764 Phil. 595

SECOND DIVISION

[G.R. No. 203928, July 22, 2015]

CE CASECNAN WATER AND ENERGY COMPANY, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

LEONEN, J.:

The thirty (30)-day period provided in Section 112 of the 1997 National Internal Revenue Code to appeal the decision of the Commissioner of Internal Revenue or its inaction is statutorily provided. Failure to comply is a jurisdictional error. The window of exemption created in *Commissioner of Internal Revenue v. San Roque Power Corporation*[1] is limited to premature filing of the judicial remedy. It does not cure lack of jurisdiction due to late filing.

This Petition for Review on Certiorari[2] seeks to annul and set aside the Decision[3] dated June 26, 2012 and Resolution[4] dated October 4, 2012 of the Court of Tax Appeals En Banc in CTA EB No. 726. Both the Decision and Resolution dismissed petitioner CE Casecnan Water and Energy Company, Inc.'s (CE Casecnan) appeal on the ground that its judicial claim for refund or issuance of tax credit for unutilized excess input value-added tax (VAT) in the amount of P26,066,286.96, attributable to its zero-rated sales for the four (4) quarters of 2006, was filed beyond the thirty (30)-day period stated in Section 112 (c) of the 1997 National Internal Revenue Code (Tax Code).

CE Casecnan was incorporated on September 21, 1994. Its primary purpose was "to design, develop, construct, assemble, commission and operate hydro-electric power plants and related facilities"[5] for government or any of its subdivisions, instrumentalities, or agencies, as well as for any government-owned and controlled corporation engaged in energy development, supply, or distribution. It is registered with the Bureau of Internal Revenue as a VAT taxpayer with Taxpayer Identification No. 004-500-931-000.[6]

CE Casecnan filed its quarterly VAT returns for the first to fourth quarters of 2006 on April 25, 2006, July 25, 2006, October 25, 2006, and January 25, 2007.[7] Subsequently, it filed amended VAT returns for these taxable quarters on February 22, 2007 and July 25, 2007.[8]

For the first to fourth quarters of 2006, CE Casecnan had unutilized input VAT credits from its domestic purchases of goods, services rendered by non-residents, and importation of non-capital goods in the total amount of P45,445,453.76, detailed as follows:[9]

	Unutilized Input VAT					
2006 Taxable Quarter	Domestic Purchases other than Capital Goods	Domestic Purchases Capital Goods	Importation other than Capital Goods	Domestic Purchases Services	Services Rendered by Non-Residents	Total
1st	379,544.56	0.00	12,368.00	15,507,614.62	129,268.58	16,028,795.76
2nd	785,961.65	0.00	90,287.00	11,084,959.24	6,146.09	11,967,353.98
3rd	923,658.39	5,714.29	280,325.06	9,184,319.94	0.00	10,394,017.68
4th	831,404.20	17,142.87	976,334.00	5,096,742.58	133,662.69	7,055,286.34
Total	2,920,568.80	22,857.16	1,359,314.06	40,873,636.38	269,077.36	45,445,453.76

Of the total accumulated input VAT of P45,445,453.76, the amount of P26,066,286.96 was attributable to CE Casecnan's zero-rated sales of power generation services to the National Irrigation Administration for the first to fourth quarters of 2006.[10]

On **September 26, 2007**, CE Casecnan filed before the Bureau of Internal Revenue an administrative claim for refund or issuance of tax credit certificate for the excess or unutilized input VAT in the total amount of P26,066,286.96.[11]

On **March 14, 2008**, CE Casecnan filed its Petition for Review, docketed as CTA Case No. 7739, due to the inaction of the Commissioner of Internal Revenue on its administrative claim.[12]

In her Answer, the Commissioner alleged the following as special and affirmative defenses:

> 6. The amount of P26,066,286.96 being claimed by petitioner as alleged unutilized input VAT for the first to fourth quarters of calendar year 2006 is not properly documented. . . .
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> . . . .
>
> 8. Prescription has set in regarding petitioner's claim for refund based on Section 112 (C) of the Tax Code[.][13]

On December 2, 2010,[14] the Court of Tax Appeals Former Second Division denied CE Casecnan's judicial claim for having been filed beyond the thirty (30)-day period prescribed in Section 112 (c) of the Tax Code. Likewise, its Motion for Reconsideration was denied.[15]

CE Casecnan appealed to the Court of Tax Appeals En Banc. Through the Decision[16] dated June 26, 2012, the appeal was denied. Relying upon *Commissioner of Internal Revenue v. Aichi Forging Company Asia, Inc.*,[17] the Court of Tax Appeals En Banc ruled that the one hundred twenty (120)- and thirty (30)-day periods under Section 112 (c) of the Tax Code are mandatory, and non-compliance is fatal to a judicial claim for refund. CE Casecnan's subsequent Motion for Reconsideration was further denied in the Court of Tax Appeals' October 4, 2012 Resolution.[18]

Hence, this Petition[19] raises as its sole issue whether the Court of Tax Appeals En Banc erred in denying petitioner CE Caseenan claim for refund due to prescription.

Petitioner argues that the *Aichi* ruling, which involved an administrative and judicial claim for refund simultaneously filed by the taxpayer, is not squarely applicable to its case.[20] Nonetheless, petitioner submits that *Aichi* should be revisited because there is nothing in Section 112 (c) of the Tax Code[21] stating that compliance by taxpayers with the one hundred twenty (120)- and thirty (30)-day periods is mandatory. On the other hand, unlike Section 112 (c), Section 229 of the Tax Code is allegedly explicit that compliance with the two-year period is mandatory for filing a judicial claim before the Court of Tax Appeals.[22]

Moreover, petitioner proposes a prospective application of the *Aichi* ruling on equitable considerations. Petitioner, as well as other taxpayers, relies upon both the Court of Tax Appeals' and respondent Commissioner of Internal Revenue's previous interpretations that the only jurisdictional requirement for appeals to the Court of Tax Appeals on VAT refund cases was that they be filed within the two-year period set out in Section 229.[23]

Respondent counters[24] that Section 112 is a specific provision referring particularly to VAT, while Section 229 is a general provision referring to general remedies. Hence, with respect to the Rules of Procedure governing VAT matters, Section 112 prevails over Section 229.[25] Furthermore, respondent avers that the word "may" in Section 112 simply means that taxpayers have an avenue of appeal if they so desire to pursue it. It does not give the taxpayer the discretion or the option to choose either the one hundred twenty (120)- and thirty (30)-day rule

under Section 112 or the two-year rule under Section 229, as petitioner erroneously contends.[26]

Respondent further argues that the rule on prospectivity is not applicable because *Aichi* is a case of first impression and its ruling did not overturn any doctrinal precedent. The pronouncement in *Aichi* corrected an erroneous understanding and application of the periods set under Section 112 of the Tax Code by litigants and the Court of Tax Appeals alike. Hence, to limit *Aichi* to a prospective application would be tantamount to sanctioning an erroneous practice in tax litigation.[27]

Lastly, respondent contends that petitioner's failure to comply with the reglementary period prevented the Court of Tax Appeals Former Second Division from acquiring jurisdiction over its claim.[28]

In its Reply,[29] petitioner contends that the doctrine of prospectivity has been applied even in cases of first impression, such as *Land Bank of the Philippines v. De Leon*[30] on equitable considerations and *Co v. Court of Appeals*,[31] in order not to prejudice those who had relied on a contrary administrative interpretation before the adoption of the new doctrine. Petitioner stresses that in *San Roque*, this court did not adopt an iron-clad application of *Aichi*. Rather, it carved out an exception from the rule that the one hundred twenty (120)- and thirty (30)-day periods are mandatory and jurisdictional, such that judicial claims filed by taxpayers who relied on BIR Ruling No. DA-489-03 (BIR Ruling)—from its issuance on December 10, 2003 to its reversal by *Aichi* on October 6, 2010—are shielded from the vice of prematurity. In this regard, petitioner submits that the benefits of the BIR Ruling should also be extended to judicial claims filed beyond the thirty (30)-day period set forth in Section 112 of the Tax Code because the import of the BIR Ruling was that it was the two-year prescriptive period under Section 229 that had jurisdictional significance. Petitioner adds that the BIR Ruling reflected a long-standing practice in tax litigation, which included various administrative issuances and Court of Tax Appeals decisions where, with respect to VAT refunds, the only requirement was that both administrative and judicial claims be filed within the two-year prescriptive period.[32]

We deny the Petition.

Petitioner's judicial claim was filed beyond the thirty (30)-day period required in Section 112 (c) of the Tax Code. The administrative claim for refund was filed on September 26, 2007. Thus, the one hundred twenty (120)-day period for the Bureau of Internal Revenue to act on the claim lapsed on January 24, 2008. Petitioner had until February 23, 2008 to file a petition before the Court of Tax Appeals, but it filed its appeal only on March 14, 2008. Petitioner was late by 19 days.

The prescriptive periods regarding claims for refunds or tax credits of input VAT are explicitly set forth in Section 112 of the Tax Code:

> Section 112. *Refunds or Tax Credits of Input Tax*. —
>
> 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.*** (Emphasis supplied)