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FIRST DIVISION

[G.R. No. 184823, October 06, 2010]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. AICHI FORGING COMPANY OF ASIA, INC., RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

A taxpayer is entitled to a refund either by authority of a statute expressly granting such right, privilege, or incentive in his favor, or under the principle of *solutio indebiti* requiring the return of taxes erroneously or illegally collected. In both cases, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the July 30, 2008 Decision[1] and the October 6, 2008 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc*.

Factual Antecedents

Respondent Aichi Forging Company of Asia, Inc., a corporation duly organized and existing under the laws of the Republic of the Philippines, is engaged in the manufacturing, producing, and processing of steel and its by-products.[3] It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) entity[4] and its products, "close impression die steel forgings" and "tool and dies," are registered with the Board of Investments (BOI) as a pioneer status.[5]

On September 30, 2004, respondent filed a claim for refund/credit of input VAT for the period July 1, 2002 to September 30, 2002 in the total amount of P3,891,123.82 with the petitioner Commissioner of Internal Revenue (CIR), through the Department of Finance (DOF) One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center.[6]

Proceedings before the Second Division of the CTA

On even date, respondent filed a Petition for Review[7] with the CTA for the refund/credit

of the same input VAT. The case was docketed as CTA Case No. 7065 and was raffled to the Second Division of the CTA.

In the Petition for Review, respondent alleged that for the period July 1, 2002 to September 30, 2002, it generated and recorded zero-rated sales in the amount of P131,791,399.00,[8] which was paid pursuant to Section 106(A) (2) (a) (1), (2) and (3) of the National Internal Revenue Code of 1997 (NIRC);[9] that for the said period, it incurred and paid input VAT amounting to P3,912,088.14 from purchases and importation attributable to its zero-rated sales;[10] and that in its application for refund/credit filed with the DOF One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, it only claimed the amount of P3,891,123.82.[11]

In response, petitioner filed his Answer[12] raising the following special and affirmative defenses, to wit:

4. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;

5. Petitioner must prove that it paid VAT input taxes for the period in question;

6. Petitioner must prove that its sales are export sales contemplated under Sections 106(A) (2) (a), and 108(B) (1) of the Tax Code of 1997;

7. Petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the Tax Code;

8. 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; and

9. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.[13]

Trial ensued, after which, on January 4, 2008, the Second Division of the CTA rendered a Decision partially granting respondent's claim for refund/credit. Pertinent portions of the Decision read:

> For a VAT registered entity whose sales are zero-rated, to validly claim a refund, Section 112 (A) of the NIRC of 1997, as amended, provides:

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: x x x

Pursuant to the above provision, petitioner must comply with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated 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; and (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.

The Court finds that the first three requirements have been complied [with] by petitioner.

With regard to the first requisite, the evidence presented by petitioner, such as the Sales Invoices (Exhibits "II" to "II-262," "JJ" to "JJ-431," "KK" to "KK-394" and "LL") shows that it is engaged in sales which are zero-rated.

The second requisite has likewise been complied with. The Certificate of Registration with OCN 1RC0000148499 (Exhibit "C") with the BIR proves that petitioner is a registered VAT taxpayer.

In compliance with the third requisite, petitioner filed its administrative claim for refund on September 30, 2004 (Exhibit "N") and the present Petition for Review on September 30, 2004, both within the two (2) year prescriptive period from the close of the taxable quarter when the sales were made, which is from September 30, 2002.

As regards, the fourth requirement, the Court finds that there are some documents and claims of petitioner that are baseless and have not been satisfactorily substantiated.

x x x x

In sum, petitioner has sufficiently proved that it is entitled to a refund or issuance of a tax credit certificate representing unutilized excess input VAT payments for the period July 1, 2002 to September 30, 2002, which are attributable to its zero-rated sales for the same period, but in the reduced

amount of P3,239,119.25, computed as follows:

Amount of Claimed Input VAT	P 3,891,123.82
Less:	
Exceptions as found by the ICPA	41,020.37
Net Creditable Input VAT	P 3,850,103.45
Less:	
Excess Creditable Input VAT	P 3,239,119.25

WHEREFORE, premises considered, the present Petition for Review is PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner [in] the reduced amount of THREE MILLION TWO HUNDRED THIRTY NINE THOUSAND ONE HUNDRED NINETEEN AND 25/100 PESOS (P3,239,119.25), representing the unutilized input VAT incurred for the months of July to September 2002.

SO ORDERED.[14]

Dissatisfied with the above-quoted Decision, petitioner filed a Motion for Partial Reconsideration,[15] insisting that the administrative and the judicial claims were filed beyond the two-year period to claim a tax refund/credit provided for under Sections 112(A) and 229 of the NIRC. He reasoned that since the year 2004 was a leap year, the filing of the claim for tax refund/credit on September 30, 2004 was beyond the two-year period, which expired on September 29, 2004.[16] He cited as basis Article 13 of the Civil Code, [17] which provides that when the law speaks of a year, it is equivalent to 365 days. In addition, petitioner argued that the simultaneous filing of the administrative and the judicial claims contravenes Sections 112 and 229 of the NIRC.[18] According to the petitioner, a prior filing of an administrative claim is a "condition precedent"[19] before a judicial claim can be filed. He explained that the rationale of such requirement rests not only on the doctrine of exhaustion of administrative remedies but also on the fact that the CTA is an appellate body which exercises the power of judicial review over administrative actions of the BIR. [20]

The Second Division of the CTA, however, denied petitioner's Motion for Partial Reconsideration for lack of merit. Petitioner thus elevated the matter to the CTA *En Banc* via a Petition for Review.[21]

Ruling of the CTA En Banc

On July 30, 2008, the CTA *En Banc* affirmed the Second Division's Decision allowing the partial tax refund/credit in favor of respondent. However, as to the reckoning point for counting the two-year period, the CTA *En Banc* ruled:

> Petitioner argues that the administrative and judicial claims were filed beyond the period allowed by law and hence, the honorable Court has no jurisdiction over the same. In addition, petitioner further contends that respondent's filing of the administrative and judicial [claims] effectively eliminates the authority of the honorable Court to exercise jurisdiction over the judicial claim.
>
> We are not persuaded.
>
> Section 114 of the 1997 NIRC, and We quote, to wit:
>
> > SEC. 114. Return and Payment of Value-added Tax. -
> >
> > (A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
> >
> > [x x x x]
>
> Based on the above-stated provision, a taxpayer has twenty five (25) days from the close of each taxable quarter within which to file a quarterly return of the amount of his gross sales or receipts. In the case at bar, the taxable quarter involved was for the period of July 1, 2002 to September 30, 2002. Applying Section 114 of the 1997 NIRC, respondent has until October 25, 2002 within which to file its quarterly return for its gross sales or receipts [with] which it complied when it filed its VAT Quarterly Return on October 20, 2002.
>
> In relation to this, the reckoning of the two-year period provided under Section 229 of the 1997 NIRC should start from the payment of tax subject claim for refund. As stated above, respondent filed its VAT Return for the taxable third quarter of 2002 on October 20, 2002. Thus, respondent's administrative and judicial claims for refund filed on September 30, 2004 were filed on time because AICHI has until October 20, 2004 within which to file its claim for refund.
>
> In addition, We do not agree with the petitioner's contention that the 1997 NIRC requires the previous filing of an administrative claim for refund prior to the judicial claim. This should not be the case as the law 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 Court En Banc finds no cogent justification to disturb the findings and conclusion spelled out in the assailed January 4, 2008 Decision and March 13, 2008 Resolution of the CTA Second Division. What the instant petition seeks is for the Court En Banc to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby DENIED DUE COURSE and DISMISSED for lack of merit. Accordingly, the January 4, 2008 Decision and March 13, 2008 Resolution of the CTA Second Division in CTA Case No. 7065 entitled, "AICHI Forging Company of Asia, Inc. petitioner vs. Commissioner of Internal Revenue, respondent" are hereby AFFIRMED in toto.

SO ORDERED.[22]

Petitioner sought reconsideration but the CTA *En Banc* denied[23] his Motion for Reconsideration.

