Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

DASH ENGINEERING PHILIPPINES, INC.,
Respondent.

G.R. No. 184145

Present:

VELASCO, JR., *J., Chairperson,*
PERALTA,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

December 11, 2013

x ---------- x

DECISION

MENDOZA, *J.*:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure, assailing the July 17, 2008 Decision[1] and the August 12, 2008 Resolution[2] of the Court of Tax Appeals (*CTA*) *En Banc* in C.T.A. EB No. 357 (C.T.A. Case No. 7243) entitled "*Commissioner of Internal Revenue v. Dash Engineering Philippines, Inc.*"

The Facts

Respondent Dash Engineering Philippines, Inc. (*DEPI*) is a corporation duly registered with the Securities and Exchange Commission, authorized to do business in the Philippines and listed with the Philippine

[1] *Rollo*, pp. 30-47; penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova and Associate Justice Olga Palanca-Enriquez.
[2] Id. at 48-49.

Economic Zone Authority as an ecozone IT export enterprise.[3] It is also a VAT-registered entity engaged in the export sales of computer-aided engineering and design.[4]

Respondent filed its monthly and quarterly value-added tax (*VAT*) returns for the period from January 1, 2003 to June 30, 2003.[5] On August 9, 2004, it filed a claim for tax credit or refund in the amount of ₱ 2,149,684.88 representing unutilized input VAT attributable to its zero-rated sales.[6] Because petitioner Commissioner of Internal Revenue (*CIR*) failed to act upon the said claim, respondent was compelled to file a petition for review with the CTA on May 5, 2005.[7]

On October 4, 2007, the Second Division of the CTA rendered its Decision[8] partially granting respondent's claim for refund or issuance of a tax credit certificate in the reduced amount of ₱ 1,147,683.78. On the matter of the timeliness of the filing of the judicial claim, the Tax Court found that respondent's claims for refund for the first and second quarters of 2003 were filed within the two-year prescriptive period which is counted from the date of filing of the return and payment of the tax due. Because DEPI filed its amended quarterly VAT returns for the first and second quarters of 2003 on July 24, 2004, it had until July 24, 2006 to file its judicial claim. As such, its filing of a petition for review with the CTA on April 26, 2005[9] was within the prescriptive period.[10] Petitioner moved for reconsideration but the same was denied in a Resolution dated January 3, 2008.[11]

Aggrieved, petitioner elevated the case to the CTA *En Banc*, where it argued that respondent failed to show that (1) its purchases of goods and services were made in the course of its trade and business, (2) the said purchases were properly supported by VAT invoices and/or official receipts and other documents, and (3) that the claimed input VAT payments were directly attributable to its zero-rated sales. Petitioner also averred that the petition for review was filed out of time.[12]

---

[3] Id. at 32.
[4] Id. at 31.
[5] Id. at 32; 120-129.
[6] Id. at 95-96.
[7] Id. at 254.
[8] Id. at 50-67; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Erlinda P. Uy.
[9] Based on the Memoranda filed by the petitioner and the respondent and on the Decision of the CTA *En Banc*, the petition for review was filed with the CTA on May 5, 2005, not April 26, 2005.
[10] Id. at 59-61.
[11] Id. at 68-69.
[12] Id. at 35-36.

The CTA *En Banc* in its Decision,[13] dated July 17, 2008, upheld the decision of the CTA Second Division, ruling that the judicial claim was filed on time because the use of the word "may" in Section 112(D) (now subparagraph C) of the National Internal Revenue Code (*NIRC*) indicates that judicial recourse within thirty (30) days after the lapse of the 120-day period is only directory and permissive and not mandatory and jurisdictional, as long as the petition was filed within the two-year prescriptive period. The Tax Court further reiterated that the two-year prescriptive period applies to both the administrative and judicial claims. Petitioner's motion for reconsideration was denied in the August 12, 2008 Resolution of the CTA.[14]

Hence, this petition.

The Issues

Petitioner raises the following grounds for the allowance of the petition:

I

The Court of Tax Appeals *En Banc* erred in holding that respondent's judicial claim for refund was filed within the prescriptive period provided under the Tax Code.

II

The Court of Tax Appeals *En Banc* erred in partially granting respondent's claim for refund despite the failure of the latter to substantiate its claim by sufficient documentary proof.[15]

The Court's Ruling

As to the first issue, petitioner argues that the judicial claim was filed out of time because respondent failed to comply with the 30-day period referred to in Section 112(D) (now subparagraph C) of the NIRC, citing the case of *Commissioner of Internal Revenue v. Aichi*[16] where the Court categorically held that compliance with the prescribed periods in Section 112 is mandatory and jurisdictional. Respondent filed its administrative claim for refund on August 9, 2004. The 120-day period within which the CIR should act on the claim expired on December 7, 2004 without any action on the part of petitioner. Thus, respondent only had 30 days from the

---

[13] Id. at 30-47.
[14] Id. at 48-49.
[15] Id. at 15.
[16] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

lapse of the said period, or until January 6, 2005, to file a petition for review with the CTA. The petition, however, was filed only on May 5, 2005.[17] Petitioner further posits that the 30-day period within which to file an appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction to entertain the same.[18]

Conversely, respondent DEPI asserts that its petition was seasonably filed before the CTA in keeping with the two-year prescriptive period provided for in Sections 204(c) and 229 of the NIRC.[19] DEPI interprets Section 112, in relation to Section 229, to mean that the 120-day period is the time given to the CIR to decide the case. The taxpayer, on the other hand, has the option of either appealing to the CTA the denial by the CIR of the claim for refund within thirty (30) days from receipt of such denial and within the two-year prescriptive period, or appealing an unacted claim to the CTA anytime after the expiration of the 120-day period given to the CIR to resolve the administrative claim for as long as the judicial claim is made within the two-year prescriptive period.[20] Following respondent's reasoning, its filing of the judicial claim on April 26, 2005 was filed on time because it was made after the lapse of the 120-day period and within the two-year period referred to in Section 229.

The petition is meritorious.

Sec. 229 is inapplicable; two-year period in Sec. 112 refers only to administrative claims

Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes:

> Sec. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – The Commissioner may –
>
> 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

[17] *Rollo*, p. 231.
[18] Id. at 235.
[19] Id. at 254.
[20] Id. at 257.

> an overpayment shall be considered as a written claim for credit or refund.
>
> 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 xxx. (Emphases supplied)

This Court has previously made a pronouncement as to the inapplicability of Section 229 of the NIRC to claims for excess input VAT. In the recently decided case of *Commissioner of Internal Revenue v. San Roque Power Corporation,*[21] the Court made a lengthy disquisition on the nature of excess input VAT, clarifying that "input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper."[22] Hence, respondent cannot advance its position by referring to Section 229 because Section 112 is the more specific and appropriate provision of law for claims for excess input VAT.

Section 112(A) also provides for a two-year period for filing a claim for refund, 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
>
> x x x

---

[21] G.R. No. 187485, February 12, 2013, 690 SCRA 336.
[22] Id.

As explained in *San Roque*, however, the two-year prescriptive period referred to in Section 112(A) applies only to the filing of administrative claims with the CIR and not to the filing of judicial claims with the CTA. In other words, for as long as the administrative claim is filed with the CIR within the two-year prescriptive period, the 30-day period given to the taxpayer to file a judicial claim with the CTA need not fall in the same two-year period.

At any rate, respondent's compliance with the two-year prescriptive period under Section 112(A) is not an issue. What is being questioned in this case is DEPI's failure to observe the requisite 120+30-day period as mandated by Section 112(C) of the NIRC.

120+30 day period under Sec. 112 is mandatory and jurisdictional

Section 112(D) (now subparagraph C) of the NIRC provides that:

> Sec. 112. Refunds or Tax Credits of Input Tax
>
> 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)

Petitioner is entirely correct in its assertion that compliance with the periods provided for in the abovequoted provision is indeed mandatory and jurisdictional, as affirmed in this Court's ruling in *San Roque*, where the Court *En Banc* settled the controversy surrounding the application of the 120+30-day period provided for in Section 112 of the NIRC and reiterated the *Aichi* doctrine that the 120+30-day period is mandatory and jurisdictional. Nonetheless, the Court took into account the issuance by the Bureau of Internal Revenue (*BIR*) of BIR Ruling No. DA-489-03 which misled taxpayers by explicity stating that taxpayers may file a petition for review with the CTA even before the expiration of the 120-day period given

to the CIR to decide the administrative claim for refund. Even though observance of the periods in Section 112 is compulsory and failure to do so will deprive the CTA of jurisdiction to hear the case, such a strict application will be made from the effectivity of the Tax Reform Act of 1997 on January 1, 1998 until the present, except for the period from December 10, 2003 (the issuance of the erroneous BIR ruling) to October 6, 2010 (the promulgation of *Aichi*), during which taxpayers need not wait for the lapse of the 120+30-day period before filing their judicial claim for refund.

The case at bench, however, does not involve the issue of premature filing of the petition for review with the CTA. Rather, this petition seeks the denial of DEPI's claim for refund for having been filed late or after the expiration of the 30-day period from the denial by the CIR or failure of the CIR to make a decision within 120 days from the submission of the documents in support of respondent's administrative claim.

In *San Roque*, one of the respondents similarly filed its petition for review with the CTA well after the 120+30-day period. In denying the taxpayer's claim for refund, this Court explained that:

> Unlike San Roque and Taganito, **Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim long after the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period.** In any event, whether governed by jurisprudence before, during or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing. Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
>
> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable.** The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. **The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its**

> **exercise.** Philex failed to comply with the statutory conditions and must thus bear the consequences.[23] (Emphases supplied)

Therefore, in accordance with *San Roque*, respondent's judicial claim for refund must be denied for having been filed late. Although respondent filed its administrative claim with the BIR on August 9, 2004 before the expiration of the two-year period in Section 112(A), it undoubtedly failed to comply with the 120+30-day period in Section 112(D) (now subparagraph C) which requires that upon the inaction of the CIR for 120 days after the submission of the documents in support of the claim, the taxpayer has to file its judicial claim within 30 days after the lapse of the said period. The 120 days granted to the CIR to decide the case ended on December 7, 2004. Thus, DEPI had 30 days therefrom, or until January 6, 2005, to file a petition for review with the CTA. Unfortunately, DEPI only sought judicial relief on May 5, 2005 when it belatedly filed its petition to the CTA, despite having had ample time to file the same, almost four months after the period allowed by law. As a consequence of DEPI's late filing, the CTA did not properly acquire jurisdiction over the claim.

The Court has held time and again that taxes are the lifeblood of the government and, consequently, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[24] Hence, We are left with no other recourse but to deny respondent's judicial claim for refund for non-compliance with the provisions of Section 112 of the NIRC.

WHEREFORE, the petition is **GRANTED**. The July 17, 2008 Decision and the August 12, 2008 Resolution of the CTA *En Banc* in C.T.A. EB No. 357 (C.T.A. Case No. 7243) are hereby **REVERSED** and **SET ASIDE**. Respondent DEPI's judicial claim for refund or tax credit through its petition for review before the CTA is **DENIED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

---

[23] Id.
[24] *Commissioner of Internal Revenue v. Acosta*, G.R. No. 154068, August 3, 2007, 529 SCRA 177, 186.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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