REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BRITISH AMERICAN TOBACCO (PHILIPPINES), LIMITED, Petitioner,	CTA Case No. 9998
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 02 2024 4:11 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1) Respondent's "Motion for Reconsideration (Re: Decision dated 12 September 2023)"[1] (**MR**) filed on 06 October 2023[2]; and,

2) Petitioner's "Motion for Leave to Admit Attached Comment/Opposition [To Respondent's Motion for Reconsideration (Re: Decision dated 12 September 2023)]" (**Motion for Leave**) filed on 15 November 2023.[3]

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1 Division Docket, Volume IV, pp. 1567-1580.
2 Received by the Court on 11 October 2023.
3 Division Docket, Volume IV, pp. 1585-1586-a.

The MR assails the Court's Decision dated 12 September 2023[4] (**assailed Decision**) which granted petitioner' claim for refund of unutilized advanced deposits in the Bureau of Internal Revenue's (**BIR**'s) Internal Revenue Stamp Integrated System (**IRSIS**). The dispositive portion of the assailed Decision reads, thusly:

> ...
>
> **WHEREFORE**, with the foregoing premises, the Petition for Review filed by petitioner British American Tobacco (Philippines), Limited on 21 December 2018 is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** petitioner the amount of **₱305,823,304.00**, representing its unutilized advanced deposit in Internal Revenue Stamp Integrated System, as well as the credits representing the value of unused, spoiled, and bad order internal revenue stamps, for the period from 29 December 2016 to 18 May 2017.
>
> **SO ORDERED.**[5]
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> ...

To recall, the Court found that petitioner was able to fully substantiate the amount of the tax refund it had claimed. The records show that it had advanced deposits in the IRSIS (including credit back of spoiled stamps and bad order) that it may no longer be able to utilize by reason of its closure. In the assailed Decision, the Court observed, thusly:

> ...
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> The Bad Orders reflected above in the amount of ₱1,029,600.00 pertain to Orders made in 2017. As can also be gleaned from the above table showing the application of advance payments to Orders, the payments for these Orders were from the Excise Tax Payments dated 19 January 2017 per the IRSIS Taxpayer Ledger.
>
> Meanwhile, as reflected in petitioner's Summary of Approved Credit Backs pertaining to Spoiled Stamps (Prescribed), the Approved Credit Back of Spoiled Stamp in the amount of ₱746,252.00 originated from Orders made in 2014 and 2015, which means that the excise tax payments for the related Orders were made prior to 29 December 2016. Since the filing for refund claim of tax payments prior to 29 December 2016 had already prescribed,

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4 Id., pp. 1538-1566.

5 Emphasis in the original text.

> petitioner excluded the said amount of ₱746,252.00 from the subject claim for refund, *albeit* the same remained unutilized.
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> In sum, the properly substantiated claimed balance of ₱154,119,184.00 as of 31 December 2017 *per* IRSIS Taxpayer Ledger is composed of Unapplied Advance Deposit of ₱153,089,584.00 and unutilized Credit Back of Bad Orders in the amount of ₱1,029,600.00.
>
> ...
>
> The Bad Orders during the year 2018, in the total amount of ₱3,598,650.00, were verified as related to 2017 Orders. The payments for these Orders (as seen from the application of advance payments above) were from the Excise Tax Payments dated 18 May 2017 *per* the IRSIS Taxpayer Ledger.
>
> Meanwhile, the Credit Back of Spoiled Stamps for 2018, in the total amount of ₱153,855,549.00, was verified as related to 2014 to 2017 Orders.
>
> As to the Credit Back of Spoiled Stamps for Orders made in 2017 amounting to ₱148,105,470.00, the earliest supported payment applied to these Orders was from the Excise Tax Payment dated 28 December 2016 *per* the IRSIS Taxpayer Ledger. On the other hand, the Credit Back of Spoiled Stamps for Orders made in 2014 to 2016 amounting to ₱5,750,079.00, which petitioner properly included from the subject refund claim as the filing of refund claim for the excise tax payments applied to the related Orders prior to 29 December 2016, had already prescribed.
>
> With the foregoing, the Court concludes that petitioner has sufficiently substantiated the claimed amount of ₱305,823,304.00, consisting of the Unapplied Excise Taxes prepaid on 18 May 2017, at the earliest, and Credit Back of Bad Orders and Spoiled Stamps during the periods of 2017 and 2018 (for 2017 Orders).[6]
>
> ...

In the MR, respondent also reiterates its argument that petitioner, in elevating its case before the Court, failed to exhaust administrative remedies considering that it filed its claim for refund before the BIR on 20 December 2018 (while it filed its judicial claim for refund on 21 December 2018 or just one [1] day after). Respondent argues that by immediately seeking redress from the Court, petitioner deprived him or her of the opportunity to rule on the administrative claim.

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6 Citations omitted and italics in the original text.

We resolve.

Sections 204(C) and 229 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, reads:

> ...
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> **SEC.** 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...
>
> (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 within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> ...
>
> **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, 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 expiration of two (2) years from the date of payment of the tax 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.[7]
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> ...

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7 Emphasis supplied and italics in the original text.

It is well-settled in our jurisprudence that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

(1) The taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;[8]

(2) If the claim is denied or not acted upon within said period, the petition for refund should be filed with the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the denial <u>and</u> within the said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening cause; otherwise, the claim for refund shall have prescribed;[9] and,

(3) The claim for refund must be a categorical demand for reimbursement.[10]

It can be gleaned from the above principles that a claimant must first file a written claim for refund, categorically demanding recovery of erroneously or illegally paid taxes with the Commissioner of Internal Revenue (**CIR**) within two (2) years from the time such cause of action arises.

In the case at bar, while respondent does not challenge the fact that petitioner was able to file both its administrative and judicial claim for refund within the prescriptive period, it takes issue on the propriety of a judicial claim that was filed just one day after the filing of the administrative claim. Because of the proximity in the dates of the filing of the administrative and judicial claims, respondent claims that he or she was deprived the opportunity to resolve the matter. In

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8 See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

9 See *Allison J. Gibbs, et al. v. Collector of Internal Revenue, et al.*, G.R. No. L-13453, 29 February 1960.

10 *Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado*, G.R. No. 154068, 03 August 2007.

the case of *Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue*[11], the Supreme Court ruled, thusly:

> ...
>
> ...Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription. In this regard, case law states that "the primary purpose of filing an administrative claim [is] to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. ...
>
> ...

In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*[12], it likewise declared:

> ...
>
> Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.
>
> ...

With the foregoing pronouncements, petitioner could thus not be faulted in bringing its judicial claim to Us. Therefore, for the purpose of this Court's exercise of jurisdiction over the case at bar, the present petition is deemed timely and properly filed on 20 December 2018 or the last day of the two (2)-year prescriptive period.

As for petitioner's Motion for Leave which seeks the admission of petitioner's Comment/Opposition against the MR, the Court finds no useful need to further belabor itself with resolving the matter considering that We maintain Our pronouncements in the assailed Decision. At this point, petitioner's Motion for Leave is mooted by the Court's denial of respondent's MR.

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[11] G.R. No. 182582, 17 April 2017.
[12] G.R. No. 226592, 27 July 2021.

WHEREFORE, the foregoing premises considered, respondent's "Motion for Reconsideration (Re: Decision dated 12 September 2023)" filed on 06 October 2023 is hereby **DENIED** for lack of merit. Accordingly, the Court's Decision dated 12 September 2023 is hereby **AFFIRMED**.

With the Court's affirmation of the Decision dated 12 September 2023, petitioner's "Motion for Leave to Admit Attached Comment/Opposition [To Respondent's Motion for Reconsideration (Re: Decision dated 12 September 2023)]" filed on 15 November 2023 is hereby **RENDERED MOOT.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice