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EN BANC

[G.R. No. 190872, October 17, 2013]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. GST PHILIPPINES, INC., RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

It is true that every citizen has a civic responsibility, *nay* an obligation, to honestly pay the right taxes as a contribution to the government in order to keep and maintain a civilized society. Corollarily, the government is expected to implement tax laws in good faith; to discharge its duty to collect what is due to it; and, consistent with the principles of fair play and equity, to justly return what has been erroneously and excessively given to it, after careful verification but without infringing upon the fundamental rights of the taxpayer.

In this Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Republic of the Philippines, represented by the Commissioner of Internal Revenue (CIR), assails the October 30, 2009 Decision[2] and January 5, 2010 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 484, granting respondent GST Philippines, Inc. (GST) a refund of its unutilized excess input value added tax (VAT) attributable to zero-rated sales for the four quarters of taxable year 2004 and the first three quarters of taxable year 2005.

The Facts

GST is a corporation duly organized and existing under the laws of the Philippines, and primarily engaged in the business of manufacturing, processing, selling, and dealing in all kinds of iron, steel or other metals.[4] It is a duly registered VAT enterprise with taxpayer identification number 000-155-645-000,[5] which deals with companies registered with (1) the Board of Investments (BOI) pursuant to Executive Order No. (EO) 226,[6] whose manufactured products are 100% exported to foreign countries; and (2) the Philippine Economic Zone Authority (PEZA).[7] Sales made by a VAT-registered person to a PEZA-registered entity are considered exports to a foreign country subject to a zero rate.[8]

During the taxable years 2004 and 2005, GST filed Quarterly VAT Returns showing its zero-rated sales, as follows:[9]

Period	Date of Filing	Zero-Rated Sales
1 st Quarter of year 2004	April 16, 2004	P 77,687,420.54

2 nd Quarter of year 2004	July 15, 2004	53,737,063.05
3 rd Quarter of year 2004	October 15, 2004	74,280,682.00
4 th Quarter of year 2004	January 11, 2005	104,633,604.23
1 st Quarter of year 2005	April 25, 2005	37,742,969.02
2 nd Quarter of year 2005	July 19, 2005	56,133,761.00
3 rd Quarter of year 2005	October 26, 2005	51,147,677.80

Claiming unutilized excess input VAT in the total amount of P32,722,109.68 attributable to the foregoing zero-rated sales,[10] GST filed before the Bureau of Internal Revenue (BIR) separate claims for refund on the following dates:[11]

Period	Date of Filing of Administrative Claim for Refund
1 st Quarter of 2004	June 9, 2004
2 nd Quarter of 2004	August 12, 2004
3 rd Quarter of 2004	February 18, 2005
4 th Quarter of 2004	February 18, 2005
1 st Quarter of 2005	May 11, 2005
2 nd Quarter of 2005	November 18, 2005
3 rd Quarter of 2005	November 18, 2005

For failure of the CIR to act on its administrative claims, GST filed a petition for review before the CTA on March 17, 2006. After due proceedings, the CTA First Division rendered a Decision[12] on January 27, 2009 granting GST's claims for refund but at the reduced amount of P27,369,114.36. The CIR was also ordered to issue the corresponding tax credit certificate.[13]

The CIR moved for reconsideration, which was denied[14] by the CTA First Division for lack of merit, thus, prompting the elevation of the case to the CTA *En Banc* via a petition for review.[15] The CIR raised therein the failure of GST to substantiate its entitlement to a refund,[16] and argued that the judicial appeal to the CTA was filed beyond the reglementary periods prescribed in Section 112 of RA 8424[17] (Tax Code).[18]

On October 30, 2009, the CTA *En Banc* affirmed[19] the Decision of the CTA First Division finding GST's administrative and judicial claims for refund to have been filed well within the prescribed periods provided in the Tax Code.[20] The CIR's motion for reconsideration was denied by the CTA *En Banc* in its Resolution[21] dated January 5, 2010.

Hence, the instant petition.

The Issue

The CIR no longer raises the alleged failure of GST to comply with the substantiation requirements for the questioned claims for refund nor questions the reduced award granted by the CTA *En Banc* in the amount of P27,369,114.36. Thus, the lone issue for resolution is whether GST's action for refund has complied with the prescriptive periods under the Tax Code.

The Ruling of the Court

Laws Providing Refunds or Tax Credit of Unutilized Excess Input VAT

Refund or tax credit of unutilized excess input VAT has been allowed as early as in the Original VAT Law – EO 273.[22] This was later amended by RA 7716[23] and RA 8424, and further amended by RA 9337[24] which took effect on November 1, 2005.[25] Since GST's claims for refund covered the periods before the effectivity of RA 9337, the old provision on VAT refund, specifically Section 112, as amended by RA 8424, shall apply.[26] It reads:

> Section 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. (Emphasis supplied)
>
> 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.
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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)

The CIR, adopting the dissenting opinion[27] of CTA Presiding Justice Ernesto D. Acosta to the CTA *En Banc* Decision dated October 30, 2009, maintains that the two-year prescriptive period under Section 112 (A) of the Tax Code reckoned from the close of the taxable quarter involved is limited only to the filing of an administrative – not judicial – claim.[28] In turn, under paragraph (D) of the same Section, the CIR has 120 days to decide on the claim counted from the date of the submission of complete documents and not from the mere filing of the administrative claim. The taxpayer then has 30 days from receipt of the adverse decision, or from the expiration of the 120-day period without the CIR acting upon the claim, to institute his judicial claim before the CTA.[29]

Thus, in the present case, the claims filed for the four quarters of taxable year 2004, as well as the first quarter of taxable year 2005, had already prescribed. While those of the second and third quarters of taxable year 2005 were prematurely filed, as summarized in the table presented by Justice Acosta, to wit:

> Applying the above discourse in the case at bar, a table is prepared for easy reference:
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> | **Filing of Administrative Claim** | **120 th day [Section 112 (D), NIRC of 1997]** | **30 th day [Section 112 (D), 2 nd par., NIRC of 1997)** | **Filing of the Petition before the First Division of this Court** | **Remarks** |
> |---|---|---|---|---|
> | June 9, 2004 | October 7, 2004 | November 6, 2004 | March 17, 2006 | Prescribed |
> | August 12, 2004 | December 10, 2004 | January 9, 2005 | March 17, 2006 | Prescribed |
> | February 18, 2005 | June 18, 2005 | July 18, 2005 | March 17, 2006 | Prescribed |
> | May 11, 2005 | September 8, 2005 | October 8, 2005 | March 17, 2006 | Prescribed |
> | November 18, 2005 | March 18, 2006 | April 17, 2006 | March 17, 2006 | Premature |
>
> Based on the above, the filing of the Petition for Review before the First Division has already prescribed with respect to the administrative claim filed on June 9, 2004; August 12, 2004; February 18, 2005; and May 11, 2005 for being filed beyond the 30th day provided under the second paragraph of Section 112 (D) of the NIRC of 1997. The petition is therefore dismissible for being out of time.
>
> Anent the administrative claim filed on November 18, 2005, the filing of the petition before the First Division is premature for failure of respondent to wait for the 120-day period to expire. It failed to exhaust

> the available administrative remedies. Hence, the instant petition is likewise dismissible for lack of cause of action.[30]

For its part, GST asserts that under Section 112 (A) of the Tax Code, the prescriptive period is complied with if both the administrative and judicial claims are filed within the two-year prescriptive period; [31] and that compliance with the 120-day and 30-day periods under Section 112 (D) of the Tax Code is not mandatory. [32] It explained that the 30-day period only refers to a case where a decision is rendered by the CIR and not when the claim for refund is not acted upon, in which case, the taxpayer may appeal to the CTA anytime even prior to or after the expiration of the 120-day period as long as it is within the two-year prescriptive period. On the other hand, the CIR may still choose to resolve the administrative claim even beyond the 120-day period. In any case, compliance with the 120-day and 30-day periods is merely directory and permissive, not mandatory nor jurisdictional.[33]

The 120+30 day periods are mandatory and jurisdictional.

The Court had already clarified in the case of *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*,[34] promulgated on October 6, 2010, that the two-year prescriptive period applies only to administrative claims and not to judicial claims. Morever, it was ruled that the 120-day and 30-day periods are not merely directory but **mandatory**. Accordingly, the judicial claim of *Aichi*, which was simultaneously filed with its administrative claim, was found to be premature. The Court held:

> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) [now Section 112 (C)] 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) [now Section 112 (C)] 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**.[35] (Emphasis supplied)

The taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or tax credit of unutilized excess input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.[36] Failure to comply with the 120-day waiting period violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition.[37]