Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 195175**
- versus -	
TOLEDO POWER COMPANY, Respondent.	

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TOLEDO POWER COMPANY, Petitioner,	**G.R. No. 199645**
	Present:
- versus -	SERENO, *CJ*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: **AUG 10 2015**

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DECISION

SERENO, ***CJ:***

Before the Court are consolidated Petitions for review on *certiorari* assailing the Decisions of the Court of Tax Appeals *En Banc* (CTA *En Banc*) dated 15 September 2010[1] and 7 July 2011[2] and Resolutions dated

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[1] *Rollo* (G.R. No. 195175), pp. 39-48; penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by then Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

12 January 2011[3] and 7 December 2011[4] in C.T.A. EB Nos. 589 and 708, respectively.

THE FACTS

Toledo Power Company (TPC) is engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation, and Atlas Fertilizer Corporation.

Pursuant to Section 6, Chapter II[5] of Republic Act (R.A.) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA),[6] value-added tax (VAT) on sales of generated power by generation companies are zero-rated.

C.T.A. EB No. 589[7]

On 23 December 2004, TPC filed a claim for refund with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 83, for alleged unutilized input VAT for the four quarters of 2004 in the total amount of □17,443,855.22.

TPC's claim was elevated to the CTA on 24 April 2006 and docketed as C.T.A. Case No. 7471.

The CTA First Division partly granted the Petition and ordered the refund of □8,617,425.41 to TPC.

In its Motion for Reconsideration, the CIR raised the issue of failure to submit the legally required documents in its administrative application for a refund; but on 15 September 2010, the CTA *En Banc* denied the CIR's appeal. The court ruled that the non-submission of supporting documents to the administrative level is not fatal to the claim for a refund. Since the CTA is a court of record, cases filed before it are litigated *de novo*, and party litigants should prove every minute aspect of their cases. Finally, the

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[2] *Rollo* (G.R. No. 199645), pp. 75-95; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, and Caesar A. Casanova, with the Concurring and Dissenting Opinion of then Presiding Justice Ernesto D. Acosta joined by Associate Justice Esperanza R. Fabon-Victorino, and the Dissent of Associate Justice Lovell R. Bautista.

[3] *Rollo* (G.R. No. 195175), pp. 50-54.

[4] *Rollo* (G.R. No. 199645), pp. 97-101.

[5] CHAPTER II
ORGANIZATION AND OPERATION OF ELECTRIC POWER INDUSTRY

x x x x

SEC. 6. *Generation Sector*. – Generation of electric power, a business affected with public interest, shall be competitive and open.

x x x x

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

[6] AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES.

[7] Supra note 1.

appellate court found that the issue of non-submission of complete documents was belatedly raised by the CIR in its Motion for Reconsideration of the Decision of the CTA First Division. The appellate court held that parties cannot be permitted to change their theory on appeal, because to do so will be unfair to the adverse party.

C.T.A. EB No. 708[8]

On 23 December 2004, TPC filed with BIR RDO No. 83 an administrative claim for the refund of the alleged unutilized input VAT for the four quarters of 2003 in the total amount of ₱15,838,539.48.

On 22 April 2005, TPC filed the first Petition with the CTA for the refund of unutilized input VAT in the amount of ₱3,907,783.80 for the first quarter of 2003. The Petition was docketed as C.T.A. Case No. 7233.

Also filed by TPC on 22 July 2005 was another Petition docketed as C.T.A. Case No. 7294. Claimed therein was the refund of alleged unutilized input VAT for the second quarter of 2003 in the total amount of ₱2,124,847.14.

The two Petitions filed by TPC were consolidated. On 15 December 2009, the First Division partly granted the refund, but only in the amount of ₱185,395.11 (original Decision).[9]

Upon Motion for Reconsideration of both parties, the Special First Division rendered an Amended Decision on 1 December 2010. The original Decision was set aside and the Motion for Reconsideration of the CIR, granted. Citing *CIR v. Aichi Forging Company of Asia, Inc.* (*Aichi*),[10] the CTA Special First Division ruled that it had no jurisdiction over TPC's Petitions, which were thus dismissed.

The appeal of TPC to the CTA *En Banc* was also dismissed on 7 July 2011. The appellate court ruled that in accordance with this Court's Decision in *Aichi*, the Petition in C.T.A. Case No. 7233 was considered prematurely filed, while that in C.T.A. Case No. 7294 was filed late.

The Petitions

The CIR filed a Petition before this Court assailing the Decision of the CTA *En Banc* in C.T.A. EB No. 589, docketed as G.R. No. 195175. The CIR mainly points out that the law requires the submission of complete supporting documents to the BIR before the 120-day audit period shall apply, and before the taxpayer can avail itself of the judicial remedies

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[8] Supra note 2.

[9] https://docs.google.com/viewer?url=http://cta.judiciary.gov.ph/home/download/3438ef41c45f56fe94748bffe702ba3e (visited 21 May 2014); penned by Associate Justice Caesar A. Casanova concurred in by Associate Justice Lovell R. Bautista, with concurring and dissenting opinion of then Presiding Justice Ernesto D. Acosta.

[10] G.R. No. 184823, 6 October 2010, 632 SCRA 422.

provided for by law. In this case, TPC failed to submit complete documents in support of its application for a tax refund. To the CIR, such disregard of a mandatory requirement warranted the denial of TPC's claim for a refund.[11]

On the other hand, TPC appealed the denial of its claim in C.T.A. EB No. 708, which was docketed as G.R. No. 199645. TPC alleged that Section 229 of the NIRC of 1997, which gives taxpayers two years within which to claim a refund, should be applied to this case, considering that the prevailing rule at the time the Petitions were filed was that the 120-30 day period was neither mandatory nor compulsory. Also, TPC posits that *Aichi* should not be applied retroactively, and that there are differences between the factual milieu of this case and that of *Aichi*.[12]

ISSUE

The Petitions raise the common issue of whether TPC is entitled to the refund of its alleged unutilized input VAT for the first and the second quarters of taxable year 2003, as well as for the four quarters of taxable year 2004.

THE COURT'S RULING

The consolidated cases involve a claim for input VAT pursuant to Section 112 of the National Internal Revenue Code (NIRC) of 1997. Pursuant to this provision, the requisites for claiming unutilized/excess input VAT, except transitional input VAT, are as follows:

1) The taxpayer-claimant is VAT registered;

2) The taxpayer-claimant is engaged in zero-rated or effectively zero-rated sales;

3) There are creditable input taxes due or paid attributable to the zero-rated or effectively zero-rated sales;

4) This input tax has not been applied against the output tax; and

5) The application and the claim for a refund have been filed within the prescribed period.

With regard to the first and the second requisites, it is undisputed that TPC is VAT-registered and is engaged in the sale of generated power, which is effectively zero-rated. The third and the fourth requisites are purely factual and the CTA has the jurisdiction to determine compliance therewith.

As to the prescriptive period, the Court in the consolidated tax cases *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and*

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[11] *Rollo* (G.R. No. 195175), pp. 16-34; Petition for Review on Certiorari.
[12] *Rollo* (G.R. No. 199645), pp. 13-73; Petition for Review on Certiorari.

Philex Mining Corporation v. Commissioner of Internal Revenue (hereby collectively referred as *San Roque*),[13] ruled that the observance of the 120+30 day period is mandatory and jurisdictional.

A summary of rules on prescriptive periods involving claims for the refund of input VAT was provided in *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue and Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*[14] as follows:

> Summary of Rules on Prescriptive Periods Involving VAT
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> We summarize the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, as follows:
>
> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
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> (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.
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> (4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.

Considering that the date of filing of the Petitions will have an effect on the jurisdiction of the courts over taking cognizance of a claim for a refund, the Court shall first discuss the timeliness of the judicial claims.

G.R. No. 195175

Since the filing of the administrative and judicial claims was done in 2004 and 2006, respectively, it would seem that compliance with the prescriptive period in this case falls within the exception period[15] within which the Court recognizes the validity of BIR Ruling No. DA-489-03.

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[13] G.R. Nos. 187485, 196113, 197156, 12 February 2013, 690 SCRA 336.
[14] G.R. Nos. 193301 and 194637, 11 March 2013, 693 SCRA 49.
[15] From the date of issuance of BIR Ruling No. DA-489-03 on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010.

However, records would show that TPC will have the same fate as *Philex* in *San Roque*.

It is not disputed that the administrative claim for a refund of unutilized input VAT for all quarters of taxable year 2004 was filed on 23 December 2004. Claiming that TPC made zero-rated or effectively zero-rated sales within the four quarters of 2004, the administrative claim for the refund of unutilized input VAT attributable to the sales in those periods was timely filed on 23 December 2004. That date was clearly within two years from the close of the taxable quarters when the sales were made.

Theoretically, from 23 December 2004, the CIR had 120 days or until 22 April 2005 within which to decide the administrative claim. Thereafter, since it rendered no decision within the 120-day period, TPC had until 22 May 2005 to file its Petition to the CTA.

In this case, however, since the filing of the administrative claim was done within the period where BIR Ruling No. DA-489-03 was recognized valid, TPC is not compelled to observe the 120-day waiting period. Nevertheless, it should have filed the Petition within 30 days after the expiration of the 120-day period.

San Roque recognized BIR Ruling No. DA-489-03 which allowed the premature filing of a judicial claim as an exception to the mandatory observance of the 120-day period. By virtue of the doctrines laid down in *San Roque*, TPC should have filed its judicial claim from 23 December 2004 until 22 May 2005; however, it filed its Petition to the CTA only on 24 April 2006.

Just like *Philex*, TPC's situation is not a case of premature filing of a judicial claim, but of late filing. The Court explained thus:

> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
>
> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so

> rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.
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> Philex's situation is not a case of premature filing of its judicial claim but of late filing, indeed *very* late filing. BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim. Philex cannot claim the benefit of BIR Ruling No. DA-489-03 because Philex did not file its judicial claim prematurely but filed it long after the lapse of the 30-day period **following the expiration of the 120-day period**. In fact, Philex filed its judicial claim 426 days after the lapse of the 30-day period.[16] (Emphasis in the original)

TPC lost its right to claim a refund or credit of its alleged excess input VAT attributable to zero-rated or effectively zero-rated sales for taxable year 2004 by virtue of its own failure to observe the prescriptive periods.

G.R. No. 199645

In both C.T.A. Case Nos. 7233 and 7294, the administrative claim for the refund of unutilized input VAT attributable to the zero-rated or effectively zero-rated sales was timely filed on 23 December 2004, which was within two years from the close of the first and the second quarters of 2003 when the sales were made.

Similarly, this case also falls within the exception period by virtue of BIR Ruling No. DA-489-03 as recognized in *San Roque*.

In C.T.A. Case No. 7233, TPC filed its judicial claim on 22 April 2005. In theory, the CTA does not have jurisdiction over the Petition, since it was filed on the last day of the 120-day period for the CIR, or without waiting for the expiration of the aforesaid period. However, BIR Ruling No. DA-489-03 allows this premature filing. TPC may claim the benefits of that ruling in its Petition in C.T.A. Case No. 7233 for the refund of the unutilized input VAT attributable to zero-rated or effectively zero-rated sales for the first quarter of 2003.

The other issues raised by TPC as regards the applicability of *Aichi*, *Mirant*[17] and *Atlas*,[18] were already settled by this Court in *San Roque*.

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[16] Supra note 13.
[17] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, 586 Phil. 712 (2008).
[18] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 551 Phil. 519 (2007).

In accordance with *San Roque*, TPC cannot rely on *Atlas* and *Mirant*, since these cases were promulgated only on 8 June 2007 and 12 September 2008, respectively, three to four years after TPC had filed its administrative and judicial claims. More important, *Atlas* and *Mirant* referred only to the reckoning of the prescriptive period of administrative claims. The doctrine in *Atlas,* which reckons the two-year period from the date of filing of the return and payment of the tax, does not interpret − expressly or impliedly − the 120+30 day periods. On the other hand, the *Mirant* doctrine counts the two-year prescriptive period from the "close of the taxable quarter when the sales were made" as expressly stated in the law, which means the last day of the taxable quarter. Verily, *Atlas* and *Mirant* are not material to the claim of TPC for a refund, since its administrative claim is well within the period prescribed by the NIRC.

With regard to TPC's argument that *Aichi* should not be applied retroactively, we reiterate that even without that ruling, the law is explicit on the mandatory and jurisdictional nature of the 120+30 day period.

Philex is likewise applicable to the Petition filed in C.T.A. Case No. 7294. As earlier discussed, TPC had until 22 May 2005 to file its appeal with the court since there was, on the part of the CIR, an inaction deemed to be a denial of the claim. The judicial claim though, was filed only on 22 July 2005, which was 61 days late. Again, TPC lost it right to claim a refund of its unutilized input VAT attributable to zero-rated or effectively zero-rated sales for the second quarter of 2003.

In sum, the CTA has jurisdiction over the Petition of TPC, but only in C.T.A. Case No. 7233 or the claim for refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales for the first quarter of 2003. However, considering that the original Decision[19] of the CTA First Division did not separate the computation of the refundable amount of input VAT for the first and the second quarters of 2003, we cannot determine the actual amount that may be attributed to the first quarter of 2003. Thus, a remand of the case to the CTA is necessary.

The Court finds, in view of the absence of jurisdiction of the Court of the Tax Appeals over the judicial claims of TPC in C.T.A. Case Nos. 7471 and 7294, that there is no need to discuss the other issues raised.

WHEREFORE, premises considered, the Petition in G.R. No. 195175 is **DENIED**, while the Petition in G.R. No. 199645 is **PARTLY GRANTED**. Accordingly, the case in G.R. No. 199645 is hereby **REMANDED** to the Court of Tax Appeals insofar as the Petition in C.T.A. Case No. 7233, for the purpose of the computation of the refundable input VAT attributable to the zero-rated or effectively zero-rated sales of Toledo Power Corporation for the first quarter of 2003.

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[19] Supra note 9.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice