

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CRESCENT PARK 18-2
PROPERTY HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

CTA CASE NO. 8061

Members:
ACOSTA, Chairperson
UY, and
FABON-VICTORINO

Promulgated:

JUL 02 2010 ; 11:50 am

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RESOLUTION

For Court action is the Motion to Dismiss dated April 22, 2010, filed by respondent Commissioner of Internal Revenue on the ground of lack of cause of action due to failure of petitioner Crescent Park 8-2 Property Holdings, Inc. to exhaust all administrative remedies available under the rules.

Respondent claims that the instant Petition for Review pertains to petitioner's application for refund of unutilized input VAT in the amount of Php19,716,000.00 for the first quarter of the year 2008. Admittedly, petitioner filed the administrative claim for such tax refund with the RDO 44, Taguig, Pateros on

March 29, 2010. Two days thereafter, or on March 31, 2010, petitioner filed the instant Petition for Review effectively depriving him of sufficient time to process the claim in clear violation of Section 112(C) of the National Internal Revenue Code (NIRC) of 1997 which grants him 120 days to take action on the application for refund. Only after receipt of the denial of the application for refund or the lapse of the allowable period of 120 days without any action on his part, that petitioner may, within 30 days, seek the Court's intervention through a Petition for Review. Obviously, there was neither denial nor inaction on his part when the instant petition was filed rendering the same premature justifying dismissal for lack of cause of action.

In opposition, petitioner claims that the motion is devoid of merit. Allegedly, it only had until March 31, 2010, to file its administrative as well as its judicial claim for tax refund or credit as the sale from which the unutilized input VAT of Php19,716,000.00 was generated took place on January 5, 2008. Contrary to respondent's position, both the administrative and judicial claims for refund must be filed within the two year-period prescribed under Section 112 of the NIRC. The word "may" in the provision indicates that the judicial recourse within 30 days after the lapse of the 120-day period is directory and permissive

and not mandatory nor jurisdictional. Failure to seasonably act within the 2-year prescriptive period will bar any action for tax refund under Section 229 of the NIRC. This was the reason for the filing of the instant Petition for Review on March 31, 2010 or two days after the administrative claim was filed with Revenue District Office No. 44-Taguig-Pateros on March 29, 2010.

In its Supplemental Opposition, petitioner additionally prays that respondent be declared in default for failure to file answer to the Petition within the period granted. By filing a Motion to Dismiss, respondent violated A.M. No. 03-01-09-SC and the IBP-OCA Memorandum on Policy Guidelines dated March 12, 2002, which requires restraint on the part of respondent in filing a motion to dismiss instead of an answer in which the ground for dismissal may be rightfully invoked.

Respondent counters in his Supplemental Opposition that the prohibition under IBP-OCA Memorandum on Policy and Guidelines is not absolute. Only a motion to dismiss that is dilatory in nature may not be filed. Moreover, Section 1, Rule 16 of the Rules of Court expressly allows the filing of a motion to dismiss before an answer. Having seasonably filed a Motion to Dismiss, respondent cannot therefore be declared in default.

Further, by filing the instant petition barely 2 days after the administrative claim for refund was filed, petitioner, in effect, passed to the Court the burden of evaluating documents relative to the application for refund or credit, which in the first place is best discharged or performed by respondent, the head of the collecting agency.

Section 112 of the NIRC, as amended, laid down the rules on the matter, thus:

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

(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"

Clear from the foregoing provision that any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit certificate or refund of creditable unutilized input tax 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 the said tax was paid or not.¹ Without any doubt, petitioner's administrative claim for refund for the first quarter of the year 2008 was seasonably filed on March 29, 2010.

From the said date, assuming that all the pertinent documents to substantiate the administrative claim have been simultaneously submitted, respondent had 120 days, within which to grant or deny petitioner's application. In case of adverse ruling or inaction of respondent within the allowable period of 120 days, the aggrieved taxpayer – the petitioner in this case – could elevate the case via a petition for review to this Court.

¹ CIR vs. Mirant, G.R. No. 172129, September 12, 2008

Hence, only upon receipt of the adverse ruling or the lapse of the allowable period of 120 days, without any action on the part of respondent, may petitioner, within 30 days appeal the matter to this Court. The two-year prescriptive period is only insofar as the filing of the application for tax refund or credit with respondent is concerned and not resort to court action. The ruling by no less than the Supreme Court in *Intel Technology Philippines Inc. v. CIR*,² is enlightening, thus:

Under Sections 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 sales 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), Section 106(B), and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations. (underscoring ours)

² G.R. No. 166732, April 27, 2007, 522 SCRA 657

Undeniably, petitioner's filing of the Petition for Review with the Court on March 31, 2010 or two days after the administrative claim for refund was filed with respondent on March 29, 2010, rendered the law on the matter irrelevant if not inutile. Respondent was virtually deprived of the opportunity to discharge his function and exercise the administrative authority reposed upon him by law. Two days were definitely not sufficient to conduct the necessary investigation and accord action on the claim for refund, and that is assuming that petitioner complied with all the requirements. Precisely the rule granted him 120 days to determine the validity of the taxpayer's claim which partakes of the nature of an exemption, hence, cannot be allowed unless entitlement thereto is categorically established.

It must also be emphasized that a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous or unsuccessful administrative claim.³

Note, that there was yet no adverse ruling or inaction on the part of respondent when petitioner filed the instant petition. Either was necessary for petitioner to exercise the right of appeal.

³ Atlas Consolidated Mining vs. CIR, G.R. No. 145526, March 16, 2007

Section 11 of Republic Act No. 9282⁴ enumerates the parties who may seek relief from this Court by way of appeal, thus:

"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 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 shall 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. x x x" (emphasis ours)

A similar provision is also found in Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals, thus:

"SEC. 3. Who may appeal; period to file petition. - A party adversely affected

⁴ 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

by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments.** x x x"
(emphasis ours).

Anent petitioner's prayer to declare respondent in default for filing a Motion to Dismiss in lieu of an answer, suffice it to say that the same is allowed by the rules. Section 1, Rule 16 of the Rules of Court, which is supplementary to the Revised Rules of the Court of Tax Appeals, as amended,⁵ states that "Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made x x x."

Section 4, Rule 16 of the Rules of Court also provides that "If the motion is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 x x x." Hence, if the motion to dismiss is denied or if determination thereof is

⁵ Section 3, Rule 1 of the 2005 Revised Rules of the Court of Tax Appeals, as amended

deferred, the movant shall file his answer within the period prescribed by Rule 11, computed from the time he received notice of the denial or deferment, unless the court provides a different period.⁶ By filing a motion to dismiss, respondent is deemed to have filed a responsive pleading, hence, cannot be declared in default.

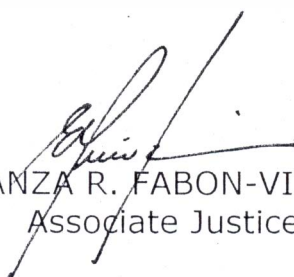
WHEREFORE, premises considered, the Motion to Dismiss dated April 22, 2010, filed by respondent, is hereby GRANTED. Consequently, the Petition for Review dated March 30, 2010, filed by petitioner Crescent Park 18-2 Property Holdings, Inc. is hereby DISMISSED, without prejudice.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

WITH DISSENTING OPINION


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

⁶ Bayog vs. Natino, G.R. No. 118691. July 5, 1996