REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

KEPCO PHILIPPINES CORPORATION, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**C.T.A. CASE NO. 7474** Members: **CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.* **Promulgated:** OCT 2 1 2010 3:25 p.m.

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AMENDED DECISION

UY, *J.*:

Before the Court are: (1) petitioner's "*Motion for Partial Reconsideration*" filed on April 30, 2010, without respondent's comment despite notice; and (2) respondent's "*Motion for Reconsideration*" filed through registered mail on April 30, 2010, with petitioner's "*Comment/Opposition (To Respondent's Motion for Reconsideration)*" filed on June 21, 2010. Both motions seek to reconsider this Court's Decision promulgated on April 12, 2010, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is

hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT MILLION EIGHTY THREE THOUSAND THREE HUNDRED TWENTY SIX PESOS AND FIFTY FIVE CENTAVOS (₱ 8,083,326.55)** in favor of petitioner Kepco Philippines Corporation, representing unutilized input VAT for taxable year 2004.

SO ORDERED."

Petitioner's Motion For Partial Reconsideration

In its *Motion for Partial Reconsideration*, petitioner seeks reconsideration of this Court's Decision on the following grounds:

A. The reckoning date prevailing at the time when the first quarter input VAT was paid and/or incurred, and when petitioner applied for refund, is the date of filing of quarterly VAT return, and not the close of the taxable quarter.

B. Input VAT on importation of STC Dead End Composite Insulator of P114,602.00 was supported by equivalent documents under RR 7-95, i.e., manager's check, bank draft machine validated application, other documents issued by the broker, as proof of importation and payment.

C. Intel Technology case ruled that there is no outright denial of input VAT on purchases of goods and services supported by invoices which do not comply with the invoicing requirements.

D. Some of the input VAT worth P2,655,019.99 were supported by documents; and some were already disallowed by the ICPA; thus, the Court's disallowance, if sustained, would result to double deduction.

As mentioned earlier, no comment/opposition was filed by respondent to petitioner's Motion for Reconsideration.

Respondent's Motion for Reconsideration

In respondent's *Motion for Reconsideration,* respondent alleges that the official receipts presented by petitioner to prove its alleged zero-rated sales to National Power Corporation (NPC) show that the word "zero-rated" was just stamped and not imprinted contrary to the requirement of Section 4.108-1 of Revenue Regulations (RR) No. 7-95. He emphasizes that the imprinting of "zero-rated" is a measure of control employed by Bureau of Internal Revenue (BIR) to assure that the seller and purchaser's copy of the official receipt bore such words, which if not strictly enforced, would open loop-holes inviting exploitation for bogus claim for refund of input tax that no stamping could guard against. Respondent also argues that he cannot be estopped from assailing the stamping of the word "zero-rated" simply because such practice is allowed under Revenue Memorandum Order (RMO) 9-00 and Revenue Memorandum Order (RMO) 22-04. RMO 9-00 is inapplicable and in fact requires that the supplier must issue a duly registered VAT invoice with the word "zero-rated" stamped thereon in compliance with Section 4.108-15 of RR 7-95, which in turn requires that the word "zero-rated" must be imprinted, and not merely rubber stamped; while RMO 22-04 deals with VAT exemption certificate/identification card issued to qualified foreign embassies and their qualified personnel which is not the issue in this case.

In its ***Comment/Opposition (To Respondent's Motion For Reconsideration***), petitioner counters that: a) Kephilco cases cited in respondent's Motion for Reconsideration are not applicable to the instant case; b) the CTA has already ruled in previous cases that the imposition of the words "zero-rated" through a rubber stamp is sufficient compliance with VAT invoicing requirements; c) decisions of the *En Banc* court should prevail over decisions made by its divisions; and d) a review of the Supreme Court, Court of Appeals, and CTA decided cases reveals that NPC has not ever claimed for refund of VAT representing amounts paid to any of its suppliers/sellers.

THE ISSUE

Before considering the arguments raised by the parties in their respective Motions, and in the light of the recent decision of the Supreme Court in the case of ***Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*** (G.R. No. 184823) promulgated on October 6, 2010, the Court finds it necessary to consider whether or not this Court has jurisdiction to entertain the present appeal as allowed under paragraph 2 of Section 1 of Rule 14 of the Revised Rules of the Court of Tax Appeals, which states that "In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case".

Needless to state, to obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties.[1] Corollarily, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[2]

Thus, the principal issue for determination by this Court would center on whether it properly acquired jurisdiction to entertain the instant case, as dependent upon the timeliness of the filing of the judicial claim with this Court in accordance with Section 112 of the NIRC of 1997.

THIS COURT'S RULING

The assailed Decision must be reconsidered.

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[1] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[2] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.

