

THIRD DIVISION

[G.R. No. 193625, August 30, 2017]

**AICHI FORGING COMPANY OF ASIA, INC., PETITIONER, VS.
COURT OF TAX APPEALS - EN BANC AND COMMISSIONER OF
INTERNAL REVENUE, RESPONDENTS.**

DECISION

MARTIRES, J.:

The Commissioner of Internal Revenue (CIR) is given 120 days to decide^[1] an administrative claim for refund/credit of unutilized or unapplied input Value Added Tax (VAT) attributable to zero-rated sales. In case of a decision rendered or inaction after the 120-day period, the taxpayer may institute a judicial claim by filing an appeal before the Court of Tax Appeals (CTA) within 30 days from the decision or inaction.^[2] Both 120- and 30-day periods are mandatory and jurisdictional.^[3] An appeal taken prior to the expiration of the 120-day period without a decision or action of the Commissioner is premature and, thus, without a cause of action. Accordingly, the appeal must be dismissed for lack of jurisdiction.

The Case

Before the Court is a special civil action for certiorari under Rule 65 of the Rules of Court filed by petitioner Aichi Forging Company of Asia, Inc. (AICHI) seeking the reversal and setting aside of the 18 February 2010 Decision^[4] and 20 July 2010 Resolution^[5] of the CTA En Banc in CTA-EB Case No. 519, which affirmed the 20 March 2009 Decision and 29 July 2009 Resolution of the CTA Second Division (CTA Division) in CTA Case No. 6540 that partially granted the claim of AICHI for tax refund/credit of unutilized or unapplied input VAT attributable to zero-rated sales.

The Antecedents

AICHI is a domestic corporation duly organized and existing under the laws of the Philippines, and is principally engaged in the manufacture, production, and processing of all kinds of steel and steel byproducts, such as closed impression die steel forgings and all automotive steel parts. It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer and with the Board of Investments (BOI) as an expanding producer of closed impression die steel forgings.

On 26 September 2002, AICHI filed with the BIR District Office in San Pedro, Laguna, a written claim for refund and/or tax credit of its unutilized input VAT credits for the third and fourth quarters of 2000 and the four taxable quarters of 2001. AICHI sought the tax refund/credit of input VAT for the said taxable quarters in the total sum of P18,030,547.77^[6] representing VAT payments on importation of capital goods and domestic purchases of goods and services.^[7]

As respondent CIR failed to act on the refund claim, and in order to toll the running of the prescriptive period provided under Sections 229 and 112 (D) of the National Internal Revenue Code (Tax Code), AICHI filed, on 30 September 2002, a Petition for Review before the CTA Division.^[8]

The Issues

The issue for resolution before the court was whether AICHI was entitled to a refund or issuance of a tax credit certificate of unutilized input VAT attributable to zero-rated sales and unutilized input tax on importation of capital goods for the period 1 July 2000 to 31 December 2001 (or six consecutive taxable quarters). Corollary thereto was the issue on whether the administrative claim (refund claim with the BIR) and judicial claim (Petition for Review with the CTA) were filed within the statutory periods for filing the claims.

The Proceedings before the CTA Division

After finding that both the administrative and judicial claims were filed within the statutory two-year prescriptive period,^[9] the CTA Division partially granted the refund claim of AICHI.

The CTA Division denied AICID's refund claim with respect to its purchase of capital goods for the period 1 July 2000 to 31 December 2001 because of the latter's failure to show that the goods purchased formed part of its Property, Plant and Equipment Account and that they were subjected to depreciation allowance. As to the claim for refund of input VAT attributable to zero-rated sales, the CTA only partially granted the claim due to lack of evidence to substantiate the zero-rating of AICID's sales. In particular, the CTA denied VAT zero-rating on the sales to BOI-registered enterprises on account of non-submission of the required BOI Certification.^[10] The dispositive portion of the decision^[11] partially granting the refund claim reads as follows:

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, Respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **SIX MILLION NINE HUNDRED NINETY ONE THOUSAND THREE HUNDRED TWENTY and 40/100 PESOS (P6,991,320.40)**, representing unutilized input VAT attributable to zero-rated sales for the period covering July 1, 2000 to December 31, 2001.^[12]

Only the CIR moved for reconsideration^[13] of the said decision. The CTA Division denied the motion,^[14] hence, the appeal by the CIR to the CTA En Banc.

The Proceedings before the CTA En Banc

The CIR questioned the partial grant of the refund claim in favor of AICHI. It claimed that the court did not acquire jurisdiction over the refund claim in view of AICHI's failure to observe the 30-day period to claim refund/tax credit as specified in Sec. 112 of the Tax Code, i.e., appeal to the CTA may be filed *within 30 days* from receipt of the decision denying the claim or *after expiration of 120 days* (denial by inaction).

With the filing of the administrative claim on 26 September 2002, the CIR had until 20 January 2003 to act on the matter; and if it failed to do so, AICHI had the right to elevate the case before the CTA within 30 days from 20 January 2003, or on or before 20 February 2003. However, AICHI filed its Petition for Review on 30 September 2002, or before the 30-day period of appeal had commenced. According to the CIR, this period is jurisdictional, thus, AICHI's failure to observe it resulted in the CTA not acquiring jurisdiction over its appeal.^[15]

The CTA En Banc was not persuaded. The court ruled that the law does not prohibit the simultaneous filing of the administrative and judicial claims for refund.^[16] It further declared that what is controlling is that both claims for refund are filed within the two-year prescriptive period.^[17] In sum, the CTA En Banc affirmed the assailed decision and resolution of the CTA Division, disposing as follows:

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the March 20, 2009 Decision and July 29, 2009 Resolution of the *CTA Former Second Division* in CTA Case No. 6540 entitled, "*Aichi Forging Company of Asia, Inc. vs. Commissioner of Internal Revenue*" are hereby **AFFIRMED in toto**.^[18]

This time, both the CIR and AICHI separately filed motions for reconsideration of the CTA En Banc decision. In the assailed resolution of the CTA En Banc, the court ruled:

WHEREFORE, premises considered, there having no new matters or issues advanced by the petitioner-CIR in its Motion which may compel this Court to reverse, modify or amend the March 20, 2009 Decision of the CTA *En Banc*, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit. On the other hand, respondent-AICHI's (sic) Motion for Reconsideration is hereby **DENIED** for being filed out of time.
^[19]

On 24 September 2010, or sixty days from receipt of the said resolution, AICHI, through a new counsel, filed the instant petition alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the CTA En Banc when it issued the assailed decision and resolution.

The Present Petition for Certiorari

To support its petition, AICHI raised the following grounds:

A. PETITIONER'S MOTION FOR RECONSIDERATION (of the Decision promulgated on 18 February 2010) WAS FILED ON TIME;

B. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE SAID MOTION WAS FILED OUT OF TIME, IN THE INTEREST OF SUBSTANTIAL JUSTICE, AND DUE TO GROSS NEGLIGENCE OF PETITIONER'S FORMER COUNSEL, THE HONORABLE COURT OF TAX APPEALS EN BANC SHOULD HAVE CONSIDERED PETITIONER'S MOTION FOR RECONSIDERATION;

C. PETITIONER IS ENTITLED TO THE CLAIMED REFUND AS

EVIDENCED BY THE CERTIFICATION ISSUED BY THE BOARD OF INVESTMENTS.^[20]

Citing Section 1, Rule 15 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals (Revised CTA Rules),^[21] AICHI claims that it has fifteen (15) days from receipt of the questioned decision of the CTA En Banc within which to file a motion for reconsideration. Considering that it received the 18 February 2010 Decision of the CTA *En Banc* on 25 February 2010, and that it filed the Motion for Reconsideration on 12 March 2010, AICHI asserts that the filing of the said motion was made within the prescriptive period provided in the law.^[22]

AICHI also ascribes gross negligence on the part of its former counsel when it repeatedly failed to avail of the remedies under the law after obtaining unfavorable decisions and/or resolutions of the CTA, to wit: (1) failure to file a motion for reconsideration or new trial from the decision of the CTA Division partially denying AICHI's claim for refund; and (2) failure to appeal to the Supreme Court after receiving the resolution of the CTA En Banc denying AICHI's motion for reconsideration of the decision of the CTA En Banc. Such gross negligence of the former counsel, AICHI claims, does not bind the latter and, thus, its motion for reconsideration of the decision of the CTA En Banc ought to have been considered by the latter.^[23]

Finally, AICHI argues that it is entitled to the refund of unutilized input VAT because its sales to Asian Transmission Corporation and Honda Philippines are qualified for zero-rating, the latter being a HOI-registered enterprise, as evidenced by a Certification issued by the BOI. Said certification was attached by AICHI in its motion for reconsideration from the CTA En Banc decision.^[24]

Without giving it due course, we required the respondents to submit their comment to the said petition.^[25]

The Arguments of the CIR

In its Comment,^[26] the CIR anchored its opposition to the petition on the following arguments:

- I. PETITIONER FAILED TO AVAIL OF THE PROPER REMEDY.
- II. THE CTA EN BANC DID NOT ERR WHEN IT DENIED PETITIONER'S MOTION FOR RECONSIDERATION.
- III. PETITIONER IS NOT ENTITLED TO ITS CLAIM FOR REFUND.^[27]

The CIR maintains that under Republic Act No. 9282 (R.A. No. 9282)^[28] and the Revised CTA Rules,^[29] an aggrieved party may appeal a decision or ruling of the CTA En Banc by filing a verified petition for review under Rule 45 of the Rules of Court. Conformably thereto, the petitioner should have filed a petition for review on certiorari under Rule 45 instead of a special civil action for certiorari under Rule 65. Being procedurally flawed, the instant petition must be dismissed outright.^[30]

As to the timeliness of the motion for reconsideration, the CIR contends that the petitioner had mistakenly reckoned the counting of the 15-day period to file the motion for reconsideration from the receipt of the decision of the CTA En Banc. The CIR maintains that the reckoning point should be the petitioner's receipt of the decision of the CTA Division. Considering that no such motion for reconsideration within the 15-day period was filed by the petitioner before the CTA Division, the CIR concludes that the petitioner's right to question the decision of the CTA Division had already lapsed and, accordingly, the petitioner may no longer move for a reconsideration of a decision which it never questioned.^[31]

Anent petitioner AICHI's entitlement to the claim for refund, the CIR contends that the BOI Certification, which was attached to the petitioner's Motion for Reconsideration, dated 12 March 2010, should not be considered at all as it was presented only during appeal (before the CTA En Banc). In any event, the certification does not prove AICHI's claim for refund. In said certification, it is required by the terms and conditions that AICHI must comply with the production schedule of 3,900 metric tons or the peso equivalent of P257,400,000.00. However, this data is not verifiable from the petitioner's Quarterly VAT Returns or from the testimonies of its witness. The CIR, thus, submits that the noncompliance with the BOI terms and conditions further warrants the denial of AICHI's claim for refund.^[32]

The Issues

Based on the opposing contentions of the parties, the issues for resolution are the following: (1) whether AICHI availed of the correct remedy; (2) whether AICHI can still question the CTA Division ruling; and (3) whether AICHI sufficiently proved its entitlement to the refund or tax credit.

The Court's Ruling

We deny the petition.

I.

***The CTA had no jurisdiction over the judicial claim.
AICHI's judicial claim was filed prematurely and, thus, without cause of action.***

First, we invoke the age-old rule that when a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case.^[33] Guided by this principle, we shall discuss the timeliness of AICHI's judicial claim, although not raised by the parties in the present petition, in order to determine whether the CTA validly acquired jurisdiction over it. The matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.^[34] In addition, courts have the power to *motu proprio* dismiss an action over which it has no jurisdiction. The grounds for *motu proprio* dismissal by the court are provided in Rule 9, Section 1 of the Revised Rules of Court, to wit: