Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

APPLIED FOOD INGREDIENTS COMPANY, INC.,
Petitioner,

– versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 184266

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:
NOV 11 2013

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DECISION

SERENO, *CJ:*

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by Applied Food Ingredients, Company, Inc. (petitioner). The Petition assails the Decision[2] dated 4 June 2008 and Resolution[3] dated 26 August 2008 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in C.T.A. EB No. 359. The assailed Decision and Resolution affirmed the Decision[4] dated 13 June 2007 and Resolution[5] dated 16 January 2008 rendered by the CTA First Division in C.T.A. Case No. 6513 which denied petitioner's claim for the issuance of a tax credit

[1] *Rollo*, pp. 41-71.
[2] Id. at 8-26; penned by Associate Justice Olga Palanca-Enriquez, and concurred in by Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Erlinda P. Uy and Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta dissenting.
[3] Id. at 139 -140.
[4] Id. at 75-109; penned by Associate Justice Lovell R. Bautista, and concurred in by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta dissenting.
[5] Id. at 100-109.

certificate representing its alleged excess input taxes attributable to zero-rated sales for the period 1 April 2000 to 31 December 2000.

THE FACTS

Considering that there are no factual issues in this case, we adopt the findings of fact of the CTA *En Banc*, as follows:

> Petitioner is registered with the Regional District Office (RDO) No. 43 of the BIR in Pasig City (BIR-Pasig) as, among others, a Value-Added Tax (VAT) taxpayer engaged in the importation and exportation business, as a pure buy-sell trader.
>
> Petitioner alleged that from September 1998 to December 31, 2000, it paid an aggregate sum of input taxes of ₱9,528,565.85 for its importation of food ingredients, as reported in its Quarterly Vat Return.
>
> Subsequently, these imported food ingredients were exported between the periods of April 1, 2000 to December 31, 2000, from which the petitioner was able to generate export sales amounting to ₱114,577,937.24. The proceeds thereof were inwardly remitted to petitioner's dollar accounts with Equitable Bank Corporation and with Australia New Zealand Bank-Philippine Branch.
>
> Petitioner further claimed that the aforestated export sales which transpired from April 1, 2000 to December 31, 2000 were "zero-rated" sales, pursuant to *Section 106(A (2)(a)(1) of the N1RC of* 1997.
>
> Petitioner alleged that the accumulated input taxes of ₱9,528,565.85 for the period of September 1, 1998 to December 31, 2000 have not been applied against any output tax.
>
> On March 26, 2002 and June 28, 2002, petitioner filed two separate applications for the issuance of tax credit certificates in the amounts of ₱5,385, 208.32 and ₱4,143,357.53, respectively.
>
> On July 24, 2002, in view of respondent's inaction, petitioner elevated the case before this Court by way of a Petition for Review, docketed as C.T.A. Case No. 6513.
>
> In his Answer filed on August 28, 2002, respondent alleged by way of special and affirmative defenses that the request for tax credit certificate is still under examination by respondent's examiners; that taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable; petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not ipso facto warrant the refund/credit or the issuance of a certificate thereto; petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in *Sections 204(C) and 229 of the Tax Code, as amended.*[6]

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[6] Id. at 113-115.

Trial ensued and the CTA First Division rendered a Decision on 13 June 2007. It denied petitioner's claim for failure to comply with the invoicing requirements prescribed under Section 113 in relation to Section 237 of the National Internal Revenue Code (NIRC) of 1997 and Section 4.108-1 of Revenue Regulations No. 7-95.

On appeal, the CTA *En Banc* likewise denied the claim of petitioner on the same ground and ruled that the latter's sales for the subject period could not qualify for VAT zero-rating, as the export sales invoices did not bear the following: 1) the imprinted word "zero-rated;" 2) "TIN-VAT;" and 3) BIR's permit number, all in violation of the invoicing requirements.

THE ISSUES

Petitioner raises this sole issue for the consideration of this Court:

> WHETHER OR NOT THE PETITIONER IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE OR REFUND OF THE AMOUNT OF ₱9,528,565.85 REPRESENTING CREDITABLE INPUT TAXES INCURRED FOR THE PERIOD OF SEPTEMBER 1, 1998 TO DECEMBER 31, 2000 WHICH ARE ATTRIBUTABLE TO ZERO-RATED SALES FOR THE PERIOD OF APRIL 1, 2000 TO DECEMBER 31, 2000.[7]

THE COURT'S RULING

The Petition has no merit.

Our VAT Law provides for a mechanism that would allow VAT-registered persons to recover the excess input taxes over the output taxes they had paid in relation to their sales.

In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*,[8] this Court explained that "the VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is invoice-based, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports."

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[7] Id. at 46.
[8] G.R. No. 178090, 8 February, 2010, 612 SCRA 28, 33, citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 332 (2005).

For zero-rated or effectively zero-rated sales, although the sellers in these transactions charge no output tax, they can claim a refund of the VAT that their suppliers charged them.[9]

At the outset, bearing in mind that tax refunds or credits − just like tax exemptions − are strictly construed against taxpayers,[10] the latter have the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.

Section 112 of the NIRC of 1997 laid down the manner in which the refund or credit of input tax may be made, to wit:

> 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: 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 of 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.
>
> x x x x
>
> (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.

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[9] Id at 34.

[10] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219; *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp.*, G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549; *La Carlota Sugar Central v. Jimenez,* 112 Phil. 232 (1961).

This Court finds it appropriate to first determine the timeliness of petitioner's claim in accordance with the above provision.

Well-settled is the rule that the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or considered by the Court *motu proprio*.[11] Therefore, the jurisdiction of the CTA over petitioner's appeal may still be considered and determined by this Court.

Although the *ponente* in this case expressed a different view on the mandatory application of the 120+30 day period as prescribed in the above provision, with the advent, however, of this Court's pronouncement on the consolidated tax cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue* [12](hereby collectively referred as *San Roque*), we are constrained to apply the dispositions therein to similar facts as those in the present case.

To begin with, Section 112(A) provides for a two-year prescriptive period after the close of the taxable quarter when the sales were made, within which a 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 input tax.

In this case, petitioner claims that from April 2000 to December 2000 it had zero-rated sales to which it attributed the accumulated input taxes it had incurred from September 1998 to December 2000.

Applying Section 112(A), petitioner had until 30 June 2002, 30 September 2002 and 31 December 2002 − or the close of the taxable quarter when the zero-rated sales were made − within which to file its administrative claim for refund. Thus, we find sufficient compliance with the two-year prescriptive period when petitioner filed its claim on 26 March 2002[13] and 28 June 2002[14] covering its zero-rated sales for the period April to September 2000 and October to December 2000, respectively.

The Commissioner of Internal Revenue (CIR) had one hundred twenty (120) days from the date of submission of complete documents in support of the application within which to decide on the administrative claim.

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[11] *Namuhe v. Ombudsman*, 358 Phil. 782 (1998), *citing* Section 1, Rule 9, 1997 Rules of Civil Procedure (formerly Section 2, Rule 9); *Fabian v. Desierto*, 356 Phil. 787 (1998).
[12] G.R. Nos. 187485, 196113, 197156, 12 February 2013.
[13] CTA *rollo*, pp. 28-29, Annex H.
[14] Id. at 31-32, Annex I.

In relation thereto, absent any evidence to the contrary and bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively.

Counting 120 days from 26 March 2002, the CIR had until 24 July 2002 within which to decide on the claim of petitioner for an input VAT refund attributable to the its zero-rated sales for the period April to September 2000.

On the other hand, the CIR had until 26 October 2002 within which to decide on petitioner's claim for refund filed on 28 June 2002, or for the period covering October to December 2000.

Records, however, show that the judicial claim of petitioner was filed on 24 July 2002.[15] Petitioner clearly failed to observe the mandatory 120-day waiting period. Consequently, the premature filing of its claim for refund/credit of input VAT before the CTA warranted a dismissal, inasmuch as no jurisdiction was acquired by the CTA.[16]

In *San Roque*, this Court, held thus: "Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles."[17]

Furthermore, the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[18] Section 7 of R.A. 1125,[19] as amended by R.A. 9282,[20] specifically provides:

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[15] Id. at 1-7, Petition for Review.
[16] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, 6 October 2010, 632 SCRA 422.
[17] Supra note 11.
[18] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, 24 April 2007, 522 SCRA 144, 150.
[19] "An Act Creating the Court of Tax Appeals."
[20] "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 or Republic Act No. 1125, as amended, otherwise known as 'The Law Creating the Court of Tax Appeals,' and for other purposes."

> SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of 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;
>
> (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 of action, **in which case the inaction shall be deemed a denial**; x x x.(Emphases supplied)

"Inaction by the CIR" in cases involving the refund of creditable input tax, arises only after the lapse of 120 days. Thus, prior thereto and without a decision of the CIR, the CTA, as a court of special jurisdiction, has no jurisdiction to entertain claims for the refund or credit of creditable input tax. "The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review."[21]

Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, both periods are hereby rendered jurisdictional. Failure to observe 120 days prior to the filing of a judicial claim is not a mere non-exhaustion of administrative remedies, but is likewise considered jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether the CIR renders a decision (which must be made within 120 days) or there was inaction, the period of 120 days is material.

This Court further ruled:

> The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. The 30-day period was adopted

[21] Supra note 11.

> precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.
>
> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is with the 120+30 day mandatory and jurisdictional periods. Thus, **strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.**[22] (Emphasis supplied)

In accordance with *San Roque*, and considering that petitioner's judicial claim was filed on 24 July 2002, when the 120+30 day mandatory periods were already in the law and BIR Ruling No. DA-489-03 had not yet been issued, petitioner does not have an excuse for not observing the 120+30 day period. Failure of petitioner to observe the mandatory 120-day period is fatal to its claim and rendered the CTA devoid of jurisdiction over the judicial claim.

The Court finds, in view of the absence of jurisdiction of the Court of the Tax Appeals over the judicial claim of petitioner, that there is no need to discuss the other issues raised.

WHEREFORE, premises considered, the instant Petition is **DENIED.**

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

[22] Id.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice