Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HEDCOR, INC.,
Petitioner,

– versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 207575

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:
JUL 15 2015

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RESOLUTION

SERENO, *CJ:*

This is a Petition for Review filed by Hedcor, Inc. (petitioner) assailing the Court of Tax Appeals (CTA) *en banc* Decision[1] dated 1 October 2012 and Resolution[2] dated 28 May 2013 in C.T.A. EB No. 785. The CTA *en banc* affirmed the CTA Second Division Resolutions dated 19 January 2011[3] and 12 May 2011[4] of the in C.T.A. Case No. 8129. The latter granted the Motion to Dismiss filed by the Commissioner of Internal Revenue (CIR) and dismissed the Petition for being filed out of time.

THE FACTS

The facts, as culled from the records, are as follows:

Petitioner is a domestic corporation primarily engaged in the operation of hydro-electric power plants and the generation of hydro-electric

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[1] *Rollo*, pp. 62-80; penned by Associate Justice Erlinda P. Uy and concurred in by then Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, with the Separate Concurring Opinion of Associate Justice Lovell R. Bautista.

[2] Id. at 89-98; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

[3] Id. at 154-157.

[4] Id. at 218-220.

power. It is a value-added tax (VAT) payer duly registered with the Bureau of Internal Revenue (BIR).

Petitioner alleged that in the course of operating its business, it purchased domestic goods and services, as well as capital goods, and paid the corresponding VAT as part of the purchase price. For the period covering taxable year 2008, its purchases amounted to ₱35,467,773.00 on which the corresponding input VAT was ₱4,256,132.80. However, after deductions of output tax due from the accumulated input tax, petitioner still had an unused or excess input VAT in the total amount of ₱4,217,955.84.

Being in the business of generating of renewable sources of energy through hydro power, petitioner maintained that it was entitled to zero-percent (0%) VAT, as the sales of electric power to National Power Corporation (NPC) qualified as zero-rated sales pursuant to Section 108(B) (7) of the National Internal Revenue Code (NIRC).

Thus, on 28 December 2009, petitioner filed with the BIR an administrative claim for the refund of excess and unused input VAT in the amount of ₱4,217,955.84 for the second quarter of taxable year 2008. On 23 March 2010, it admittedly received from the BIR a Letter of Authority or request for the presentation of records.[5] Nevertheless, petitioner filed on 6 July 2010 a Petition for Review docketed as CTA Case No. 8129 because of its apprehension that the two (2) years provided by law to file a judicial claim would lapse on 21 July 2010 in view of *Atlas*.[6]

Petitioner filed on 29 October 2010 a Motion for Leave to File Supplemental Petition for Review. In its motion, it manifested that it had submitted to the BIR on 20 September 2010 the last set of supporting documents related to its administrative claim for a refund. The motion was granted by the CTA Division, which then required petitioner to file the Supplemental Petition for Review and respondent, a Supplemental Answer.[7]

Meanwhile, respondent CIR filed a Motion to Dismiss on 8 November 2010 on the ground of lack of jurisdiction. The CTA Second Division granted the motion and dismissed the Petition for being filed out of time.

On appeal, following this Court's disposition in *Aichi*,[8] the CTA *en banc* denied the Petition and ruled that the judicial claim had been filed out of time. It held that, under Section 112(C) of the NIRC, the 120-day period for the BIR to act on the claim should be reckoned from 28 December 2009 or the date of filing of petitioner's administrative claim with the tax agency. Counting 120 days from 28 December 2009, the BIR had until 27 April 2010 to decide the administrative claim. Thereafter, petitioner had until 27 May 2010 or 30 days to appeal to the CTA either the decision or the

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[5] Id. at 105, Petition for Review in C.T.A. Case No.8129.
[6] G.R. Nos. 141104 & 148763, 8 June 2007, 524 SCRA 73.
[7] *Rollo*, p. 170, Resolution dated 1 December 2010.
[8] G.R. No. 184823, 6 October 2010, 632 SCRA 422.

inaction of the BIR. Thus, the filing of the Petition for Review with the CTA Division on 6 July 2010 was clearly beyond the period allowed by law.[9]

The Motion for Reconsideration filed by petitioner was also denied by the CTA *en banc* for lack of merit.[10]

Hence, this Petition.

THE ISSUES

Petitioner's appeal is anchored on the following grounds:

1. That the CTA gravely erred and has no authority to deviate from the clear and literal meaning of Section 112 (D) of the NIRC by counting the 120-day period from the filing of the administrative claim and not from the last submission of complete documents in the administrative proceedings with the BIR;

2. That the CTA gravely erred when it dismissed CTA Case No. 8129/CTA EB No. 785 and granted respondent's motion to dismiss on ground of insufficiency of evidence although trial proceedings have not even started; and

3. That the CTA gravely erred when it dismissed its petition for insufficiency of evidence and on ground of prescription when there is no such allegation in the pleading which would support such conclusion.[11]

THE COURT'S RULING

The Petition lacks merit.

The requirements for a taxpayer be able to claim a refund or credit of its input tax are found in Section 112 of the NIRC, as amended, the relevant portions of which read:

> Sec. 112. Refunds or Tax Credits of Input Tax.—
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> x x x x
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> (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.
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> 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

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[9] *Rollo*, pp. 62-80, *CTA en banc* Decision dated 01 October 2012.
[10] Id. at 89-98, Resolution dated 28 May 2013.
[11] Id. at 21-22, Petition for Review on Certiorari.

> 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.

Pursuant to Section 112(C) of the NIRC, respondent had 120 days from the date of submission of complete documents in support of the application within which to decide on the administrative claim. Thereafter, the taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from the receipt of the decision or from the expiration of the 120-day period. Compliance with both periods is jurisdictional, considering that the 30-day period to appeal to the CTA is dependent on the 120-day period. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal.

Strict compliance with the 120+30 day period is necessary for a claim for a refund or credit of input VAT to prosper. An exception to that mandatory period was, however, recognized in *San Roque*[12] during the period between 10 December 2003, when BIR Ruling No. DA-489-03 was issued, and 6 October 2010, when the Court promulgated *Aichi* declaring the 120+30 day period mandatory and jurisdictional, thus reversing BIR Ruling No. DA-489-03.

Since the claim of petitioner fell within the exception period, it did not have to observe the 120+30 day mandatory period under the *San Roque* doctrine. The present case, though, is not a case of premature filing.

The CTA here found that the judicial claim was filed beyond the mandatory 120+30 day prescriptive period; hence, it did not acquire jurisdiction over the case.

Petitioner is similarly situated as *Philex*, which is also a case of late filing:

> 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.
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> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The **inaction** of the Commissioner on Philex's claim during

[12] G.R. Nos. 187485, 196113, 197156, 12 February 2013, 690 SCRA 336.

> 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.
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> x x x x
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> Philex's situation is not a case of premature filing of its judicial claim but of late filing, indeed *very* late filing. BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim. Philex cannot claim the benefit of BIR Ruling No. DA-489-03 because Philex did not file its judicial claim prematurely but filed it long after the lapse of the 30-day period **following the expiration of the 120-day period**. In fact, Philex filed its judicial claim 426 days after the lapse of the 30-day period.[13] (Emphasis in the original)

Considering that the administrative claim was filed on 28 December 2009, petitioner had only until 27 May 2010 (counting 120+30 days) to appeal to the CTA the decision or inaction of the BIR. Petitioner belatedly filed its judicial claim with the CTA on 6 July 2010.

Petitioner insists, though, that it filed on 20 September 2010 the complete documents supporting its administrative claim; the 120-day period should then be counted from that date. To prove its assertion, it attached to the Supplemental Petition for Review a Transmittal Letter marked as Annex "A."[14] Based on this letter, petitioner contends that its judicial claim was filed within the allowable period set by law.

We do not agree.

The Court finds that the Transmittal Letter submitted by petitioner is not a substantial submission that would warrant a change in the reckoning date for the 120-day period for the BIR to act on the claim for refund. As aptly found by the CTA, the letter does not even bear any stamp marking that would show that it was legitimately received by the BIR.[15] The only proof of receipt was a signature, which was not even identified by petitioner.

To allow petitioner's allegations to prevail would set a dangerous precedent, as the reckoning period for the 120 days would be at the mercy of taxpayers. They will then submit complete supporting documents even after the two-year prescriptive period for filing an administrative claim has lapsed. This is obviously not the intention of the law.

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[13] Supra note 12, at 389-390 and 405-406.
[14] *Rollo*, p. 136.
[15] Id. at 220, Resolution dated 12 May 2011.

It is worth emphasizing at this point that the burden of proving entitlement to a tax refund is on the taxpayer. It is logical to assume that in order to discharge this burden, the law intends the filing of an application for a refund to necessarily include the filing of complete supporting documents to prove entitlement for the refund. Otherwise, the mere filing of an application without any supporting document would be as good as filing a mere scrap of paper. Besides, the taxpayer was already given two (2) years to determine its refundable taxes and complete the documents necessary to prove its claim. The alleged completion of supporting documents after the filing of an application for an administrative claim – and worse, after the filing of a judicial claim – is tantamount to legal maneuvering, which this Court will not tolerate.

What is peculiar to this case is that prior to the alleged completion of its supporting documents, petitioner had already filed its judicial claim with the CTA.

Petitioner contends that pursuant to Revenue Memorandum Circular (RMC) No. 49-2003, the 120-day period must be counted from receipt of the complete documents.

Granting *arguendo* that the 120-day period should commence to run only upon receipt of the Transmittal Letter, petitioner's judicial claim must still fail. RMC No. 49-2003 provides:

> A-18 x x x
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> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, **the same shall be officially received only upon submission of complete documents**.

If we follow the assumptions of petitioner, its administrative claim would only be considered as officially received on 20 September 2010, when it allegedly filed its complete supporting documents. By that time, the period for filing an administrative application for a refund would have already prescribed on 30 June 2010, or two (2) years from the close of the taxable quarter when the relevant sales were made.

To reiterate, the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise. Like *Philex*, petitioner failed to comply with the statutory conditions and must therefore bear the consequences. It has already lost its right to claim a refund or credit of its alleged excess input VAT attributable to zero-rated or effectively zero-rated sales for the second quarter of taxable year 2008 by virtue of its own failure to observe the prescriptive period.

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

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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