Issue

Hence, the present recourse where petitioner interposes the issue of whether respondent's judicial and administrative claims for tax refund/credit were filed within the two-year prescriptive period provided in Sections 112(A) and 229 of the NIRC.[24]

Petitioner's Arguments

Petitioner maintains that respondent's administrative and judicial claims for tax refund/credit were filed in violation of Sections 112(A) and 229 of the NIRC.[25] He posits that pursuant to Article 13 of the Civil Code,[26] since the year 2004 was a leap year, the filing of the claim for tax refund/credit on September 30, 2004 was beyond the two-year period, which expired on September 29, 2004.[27]

Petitioner further argues that the CTA *En Banc* erred in applying Section 114(A) of the NIRC in determining the start of the two-year period as the said provision pertains to the compliance requirements in the payment of VAT.[28] He asserts that it is Section 112, paragraph (A), of the same Code that should apply because it specifically provides for the period within which a claim for tax refund/ credit should be made.[29]

Petitioner likewise puts in issue the fact that the administrative claim with the BIR and the judicial claim with the CTA were filed on the same day.[30] He opines that the

simultaneous filing of the administrative and the judicial claims contravenes Section 229 of the NIRC, which requires the prior filing of an administrative claim.[31] He insists that such procedural requirement is based on the doctrine of exhaustion of administrative remedies and the fact that the CTA is an appellate body exercising judicial review over administrative actions of the CIR.[32]

Respondent's Arguments

For its part, respondent claims that it is entitled to a refund/credit of its unutilized input VAT for the period July 1, 2002 to September 30, 2002 as a matter of right because it has substantially complied with all the requirements provided by law.[33] Respondent likewise defends the CTA *En Banc* in applying Section 114(A) of the NIRC in computing the prescriptive period for the claim for tax refund/credit. Respondent believes that Section 112(A) of the NIRC must be read together with Section 114(A) of the same Code.[34]

As to the alleged simultaneous filing of its administrative and judicial claims, respondent contends that it first filed an administrative claim with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the DOF before it filed a judicial claim with the CTA.[35] To prove this, respondent points out that its Claimant Information Sheet No. 49702[36] and BIR Form No. 1914 for the third quarter of 2002,[37] which were filed with the DOF, were attached as Annexes "M" and "N," respectively, to the Petition for Review filed with the CTA.[38] Respondent further contends that the non-observance of the 120-day period given to the CIR to act on the claim for tax refund/credit in Section 112(D) is not fatal because what is important is that both claims are filed within the two-year prescriptive period.[39] In support thereof, respondent cites *Commissioner of Internal Revenue v. Victorias Milling Co., Inc*.[40] where it was ruled that "[i]f, however, the [CIR] 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 [CTA] before the end of the two-year period without awaiting the decision of the [CIR]."[41] Lastly, respondent argues that even if the period had already lapsed, it may be suspended for reasons of equity considering that it is not a jurisdictional requirement.[42]

Our Ruling

The petition has merit.

Unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made

In computing the two-year prescriptive period for claiming a refund/credit of unutilized input VAT, the Second Division of the CTA applied Section 112(A) of the NIRC, which

states:

> 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 or 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. (Emphasis supplied.)

The CTA *En Banc,* on the other hand, took into consideration Sections 114 and 229 of the NIRC, which read:

> SEC. 114. Return and Payment of Value-Added Tax. -
>
> (A) In General. - Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
>
> Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.
>
> x x x x
>
> 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 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 supplied.)

Hence, the CTA *En Banc* ruled that the reckoning of the two-year period for filing a claim for refund/credit of unutilized input VAT should start from the date of payment of tax and not from the close of the taxable quarter when the sales were made.[43]

The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,*[44] where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes."[45] We explained that:

> The above proviso [Section 112 (A) of the NIRC] 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 aforequoted 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 pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on

September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable

To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:

> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. - The Commissioner may -
>
> x x x x
>
> (c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> x x x x
>
> 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, of any sum alleged to have been excessively or in any manner wrongfully 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.

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, **both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.**

MPC's creditable input VAT not erroneously paid

For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the equation.

x x x x

Considering the foregoing discussion, **it is clear that Sec. 112 (A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes.**[46] (Emphasis supplied.)

In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.

The administrative claim was timely filed

Bearing this in mind, we shall now proceed to determine whether the administrative claim was timely filed.

Relying on Article 13 of the Civil Code,[47] which provides that a year is equivalent to 365 days, and taking into account the fact that the year 2004 was a leap year, petitioner submits

that the two-year period to file a claim for tax refund/ credit for the period July 1, 2002 to September 30, 2002 expired on September 29, 2004.[48]

We do not agree.

In *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*,[49] we said that as between the Civil Code, which provides that a year is equivalent to 365 days, and the Administrative Code of 1987, which states that a year is composed of 12 calendar months, it is the latter that must prevail following the legal maxim, *Lex posteriori derogat priori*.[50] Thus:

> Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter - the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.
>
> There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*
>
> Applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987 to this case, the two-year prescriptive period (reckoned from the time respondent filed its final adjusted return on April 14, 1998) consisted of 24 calendar months, computed as follows:

Year 1	1st month	calendar	April 15, 1998 to May 14, 1998
	2nd month	calendar	May 15, 1998 to June 14, 1998
	3rd month	calendar	June 15, 1998 to July 14, 1998
	4th month	calendar	July 15, 1998 to August 14, 1998
	5th month	calendar	August 15, 1998 to September 14, 1998
	6th month	calendar	September 15, 1998 to October 14, 1998

	7th calendar month	October 15, 1998 to November 14, 1998
	8th calendar month	November 15, 1998 to December 14, 1998
	9th calendar month	December 15, 1998 to January 14, 1999
	10th calendar month	January 15, 1999 to February 14, 1999
	11th calendar month	February 15, 1999 to March 14, 1999
	12th calendar month	March 15, 1999 to April 14, 1999
Year 2		April 15, 1999 to May 14, 1999
	13th calendar month	
	14th calendar month	May 15, 1999 to June 14, 1999
	15th calendar month	June 15, 1999 to July 14, 1999
	16th calendar month	July 15, 1999 to August 14, 1999
	17th calendar month	August 15, 1999 to September 14, 1999
	18th calendar month	September 15, 1999 to October 14, 1999
	19th calendar month	October 15, 1999 to November 14, 1999
	20th calendar month	November 15, 1999 to December 14, 1999
	21st calendar month	December 15, 1999 to January 14, 2000
	22nd calendar month	January 15, 2000 to February 14, 2000
	23rd calendar month	February 15, 2000 to March 14, 2000
	24th calendar month	March 15, 2000 to April 14, 2000

We therefore hold that respondent's petition (filed on April 14, 2000) was filed

on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period.[51]

Applying this to the present case, the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. Hence, respondent's administrative claim was timely filed.

The filing of the judicial claim was premature

However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:

> SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> 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.** (Emphasis supplied.)

Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period[52] has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.*[53] relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

WHEREFORE, the Petition is hereby **GRANTED.** The assailed July 30, 2008 Decision and the October 6, 2008 Resolution of the Court of Tax Appeals are hereby **REVERSED** and **SET ASIDE.** The Court of Tax Appeals Second Division is DIRECTED to dismiss CTA Case No. 7065 for having been prematurely filed.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and *Perez, JJ.*, concur.

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[1] *Rollo*, pp. 31-A-43; penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr.,

Lovell R. Bautista, Erlinda P. Uy, and Olga Palanca-Enriquez.

[2] Id. at 44-45.

[3] Id. at 13.

[4] Id.

[5] Id.

[6] CTA Second Division *rollo*, pp. 26-27.

[7] *Rollo*, pp. 79-90.

[8] Id. at 82.

[9] SEC. 106. Value-added Tax on Sale of Goods or Properties. -

(A) Rate and Base of Tax. - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

x x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. - The term `export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas

(BSP);

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

x x x x

[10] *Rollo,* p. 82

[11] Id. at 82-83.

[12] Id. at 91-94.

[13] Id. at 92.

[14] Id. at 53-54 and 61-62.

[15] Id. at 95-104.

[16] Id. at 98.

[17] Art. 13. When the law speaks of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included.

[18] *Rollo,* pp. 98-99.

[19] Id. at 101.

[20] Id. at 100-101.

[21] Id. at 105-118.

[22] Id. at 41-43.

[23] Id. at 44-45.

[24] Id. at 19.

[25] Id.

[26] Supra note 17.

[27] *Rollo,* p. 21.

[28] Id. at 22.

[29] Id.

[30] Id. at 24.

[31] Id.

[32] Id. at 25.

[33] Id. at 161-162.

[34] Id. at 164.

[35] Id. at166.

[36] CTA Second Division *rollo*, p. 26.

[37] Id. at 27.

[38] *Rollo*, p. 166.

[39] Id. at 166.

[40] 130 Phil. 12 (1968).

[41] Id. at 16.

[42] *Rollo*, p. 167.

[43] Id.

[44] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

[45] Id. at 173.

[46] Id. at 171-175.

[47] Supra note 17.

[48] *Rollo,* p. 21.

[49] G.R. No. 162155, August 28, 2007, 531 SCRA 436.

[50] Id. at 444.

[51] Id. at 444-445.

[52] *Rollo*, p. 166.

[53] Supra note 40.