In determining the reckoning of the two-year prescriptive period in a claim for refund/credit of unutilized input VAT, We look into the pertinent provisions of Section 112 of the NIRC of 1997, to wit:

> "**SEC. 112.** ***Refund 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
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> "(B) *Capital Goods.—* A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. **The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.**
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> xxx xxx 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.
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> "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**." *(Emphases supplied)*

Based on Section 112 (A) of the NIRC of 1997, a VAT-registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax attributable to zero-rated or effectively zero-rated sales within two (2) years after the close of taxable quarter when the sales were made.

Thus, contrary to petitioner's assertion, the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under said section **starts 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 held in the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc),*[3] which is the applicable ruling in the instant case. In said case, the Supreme Court held that:

> The above proviso (Sec. 112 [A]) 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*)

Additionally, a further reading of the provisions of Section 112 shows that under paragraph (D) thereof, the Commissioner of Internal Revenue is granted a **120-day period**, from submission of complete documents in support of the administrative claim within which to act on claims for refund/applications for issuance of the tax credit certificate. Upon denial of the claim or application, or upon expiration of the **120-day period**, <u>the taxpayer only has a **30-day period** within which to appeal said adverse decision or unacted claim before the Court of Tax Appeals</u>.

[3] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

In the very recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[4] the Supreme Court elaborated on the **120-day** and **30-day** periods as follows:

> "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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> xxx xxx xxx
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> xxx. 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.
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> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides 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."** *(Emphases supplied)*

In the instant case, it is undisputed that petitioner timely filed on October 28, 2005, its administrative claim for refund of the total amount of ₱ 15,512,529.73,

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

representing the input VAT incurred by petitioner for the four (4) quarters of taxable year 2004, paid on its purchase of goods and services for the sale of electricity to the National Power Corporation.[5] However, records show that the instant *Petition for Review* was **belatedly** filed on April 25, 2006, or beyond the thirty (30) day period reckoned from the expiration of the 120-day period prescribed under the above-quoted Section 112(D).

To bolster this point, a summary of the pertinent dates involved in this case is presented as follows:

Taxable year 2004	*Filing date of administrative claim*	*Last day of the 120-day period under Section 112(D) from the filing of the administrative claims*	*Last day of the 30-day period within which to file a petition for review under Section 112(D), NIRC of 1997 and Section 11, RA 1125, as amended by RA 9282*	*Filing date of the instant petition for review*
1st Quarter	*October 28, 2005*	*February 25, 2006*	*March 27, 2006*	*April 25, 2006*
2nd Quarter				
3rd Quarter				
4th Quarter				

Although it would seem, from the wordings employed by the above-quoted Section 112, that the date of filing of the administrative claim is separate and distinct, albeit subsequent, from the date of submission of the complete documents in support thereof, it is herein apparent that petitioner, upon filing the said administrative claim, simultaneously submitted the complete documents in support thereof. This is manifested in petitioner's administrative claim[6], wherein the following statements were indicated, *viz*:

[5] Exhibits "G" and "G-1".
[6] Id.

"xxx. A photocopy of our VAT Certificate of Registration and Approved Application for Zero-rated Sales for the year 2004 are **attached hereto as Annex 'A" and 'B' respectively and made an integral part hereof**.

xxx. A photocopy of KEPHILCO's Quarterly VAT Return duly filed with the BIR is **attached hereto as Annex 'C', 'C-1', 'C-2' and 'C-3' and made an integral part hereof**.

xxx. **Attached as annex 'D' is BIR Form 1914 for the application for tax credit/refund**." *(Emphases supplied)*

Based on the foregoing findings, the reckoning date of the 120-day period under Section 112(D) of the NIRC of 1997 commenced simultaneously with the filing of petitioner's administrative claim. Thus, when petitioner filed the instant appeal by way of a *Petition for Review* on April 25, 2006, this Court has no more appellate jurisdiction to entertain the same.

As aptly held in *Yao vs. Court of Appeals, et al.*[7]:

"The right to appeal is **not** a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. Since the right to appeal is not a natural right nor a part of due process, **it may be exercised only in the manner and in accordance with the provisions of law**. Corollarily, **its requirements must be strictly complied with**.

"**That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional**. Non-compliance with such legal requirements is fatal, for it renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision." *(Emphases supplied)*

Parenthetically, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[8] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature

[7] G.R. No. 132428, October 24, 2000.
[8] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.

of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[9] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[10]

It should be recalled that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[11] Relative thereto, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[12]

WHEREFORE, in view of the foregoing considerations, petitioner's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit, while respondent's Motion for Reconsideration is **GRANTED** on jurisdictional grounds.

Accordingly, our Decision dated April 12, 2010, in the above captioned case is hereby **RECALLED** and **SET ASIDE** and the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[9] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[10] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.
[11] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, supra.
[12] Section 1, Rule 9, Rules of Court.

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

I hereby certify that the Amended 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