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THIRD DIVISION

[G.R. No. 205721, September 14, 2016]

HARTE-HANKS PHILIPPINES, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

REYES, J.:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Court which seeks to reverse and set aside the Decision[2] dated September 7, 2012 and Resolution[3] dated February 4, 2013 of the Court of Tax Appeals (CTA) *en banc* in C.T.A. EB No. 748 (C.T.A. Case No. 8050) regarding the claim for Value-Added Tax (VAT) refund of Harte-Hanks Philippines, Inc. (HHPI) in the amount of P3,167,402.34.

Facts of the Case

HHPI is a domestic corporation engaged in the business of providing outsourcing customer relationship management solutions through inbound and outbound call services to its customers. It is located in Bonifacio Global City in Taguig and, as such, pays VAT to the Bureau of Internal Revenue (BIR) using the calendar year (CY) system.[4]

During the first quarter of CY 2008, HHPI received income for services rendered within the Philippines for clients abroad. On April 25, 2008, it filed its original Quarterly VAT Return with the BIR through the BIR Electronic Filing and Payment System. The return was amended on May 29, 2008 showing that HHPI had no output VAT liability for the first quarter of CY 2008 as it had no local sales subject to 12% VAT but it has unutilized input VAT of P3,167,402.34 on its domestic purchases of goods and services on its zero-rated sales of services.[5]

On March 23, 2010, HHPI filed a claim for refund of its unutilized input VAT of P3,167,402.34 before the BIR. Asserting that there was inaction on the part of the Commissioner of Internal Revenue (CIR) and in order to toll the running of the two-year period prescribed by law, HHPI elevated its claim to the CTA on March 30, 2010.[6]

On May 25, 2010, the CIR sought the dismissal of HHPI's claim for refund due to the prematurity of the appeal. According to the CIR, the 120-day period under Section 112(C)[7] of the National Internal Revenue Code (NIRC) of 1997 for the CIR to act on the matter had not yet lapsed. Therefore, HHPI failed to exhaust administrative remedies before it appealed before the CTA.[8]

On July 14, 2010, HHPI filed its comment praying for the denial of the motion to

dismiss because: (1) it was procedurally infirm for having been addressed to the Clerk of Court instead of the party litigant; (2) it lacked basis that HHPI failed to exhaust administrative remedies; (3) the two-year prescriptive period under Section 229[9] of the 1997 NIRC was not applicable; (4) the duty imposed in Section 112(C) of the 1997 NIRC was upon the CIR and not upon HHPI; (5) the motion was violative of HHPI's right to seek refund within the two-year period; and (6) HHPI failed to take action on its administrative claim.[10]

In a Resolution[11] dated November 30, 2010, the CTA Third Division granted the motion to dismiss in view of the prematurity of the petition. Citing the case of *CIR v. Aichi Forging Company of Asia, Inc.*,[12] the CTA explained the mandatory 120-day period under Section 112(D) of the 1997 NIRC reckoned from the date of submission of the complete documents in support of the application for refund, and the 30-day period to appeal to be reckoned either from the lapse of the 120-day period without any decision rendered by the CIR on the application or, upon receipt of the CIR's decision before or after the 120-day period has expired. The CTA Third Division also stressed that the two-year period refers to the period for the filing of the claim before the CIR and was never intended to include the period for filing the judicial claim.[13]

HHPI's motion for reconsideration[14] thereof was denied in the CTA's Resolution[15] dated March 14, 2011 after finding no cogent reason to deviate from its ruling.

Undaunted, HHPI filed a petition for review[16] before the CTA *en banc* which, however, denied the same in the assailed Decision[17] dated September 7, 2012, and accordingly, affirmed the resolution of the CTA Third Division. It was declared that the crucial nature of the mandatory 120 and 30-day periods and that non-observance thereof will deprive the court of competence to entertain the appeal;[18] that the 120 and 30-day periods in Section 112(C) of the 1997 NIRC refer to the taxpayer's discretion on whether or not to appeal the CIR's decision or inaction with the CTA; and, that the said periods are indispensable even if the claim is lodged within the two-year prescriptive period.[19]

HHPI sought for reconsideration but the same was denied in the Resolution[20] dated February 4, 2013.

Hence, this petition anchored on the following arguments, to wit:

1. In *CIR v. San Roque Power Corporation*,[21] the Court held that taxpayers who filed their judicial claims after the issuance of BIR Ruling No. DA-489-03 but before *Aichi*[22] cannot be faulted for filing such claims prematurely;[23]

2. The failure to comply with the 120-day period under Section 112(C) of the 1997 NIRC is not jurisdictional;[24]

3. CIR's motion to dismiss was fatally defective and should have been disregarded;[25] and

4. 4. Sections 112 and 229 of the 1997 NIRC should be reconciled.[26]

Ruling of the Court

The petition has no merit.

It should be noted that the petition for review was filed before the CTA on March 30, 2010, or merely seven days after the administrative claim for refund was filed before the BIR on March 23, 2010. Evidently, HHPI failed to wait for the lapse of the 120-day period which is expressly provided for by law for the CIR to grant or deny the application for refund.

In *San Roque*,[27] it has been held that the compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on January 1, 1988. The waiting period was extended to 120 days effective January 1, 1998 under Republic Act No. 8424 or the Tax Reform Act of 1997. **The 120-day period under Section 112(C) has been in the statute books for more than 15 years before respondent San Roque filed its judicial claim.**[28]

Moreover, a taxpayer's failure to comply with the prescribed 120-day waiting period would render the petition premature and is violative of the principle on exhaustion of administrative remedies. Accordingly, the CTA does not acquire jurisdiction over the same. This being so, "[w]hen a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the [CIR], there is no 'decision' of the [CIR] to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal."[29]

The CTA, being a court of special jurisdiction, has the judicial power to review the decisions of the CIR. Concomitantly, the CTA also has the power to decide an appeal because the CIR's inaction[30] within the 120-day waiting period shall be deemed a denial of the taxpayer's application for refund or tax credit.

In the instant case, the petition for review is considered premature because the 120-day **mandatory** period was not observed before an appeal was elevated to the CTA. Either the CTA or this Court could also legitimize such procedural infirmity because it would run counter to Article 5[31] of the Civil Code unless a law exists that would authorize the validity of said petition. Regrettably, such law is wanting in the instant case.

Tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[32] A refund is not a matter of right by the mere fact that a taxpayer has undisputed excess input VAT or that such tax was admittedly illegally, erroneously or excessively collected. Corollarily, a taxpayer's non-compliance with the mandatory 120-day period is fatal to the petition even if the CIR does not assail the numerical correctness of the tax sought to be refunded. Otherwise, the mandatory and jurisdictional conditions impressed by law would be rendered useless.

Additionally, the 30-day appeal period to the CTA "was adopted precisely to do away with the old rule,[33] so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the CIR acts only on the 120th day, or does not