EN BANC

G.R. No. 226592 — COMMISSIONER OF INTERNAL REVENUE, *petitioner,* ***versus*** **CARRIER AIR CONDITIONING PHILIPPINES, INC.,** *respondent.*

Promulgated:

July 27, 2021

x - x

CONCURRING OPINION

CAGUIOA, *J.*:

On November 29, 2011, respondent Carrier Air Conditioning Philippines, Inc. (Carrier) filed an administrative claim for refund or issuance of tax credit certificate (TCC) for overpaid final withholding taxes (FWT). After 10 days or on December 9, 2011, without waiting for petitioner Commissioner of Internal Revenue's (CIR) action on its administrative claim, Carrier filed its judicial claim for refund before the Court of Tax Appeals (CTA).

The CTA Division granted Carrier's claim and ordered the CIR to refund or issue a TCC in favor of Carrier. The CTA Division found that Carrier's administrative and judicial claims were filed within the two-year prescriptive period provided under Sections 204 and 229 of the National Internal Revenue Code of 1997[1] (NIRC), as amended, and there was an over-remittance of FWT. In the assailed Decision, the CTA En Banc affirmed the CTA Division.[2]

In the Petition before this Court, the CIR contends that Carrier's judicial claim was prematurely filed because it was filed only 10 days after its administrative claim. Thus, the CIR contends that this violates the principle of exhaustion of administrative remedies. The CIR further contends that Carrier may not invoke the CTA's appellate jurisdiction over refund claims without a decision or ruling by the CIR on its administrative claim.

On the other hand, Carrier argues that it had to file its judicial claim on December 9, 2011 to preserve its right to seek a refund or tax credit of erroneously paid taxes, which was to expire the following day or on December 10, 2011.[3]

The *ponencia* denies the CIR's Petition and affirms the assailed Decision of the CTA En Banc. The *ponencia* finds proper Carrier's filing of

---

1 Republic Act No. 8424, December 11, 1997.

2 *Ponencia*, pp. 3-5.

3 Id. at 6.

its judicial claim 10 days after its administrative claim even without any decision from the CIR.[4] The *ponencia* explains that Section 229 of the NIRC, as amended, does not require the CIR to resolve a claim for refund or credit of erroneously paid taxes within a specific period.[5] Thus, it does not matter how far apart the administrative and judicial claims were filed, or whether the CIR was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.[6] The *ponencia* concludes that the law's silence on a reasonable period for the CIR to resolve an administrative claim is one that can be remedied through appropriate legislation.[7]

I concur.

Section 229 of the NIRC, as amended, does not provide the CIR a specific period within which to decide an administrative claim. As such, the filing of the judicial claim for refund a few days after the filing of the administrative claim for refund, or even in the absence of a decision from the CIR on the administrative claim, as in the instant case, is still proper. Such action also does not violate the principle of exhaustion of administrative remedies or the doctrine of primary administrative jurisdiction.

Section 229 of the NIRC, as amended, allows the successive or simultaneous filing of the administrative and judicial claims, even without awaiting the CIR's decision on the administrative claim

Section 229 of the NIRC, as amended, provides for the requisites for filing a judicial claim for refund of erroneously or illegally collected taxes. Said provision reads:

> 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: *Provided, however*, That the Commissioner may, even without a

---

4 Id. at 11.
5 Id. at 11-12.
6 Id. at 12.
7 Id. at 14.

> 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 and underscoring supplied)

A plain reading of Section 229 indubitably shows that there are only two requisites before a claim for refund may be filed before the court: (1) that an administrative claim is first filed with the CIR; and (2) that the judicial claim is filed within two years from the actual payment of tax or penalty sought to be refunded, regardless of the existence of any supervening cause after payment.

It must likewise be noted that Section 229 does not provide the CIR with a period within which to decide an administrative claim. Unlike in claims for refund for excessive or unutilized input Value-Added Tax (VAT) under Section 112(D)[8] of the NIRC, as amended, where the CIR is given a 120-day period[9] to act on the claim for refund of input VAT, and under Section 228[10] of the NIRC, as amended, where the CIR is allowed a period of 180 days within which to decide a disputed assessment, the legislature intentionally did not provide a period for the CIR to act on the administrative claim for erroneously or illegally paid taxes under Section 229. Section 229 simply states that the claim for refund or credit should be duly filed with the CIR. This clearly suggests that the filing of a claim with the CIR is a mere condition precedent for the filing of a judicial claim with the court.[11] The primary purpose of filing an administrative claim is to serve as a notice or warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded.[12]

Consequently, a taxpayer who files a claim for refund with the CIR a few days before the expiration of the two-year prescriptive period, or without waiting for the CIR's decision, still complies with the clear mandate of the law as long as the taxpayer's judicial claim is filed in court within the two-year prescriptive period. In other words, a taxpayer does not have to wait for the CIR's action on the administrative claim before the taxpayer may have a cause of action to file the judicial claim before the courts. This was aptly

---

8 Sec. 112. *Refunds or Tax Credits of Input Tax.* –
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 x x x.

9 Republic Act No. 10963 or the "Tax Reform for Acceleration and Inclusion" Law reduced the period to 90 days.

10 Sec. 228. *Protesting of Assessment.* x x x
x x x x
If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

11 *Vda. de Aguinaldo v. Commissioner of Internal Revenue*, No. L-19927, February 26, 1965, 13 SCRA 269.

12 *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016, 799 SCRA 489, 499.

explained by the Court in *CBK Power Company Limited v. CIR*[13] (*CBK Power Company Limited*) in this wise:

> 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.**
>
> x x x x
>
> x x x Nowhere and in no wise does the law imply that the [Commissioner] of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the [CIR's] action.[14]

Clearly, the ruling in *CBK Power Company Limited* simply interprets and applies the plain meaning of Section 229 of the NIRC, as amended. Giving the CIR a period to decide an administrative claim goes beyond the clear and unequivocal language of Section 229. As aptly pointed out in the *ponencia*, the absence of a period in Section 229 for the CIR to resolve or decide an administrative claim can only be addressed through appropriate legislation.[15]

A "decision" or "inaction deemed denial" over taxes erroneously or illegally collected is not required to seek judicial recourse

It is also error for the CIR to insist that the CTA has no jurisdiction over Carrier's judicial claim because there was no "decision" or "inaction deemed denial" to speak of over which the CTA may exercise its jurisdiction.

In Republic Act (RA) No. 1125,[16] the CTA had jurisdiction only over the "decisions" of the CIR. When RA No. 1125 was amended through RA No. 9282[17] and further by A.M. No. 05-11-07-CTA[18] (Revised CTA Rules), the CTA's jurisdiction is expanded to include **inaction** by the CIR. However, the "inaction deemed denial" is relevant only in cases where the law fixes a period within which the CIR has to rule on a claim such as the refund of input VAT

---

13 G.R. Nos. 193383-84 & 193407-08, January 14, 2015, 746 SCRA 93.

14 Id. at 110-112; emphasis supplied.

15 *Ponencia*, p. 14.

16 AN ACT CREATING THE COURT OF TAX APPEALS, June 16, 1954.

17 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS, 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.

18 REVISED RULES OF THE COURT OF TAX APPEALS, November 22, 2005.

under Section 112 and disputed assessments under Section 228, and such inaction is appealed to the CTA. This "inaction deemed denial" is recognized under the Revised CTA Rules, *viz.*:

> Sec. 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (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 Code 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 relation 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 or other applicable law **provides a specific period for action:** *Provided*, that in case of **disputed assessments**, the **inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period** under Section 228 of the National Internal Revenue Code shall be **deemed a denial** for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that **in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code**[.][19]

However, with respect to refund filed under Section 229, a "decision" or "inaction deemed denial" by the CIR is irrelevant. To reiterate, Section 229 of the NIRC, as amended, does not fix a period for the CIR to act on the refund claim. Without a doubt, therefore, the taxpayer does not have to wait for the "decision" of the CIR before filing an appeal to the CTA in cases of refund of erroneously or illegally collected tax. As can be gleaned from the last sentence of Section 3(a)(2) of the Revised CTA Rules, what is required is that a taxpayer-claimant must file a petition for review with the CTA before the expiration of the two-year period. There is no "decision" or "inaction deemed denial" provided for in the last sentence of Section 3(a)(2) of the Revised CTA Rules before a taxpayer may seek judicial relief. Simply put, the governing rule for appeals to the CTA in cases of refund of erroneously or illegally

---

[19] REVISED RULES OF THE COURT OF TAX APPEALS, Rule 4, Sec. 3; emphasis supplied.

collected tax is not Section 3(a)(1) which applies to "decisions" nor the first part of Section 3(a)(2) on "inaction deemed denial", but the last sentence thereof. The wording of the provision is clear and simple.

No violation of the principle of exhaustion of administrative remedies and doctrine of primary administrative jurisdiction

Lastly, I agree with the *ponencia* in ruling that there was no violation of the principle of exhaustion of administrative remedies in this case. As aptly explained in the *ponencia*, the requirement of filing of the administrative claim before a judicial claim is filed in court already recognizes the primary jurisdiction of the CIR to decide refunds of internal revenue taxes as it gives the CIR "an opportunity to consider his/her mistake, if mistake has been committed," or to investigate and ascertain the veracity of the claim, before he/she is sued.[20]

The principle of exhaustion of administrative remedies requires that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he/she avails himself/herself of all administrative processes afforded him/her. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within such officer's jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.[21]

Corollary to the principle of exhaustion of administrative remedies is the time-honored doctrine of primary administrative jurisdiction. Under this doctrine, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to resolving the same, where the question demands the exercise of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact. In cases where the doctrine of primary jurisdiction is clearly applicable, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence.[22]

The principle of exhaustion of administrative remedies is not violated in this case. Contrary to the CIR's claim, Carrier complied with the text of Section 229, which requires the filing of an administrative claim with the CIR before seeking judicial relief, and both must be done within the two-year prescriptive period. In fact, this same issue was raised in *CBK Power Company Limited*, where the Court correctly held that:

---

20 *Ponencia*, pp. 11-12; citation omitted.

21 *Samar II Electric Cooperative, Inc. v. Seludo, Jr.*, G.R. No. 173840, April 25, 2012, 671 SCRA 78, 88; citation omitted.

22 *Guy v. Ignacio*, G.R. Nos. 167824 & 168622, July 2, 2010, 622 SCRA 678, 691; citations omitted.

> 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.[23]

Neither is there a violation of the doctrine of primary jurisdiction in this case. As discussed, Section 229 does not provide for a period within which the CIR must decide an administrative claim. Neither does it suggest that the taxpayer-claimant should wait for the CIR's action before the taxpayer can file a claim for refund with the court. If there was an option to wait in Section 229, a violation of the doctrine of primary administrative jurisdiction is possible where a taxpayer-claimant seeks judicial relief without giving the administrative agency an opportunity to act on the case. Nonetheless, the doctrine is not violated when a taxpayer has filed a prior administrative claim before the CIR and more importantly, when judicial relief is needed to comply with what Section 229 mandates — that the administrative claim and the subsequent appeal to the CTA filed within the two-year prescriptive period.

In light of the foregoing, I vote to **DENY** the Petition filed by the Commissioner of Internal Revenue.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

[23] *CBK Power Company Limited v. CIR*, supra note 13, at 110; citation omitted.