certificate in the amount of P14,024,866.68, representing unutilized input taxes on its local purchases of goods and services for the period July 1, 2005 to December 31, 2005, attributable to Petitioner's zero-rated sales for the same period; and

5. Whether or not Petitioner is entitled to a tax credit certificate in the amount of Fourteen Million Twenty Four Thousand Eight Hundred Sixty Six and 68/100 (P14,024,866.68), representing unutilized input taxes on its local purchases of goods and services for the period July 1, 2005 to December 31, 2005, attributable to its zero-rated sales for the same period, pursuant to Sections 112(A) of the 1997 Tax Code, as amended."

Of the foregoing issues, the Court deems paramount to give priority in discussion the issue on the timeliness of petitioner's filing of its administrative and the judicial claim for issuance of TCC. This is simply because the non-observance of the prescribed periods, within which to seek administrative remedy and judicial intervention will render the rest of the issues raised moot and academic.

Petitioner claims that its administrative and judicial claims were both seasonably filed in accordance with the Supreme Court's pronouncement in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[13], which is the prevailing and applicable jurisprudence on the matter. Per petitioner, the two-year prescriptive period for filing a claim for refund/tax credit of input VAT must be reckoned from the date of filing of the VAT Return and payment of the tax due.

Perusal of the case however reveals that the Atlas Case was resolved by the High Tribunal using the Tax Code of 1977, the law enforced at that time. In rendering the decision, the Supreme Court construed and applied with specificity Sections 106, 110, and 230 (now Section 229), of the 1977 Tax Code since the said case involved claim for refund/tax credit of the input VAT on petitioner's purchases of capital goods and on its zero-rated sales for the taxable quarters of the years 1990 and 1992.

The factual milieu of the instant case is obviously different. Petitioner's claim for issuance of TCC pertains to sales and transactions consummated during the period starting July 1, 2005 to December 31, 2005. That being the case, Republic Act No. 8424

[13] G.R. Nos. 141104 and 148763, June 8, 2007

or the Tax Reform Act of 1997 (1997 NIRC), which took effect on January 1, 1998, as amended, applies.

Section 112(A) of the NIRC of 1997, as amended, prescribes the period, within which a taxpayer may claim for tax refund or credit, thus:

> "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, <u>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</u> 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.

It must however be emphasized that the two-year prescriptive period in the provision refers to application for refund/credit of unutilized input VAT with respondent CIR and not in any way to appeal via a petition for review with the Court of Tax Appeals.

This much was made clear by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.),*[14] wherein it

[14] G.R. No. 172129, September 12, 2008

ruled that the two-year prescriptive period for the filing of an administrative claim for refund or issuance of TCC is reckoned from the **close of the taxable quarter when the sales were made** effectively modifying the doctrine laid down in the *Atlas* case. It also stated that Section 229 of the NIRC is limited to instances of refunds of erroneously paid or illegally collected internal revenue taxes and not to refund of unutilized input VAT attributable to zero-rated sales or effectively zero-rated transactions. The pertinent portion of the Decision reads:

> **"Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable**
>
> To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:
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>> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.—* The Commissioner may –
>> x 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 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 <u>within two (2) years after the payment of the tax</u> or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

x x x x

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, 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 <u>expiration of two (2) years from the date of payment of the tax</u> 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. (Emphasis ours.)

> Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes."

The recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc. ("Aichi case"),*[15] hit the nail on the head. In explaining the two-year prescriptive period for refund of input VAT under Section 112 of the NIR, the Supreme Court held:

x x x x x x

> 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.

Applying the foregoing provisions and jurisprudence in the present case, petitioner had until September 30, 2007, counting from the close of the third taxable quarter on September 30, 2005,

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

and until December 31, 2007, reckoned from the close of the fourth taxable quarter of 2005 on December 31, 2005, to file the administrative claim for issuance of TCC. Clearly, the administrative claim filed by petitioner with respondent on September 28, 2007, was well within the two-year period prescribed by law.

The same is however not true insofar as petitioner's judicial claim is concerned. Note that the administrative recourse was availed by petitioner on September 28, 2007, which is presumed to be the same date it submitted the complete supporting documents. Hence, respondent had 120 days therefrom or until January 26, 2008, within which to act on the application. From receipt of the adverse decision or the lapse of the 120-day period without any action on the part of respondent, petitioner had thirty (30) days or until February 25, 2008, to appeal before this Court. Section 112(C) of the NIRC, as amended, is explicit on this mandate, thus:

> (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 Subsections (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 11 of Republic Act (RA) No. 1125[16], as amended by RA No. 9282,[17] also provides, thus:

> "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 in Section 7(a)(2) herein.
>
> Appeal should 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 the 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.** xxx" (*Emphasis supplied*)

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[16] An Act Creating the Court of Tax Appeals

[17] 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 Court of Tax Appeals, and for Other Purposes

Evidently, petitioner's filing of the instant Petition for Review on October 18, 2007, or barely twenty (20) days from the time it lodged its administrative claim, is premature for failure to exhaust the available administrative remedy. It bears repeating that "non-exhaustion of administrative remedies justifies dismissal of the case on ground of prematurity. Otherwise stated, 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."[18]

Again in the Aichi case (supra), the Supreme Court elucidated on the procedure which an aggrieved taxpayer may take in case of respondent's inaction or adverse decision, it held:

> "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.**

[18] Carale vs. Abarintos, G.R. No. 120704, March 03, 1997

> xxx xxx xxx
>
> 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)*

Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[19] In this, petitioner failed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for prematurity and lack of cause of action.

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[19] Philippine Geothermal vs. CIR, G.R. No. 154028. July 29, 2005

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice