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THIRD DIVISION

[G.R. No. 184145, December 11, 2013]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. DASH ENGINEERING PHILIPPINES, INC., RESPONDENT.

D E C I S I O N

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 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 P 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 P1,147,683.78. 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]

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 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 –
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> x x x
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> (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 an overpayment shall be considered as a written claim for credit or refund.
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> 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. –
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> (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
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> x x x

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.