



Republic of the Philippines
Supreme Court
Manila

EN BANC

COMMISSIONER OF INTERNAL REVENUE, G.R. No. 226592

Petitioner,

Present:

GESMUNDO, *Chief Justice*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO, and
LOPEZ, J., *JJ.*

-versus-

CARRIER AIR CONDITIONING
PHILIPPINES, INC.,
Respondent.

Promulgated:

July 27, 2021

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DECISION

LEONEN, *J.*:

Section 229 of the National Internal Revenue Code of 1997 prescribes two conditions for an action to recover erroneously paid or illegally collected taxes, namely: (1) that an administrative claim must first be filed with the Bureau of Internal Revenue; and (2) that the judicial claim must be filed within two years from payment of the tax. Respondent's judicial claim, filed within the two-year prescriptive period, is proper.

This Court resolves a Petition for Review on Certiorari¹ assailing the Decision² and Resolution³ of the Court of Tax Appeals *En Banc*, which affirmed the Second Division's Decision⁴ and Resolution⁵ granting the claim for refund or tax credit of ₱11,395,574.20. This amount represents the final withholding tax on the excess cash dividends paid by Carrier Air Conditioning Philippines, Inc. (Carrier Air Conditioning) to its non-resident foreign parent company in 2009.

During a special meeting on November 23, 2009, Carrier Air Conditioning's Board of Directors declared cash dividends in favor of its foreign parent company, Carrier HVACR Investments B.V. (Carrier B.V.), out of its unrestricted retained earnings as of October 31, 2009.⁶ The cash dividends in the total amount of ₱871,084,418.00 were payable as follows:

Payable on or before	Amount
November 30, 2009	₱654,000,000.00
December 31, 2009	₱217,084,418.00 ⁷

Carrier Air Conditioning paid Carrier B.V. the cash dividends on November 24, 2009 and December 22, 2009,⁸ net of the 10% final withholding taxes that were remitted to the Bureau of Internal Revenue on December 10, 2009 and January 12, 2010.⁹

However, an independent audit for the year 2009 revealed that the unrestricted retained earnings were insufficient to support the dividends of ₱113,955,742.00 that were overdeclared on November 23, 2009.¹⁰ Since the cash dividends were already paid to Carrier B.V., Carrier Air Conditioning recorded the overpaid dividends as receivables from Carrier B.V. in its 2009

¹ *Rollo*, pp. 12–35. Filed under Rule 45 of the Rules of Court.

² *Id.* at 46–60. The June 2, 2016 Decision in CTA EB Case No. 1341 was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban of the Court of Tax Appeals, Quezon City.

³ *Id.* at 61–63. The August 12, 2016 Resolution in CTA EB Case No. 1341 was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis Liban of the Court of Tax Appeals, Quezon City.

⁴ *Id.* at 208–226. The March 17, 2015 Decision in CTA Case No. 8393 was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justice Juanito C. Castaneda, Jr. of the Second Division, Court of Tax Appeals, Quezon City.

⁵ *Id.* at 234–240. The July 13, 2015 Resolution in in CTA Case No. 8393 was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castaneda, Jr. and Amelia R. Cotangco-Manalastas of the Second Division, Court of Tax Appeals, Quezon City.

⁶ *Id.* at 48.

⁷ *Id.*

⁸ *Id.* at 220.

⁹ *Id.* at 219.

¹⁰ *Id.* at 220–221.

Audited Financial Statements.¹¹ These receivables were carried over and reflected in the 2010 Audited Financial Statements.¹²

On November 2, 2011, the Board of Directors approved a cash dividend declaration of ₱150,333,970.00 “out of the unrestricted retained earnings of the Corporation as of December 31, 2010[.]”¹³ Of that amount, the Board also authorized the deduction of the overpaid cash dividends from 2009, resulting in a net dividend payable of ₱21,344,381.00.¹⁴

This net dividend payable was remitted to Carrier B.V. on November 23, 2011. Thus, the receivables from Carrier B.V. worth ₱113,955,742.00 were removed from Carrier Air Conditioning’s 2011 Audited Financial Statements.¹⁵ The 10% final withholding taxes of ₱15,033,397.00 for the 2011 dividend declaration were remitted to the Bureau of Internal Revenue on December 6, 2011.¹⁶

Meanwhile, on November 29, 2011, Carrier Air Conditioning had filed an administrative claim for the refund or issuance of tax credit certificate in the amount of ₱11,395,574.20, representing the final withholding taxes on the 2009 overpaid dividends.¹⁷

Ten days later, on December 9, 2011, Carrier Air Conditioning filed a Petition for Review before the Court of Tax Appeals.¹⁸

In its Answer (with Motion to Dismiss),¹⁹ the Commissioner of Internal Revenue argued that the claim was without legal and factual bases,²⁰ the Court of Tax Appeals had no jurisdiction over the case because the Verification and Certification of Non-Forum Shopping attached to the Petition was defective;²¹ and the administrative claim was still subject to their investigation.²² To this, Carrier Air Conditioning filed its Reply.²³

In an April 24, 2012 Resolution, the Court of Tax Appeals denied the Commissioner of Internal Revenue’s prayer to have the Petition dismissed.²⁴

¹¹ Id. at 222.

¹² Id. at 223.

¹³ Id. at 49.

¹⁴ Id. at 48–49.

¹⁵ Id. at 223.

¹⁶ Id. at 224.

¹⁷ Id. at 49.

¹⁸ Id.

¹⁹ Id. at 125–134.

²⁰ Id. at 128.

²¹ Id. at 128–129.

²² Id. at 130.

²³ Id. at 50.

²⁴ Id.

On August 17, 2012, the parties filed their Joint Stipulation of Facts and Issues,²⁵ setting forth the following issues:

- a. Whether there is an actual and proper reversal of cash dividends made by [Carrier Air Conditioning];
- b. Whether [Carrier Air Conditioning] has remitted the final withholding tax on the dividends to the BIR, which is currently the subject of the case for refund or issuance of a TCC;
- c. Whether [Carrier Air Conditioning's] claim for refund or issuance of a TCC is duly substantiated by documentary evidence;
- d. Whether [Carrier Air Conditioning] is entitled to refund or issuance of a TCC in the amount of P11,395,574.20, representing final tax withheld and remitted on the excess cash dividends paid by [Carrier Air Conditioning] to Carrier [B.V.] on November 24, 2009 and December 22, 2009.²⁶

During trial, Carrier Air Conditioning submitted its evidence and Memorandum. The Commissioner of Internal Revenue submitted no memorandum and manifested that no witnesses would be presented.²⁷

In a March 17, 2015 Decision,²⁸ the Court of Tax Appeals Second Division granted the Petition.²⁹ It held that “both administrative and judicial claims were filed within the two-year prescriptive period” under Sections 204 and 229 of the 1997 National Internal Revenue Code.³⁰ Moreover, it found an over-remittance of final withholding tax,³¹ thus ordering the Commissioner of Internal Revenue to refund or issue a tax credit certificate worth ₱11,395,574.20, representing the erroneously withheld final withholding tax on the excess cash dividends paid in 2009.³²

The Commissioner of Internal Revenue moved for reconsideration,³³ which was denied in a July 13, 2015 Resolution³⁴ for having been filed two days late³⁵ and for lack of merit.³⁶

The Commissioner of Internal Revenue then filed a Petition for Review before the Court of Tax Appeals *En Banc*.³⁷

²⁵ Id.

²⁶ Id. at 51.

²⁷ Id. at 50.

²⁸ Id. at 208–226.

²⁹ Id. at 51.

³⁰ Id. at 219.

³¹ Id. at 224.

³² Id. at 225.

³³ Id. at 52.

³⁴ Id. at 234–240.

³⁵ Id. at 236.

³⁶ Id. at 240.

³⁷ Id. at 46–47.

