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G.R. No. 226592 – COMMISSIONER OF INTERNAL REVENUE, *petitioner* v. CARRIER AIR CONDITIONING PHILIPPINES, INC., *respondent.*

Promulgated:

July 27, 2021

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CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. In *CBK Power Company Limited v. Commissioner of Internal Revenue* (*CBK Power Company*),[1] the Court has already held that Section 229[2] of the Tax Reform Act of 1997 (Tax Code)[3] does not contemplate that the Commissioner of Internal Revenue (CIR) must first act upon the taxpayer's administrative claim before a judicial action is instituted. Citing *P. J. Kiener Company, Ltd. v. David* (*P. J. Kiener Co.*),[4] the Court, in said case, held that "the claim with the Collector of Internal Revenue was intended primarily as a notice or warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow."[5]

Notably, it has been pointed out during the deliberations on this case that the *CBK Power Company* doctrine effectively permits anomalous situations wherein the period between lodging an administrative claim and filing a judicial claim would only be a matter of a few days, which thus curtails the CIR's authority to resolve the administrative claim on the merits. Therefore, it was ruminated whether or not the CIR should be first given a fixed reasonable period to rule on the administrative claim before the taxpayer may pursue his or her judicial claim.

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1 750 Phil. 748, 765 (2015).

2 Section 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 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.

3 Republic Act No. 8424, entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES" (January 1, 1998).

4 92 Phil. 945, 947 (1953).

5 See *CBK Power Company*, supra at 765.

It bears to stress that the *CBK Power Company* doctrine stems from none other than the consistent phraseology of Section 229 of the Tax Code, which has long existed since the National Internal Revenue Code of 1939.[6] Its precursor provision, *i.e.*, Section 306 of the 1939 Tax Code, states that:

> Section 306. *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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; 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 begun after the expiration of two years from the date of payment of the tax or penalty.

In 1972, Section 306 was amended to include a *proviso* empowering the CIR to refund taxes on its own when erroneous payment is apparent on the face of the return:[7]

> Section 306. *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 excessive 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 begun after the expiration of two 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.

When the Tax Code was re-codified in 1977,[8] Section 306 was renumbered to Section 292 but the substance thereof was retained:

> Section 292. *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 excessive 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

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6 Commonwealth Act No. 466, entitled "AN ACT TO REVISE, AMEND AND CODIFY THE INTERNAL REVENUE LAWS OF THE PHILIPPINES," then also known as the "NATIONAL INTERNAL REVENUE CODE," approved on June 15, 1939 .

7 Presidential Decree No. (PD) 69, entitled "AMENDING CERTAIN SECTIONS OF NATIONAL INTERNAL REVENUE CODE," approved on November 24, 1972.

8 PD 1158, entitled "A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES," also known as the "NATIONAL INTERNAL REVENUE CODE OF 1977" (June 3, 1977).

> maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> In any case, no such suit or proceeding shall be begun after the expiration of two 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.

By the second re-codification in 1997,[9] Section 292 was again renumbered to the present Section 229, but nevertheless remained unchanged:

> Section 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.
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> 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, in the most recent amendment of the Tax Code, through Republic Act No. (RA) 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)" Law,[10] Section 229 was not altered in any way.

From the foregoing, it is apparent that despite the numerous amendments undergone by the Tax Code, legislators did not see fit to include in Section 229 a "reasonable period" for the CIR to act on the administrative claim for refund prior to the institution of a judicial action.

It should be borne in mind that when Section 306 was first amended in 1972, *P. J. Kiener Co.* already espoused the doctrine that "the filing of the claim with the Collector of Internal Revenue [is] **intended primarily as a**

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9 See note 3.

10 Entitled "AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES" (January 1, 2018).

notice or warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow. Previous and timely notice is, in other cases and for diverse salutary reasons, made a prerequisite to the prosecution of contemplated proceedings **without imposing on the party to whom the notice was sent any obligation to make any move.**"[11] Nevertheless, the law was not amended to provide for a mandatory period for the CIR to act on the claim. In fact, the provision remained unchanged despite the succeeding amendments to the Tax Code.

When the TRAIN Law was passed in 2017, *CBK Power Company* was already promulgated wherein the Court applied Section 229 exactly as worded even if the end result entailed the almost simultaneous filing of the administrative claim for refund with the judicial claim. Despite this prevailing doctrine, the legislators did not see fit to amend Section 229 by introducing a mandatory period that must be observed prior to the institution of a judicial claim.

In the enactment of statutes, it is presumed that the Legislature "understood the language it used and to have acted with full idea of what it wanted to accomplish,"[12] and that the law is passed "with deliberation with full knowledge of all existing ones on the subject."[13] Based on this dictum, it is thus reasonable to conclude that Congress deliberately chose to forego a mandatory period for administrative review of claims for refund for erroneously or illegally collected taxes.

It deserves highlighting that, in contrast to Section 229, the corresponding provision for refund of creditable input value-added taxes (VAT) provides for a period. To recount, the concept of VAT was introduced to the Philippine taxation system in 1987 through Executive Order No. 273.[14] The refund thereof was governed by Section 106:

> Section 106. *Refunds or Tax Credits of Input Tax.* — (a) *Export Sales.* — An exporter who is a VAT-registered person may, within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.
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> (b) *Zero-Rated or Effectively Zero-Rated Sales.* — Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate

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11 *P. J. Kiener Co*, supra note 4, at 947; emphases supplied.

12 Id.

13 See *Mecano v. Commission on Audit*, 290-A Phil. 272, 283 (1992).

14 Entitled "ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES" (January 1, 1988).

or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.

(c) *Capital Goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application for refund may be made only after the expiration of two (2) succeeding quarters following the quarter in which the importation or local purchase was made: Provided, That a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later: Provided, however, That the application is filed not later than two (2) years from the dates herein prescribed.

(d) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 100(c) of this Code may, within 2 years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes.

(e) *Period Within Which Refund of Input Taxes May Be Made by the Commissioner.* — The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.

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In 1994, when the VAT system was expanded by RA 7716,[15] Section 106 (d) was amended to recognize resort to the Court of Tax Appeals in cases of full or partial denial or inaction by the CIR of administrative claims for refund for input VAT:

Section 106. *Refunds or tax credits of creditable input tax.* — x x x

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 for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

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15 Entitled "AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES," approved on May 5, 1994.

Upon the 1997 re-codification of the Tax Code, the VAT system was therein integrated, and Section 106 became Section 112. Paragraph (d), however, remained unchanged except for the increase in the period given to the CIR to act on such claims from sixty (60) days to one hundred twenty (120) days:

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

Section 112 (D) was then re-numbered to Section 112 (C) through RA 9337 or the VAT Reform Act,[16] but it remained the same in substance:

> Section 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 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.

Most recently, the TRAIN Law[17] amended Section 112 (C) by reducing the period to act on the administrative claim for refund from one hundred twenty (120) days to ninety (90) days, mandating that the CIR must have legal and factual bases to deny any claim, and providing for sanctions if the CIR or his or her agents fail to act on any application within the ninety (90)-day period:

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16 Entitled "AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES" (July 1, 2005).

17 See note 10.

> Section 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 of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

The evolution of the VAT provision on refund shows that the legislature has always intended for administrative claims for VAT refund to be subject to a mandatory period of review. Had Congress intended for a similar period to apply to the refund of erroneously or illegally collected taxes, it could have simply adopted the wording of the VAT refund provision. This therefore shows that the treatment of Section 229 and Section 112 (C) of the Tax Code, with respect to the period to rule on an administrative claim, was deliberately differentiated.

In sum, there is nothing in the Tax Code which requires a definite period for the filing of an administrative claim for refund of erroneously or illegally collected taxes prior to seeking a judicial claim within the two (2)-year prescriptive period. This is in stark contrast to claims for refund of input VAT wherein the judicial action can only prosper after an administrative claim is lodged and the mandatory ninety (90)-day period to act on the same has lapsed.

Whether or not the CIR should be given a mandatory period of review of administrative claims as a condition precedent to the filing of a judicial claim goes into the wisdom of the law. It is well-settled that the Court cannot supplant its own wisdom with that of Congress as this goes beyond the purview of its power of judicial review. As the Court has held, "[t]he courts may or may not agree with the legislature upon the wisdom or necessity of the law. Their disagreement, however, furnishes no basis for pronouncing a statute illegal. If the particular statute is within the constitutional power of the legislature to enact, whether the courts agree or not in the wisdom of its enactment, is a matter of no concern."[18]

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[18] *United States v. Ten Yu*, 24 Phil. 1, 10-11 (1912).

In this regard, the proper recourse against the curtailment of the CIR's power to first rule on administrative claim, as herein stated, is to seek the amendment of Section 229. "'[I]f the law is too narrow in scope, it is for the Legislature rather than the courts to expand it.' It is only when all other means of determining the legislative intention fail that a court may look into the effect of the law; otherwise, the interpretation becomes judicial legislation."[19]

Therefore, as now ruled by the *ponencia*, the Court is constrained to deny the present petition, but let a copy of this Decision be furnished to the Senate and the House of Representatives for their information, and for the possible enactment of remedial legislation.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

[19] *Lacson v. Roque*, 92 Phil. 456, 464 (1953), citing *Cornejo v. Naval*, 54 Phil. 809, 814 (1930).