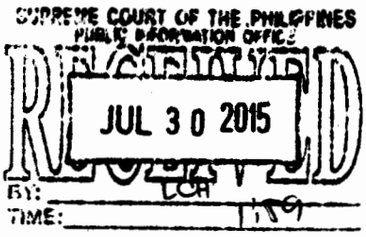
REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **08 July 2015** *which reads as follows*:

"**G.R. No. 202459 - *CE Cebu Geothermal Power Company, Inc. v. Commissioner of Internal Revenue.***

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the January 12, 2012 Decision[1] and the June 25, 2012 Resolution[2] of the Court of Tax Appeals (*CTA*) *En Banc*, in C.T.A. EB No. 741, which reversed and set aside the Amended Decision[3] and the Resolution[4] of the CTA Special First Division *(CTA Division)* in C.T.A. Case No. 7395, and dismissed the petition for being prematurely filed.

On December 14, 2005, petitioner CE Cebu Geothermal Power Company, Inc. *(petitioner),* a domestic corporation duly organized and existing under Philippine laws, filed with the Bureau of Internal Revenue (*BIR*) an administrative claim for refund or issuance of a tax credit certificate of its excess and unutilized input value-added tax *(VAT)* in the amount of ₱8,623,007.12 for the four quarters of taxable year 2004.

On December 29, 2005, petitioner filed a judicial claim for refund pursuant to Section 229 of the National Internal Revenue Code *(NIRC)* of 1997, in view of the inaction of respondent Commissioner of Internal Revenue *(CIR).*

On January 5, 2010, the CTA Division, rendered a decision[5] partially granting the claim and ordering the CIR to refund or issue a tax credit certificate to petitioner in the amount of ₱15,618,980.98, representing unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to PNOC-EDC, for the first to fourth quarter of taxable year 2004.

Petitioner filed its Motion for Partial Reconsideration, while the CIR filed its Motion for Reconsideration.

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[1] *Rollo*, pp. 13-24; penned by Associate Justice Olga Palanca-Enriquez, with Associate Justice Juanito C. Castaneda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, and Associate Justice Cielito N. Mindaro-Grulla, concurring; and Presiding Justice Ernesto D. Acosta, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Amelia R. Cotangco-Manalastas, concurring and dissenting.
[2] Id. at 30-37.
[3] Id. at 229-234.
[4] Id. at 292-298.
[5] Id. at 142-159.

On November 25, 2010, the CTA Division rendered the Amended Decision which granted the CIR's motion for reconsideration, thus, denying the petition for review for insufficiency of evidence. It stated that the Department of Energy *(DOE)* Certificate of Accreditation submitted by petitioner was insufficient to prove that it was a generation company. It explained that a certificate of compliance *(COC)* from the Energy Regulatory Commission *(ERC)* was necessary to be considered a generation company under the Electric Power Industry Reform Act of 2001 *(EPIRA)*, and which petitioner failed to submit. Thus, for failure to present a COC issued by the ERC, the CTA Division concluded that petitioner's sale of generated power could not qualify for a VAT zero-rating under the EPIRA.

Petitioner filed a motion for reconsideration, of the amended decision, attaching the COC.

On March 4, 2011, the CTA Division issued the resolution denying petitioner's motion for reconsideration for being a prohibited pleading as it was tantamount to a second motion for reconsideration.

On January 12, 2012, the CTA *En Banc* promulgated the assailed decision, ruling:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit. The assailed Amended Decision dated November 25, 2010 and Resolution dated March 04, 2011 are **REVERSED** and **SET ASIDE**. Accordingly, the Petition for Review in CTA Case No. 7395 is hereby **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED.**[6]

Applying *CIR v. Aichi Forging Company of Asia, Inc. (Aichi),*[7] the CTA *En Banc* ruled that petitioner prematurely filed its judicial appeal, as it did so just 15 days after it had filed its administrative claim with the CIR, in violation of the 120+30 day mandatory and jurisdictional period under Section 112 of the NIRC. It, thus, found it unnecessary to discuss petitioner's compliance with the other requisites for refund for being moot and academic.

