

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

**COMMISSIONER OF INTERNAL
REVENUE ,**

Petitioner,

EB Case No. 519
(CTA Case No. 6540)

Members:

- versus -

**AICHI FORGING COMPANY OF
ASIA,**

Respondent.

ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

FEB 18 2010

*Atty. Polinario
2:10 p.m.*

X ----- X

DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review¹, filed by herein petitioner-Commissioner of Internal Revenue (CIR) from the Decision² ("Assailed Decision") of the Court of Tax Appeals, Former Second Division (CTA Former Second Division) dated March 20, 2009 in CTA Case no. 6540 entitled "Aichi Forging Company of Asia, Inc., vs. Commissioner of Internal Revenue", ordering petitioner-CIR to refund or to issue a tax credit certificate in favor of herein

¹ En Banc Rollo, pp. 7-19

² En Banc Rollo, pp. 21-52

respondent-Aichi Forging Company of Asia (AICHI), the reduced amount of Php6,991,320.40, representing unutilized input VAT attributable to zero-rated sales for the period covering July 1, 2000 to December 31, 2001³ and from the Resolution⁴ (*Assailed Resolution*) dated July 29, 2009, denying petitioner-CIR's Motion for Reconsideration⁵ filed with the *CTA Former Second Division*.

. The facts of the case, as culled from the records⁶, are as follows:

"Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal place of business at Bo. Pulong, Sta. Cruz, Sta. Rosa, Laguna. It is principally engaged in the manufacture, production and processing of all kinds of steel and steel by products, such as close impression die steel forgings and all automotive steel parts. It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT Taxpayer, with Tax Identification Number 004-146-511 (Exhibit "A"). It is likewise registered with the Board of Investments (BOI) as an expanding producer of closed die impressions forgings for which it was issued Certificate of Registration No. EP95-132 on June 8, 1995.

On the other hand, Respondent is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant tax credits/and or refunds of overpaid or erroneously paid internal revenue taxes, with office at 5/F BIR National Office Building, Diliman, Quezon City.

In their Joint Stipulation of Facts and Issues⁷, the parties stipulated as follows:

' XXX XXX XXX.

6. Fact of filing on October 25, 2000 of the Quarterly VAT Return of the Petitioner for the period covering July 1, 2000 to September 30, 2000;

7. Fact of filing on January 25, 2001 of the Quarterly VAT Return of the Petitioner for the period covering October 1, 2000 to December 31, 2000 and also the fact of filing on February 20, 2001 of the amended VAT Return for the same period; 

³ En Banc Rollo, p. 40

⁴ En Banc Rollo, pp. 59-61.

⁵ Division Docket pp. 594-599.

⁶ CTA 2nd Division Decision, En Banc Rollo, pp. 22-23.

⁷ Division Docket, pp. 139-140.

8. Fact of filing on April 25, 2001 of the Quarterly VAT Return of the Petitioner for the period covering January 1, 2001 to March 31, 2001;

9. Fact of filing on July 25, 2001 of the Quarterly VAT Return of the Petitioner for the period covering April 1, 2000 to June 30, 2001;

10. Fact of filing on October 25, 2001 of the Quarterly VAT Return of the Petitioner for the period covering July 1, 2001 to September 30, 2001;

11. Fact of filing on January 25, 2002 of the Quarterly VAT Return of the Petitioner for the period covering October 1, 2001 to December 31, 2001;

12. On September 26, 2002, Petitioner filed with the Bureau of Internal Revenue District Office in San Pedro, Laguna, a written claim for refund and/or tax credit of its unutilized input VAT credits for the 3rd and 4th quarters of 2000 and the whole taxable year of 2001 amounting to P18,030,547.77, representing the unutilized/ excess input VAT payments;

13. The administrative claim for refund and/or tax credit has not been acted upon with finality by the Respondent; and

14. Petition for Review is being filed in order to toll the running of the prescriptive period provided under Section 229 and 112 (D) of the Tax Code, as amended, in relation to Section 4.112-2(c) of the Revenue Regulations No. 7-95, as amended.'

Xxx

xxx

xxx

On February 8, 2005, Petitioner filed a "Motion for Leave to File its Amended Petition for Review", which the court granted in a Resolution dated May 18, 2005. Furthermore, the Amended Petition for Review was admitted.

In his Answer to the Amended Petition for Review⁸, Respondent alleged the following special and affirmative defenses:

"4. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative defenses;

5. Petitioner's alleged claim for refund is subject to administrative investigation/ examination by the Respondent; 

⁸ Division Docket, pp.316-318.

6. To support its claim, it is imperative for Petitioner to prove the following viz:

a. The registration requirement of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended:

b. The invoicing and the accounting requirements for the VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the TAX Code, as amended;

c. Compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise, there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law;

d. That the input taxes of **Php18,203,933.60** allegedly paid by the petitioner on its purchases of capital goods were attributable to its zero-rated sales and such have not been applied against any output tax;

e. The Petitioner's claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the purchase was made in accordance with Section 112 (B) of the Tax Code, as amended;

f. That Petitioner's domestic purchases of goods, services and capital goods were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as amended under Section 4.104-2 of the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);

h. That Petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (B) and 229 of the Tax Code, as amended.

7. Furthermore, in an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he, who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications. (*Asiatic Petroleum Co. (P.I) v. Llanes*, 49 Phil. 466 cited in *Collector of Internal Revenue vs. Manila Jockey Club, Inc.*, 98 Phil. 670).

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

Petitioner presented Editha Descartin, Richard Querido, the Court Commissioned Independent CPA and documentary evidence, marked as *Exhibits "E" to "LLL-6" together with their sub-markings*, which were admitted by the Court in a Resolution dated November 6, 2006, and supplemental exhibits, marked as Exhibits "PP" and "PPP-I", which were admitted by the Court in a Resolution dated April 29, 2008.

Upon manifestation of Respondent's counsel that he will not present any evidence with the admission by Petitioner's counsel of the genuineness, existence, and due execution of Petitioner's Certificate of BOI Registration (No. EP95-132) dated June 8, 1995, including its General and Specific Terms and Conditions, both parties were granted thirty (30) days from May 26, 2008 or until June 25, 2008 to file their simultaneous memoranda, after which the case shall be deemed submitted for decision."

After the trial on the merits, the *CTA Former Second Division* promulgated the *Assailed Decision* on March 20, 2009, the dispositive portion of which reads as follows: 

"WHEREFORE, premises considered, the 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 favor of petitioner the reduced amount of **SIX MILLION NINE HUNDRED NINETY ONE THOUSAND THREE HUNDRED TWENTY and 40/100 PESOS (Php6,991,320.40),** representing unutilized input VAT attributable to zero-rated sales for the period covering July 1, 2000 to December 31, 2001.

SO ORDERED."

Not satisfied with the above decision, respondent filed its Motion for Reconsideration⁹ on April 7, 2009. On April 14, 2009, a Resolution¹⁰ was issued by *CTA Former Second Division* ordering Petitioner to comment on Respondent's "Motion for Reconsideration", within ten (10) days from the receipt thereof, after which the incident shall be deemed submitted for resolution. In compliance with the above-mentioned Resolution, petitioner filed its "Opposition (Re: Respondent's Motion for Reconsideration dated 2 April 2009)"¹¹ on May 26, 2009.

On July 29, 2009, the *CTA Former Second Division* promulgated the *Assailed Resolution* finding no merit in respondent's "Motion for Reconsideration". The Court added that there is no valid or compelling reason to compel a modification or reversal of its decision dated March 20, 2009.

On September 3, 2009, Petitioner filed a "Petition for Review"¹² with the *CTA En Banc* praying that the Respondent's claim for refund be denied for lack of merit. The Court promulgated a Resolution¹³ on September 17, 2009, giving due course to the Petition for Review requiring respondent to file its "Comment"

⁹ Division Docket, pp. 594-599.

¹⁰ Division Docket, p. 603.

¹¹ Division Docket pp.612-621.

¹² En Banc Rollo, pp.7-19.

¹³ En Banc Rollo, pp. 66.

within ten (10) days from receipt of the Resolution. On October 26, 2009, respondent filed its "Comment"¹⁴ to petitioner's "Petition for Review".

Petitioner raised its sole issue¹⁵ in support of its Petition for Review, to wit:

"THE HONORABLE COURT SECOND DIVISION ERRED IN ORDERING PETITIONER TO REFUND OR TO ISSUE TAX CREDITS CERTIFICATES TO RESPONDENT THE REDUCED AMOUNT OF Php6,991,320.40 REPRESENTING UNUTILIZED INPUT VAT ATTRIBUTABLE TO ZERO RATED SALES FOR THE PERIOD COVERING JULY 1, 2000 to DECEMBER 31, 2001".

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Former Second Division* in its *Assailed Decision*.

With regard to the timeliness of the filing of the instant petition for review, the Court found, and We quote with approval:

"As regards the requisite of whether the subject claim was filed within the two-year prescriptive period, We rule in the affirmative. Petitioner filed its claim for refund with the BIR on September 26, 2002, and the original Petition for Review on September 30, 2002. Both dates of filing are well within the two-year prescriptive period reckoned from September 30, 2000, December 31, 2000, March 31, 2001, June 30, 2001, September 30, 2001 and December 31, 2001, the close of each taxable quarter covering the period July 1, 2000 to December 31, 2001 (*Exhibit 'GG'*)."

Petitioner argues that respondent failed to observe the period as provided by Section 112 of the 1997 NIRC, as amended, to elevate its claim for refund with the *CTA Former Second Division*. As alleged by the petitioner, "xxx the administrative claim for refund was filed with petitioner on September 26, 2002. Petitioner, therefore, has until January 20, 2003 within which to act on the 

¹⁴ En Banc Rollo, pp. 71-80.

¹⁵ En Banc Rollo, p. 14.

matter and if it fails to do so, respondent, by express provision of law, has the right to elevate the case before the Honorable Court within 30 days from January 20, 2003, or on or before February 20, 2003 or forever lose its right to appeal the case. Ergo, it cannot be disputed that the filing by respondent of its petition for review on September 30, 2002 was made before the jurisdictional period provided by law.¹⁶

We are not persuaded.

In the case of *CIR vs. Aichi Forging Company of Asia, Inc.*¹⁷, the *CTA En Banc* ruled, to wit:

"A taxpayer-claimant need not wait for the lapse of the 120-day period, provided in Section 112 (D) [now (C)] of the NIRC, as amended, before he could seek judicial relief with the Court by way of Petition for Review. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the Court may acquire jurisdiction, particularly if the claim is about to prescribe. Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law.

Incidentally, a taxpayer cannot be faulted for taking advantage of the full 2-year period set by law for filing his claim for refund for there is no provision in the NIRC requiring the claim for refund to be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the Court to review the ruling of the Commissioner of Internal Revenue on appeal.

Thus, when the 2-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon, for the protection of the interest of the taxpayer, he should file a Petition for Review with this Court within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to this Court."

The 1997 NIRC does not require the previous filing of an administrative claim for refund prior to the judicial claim. This should not be the case as the law 

¹⁶ En Banc Rollo, p. 16.

¹⁷ CTA EB No. 416, February 4, 2009.

does not prohibit the simultaneous filing of the administrative and judicial claims for refund. What is controlling is that both claims for refund must be filed within the two-year prescriptive period.

In sum, the *CTA En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed March 20, 2009 Decision and July 29, 2009 Resolution of the *CTA Former Second Division*. What the instant petition seeks is for the *CTA En Banc* to view and appreciate the discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the March 20, 2009 Decision and July 29, 2009 Resolution of the *CTA Former Second Division* in CTA Case No. 6540 entitled, "*Aichi Forging Company of Asia, Inc. vs. Commissioner of Internal Revenue*" are hereby **AFFIRMED in toto**.

SO ORDERED.



CAESAR A. CASANOVA
Associate Justice

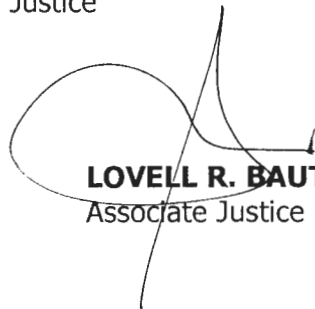
WE CONCUR:



(With Concurring and Dissenting Opinion)

ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice



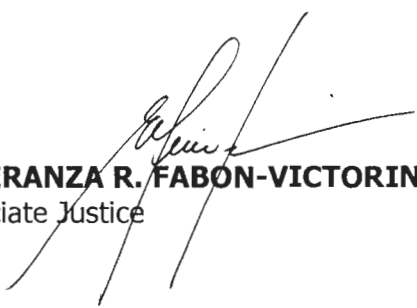
LOVELL R. BAUTISTA
Associate Justice



ERLINDA P. UY
Associate Justice



OLGA PALANCA-ENRIQUEZ
Associate Justice



ESPERANZA R. FABON-VICTORINO
Associate Justice



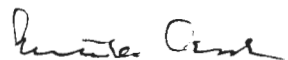
CIELITO N. MINDARO-GRULLA
Associate Justice



AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ERNESTO D. ACOSTA
Presiding Justice