In its June 2, 2016 Decision,³⁸ the Court of Tax Appeals *En Banc* still ruled for Carrier Air Conditioning. It first held that the Commissioner of Internal Revenue's Motion for Reconsideration was filed on time, as shown in the April 6, 2015 registry receipt that was belatedly submitted by the Commissioner.³⁹ Nonetheless, it denied the Petition for lack of merit.⁴⁰ It also denied the subsequent Motion for Reconsideration in an August 12, 2016 Resolution.⁴¹

Hence, the Commissioner of Internal Revenue filed this Petition for Review on Certiorari.⁴² Carrier Air Conditioning filed its Comment,⁴³ to which petitioner filed a Reply.⁴⁴

Petitioner submits that the Court of Tax Appeals *En Banc* erred in affirming the Second Division's ruling.⁴⁵ Petitioner argues that under Republic Act No. 1125, even after being amended by Republic Act No. 9282, the Court of Tax Appeals only has appellate jurisdiction over refund claims. Thus, without a ruling by petitioner, respondent may not invoke the Court of Tax Appeals' appellate jurisdiction. Petitioner contends that respondent's judicial claim, filed barely 10 days from the filing of the administrative claim for refund, was premature and violative of the doctrine of exhaustion of administrative remedies.⁴⁶ Petitioner adds:

The taxpayer claiming the tax credit or refund has the burden of proving that [they are] entitled to the refund by showing that [they] strictly complied with the conditions for the grant of the tax refund or credit. . . . Noncompliance with the mandatory periods, nonobservance of the prescriptive periods, and non-adherence to exhaustion of administrative remedies bar a taxpayer's claim for tax refund or credit, whether or not the CIR questions the numerical correctness of the claim of the taxpayer.⁴⁷ (Citation omitted)

In its Comment, respondent counters that petitioner is barred from arguing that it violated the doctrine of exhaustion of administrative remedies for belatedly raising it.⁴⁸ It notes that petitioner had actively participated in the proceedings before the Court of Tax Appeals without once raising the issue, and for petitioner to introduce this argument only after more than five years was "clearly a mere afterthought[.]"⁴⁹

³⁸ Id. at 46–60.

³⁹ Id. at 54.

⁴⁰ Id. at 59.

⁴¹ Id. at 61–63.

⁴² Id. at 12–35.

⁴³ Id. at 260–279.

⁴⁴ Id. at 515–521.

⁴⁵ Id. at 24.

⁴⁶ Id. at 30.

⁴⁷ Id. at 31.

⁴⁸ Id. at 270.

⁴⁹ Id. at 270–271.

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At any rate, respondent posits that the doctrine of exhaustion of administrative remedies admits of exceptions as when its application would nullify the claim being asserted.⁵⁰ Respondent avers that it had to file its judicial claim on December 9, 2011 given petitioner's inaction on its administrative claim, and to preserve its right to seek a refund or tax credit of erroneously paid taxes, which was supposed to expire on December 10, 2011.⁵¹ It points out that the Court of Tax Appeals Second Division expressly recognized that its administrative and judicial claims for refund were filed within the prescriptive period under the 1997 National Internal Revenue Code.⁵²

Finally, respondent asserts that it had cause of action to file its claim for refund or tax credit. It submits that it duly proved its error or mistake in withholding and remitting the final withholding tax on overpaid dividends to the Bureau of Internal Revenue, as confirmed by both the Court of Tax Appeals Second Division and *En Banc*.⁵³

The sole issue for this Court's resolution is whether or not the Court of Tax Appeals erred in granting respondent Carrier Air Conditioning Philippines, Inc.'s judicial claim, instead of dismissing the Petition on the grounds of violation of the doctrine of exhaustion of administrative remedies and lack of cause of action.

The Petition is denied.

I

Sections 204(C) and 229 of the 1997 National Internal Revenue Code govern the filing of claims to recover any erroneously paid or illegally collected tax. The provisions state:

SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* —

The Commissioner may —

.....

(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*

⁵⁰ Id. at 272.

⁵¹ Id. at 274.

⁵² Id. at 275.

⁵³ Id. at 276-277.

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.

....

SECTION 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 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: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

Section 204 refers to the Commissioner of Internal Revenue's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two years from payment of the tax.

Section 229, on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.

Reading the two provisions together, both administrative and judicial claims must be filed within the two-year period. Furthermore, the administrative claim must be filed before the judicial claim. This Court has previously declared that “[t]imeliness of the filing of the claim is mandatory and jurisdictional. The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.”⁵⁴

Consequently, respondent had two years from the date of payment or remittance of the overpaid final withholding tax to the Bureau of Internal Revenue to file a claim for refund, both administrative and judicial.

⁵⁴ *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, 802 Phil. 636, 645 (2016) [Per J. Brion, Second Division].



Here, as the Court of Tax Appeals Second Division found, respondent filed its monthly remittance return of final income taxes withheld for November and December 2009, and paid the corresponding final withholding tax of ₱87,108,441.80 on the dividend payments, as follows:

Return Period	Date Filed	Payment Date	Amount Paid
November 2009	December 10, 2009	December 10, 2009	₱65,400,000.00
December 2009	January 8, 2010	January 12, 2010	₱21,708,441.80
			₱87,108,441.80⁵⁵ (Emphasis in the original, citations omitted)

Based on the payment dates, the two-year period for filing a claim for refund (both administrative and judicial) would end on December 10, 2011 and January 12, 2012.⁵⁶

Respondent filed its administrative claim on November 29, 2011; its judicial claim, on December 9, 2011.⁵⁷ Clearly, both were within the two-year prescriptive period.

II

Petitioner, however, argues that respondent's Petition for Review before the Court of Tax Appeals, having been filed barely 10 days from the filing of the administrative claim for refund, is premature and in clear violation of the doctrine of exhaustion of administrative remedies.⁵⁸

The principle of exhaustion of administrative remedies requires a party to first avail all the means provided by administrative processes before seeking the courts' intervention.⁵⁹ It is a "form of courtesy, where the court defers to the administrative agency's expertise and waits for its resolution before hearing the case."⁶⁰ Non-observance of the rule, however, does not affect the court's jurisdiction, but only the party's cause of action.⁶¹ Hence, it may be waived if not invoked at the proper time.⁶²

Closely related in concept and function is the doctrine of primary administrative jurisdiction, which refers to a court's competence to take

⁵⁵ *Rollo*, p. 219.

⁵⁶ *Id.*

⁵⁷ *Id.* at 49.

⁵⁸ *Id.* at 30.

⁵⁹ *Republic v. Gallo*, 823 Phil. 1090 (2018) [Per J. Leonen, Third Division].

⁶⁰ *National Federation of Hog Farmers, Inc. v. Board of Investments*, G.R. No. 205835, June 23, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343>> [Per J. Leonen, En Banc].

⁶¹ *Republic v. Gallo*, 823 Phil. 1090 (2018) [Per J. Leonen, Third Division].

⁶² *Sunville Elmer Products, Inc. v. Abad*, 283 Phil. 400 (1992) [Per J. Cruz, First Division].

cognizance of a case at the first instance.⁶³ Under this doctrine, where the law confines in an administrative body the power to determine a particular issue, the administrative body's jurisdiction will prevail over the court's.⁶⁴ This means that courts "cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal[.]"⁶⁵ Noncompliance with this doctrine is jurisdictional; it cannot be waived.⁶⁶

Section 4 of the 1997 National Internal Revenue Code states that "the power to decide disputed assessments, refunds of internal revenue taxes, . . . is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals." The Commissioner of Internal Revenue's power to refund or credit taxes is further expounded in Section 204.

Meanwhile, Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282,⁶⁷ provides for the Court of Tax Appeals' *exclusive appellate* jurisdiction. It states:

SECTION 7. *Jurisdiction.* — The CTA shall exercise:

(a) *Exclusive appellate jurisdiction to review by appeal*, as herein provided:

- (1) *Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;*
- (2) *Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.] (Emphasis supplied)*

Thus, applications for refunds of internal revenue taxes lie within the primary jurisdiction of the Commissioner of Internal Revenue, and the Court

⁶³ *Republic v. Gallo*, 823 Phil. 1090 (2018) [Per J. Leonen, Third Division].

⁶⁴ *Republic v. Lacap*, 546 Phil. 87 (2007) [Per J. Austria-Martinez, Third Division]; *Radio Communications of the Philippines, Inc. v. National Telecommunications Commission*, 263 Phil. 449 (1990) [Per J. Bidin, En Banc].

⁶⁵ J. Leonen, Dissenting Opinion in *Department of Finance v. Dela Cruz, Jr.*, 767 Phil. 611, 652 (2015) [Per J. Carpio, Second Division].

⁶⁶ *Republic v. Gallo*, 823 Phil. 1090 (2018) [Per J. Leonen, Third Division].

⁶⁷ An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes. March 30, 2004.

of Tax Appeals may take cognizance of these claims only on an appellate basis. Specifically, under Section 7, the Court of Tax Appeals can review by appeal *decisions*, or “*inactions deemed denial*,” of the Commissioner of Internal Revenue in applications for refund of internal revenue taxes. There is an “inaction deemed denial” when the Commissioner fails to act on a claim within the specific period provided by the 1997 National Internal Revenue Code.

In this case, petitioner assails respondent’s filing of the judicial claim before the Court of Tax Appeals sans any ruling by them on the administrative claim.

This same issue has been squarely passed upon in *CBK Power Company Limited v. Commissioner of Internal Revenue*.⁶⁸ The Commissioner argued that since the judicial claim was filed merely five days after the administrative claim had been filed, they were not given a reasonable time to act on the claim. The Commissioner contended that the taxpayer’s filing of the judicial claim violates the doctrines of exhaustion of administrative remedies and primary jurisdiction.⁶⁹

This Court rejected the Commissioner’s argument. It ruled that Sections 204 and 229 of the 1997 National Internal Revenue Code require only that the administrative claim be filed before the judicial claim and that both claims be filed within two years from the payment of the tax. Hence, the taxpayer properly filed its judicial claim without awaiting the Commissioner’s action on its administrative claim, as long as the judicial claim was filed within the two-year prescriptive period.⁷⁰ Thus:

Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer’s claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the [1997] NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner. . . .

. . . .

With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.

⁶⁸ 750 Phil. 748 (2015) [Per J. Perlas-Bernabe, First Division].

⁶⁹ *Id.*

⁷⁰ *Id.* at 763–764.

Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.⁷¹ (Citation omitted)

Still in *CBK Power Company*, this Court further held that Section 229 does not require that the Commissioner first act on the taxpayer's claim, and that the taxpayer cannot go to court without the Commissioner's action.⁷² Citing *P.J. Kiener Company, Ltd. v. David*,⁷³ this Court held that the administrative claim filed before the Commissioner was intended "primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow[.]"⁷⁴

Hence, applying the ruling in *CBK Power Company*, this Court finds proper respondent's filing of judicial claim 10 days after it had filed its administrative claim, even without petitioner's ruling. The judicial claim was timely filed within the two-year prescriptive period based on the plain language of Section 229 of the 1997 National Internal Revenue Code.

III

A closer reading of Sections 204 and 229 of the 1997 National Internal Revenue Code, in conjunction with Section 7 of Republic Act No. 9282, reveals a problem of what is considered a "reasonable period" for the Commissioner of Internal Revenue to act on a claim for refund of taxes.

Section 229, which requires a prior administrative claim before a judicial claim is filed, recognizes the Commissioner of Internal Revenue's primary jurisdiction to decide refunds of internal revenue taxes. It gives the Commissioner "an opportunity to consider [their] mistake, if mistake has been committed,"⁷⁵ or to investigate and ascertain the veracity of the claim,⁷⁶ before they are sued. This Court in *CBK Power Company*, citing *P.J.*

⁷¹ Id. at 763–765. Reiterated in *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*, 792 Phil. 484 (2016) [Per J. Perlas-Bernabe, First Division], where this Court upheld the judicial claim that was filed only 13 days from the administrative claim.

⁷² Id. at 765.

⁷³ 92 Phil. 945 (1953) [Per J. Tuason, En Banc].

⁷⁴ *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, 750 Phil. 748, 765 (2015) [Per J. Perlas-Bernabe, First Division].

⁷⁵ *P.J. Kiener Co., Ltd. v. David*, 92 Phil. 945, 945 (1953) [Per J. Tuason, En Banc].

⁷⁶ *Philam Asset Management Inc. v. Commissioner of Internal Revenue*, 514 Phil. 147 (2005) [Per J. Panganiban, Third Division]; *Citibank, N.A. v. Court of Appeals*, 345 Phil. 695 (1997) [Per J. Panganiban, Third Division]; *San Carlos Milling, Co., Inc. v. Commissioner of Internal Revenue*, 298-A Phil. 76 (1993) [Per J. Padilla, Second Division].

Kiener, held that the primary purpose of filing an administrative claim is to serve as a *notice or warning* to the Commissioner that *court action would follow unless the tax or penalty is refunded*.⁷⁷ This necessarily implies that the Commissioner has sufficient time to examine, evaluate, and act on the matter within their jurisdiction.

On the other hand, Section 7 of Republic Act No. 9282 grants the Court of Tax Appeals exclusive appellate jurisdiction over a decision or “inaction deemed denial” of the Commissioner in a claim for refund. Under its clear wording, the Court of Tax Appeals can take cognizance of appeals in cases of the Commissioner’s “inaction” only where the 1997 National Internal Revenue Code specifically provides a period for the Commissioner to act on a claim for refund. However, unlike in claims for refund of input value-added tax,⁷⁸ the 1997 National Internal Revenue Code does not prescribe a specific period within which the Commissioner must resolve the claim for refund or credit of erroneously paid taxes.

Sections 204 and 229 fixed the same period of two years for filing an administrative claim for refund before the Bureau of Internal Revenue and to sue before the Court of Tax Appeals. *CBK Power Company* explained that as long as these two acts fall within the two-year period, there is no legal impediment to the judicial claim for refund.⁷⁹

Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.

Thus, in *CBK Power Company*, as with subsequent cases, this Court upheld the propriety of the taxpayer’s judicial claim instituted as early as five⁸⁰ and 13⁸¹ days after the administrative claim had been filed, on the ground that both claims were filed within the two-year prescriptive period.

⁷⁷ *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, 750 Phil. 748, 765 (2015) [Per J. Perlas-Bernabe, First Division].

⁷⁸ Under Section 112(C) of the National Internal Revenue Code of 1997, as amended by Republic Act No. 10963 or the TRAIN Law, the Commissioner of Internal Revenue has 90 days from the date of submission of complete documents in support of the application within which to grant a refund or issue the tax credit certificate.

⁷⁹ *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, 750 Phil. 748 (2015) [Per J. Perlas-Bernabe, First Division].

⁸⁰ *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, 802 Phil. 636 (2016) [Per J. Brion, Second Division].

⁸¹ *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*, 792 Phil. 484 (2016) [Per J. Perlas-Bernabe, First Division].

The Court of Tax Appeals likewise allowed judicial claims⁸² filed simultaneously, or one to 28 days from the administrative claim's filing, on the same ground that both claims were filed within the two-year prescriptive period.

In much earlier cases, however, it was the Commissioner who was considered long delayed in resolving the administrative claims. Hence, this Court has held that the taxpayer need not wait for the Commissioner's decision, and may file its judicial claim when the two-year prescriptive period is about to lapse.

For instance, in *P.J. Kiener*,⁸³ the taxpayer filed its administrative claim for refund four months after the last payment of the tax sought to be refunded. Yet, the then Collector of Internal Revenue took their time—*more than two years*—to decide on the claim, so much so that when the taxpayer filed its appeal, its action had already prescribed. This Court held: "*Having filed his claim and the Collector of Internal Revenue having had ample time to study it, the claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision.*"⁸⁴

In *Collector of Internal Revenue v. Court of Tax Appeals and Hume Pipe & Asbestos Co., Inc.*,⁸⁵ this Court deemed *two months* as ample time for the Collector to have decided the claim for refund of overpaid income tax. Hence, in that case, it upheld the taxpayer's filing of a petition for review before the Court of Tax Appeals without waiting for the Collector's decision, since the two-year prescriptive period was already about to expire.

⁸² *Aeon Credit Service (Philippines), Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 9770, July 15, 2020; *Commissioner of Internal Revenue v. Keppel Philippines Properties, Inc.*, C.T.A. EB Case No. 1540 (C.T.A. Case No. 8908) (Resolution), September 19, 2018; *Commissioner of Internal Revenue v. Philippine National Bank*, C.T.A. EB Case No. 1533 (C.T.A. Case No. 8268), August 23, 2018; *Commissioner of Internal Revenue v. ABB, Inc.*, C.T.A. EB Case No. 1501 (C.T.A. Case Nos. 8563, 8594, and 8674), March 13, 2018; *Commissioner of Internal Revenue v. Estate of Cabrera*, C.T.A. EB Case No. 1503 (C.T.A. Case No. 8785), July 25, 2017; *Commissioner of Internal Revenue v. PMFTC, Inc.*, C.T.A. EB Case No. 1385 (C.T.A. Case No. 8691), July 11, 2016; *Philip Morris Phils. Manufacturing, Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 8692, June 30, 2015; *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, C.T.A. Case No. 8232, December 16, 2014; *Commissioner of Internal Revenue v. Goodyear Phils., Inc.*, C.T.A. EB Case No. 1041 (C.T.A. Case No. 8188), August 14, 2014; *Unisys Public Sector Services Corp. v. Commissioner of Internal Revenue*, C.T.A. Case No. 8216, April 16, 2014; *South Global Services Phils., Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 8354, February 27, 2014; *Sutherland Global Services Phils., Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 8180, January 13, 2014; *Philippine Bank of Communications v. Commissioner of Internal Revenue*, C.T.A. EB Case Nos. 555 & 556 (C.T.A. Case No. 7486), May 13, 2010; *Gillette (Philippines), Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 4248, February 8, 1995; *Far East Bank and Trust Company/Foreign Currency Deposit Unit vs. Commissioner of Internal Revenue*, C.T.A. Case Nos. 4356 and 4441, May 5, 1994; and *Bank of the Philippine Islands, as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 4257, December 20, 1993.

⁸³ *P.J. Kiener* involved the refund of overpaid percentage taxes for the year 1948, which were paid on April 20, 1948, July 20, 1948, and January 20, 1949. The administrative claim was filed on May 25, 1949, and was denied by the Collector of Internal Revenue only on June 11, 1951.

⁸⁴ *P.J. Kiener Co., Ltd. v. David*, 92 Phil. 945, 947 (1953) [Per J. Tuason, En Banc].

⁸⁵ 110 Phil. 680 (1961) [Per J. Dizon, En Banc].

In *Commissioner of Customs and Commissioner of Internal Revenue v. The Honorable Court of Tax Appeals and Planters Products, Inc.*,⁸⁶ eight months and 10 days had lapsed from the taxpayer's filing of an administrative claim, but the Commissioner had not acted on it. Ruling in the taxpayer's favor, this Court, quoting a ruling of the tax court, said:

The taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect.

....

It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector [(now Commissioner)] of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the [Commissioner], would have, at his personal convenience, given his go signal.⁸⁷

In these cases, the written claim for refund was duly filed at the administrative level, but the claim had not been acted upon by the Commissioner (then Collector) of Internal Revenue. Since the two-year period was about to lapse, the taxpayer was held justified in filing its judicial claim, without waiting for the Commissioner's decision, to protect its interest. Otherwise, should the Commissioner render an adverse decision after the two-year period, the taxpayer would be barred, to its prejudice, from pursuing its appeal to the Court of Tax Appeals.

These cases show that the lack of a specific period fixed by the law within which the Commissioner must decide the claim has led to delays, to the taxpayer's prejudice. On the other hand, there were instances when the Commissioner was deprived of the opportunity to act on the matter within their jurisdiction because of the short interval between the filing of the administrative claim and the filing of the judicial claim. This is so because the law merely provides two years for a taxpayer to file the administrative claim and judicial claim, with the former required to be filed first.

Nonetheless, the silence or insufficiency in the law on the reasonable period for the Commissioner's action is one that can be addressed not by judicial pronouncement, but by appropriate legislation.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed June 2, 2016 Decision and August 12, 2016 Resolution of the Court of Tax Appeals *En Banc* are **AFFIRMED**. Respondent Carrier Air

⁸⁶ 253 Phil. 339 (1989) [Per J. Griño-Aquino, First Division].

⁸⁷ Id. at 343.

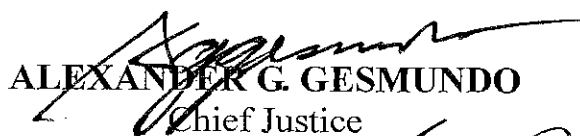
Conditioning Philippines, Inc.'s claim for refund or tax credit of ₱11,395,574.20 is **GRANTED**.

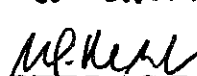
Let a copy of this Decision be furnished to the Senate of the Philippines and the House of Representatives for their information and appropriate action.

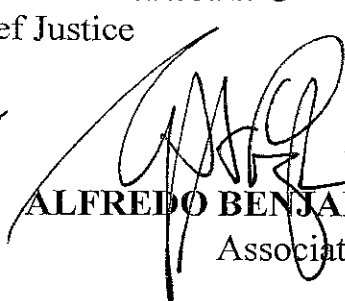
SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice


WE CONCUR:

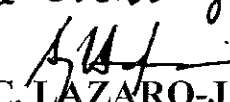

ALEXANDER G. GESMUNDO
Chief Justice


Please see Concurring Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

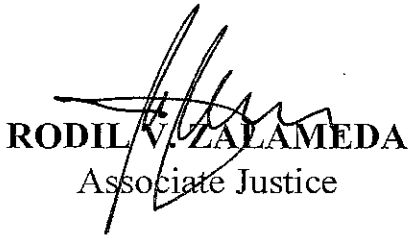
See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

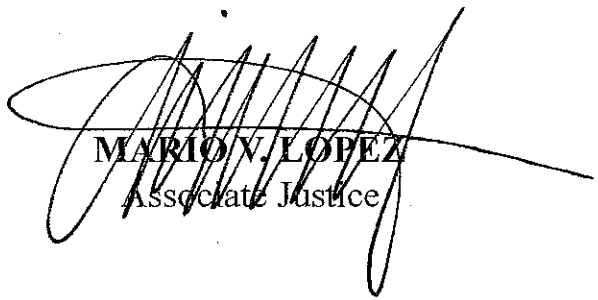

RAMON PAUL L. HERNANDO
Associate Justice



ROSMARI D. CARANDANG
Associate Justice


Pls. see Concurring Opinions

AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice

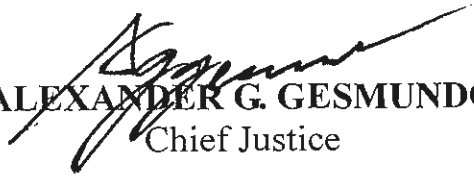

SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court