REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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DEUTSCHE KNOWLEDGE SERVICES, PTE LTD., Petitioner,	**CTA CASE NO. 8065**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 2 6 2012 4:28 pm

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RESOLUTION

This resolves respondent's **Motion To Dismiss** filed on January 26, 2012, with petitioner's **Comment and Opposition (Re: Respondent's Motion to Dismiss)** filed through registered mail on February 24, 2012 and received by this Court on March 2, 2012.

Respondent prays for the dismissal of the instant petition for review on the ground of lack of jurisdiction. Respondent argues that the governing provision of the law with respect to petitioner's claim for refund of excess input VAT is Section 112(A) and (D) of the National Internal Revenue Code (NIRC) of 1997. Respondent further argues that the Supreme Court's pronouncement in *Commissioner of Internal*

Revenue vs. Aichi Forging Company of Asia, Inc. (*Aichi* case)[1] stressed the mandatory character of Section 112(D) which governs the observance of the 120-day period before the filing of the judicial claim.

Respondent claims that the Petition was prematurely filed since petitioner filed the same two days after it filed its administrative claim for refund on March 29, 2010, in violation of the 120-day period prescribed under Section 112(D) of the NIRC of 1997 and in the *Aichi* case. Respondent argues that this Court has no jurisdiction to take cognizance of the case and should dismiss the petition.

Finally, respondent avers that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation; that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications; and that the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

On the other hand, petitioner invokes the following grounds in opposition to the Motion to Dismiss:

> "1. Congressional deliberations confirm that the 120-day period under Section 112(C), Tax Code is not jurisdictional; it was not intended to supplant the two-year prescriptive period under Section 229, Tax Code.
>
> 2. Respondent's active participation in trial and belatedly moving to dismiss the case are not consistent with the legal concepts of fairness and good faith, and thus, should bar Respondent from questioning the jurisdiction of this Court.

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

> 3. The Motion to Dismiss failed to properly comply with the notice of hearing requirement under the Revised Rules of Court, rendering such motion as pro forma, and thus, failed to toll the period to ask for reconsideration."

After a careful evaluation of the parties' arguments, this Court finds respondent's *Motion* meritorious.

Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.[2] Thus, even at this stage of the proceedings, respondent is not precluded from raising the ground of lack of jurisdiction in support of the instant Motion to Dismiss.

The case appealed before this Court is a claim for refund or issuance of a tax credit certificate in the amount of P34,310,264.27, allegedly representing petitioner's excess and unutilized input tax attributable to zero-rated sales for the first quarter of 2008.[3]

This type of claim for refund or issuance of tax credit is governed by Section 112 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337. Section 112 (A) thereof provides the administrative remedy for the refund or issuance of a tax credit of input tax, *viz.*:

> "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

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[2] Geonzon Vda. De Barrera vs. Heirs of Vicente Legaspi, G.R. No. 174346, September 12, 2008, 565 SCRA 192 *citing Francel Realty Corporation v. Sycip, G.R. No. 154684, September 8, 2005*
[3] Petition for Review; Docket, p. 1

> 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: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales.

The taxpayer affected by the adverse decision or inaction of the Commissioner of Internal Revenue is allowed to appeal before this Court within thirty days from receipt of the decision or after the expiration of the one hundred twenty day-period pursuant to Section 112(C) *[formerly Section 112(D) prior to the passage of RA 9337]* of the NIRC, which provides:

> "(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 Subsection (A) 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**." (*Emphasis supplied*)

In applying the provision of *Section 112(D) of the NIRC*, the Supreme Court in the Aichi case[4] held in this wise:

> "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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> 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.
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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.

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[4] Note 1, *supra*

> **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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> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, **Section 229 does not apply to refunds/credits of input VAT,** such as the instant case.
>
> 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*)

In the instant case, petitioner did not dispute the fact that it failed to exhaust the 120-day period provided under Section 112(C) of the NIRC, as amended. Petitioner filed its Petition for Review on March 31, 2010 or merely two (2) days after the filing of its administrative claim for refund before the Bureau of Internal Revenue (BIR) on March 29, 2010. Following the ruling in the *Aichi case,* the premature filing of the above-entitled case before this Court warrants a dismissal inasmuch as this Court has not acquired jurisdiction.

Anent petitioner's allegation that Section 112(C) of the NIRC is neither jurisdictional, nor intended to supplant the two-year prescriptive period under

Section 229 thereof, suffice it to say that 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 which provides, thus:

> ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.[5]

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

Following the *Aichi* ruling, Section 229 of the NIRC of 1997, as amended, is not applicable to claims of input VAT attributable to zero-rated sales of goods and services, and the governing provision is Section 112(D) *[now 112(C)]* of the same law.

This Court, therefore, sees no reason to depart from the judicial pronouncement by the Supreme Court in the *Aichi* case which provides the outright application of the provision of Section 112 (D) of the NIRC of 1997, as amended.

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[5] Lazatin vs. Desierto, G.R. No. 147097, June 5, 2009, 588 SCRA 285
[6] *Id* citing Fermin vs. People, G.R. No. 157643, March 28, 2008, 550 SCRA 132

WHEREFORE, premises considered, respondent's *Motion to Dismiss* is hereby **GRANTED**. Accordingly, the Petition for Review docketed as CTA Case No. 8065 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

(On Leave)
CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice