REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

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HEDCOR SIBULAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8125

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JAN 31 2011
[illegible] 2:03 p.m.

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RESOLUTION

For this Court's resolution is respondent's *special and affirmative defense of prematurity as interposed in her* ***"Answer"*** "filed on August 5, 2010.

Respondent avers that the instant Petition for Review merits dismissal due to the premature filing of the judicial claim for refund, in utter disregard of administrative procedure. Respondent maintains that the instant petition was filed barely four (4) days after petitioner filed its administrative claim, in violation of Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Petitioner filed its "***Comment***" on December 15, 2010, raising the following grounds:

1. The prematurity of a petition is not a specific ground for dismissal of an action;

2. The petition was filed within the period prescribed by law citing as its basis Section 112 in relation to Section 229 of the National Internal Revenue Code of 1997, as amended;

3. The observance of the 120-day rule should only be applied prospectively; and

4. Even assuming that there was prematurity in the filing of the petition, respondent is deemed to have abandoned or waived the same.

After a scrutiny of the averments raised by both parties, this Court finds the *Motion to Dismiss* untenable.

To begin with, it is significant to emphasize that where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reason of law, comity and convenience, will not entertain a case unless the available remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[1]

If a litigant goes to court without first pursuing his administrative remedies, his action is premature or he has no cause of action to ventilate in court. His case is not ripe for judicial determination.[2] Hence, petitioner's averment that the ground of prematurity of the judicial claim for refund or

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[1] Teotico vs. Agda, G.R. No. 87437, May 29, 1991.
[2] Aboitiz vs. Collector of Customs, G.R. No. L-29466, May 18, 1978 (83 SCRA 265).

failure to exhaust administrative remedies cannot be raised as a defense from which the dismissal of the case may be based certainly deserves scant consideration.

With respect to petitioner's insistence that the instant Petition for Review was timely filed on the basis of Section 112 in relation to Section 229 of the NIRC of 1997, as amended; the issue on the application of Section 229 of the NIRC of 1997, as amended, in determining the timeliness of claims for Value-Added Tax (VAT) refund had already been settled in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc.*[3] The Supreme Court ruled:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, where we ruled that **Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as 'both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes."**

It is clear from the above-quoted decision that Section 229 of the NIRC of 1997, as amended, is not the applicable provision in determining the timeliness of the filing of judicial claims for unutilized input VAT refund. Rather, what is applicable is Section 112 (D) [now Section 112 (C)] of the NIRC of 1997, as amended, which provides:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** –

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

x x x x

(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)

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."

Significantly, in the aforecited case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[4] the Supreme Court expounded on the mandatory nature of the periods provided in Section 112 (D) [now Section 112 (C)] of the NIRC of 1997, as amended. The Supreme Court ruled that failure to observe the said period is fatal to one's case and in case of premature filing, this Court will not be clothe with jurisdiction to entertain the appeal, to wit:

"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.

x x x x

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[4] *Supra*, note 3.

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.**

x x x x

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*)

In this case, records show that petitioner filed its administrative claim for refund on June 25, 2010. The same date shall be the reckoning point in counting the 120-day period considering that the records do not show when petitioner filed its supporting documents. On June 29, 2010 or barely four (4) days from the filing of its administrative claim for refund, petitioner filed the instant Petition for Review. Thus, it is apparent that petitioner filed its judicial appeal without waiting for the lapse of the 120-day period provided for under Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended.

Consequently, petitioner's premature filing of the Petition for Review on June 29, 2010, failed to effectively clothe this Court with jurisdiction to take cognizance of the instant case.

WHEREFORE, premises considered the instant ***Motion to Dismiss*** is hereby **GRANTED.** Accordingly, the instant Petition for Review is hereby **DISMISSED** for having been prematurely filed.

SO ORDERED.

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice