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Republic of the Philippines
Supreme Court
Manila



**FIRST DIVISION**

**KEPCO ILIJAN CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**G.R. No. 205185**

Present:

LEONARDO–DE CASTRO, *C.J.*,
*Chairperson,*
BERSAMIN,
DEL CASTILLO,
TIJAM, and
*REYES, JR., A., *JJ.*

Promulgated:

SEP 26 2018

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# DECISION

**BERSAMIN, J.:**

The petitioner hereby appeals the adverse decision promulgated on September 6, 2012,[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) denied its claim for refund of the input value-added tax (VAT) for taxable year 2002. This appeal concerns the proper reckoning of the periods under Section 112(A) and Section 112(C) of the *National Internal Revenue Code of 1997* (NIRC) for bringing the administrative and judicial claims to seek the refund or issuance of the tax credit certificate of the VAT.

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* In lieu of Associate Justice Francis H. Jardeleza, who inhibited due to his prior participation as the Solicitor General, per the raffle of September 24, 2018.

[1] *Rollo,* pp. 61-79; penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justice Juanito C. Castaneda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Olga Palanca-Enriquez, Associate Justice Caesar A. Casanova concurring; and Presiding Justice Ernesto D. Acosta, Associate Justice Lovell R. Bautista, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Amelia R. Contangco-Manalastas dissenting.

## Antecedents

The petitioner, a duly registered domestic corporation engaged in the production of electricity as an independent power producer (IPP) and in the sale of electricity solely to the National Power Corporation (NPC), claimed the refund or issuance of the tax credit certificate for ₱74,658,461.68 for the VAT incurred in taxable year 2002.

It appears that the petitioner filed its quarterly VAT returns for the four quarters of taxable year 2002, thereby showing the incurred expenses representing the importation and domestic purchases of goods and services, including the input VAT thereon. On April 13, 2004, it brought its administrative claim for refund with Revenue District Office (RDO) No. 43 of the Bureau of Internal Revenue (BIR), claiming excess input VAT amounting to ₱74,658,481.68 for taxable year 2002.

On April 22, 2004, nine days after filing the administrative claim, the petitioner filed its petition for review (CTA Case No. 6966), which was assigned to the Second Division of the CTA (CTA in Division).

## Judgment of the CTA in Division

On April 14, 2009, the CTA in Division rendered judgment in CTA Case No. 6966 partly granting the petition for review,[2] and ordering the respondent to refund or to issue a tax credit certificate in the reduced amount of ₱23,389,050.05 representing the petitioner's unutilized excess input VAT attributable to its zero-rated sales to NPC for the second, third and fourth quarters of taxable year 2002, but denying the petitioner's input VAT claim for the first quarter of taxable year 2002 on the ground of prescription, and the other input VAT claims for lack of the required documentary evidence.[3]

On April 30, 2009, the petitioner moved for partial reconsideration with prayer to admit attached additional supporting documents. It argued that its claim for the first quarter of taxable year 2002 should not be denied because the rules and jurisprudence then prevailing stated that the reckoning point of the two-year period for filing the claim for refund of unutilized input taxes was the date of filing of the return and payment of the tax due pursuant to the two-year rule under *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* (*Atlas*).[4]

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2 *Rollo*, pp. 105-123

3 Id. at 64-65.

4 G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

Acting on the petitioner's motion for partial reconsideration, the CTA in Division promulgated the amended decision dated February 18, 2011 denying the entire claim on the ground of prematurity.[5] It opined that it did not acquire jurisdiction over the petition for review because of the petitioner's non-observance of the periods provided under the NIRC,[6] citing the rulings in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* (*Mirant*)[7] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* (*Aichi*).[8] It decreed thusly:

> **WHEREFORE**, premises considered, the **Motion for Partial Reconsideration** is hereby **DENIED** for lack of merit. On the other hand, the assailed Decision promulgated on April 14, 2009 is hereby **SET ASIDE** and the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
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> **SO ORDERED.**[9]

## Decision of CTA *En Banc*

The petitioner elevated the case to the CTA *En Banc*, contending that it had seasonably filed its administrative and judicial claims; and that the CTA had properly acquired jurisdiction over the judicial claim.

