

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DEUTSCHE KNOWLEDGE
SERVICES, PTE LTD.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

CTA CASE NO. 7979

Members:

ACOSTA, Chairperson

UY, and

FABON-VICTORINO

Promulgated:

APR 12 2010, 2:15 pm

x-----x

RESOLUTION

For resolution is the Motion to Dismiss dated October 15, 2009, posted by respondent Commissioner of Internal Revenue on October 19, 2009, on the ground of lack of cause of action due to petitioner Deutsche Knowledge Services PTE LTD.'s failure to exhaust all available administrative remedies before filing the instant petition for refund of input tax with the Court.

Respondent states that under Section 112(C) of the National Internal Revenue Code (NIRC), he has 120 days from the date of submission of complete documents, within which to rule on an application for tax refund or credit. And only after the lapse of this period without any action on his part or receipt of his adverse decision that the aggrieved party may, within 30 days, elevate the case to this Court.

According to respondent, petitioner filed its administrative claim for refund of its unutilized input VAT for the 2nd quarter of 2007 in the amount of Php 14,217,222.87 on June 18, 2009. Thus, he had until October 18, 2009, within which to make a ruling. Thereafter, petitioner had 30 days or until November 18, 2009, to challenge his adverse ruling or inaction with the Court.

90

Respondent complains that petitioner sprinted to the Court and prematurely filed the instant Petition for Review on September 30, 2009, or before the 120-day period granted unto him lapsed effectively depriving him of the opportunity to rule on the claim for refund. The failure of petitioner to exhaust all available administrative remedies, justifies the dismissal of the instant petition.

In rejecting the motion, petitioner insists that the instant Petition is already ripe for court proceeding as Section 112(C) of the NIRC is neither mandatory nor compulsory, and may even be dispensed with as long as the claim for refund is filed within the two-year period under Section 229 of the Tax Code.

Allegedly, the 120-day period granted the respondent under Section 112 (C) is merely directory as opposed to the mandatory two year prescriptive period set in Section 229 of the same Tax Code.

Petitioner further avers that respondent itself, through various issuances, particularly RMC No. 49-03 and RMC No. 029-09, has long adhered to the interpretation that taxpayers are not bound to strictly observe the 120-day period under Section 112 (C) of the Tax Code.

Besides, the doctrine of exhaustion of administrative remedies is not applicable when it appears that the party will suffer irreparable damage and injury if he waits for the final action of the administrative official concerned, as in the present petition which involves millions of pesos.

Further, by filing a Motion to Dismiss, respondent violated Section 5, Rule 6 of the Revised Rules of the Court of Tax Appeals, which requires him to file an Answer, not a motion to dismiss, within fifteen (15) days from notice. Thus, for failure to file the required responsive pleading within the reglementary period

91

pursuant to Section 3, Rule 9 of the Revised Rules of Court, respondent should be declared in default.

Indeed, there are diverse views as to when the right of a taxpayer to elevate his claim for tax refund or credit for input taxes to this Court accrues. Some legal minds inspire us to say that Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997 should be read in conjunction with Section 229 of the same Code. Thus, the claim for tax refund with the Bureau of Internal Revenue and the subsequent appeal to this Court must be filed within the 2-year period. Others, on the basis of sound principles and legislative history, encourage us to consider the amendments introduced to 1997 NIRC particularly the second paragraph of Section 112 (C) which treats the issue of when to seek relief to this Court in cases of tax refund and/or issuance of tax credit of input taxes. This view creates a demarcation on the applicability of Sections 112 and 229 of the NIRC insofar as claims for tax refund or credit are concerned. In the way just indicated, Section 112 applies to refund of input taxes while Section 229 to other refund cases particularly to refund of erroneously paid taxes.

In view of the differing opinions, it is imperative to revisit the relevant provisions of the NIRC.

Section 112 found under Title IV – Value Added of the Tax Code states:

“Section 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 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

72

input tax, to the extent that such input tax has not been applied against output tax: x x x

(B) Cancellation of VAT Registration.-xxx

(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.

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. x x x"

Section 229 found under Title VIII-Remedies, on the other hand, provides as follows:

Section 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 therefore, refund or credit any tax, where on the

93

face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.”

Undeniably, both provisions are remedies available to any taxpayer claiming tax refund or credit. Section 112 however particularly refers to refund or credit of input value-added tax and not to any other kind of tax. It sets with specificity the manner and the period by which a VAT-registered person or entity may file for tax refund or issuance of tax credit certificate for creditable and unutilized input tax attributable to zero-rated sales or effectively zero-rated transactions. It states in no uncertain term that the 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 it was paid or not. For his part, respondent, who is vested with the authority to act on the matter, has a period of 120 days, within which to grant or deny the application. In case of denial of the application or inaction on the part of respondent within the prescribed period, the aggrieved taxpayer – the petitioner in this case – has 30 days, within which to appeal via petition for review with this Court.

The two-year prescriptive period defines the limit for filing of an administrative claim for tax refund or credit for input taxes with the Commissioner of Internal Revenue and not resort to Court action. The Supreme Court addressed this issue in this wise in *Intel v. CIR*, G. R. No. 166732, April 27, 2007, thus:

Under Section 106 (A)(2)(a)(1) in relation to 112 (A) of the Tax Code, a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for a refund or issuance of a tax credit certificate for input taxes paid attributable to such sales upon complying with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated (like export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) **the claim must be filed within two years after the close of the**

taxable quarter when such sale were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations.

A fortiori, only upon denial or the expiration of the allowable period of 120 days without any action on the part of respondent that petitioner may, within the period of 30 days from notice, invoke this Court's competence to hear its petition for review. Prior to that, the Court has no jurisdiction to entertain petitioner's appeal. The Court of Tax Appeals is a court of special jurisdiction and as such, it can take cognizance only of such matters as are clearly within its province.

On the other hand, Section 229, under Title VIII Remedies of the same Tax Code, covers the refund of internal revenue taxes other than input value-added tax, erroneously or illegally assessed or collected, penalties imposed without authority and any sum alleged to have been excessive or in any manner wrongfully collected. Under this provision, the administrative claim with the Commissioner of Internal Revenue as well as the appeal with the Court of Tax appeals must be filed within two years from the payment of the tax due. When the tax is paid in installments, the prescriptive period of two years is counted from the date of the final payment. Obviously, the 30-day period to appeal to this Court must be within the two-year prescriptive period. However, if the two-year period is about to expire, the aggrieved taxpayer need not wait for the denial of his claim and may file his petition for review to the Court assailing the inaction of the Commissioner of Internal Revenue. The ruling of the Supreme Court in *Gibbs v. Collector of Internal Revenue and Court of Tax Appeals*, L-13453, February 29, 1960, 108 Phil. 232, is enlightening, thus:

A taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the

same, must comply with the requirements of both Section 306 (Now Section 229) of the National Internal Revenue Code and Section 11 of Republic Act No. 1125; that is, he must file a written claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required under Section (306) of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. If however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of the Section (306) and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.

Considering that petitioner prematurely filed its appeal with this Court on September 30, 2009, or before the lapse of the 120-day period granted unto respondent to rule on petitioner's administrative claim for refund of unutilized input VAT, the Court has no option but to dismiss the petition.

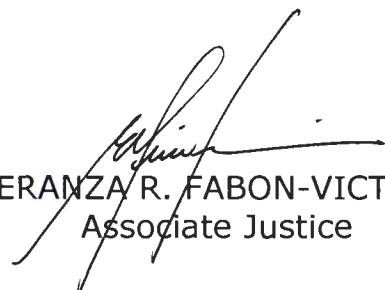
WHEREFORE, the Motion to Dismiss dated October 15, 2009, filed by respondent Commissioner of Internal Revenue, is hereby GRANTED. Consequently, the instant Petition for Review is hereby DISMISSED.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

WITH DISSENTING OPINION


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

**DEUTSCHE KNOWLEDGE SERVICES,
PTE LTD.,**

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

C.T.A. CASE NO. 7979

Members:

ACOSTA, Chairperson
UY, and
FABON-VICTORINO, JJ.

Promulgated:

APR 12 2010 12:15 pm

x ----- x

DISSENTING OPINION

UY, J.:

With all due respect to my esteemed colleagues, I find difficulty in concurring with the expressed opinion of the majority, hence, I am constrained to register my dissent.

The dismissal of the instant petition filed by Deutsche Knowledge Services, Pte Ltd. by the majority is principally anchored on the interpretation of Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads:

“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 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

xxx

xxx

xxx

(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.**

97



“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.” (*Emphasis and underscoring supplied*)

Noteworthy is that Sections 204 and 229 govern all kinds of claims for refund or credit of internal revenue taxes – imposed and collected erroneously or illegally pursuant to the NIRC.¹ Section 204 pertains to administrative claims filed with the Bureau of Internal Revenue (BIR), while Section 229 refers to judicial action for the recovery of the tax. To my mind, both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period as gleaned from the use of the word “**shall**” in both sections. These two requirements are mandatory and non-compliance therewith would be fatal to the action for refund or tax credit.² The two-year period is a limitation of action not only in submitting the written claim for refund to the Commissioner but likewise in instituting an action with the Court of Tax Appeals.³

Clearly therefore, the taxpayer must file its administrative claim for refund with the Commissioner within two (2) years after the payment of the tax, however, if the Commissioner takes time in deciding the claim and the period of two (2) years is about to expire, the suit or proceeding must be started in the Court of Tax Appeals before the

¹ *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*, L-28467, February 28, 1973, 49 SCRA 474; *Commissioner of Internal Revenue vs. Insular Lumber Co.*, L-24221, December 11, 1967, 21 SCRA 1237.

² *Johnston Lumber Co., Inc. vs. CTA*, 101 Phil 151; *Guagua Elec. Light Co., Inc. vs. Coll.*, L-14421, April 29, 1961.

³ Tax Law and Jurisprudence, 2nd Ed., Justice Jose Vitug and Judge Ernesto D. Acosta, p.306.

end of the two-year period without awaiting the decision of the Commissioner.⁴ This is so because of the positive requirement of Section 204 and the doctrine that delay of the Commissioner in rendering decision does not extend the peremptory period fixed by the statute.⁵ Thus, when the two-year period is already about to prescribe and the claim for refund with the Commissioner has yet to be acted upon, the taxpayer should file a petition for review in order to preserve the right to seek judicial recourse.

This interpretation allows a uniform application of the two-year period within which to file a refund claim. On the other hand, the majority's view, would necessarily allow an extension thereof, for as long as the 120 day period had not lapsed from the filing of the refund claim at the administrative level, regardless of whether or not the two-year prescriptive period had lapsed. It bears stressing that notwithstanding that Section 112 is specific as to the subject matter of refund or tax credit of "creditable input tax due or paid" attributable to zero-rated or effectively zero-rated sales, such provision should still be harmonized with Section 229. This must be so considering the latter provision covers also "any sum alleged to have been excessively xxx collected", which is exactly the nature of an input VAT attributable to zero-rated or effectively zero-rated sales.

Consequently, the mandatory statute of limitations prescribed under Section 229 in seeking judicial recourse shall also be made to apply to claims for refund or issuance of tax credit certificate under Section 112, because said Section provides the same period of two (2) years for the application of issuance of tax credit or refund of such unutilized tax.

Furthermore, the view presented by the majority that the two (2) year period provided for under Section 112 applies only to administrative claim lacks any legal basis. The subject provision does not mention that the periods under paragraphs (A)

⁴ *Insular Lumber Co. vs. Court of Tax Appeals*, 104 SCRA 721; *Commissioner of Internal Revenue vs. Victorias Milling Company, Inc.*, 22 SCRA 12; *Collector vs. Court of Tax Appeals*, 1 SCRA 87; *Gibbs vs. Collector of Internal Revenue*, 107 Phil 232; *College of Oral & Dental Surgery vs. Court of Tax Appeals*, 102 Phil 912; and *PJ Kenner & Co., vs. Court of Tax Appeals*, 92 Phil 945.

⁵ *Gibbs & Gibbs vs. CIR and CTA*, G.R. No. L-17406, November 29, 1965, citing *Gibbs vs. Collector of Internal Revenue*, G.R. No. L-13453, February 29, 1960.

100

W

and (B) are limited to administrative claims only, but it is more evident that the periods in paragraph (C) thereof is provided for the taxpayer's guidance in the exhaustion of administrative remedies. Begging the indulgence of the majority, in my opinion, the two-year period granted under Section 112 cannot be limited to administrative claims only for the reason that the law does not limit the same.

And if we look at prevailing jurisprudence on the matter, the issue regarding the period within which to file the claim for refund or tax credits of unutilized input VAT attributable to zero-rated or effectively zero-rated sales has already been settled in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*.⁶ The pertinent portion of the High Tribunal's Decision reads:

"The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:

(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. (Emphasis ours)

The above proviso 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 aforementioned 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**

⁶ G.R. No. 172129, September 12, 2008.

(107)



pertinent sales or transaction was made, regardless when the input VAT was paid. xxx” (*Emphasis supplied*)

Based on the foregoing jurisprudence, the reckoning of the prescriptive period shall commence 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. Nowhere therein was it provided that the taxpayer must wait for the expiration of the 120-day period even if the two (2) year period was about to expire.

Lastly, Section 3(a)(2), Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals, in relation to Section Republic Act No. 1125⁷, as amended by Republic Act No. 9282⁸, categorically state that the Court in Division shall exercise exclusive original or appellate jurisdiction to review by appeal inaction by the Commissioner of Internal Revenue in cases involving refunds of internal revenue taxes, fees or other charges, provided that the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code.

Hence, the jurisdiction of this Court to entertain cases involving inaction of the Commissioner over claims for refund, is dependent upon compliance with the two-year prescriptive period in the filing of a petition for review with this Court. Evidently, there is no mention that the taxpayer-claimant must wait for the lapse of the 120 day period from the filing of the refund claim with the Commissioner of Internal Revenue.

All told, I vote to DENY respondent’s Motion to Dismiss on the ground of premature filing of the instant Petition for Review on September 30, 2009.

SO ORDERED.


ERLINDA P. UY
Associate Justice

⁷ An Act Creating the Court of Tax Appeals.

⁸ 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 Law Creating the Court of Tax Appeals, and for Other Purposes (Effective on April 23, 2004).