

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

THIRD MILLENIUM OIL MILL,
INC.,

Petitioner,

- versus -

C.T.A. CASE NO. 7583

Members:

ACOSTA, P.J.

UY, and

FABON-VICTORINO, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUL 07 2010 ; 9:35 am

X-----X

AMENDED DECISION

UY, J.:

For resolution is respondent's "**Motion for Reconsideration**" filed on March 2, 2010, seeking the reconsideration of this Court's Decision promulgated on February 3, 2010, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **TWO MILLION FIVE HUNDRED FORTY-SIX THOUSAND SEVEN HUNDRED NINE PESOS AND 78/100 (P2,546,709.78)**, representing its unutilized input taxes attributable to zero-rated sales for the four quarters of taxable year 2005.

SO ORDERED."

Respondent argues that this Court erred in holding that the judicial claim for refund filed by petitioner was made within the prescriptive period. Thus, he submits



that this Court was without jurisdiction to hear and resolve the instant petition, the action having been prescribed upon its filing with this Court.

The foregoing argument hinges on the invocation of respondent of Section 112(A) and (D) of the National Internal Revenue Code (NIRC) of 1997.

Respondent's *Motion for Reconsideration* is meritorious.

The rule is that in order to ascertain whether a court has jurisdiction or not, the provisions of the law should be inquired into.¹

Section 7 of Republic Act No. (RA) 1125², as amended by RA 9282³, enumerates over which cases this Court has appellate jurisdiction. In part, it provides:

"SEC. 7. *Jurisdiction.*— The CTA shall exercise:

"(a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

xxx xxx xxx

"(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;** (*Emphases and underscoring supplied*)

xxx xxx xxx.

Furthermore, Section 11 prescribes how the said appeal should be taken, viz:

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the

¹ *Soller, et al. vs. Sandiganbayan, et al.*, G.R. Nos. 144261-62, May 9, 2001.

² AN ACT CREATING THE COURT OF TAX APPEALS.

³ 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.



receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**

"Appeal should be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx (Emphases supplied)

"xxx xxx xxx."

One of the "inaction(s) by the Commissioner of Internal Revenue" being contemplated in the above-quoted provisions is that found in Section 112 of the NIRC of 1997—the provision to which petitioner anchors the instant claim for the issuance of a tax credit certificate—wherein it *"provides a specific period of action"*, i.e., a period of 120 days from the date of submission of complete documents for the Commissioner of Internal Revenue, to grant, in proper cases, a refund or to issue a tax credit certificate for creditable input taxes due or paid attributable to zero-rated or effectively zero-rated sales, to wit:

"SEC. 112. *Refund 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

"(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) 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.” (*Emphases supplied*)

Based on the foregoing, before going to this Court, the concerned VAT-registered person must file an administrative claim for the refund or issuance of tax credit of its/his input VAT attributable to zero-rated or effectively zero-rated sales, within two years reckoned from the close of the taxable quarter when the said sales were made.

For this Court to have appellate jurisdiction over the case, the VAT-registered person, who timely filed the said administrative claim, must await the decision or ruling of denial of such claim, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim, and then file before this Court a petition for review within 30 days from receipt of the said decision or ruling, or from the expiration of the said 120-day period, as the case may be. As for the latter case, the expiration of such period is necessary since it is only at that time that *“the inaction shall (already) be deemed a denial”*.⁴

The filing of the petition for review within the thirty-day period should be strictly observed, since it is beyond the power of the courts to extend the period for appeal.⁵ Corollarily, administrative decisions must end sometime, as fully as public policy demands that finality be written on judicial controversies.⁶

Moreover, it is no argument that the procedural requirement in taking appeals before this Court under Section 112(D) of the NIRC of 1997 and Section 11(first paragraph) of RA 1125, as amended by RA 9282, are couched in the permissive term “may” instead of the mandatory word “shall”. While the ordinary acceptations of

⁴ Section 7(a)(2), RA 1125, as amended by RA 9282.

⁵ *Chan Kian vs. Court of Tax Appeals, et al.*, G.R. No. L-12184, May 29, 1959

⁶ *Antique Sawmills, Inc. vs. Zayco, et al.*, G.R. No. L-20051, May 30, 1966, citing *Manila Electric Co. vs. Public Service Commission*, 61 Phil. 456.



these terms may indeed be resorted to as guides in the ascertainment of the mandatory or directory character of statutory provisions, they are in no wise absolute and inflexible criteria in the vast areas of law and equity. Depending upon a consideration of the entire provision, its nature, its object and the consequences that would follow from construing it one way or the other, the convertibility of said terms either as mandatory or permissive is a standard recourse in statutory construction.⁷ Thus, Black is authority for the rule that *"Where the statute provides for the doing of some act which is required by justice or public duty, or where it invests a public body, municipality or public officer with power and authority to take some action which concerns the public interest or rights of individuals, the permissive language will be construed as mandatory and the execution of the power may be insisted upon as a duty"* (Black, Interpretation of Laws, pp. 540-543).⁸ The matter here involved not only concerns public interest but also goes into the jurisdiction of this Court and is of the essence of the proceedings taken thereon. On this point, there is authority to the fact that in statutes relating to procedures, as is the ones now under consideration, every act which is jurisdictional, or of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected, is mandatory.⁹ The present case is well within the purview of this doctrine.

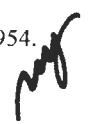
In this case, it is without doubt that petitioner timely filed on June 26, 2006, its administrative claim¹⁰ for the issuance of tax credit certificate for its alleged unutilized input taxes for the four quarters of taxable year 2005, since it was made within the two-year period prescribed under Section 112(A) of the NIRC of 1997.

⁷ *De Mesa vs. Mencias*, G.R. No. 24583, October 29, 1966.

⁸ *Id.*, citing Black, Interpretation of Laws, pp. 540-543.

⁹ Gonzaga, Statutes and their Construction, p. 98, citing: *Estate of Naval*, G.R. No. L-6736, May 4, 1954.

¹⁰ Exhibit "H", Docket, pp. 114 to 116.



However, the instant Petition for Review was **belatedly** filed on March 28, 2007, since it was filed beyond thirty (30) days after the expiration of the 120-day period prescribed under the above-quoted Section 112(D).

To bolster this point, a summary of the pertinent dates involved in this case is presented as follows:

<i>Taxable year 2005</i>	<i>Filing date of administrative claim</i>	<i>Last day of the 120- day period under Section 112(D) from the filing of the administrative claims</i>	<i>Last day of the 30-day period within which to file a petition for review under Section 112(D), NIRC of 1997 and Section 11, RA 1125, as amended by RA 9282</i>	<i>Filing date of the instant petition for review</i>
1 st Quarter	June 26, 2006	October 24, 2006	November 23, 2006	March 28, 2007
2 nd Quarter				
3 rd Quarter				
4 th Quarter				

Although it would seem, from the wordings employed by the above-quoted Section 112, that the date of filing of the administrative claim is separate and distinct, albeit subsequent, from the date of submission of the complete documents in support thereof, it is apparent that petitioner, upon filing the said administrative claim, simultaneously submitted the complete documents in support thereof. This is manifest in petitioner's administrative claim¹¹, wherein it was stated, viz:

"In support of our application we hereby attach the following:

1. Application for Tax Credits/Refunds (BIR Form No. 1914);
2. Certificate of Registration from the BOI;
3. VAT returns for the first, second, third and fourth quarters of taxable year 2005;
4. Photocopies of the VAT zero-rated invoices evidencing our company's export sales; and
5. Photocopies of the Certificates of Inward Remittance evidencing the payment for the export sales in acceptable foreign currency."

In light of the foregoing factual considerations, it is reasonable and logical to conclude that the reckoning date of the 120-day period under Section 112(D) of the

¹¹ Id.

NIRC of 1997 commenced simultaneously with the filing of petitioner's administrative claim. Thus, when petitioner filed the instant appeal by way of the instant Petition for Review on March 28, 2007, this Court has no more appellate jurisdiction to entertain the same as the thirty-day period to appeal the presumed denial of its refund claim through the respondent's inaction thereon, had long lapsed on November 23, 2006.

As aptly held in *Yao vs. Court of Appeals, et al.*¹²:

"The right to appeal is **not** a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. Since the right to appeal is not a natural right nor a part of due process, **it may be exercised only in the manner and in accordance with the provisions of law.** Corollarily, **its requirements must be strictly complied with.**

"That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional. Non-compliance with such legal requirements is fatal, for it renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision." (*Emphases supplied*)

Parenthetically, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,¹³ and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.¹⁴ If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.¹⁵

¹² G.R. No. 132428, October 24, 2000.

¹³ *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.

¹⁴ *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.

¹⁵ Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.



It should be recalled that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.¹⁶

Thus, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.¹⁷

WHEREFORE, in light of the foregoing, respondent's Motion for Reconsideration is hereby **GRANTED**. The assailed Decision is hereby **REVERSED** and **SET ASIDE**.

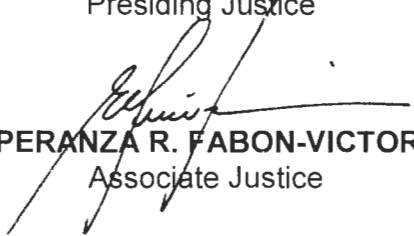
Accordingly, the instant Petition for Review is hereby **DISMISSED** on jurisdictional grounds.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

¹⁶ *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, supra.

¹⁷ Section 1, Rule 9, Rules of Court.

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's Division.


ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division