Through the now assailed decision promulgated on September 6, 2012,[10] the CTA *En Banc* denied the petition for review, disposing:

> **WHEREFORE** premises considered, the Petition for Review docketed as CTA EB NO. 733 is **DISMISSED**. The Amended Decision dated February 18, 2011 of the Former Second Division of this Court in CTA Case No. 6966, is hereby **affirmed**. No pronouncement as to cost.
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> **SO ORDERED.**[11]

On December 13, 2012, the CTA *En Banc* denied the petitioner's motion for reconsideration.[12]

Hence, this appeal.

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5 *Rollo*, pp. 93-104.
6 Id. at 103.
7 G.R. No. 172129, September 12, 2008, 565 SCRA 154.
8 G.R. No. 184823, October 6, 2010, 632 SCRA 422.
9 *Rollo*, p. 103
10 Id. at 61-79.
11 Id. at 78.
12 Id. at 52-57.

## Issue

The petitioner submits that the CTA acquired jurisdiction over the case; that the rulings in *Mirant* and *Aichi* should be applied prospectively, and, accordingly, did not apply hereto; that the two-year period for filing the claim for refund of unutilized input taxes was to be reckoned from the filing of the return and the payment of the tax due; and that the claim for the refund of ₱72,618,752.22 should be granted.

## Ruling of the Court

The appeal is partly meritorious.

The relevant provisions of the NIRC are Section 112(A) and Section 112(C), to wit:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x.
>
> x x x x
>
> (C) *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 in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Under the foregoing, a VAT-registered taxpayer claiming a refund or tax credit of excess and unutilized input VAT must file the administrative claim within two years from the close of the taxable quarter when the sales were made.

The CTA *En Banc* ruled that the statutory period for claiming the refund or tax credit was clearly provided under Section 112 of the NIRC;

that the ruling in *Mirant* – which did not create a new doctrine but only pronounced the correct application of Section 112 (A) of the NIRC – was the applicable jurisprudence; and that, therefore, no new doctrine had been retroactively applied to the petitioner.

The petitioner avers herein that when it filed its administrative claim on April 13, 2004 it relied in good faith on the prevailing rule that the two-year prescriptive period should be reckoned from the filing of the return and payment of the tax due; and that its reliance on the controlling laws as affirmed in *Atlas* ripened into a property right that neither *Mirant* nor *Aichi* could simply take away.

The resolution of when to reckon the two-year prescriptive period for the filing an administrative claim for refund or credit of unutilized input VAT in light of the pronouncements in *Atlas* and *Mirant* was extensively addressed and dealt with in *Commissioner of Internal Revenue v. San Roque Corporation* (*San Roque*).[13] To recall, the Court ruled in *Atlas* that "it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter."[14] On the other hand, *Mirant* abandoned *Atlas* and announced that "the reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid,"[15] applying Section 112(A) of the NIRC and no other provisions that pertained to erroneous tax payments.[16] In *San Roque*, promulgated on February 12, 2013, therefore, the Court clarified the effectivity of the pronouncements in *Atlas* and *Mirant* on reckoning the two-year prescriptive period,[17] elucidating that: *(a)* the *Atlas* pronouncement was effective only from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 through *Mirant*; and *(b)* prior to the promulgation of the ruling in *Atlas*, Section 112 (A) should be applied following the *verba legis* rule adopted in *Mirant.*[18]

The records show that the petitioner herein filed its administrative claims for refund for the first, second, third, and fourth quarters of taxable year 2002 on April 13, 2004. Such claims were covered by Section 112(A) of the NIRC that was the rule applicable prior to *Atlas* and *Mirant*. As such, the proper reckoning date in this case, pursuant to Section 112(A) of the

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[13] G.R. No. 187485, February 12, 2013, 690 SCRA 336.

[14] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* supra, note 4, at 96.

[15] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* supra, note 7, at 172.

[16] *CBK Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 202066 & G.R. No. 205353, September 30, 2014, 737 SCRA 218, 233-234.

[17] Id.

[18] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, October 22, 2014, 739 SCRA 147, 156.

NIRC, was the close of the taxable quarter when the relevant sales were made.[19] Specifically, the close of the quarters of taxable year 2002 took place on March 31, 2002, June 30, 2002, September 30, 2002 and December 31, 2002, giving to the petitioner until March 31, 2004, June 30, 2004, September 30, 2004 and December 31, 2004 within which to file its administrative claims for the first, second, third and fourth quarters, respectively. Under the circumstances, the petitioner had belatedly filed its administrative claim corresponding to the first quarter of taxable year 2002, which was thereby already barred. But the claims for the refund of the input taxes corresponding to the second, third and fourth quarters were timely and not barred.

We next determine the timeliness of the filing of the judicial claim in the CTA.

The petitioner brought its judicial claim in the CTA on April 22, 2004, or nine days after filing the administrative claim in the BIR. It did not await the lapse of the 120-day period provided under the NIRC, leading the CTA *En Banc* to declare that the petitioner had prematurely brought its appeal. Indeed, under Section 112(c) of the NIRC, the respondent had 120 days from the submission of the complete documents in support of the application of the respondent for the tax refund or tax credit within which to decide whether or not to grant or deny the claim. In case of the denial of the claim, or in case of the failure of the respondent to act on the application within the period prescribed, the taxpayer has 30 days from the receipt of the decision or from the expiration of the 120-day period within which to file the petition for review in the CTA.

In *Aichi*, the Court clarified that the 120-day period granted to the respondent was mandatory and jurisdictional; hence, the non-observance of the period was fatal to the filing of the judicial claim in the CTA.[20] This was because prior to the expiration of the 120-day period, the respondent still had the statutory authority to render a decision. If there was no decision and the period did not yet expire, there was no cause of action that justified a resort to the CTA.[21]

In *San Roque*, the Court acknowledged an instance when a premature filing in the CTA was allowed.[22] The mandatory and jurisdictional nature of the 120-30 period rule did not apply to claims for refund that were prematurely filed during the interim period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when

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[19] *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014, 713 SCRA 645, 664.

[20] *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*, G.R. No. 211072, November 7, 2016, 807 SCRA 90.

[21] *Aichi Forging Co. of Asia, Inc. v. Court of Tax Appeals (En Banc)*, G.R. No. 193625, August 30, 2017.

[22] *Commissioner of Internal Revenue v. San Roque Power Corporation*, supra, note 13, at 405.

the *Aichi* doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of *Aichi*, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 wherein the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA. As the Court put it in *San Roque*:

> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code.BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.**" Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
>
> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.[23]

The petitioner filed its administrative and judicial claims for refund on April 13, 2004 and April 22, 2004, respectively. Both claims were filed after BIR Ruling No. DA-589-03 was issued on December 10, 2003, but before the promulgation of the *Aichi* pronouncement on October 06, 2010. Thus, notwithstanding the petitioner's having filed its judicial claim without waiting for the decision of the respondent or for the expiration of the 120-day mandatory period, the CTA could still take cognizance of the claims because they were filed within the period exempted from the mandatory and jurisdictional 120-30 period rule.

As a result, the case has to be remanded to the CTA in Division for further proceedings on the claim for refund of the petitioner's input VAT for the second, third and fourth quarters of taxable year 2002.

**WHEREFORE**, the Court **PARTLY GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on September 6, 2012 by the Court of Tax Appeals *En Banc* in CTA EB Case No. 733; and **ORDERS** the remand of the case to the Court

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[23] Id. at 401.

of Tax Appeals in Division for further proceedings on the petitioner's claim for refund of its unutilized excess input Value-Added Tax for the second, third and fourth quarters of taxable year 2002.

No pronouncement on costs of suit.

**SO ORDERED.**

**LUCAS P. BERSAMIN**
Associate Justice

**WE CONCUR:**

**TERESITA J. LEONARDO-DE CASTRO**
Chief Justice

**MARIANO C. DEL CASTILLO**
Associate Justice

**NOEL GIMENEZ TIJAM**
Associate Justice

**ANDRES B. REYES, JR.**
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.

**TERESITA J. LEONARDO-DE CASTRO**
Chief Justice