On June 25, 2012, the CTA *En Banc* issued the assailed resolution denying petitioner's motion for reconsideration.

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[6] Id. at 22-23.
[7] G.R. No. 184823, October 6, 2010.

Hence, this petition.

Petitioner raises the following:

GROUNDS IN SUPPORT OF THE PETITION

I

The premature filing of a judicial claim for refund renders the case dismissible for lack of cause of action – not lack of jurisdiction. However, the defense of lack of cause of action may no longer be raised by respondent Commissioner due to her own acts and representations.

II

The legislative history of Section 112 (C) indicates that it was meant to be a directive to the Commissioner of Internal Revenue to act expeditiously on claims for refund of input VAT. Thus, an appeal to the CTA after 120 days was provided as an option to the taxpayer and can be construed as directory and not mandatory in character.

III

As a matter of substantive right, CE Cebu is entitled to a refund or credit of unutilized input VAT in the amount of P15, 618,980.98

IV

Assuming without conceding that compliance with the 120-day period set out in Section 112 is jurisdictional, given the reliance by taxpayers on the consistent interpretation by both the courts and respondent Commissioner that the only jurisdictional requirement for appeals to the CTA on VAT refund cases was that they be filed within the two-year period set out in Section 229 of the Tax Code and for the same equitable considerations taken into account by this Honorable Court in the case of *Land Bank*, the Aichi ruling should be applied prospectively. Otherwise, petitioner as well as other

taxpayers similarly situated stand to sustain at least ₱2.9 billion in financial losses.[8]

On March 19, 2013, the CIR filed her Comment,[9] in which the *Aichi* doctrine was reiterated.

On August 8, 2013, petitioner filed its Reply,[10] arguing that the *Aichi* ruling would not be applicable in view of the exception laid down in *CIR v. San Roque*[11] *(San Roque)*.

The Court's Ruling

The petition is partly meritorious.

Upholding the ruling in *Aichi*, the Court in San Roque indeed held that the 120+30-day period prescribed under Section 112(D) of the NIRC was mandatory and jurisdictional. The Court, nonetheless, stated that there was an exception to the mandatory and jurisdictional nature of the 120+30-day period.

The Court in San Roque noted that BIR Ruling No. DA-489-03, dated December 10, 2003, expressly stated 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." This BIR Ruling was recognized as a general interpretative rule issued by the CIR under Section 4 of the NIRC and, thus, applicable to all taxpayers.

Considering that the CIR has the exclusive and original jurisdiction to interpret tax laws, it was held that taxpayers acting in good faith should not be made to suffer for adhering to such interpretations. Section 246 of the NIRC, in consonance with equitable estoppel, expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who, in good faith, relied on the BIR regulation or ruling prior to its reversal.

Hence, taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, where it was held that the 120+30-day period was mandatory and jurisdictional.

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[8] *Rollo*, pp. 49-50.
[9] Id. at 307-320.
[10] Id. at 324-332.
[11] G.R. No. 187485, February 12, 2013, 690 SCRA 336.

In the present case, petitioner filed its judicial claim on December 29, 2005, well within the period of exception. As such, its judicial claim was not prematurely filed as it need not wait for the lapse of the 120-day period. The CTA *En Banc* should not have denied the petition.

Considering that the petition was denied due course, the CTA *En Banc* was not able to rule on the issue of whether petitioner sufficiently proved its entitlement to its claim for refund or tax credit. Such involves factual issues beyond the Court's ambit of review under Rule 45. The case must, thus, be remanded to the CTA *En Banc* for resolution.

WHEREFORE, the Court resolves to **PARTIALLY GRANT** the petition. The January 12, 2012 Decision and the June 25, 2012 Resolution of the Court of Tax Appeals *En Banc*, in C.T.A. EB No. 741 are **REVERSED** and **SET ASIDE**.

The case is **REMANDED** to the CTA *En Banc* for disposition on the merits. *(**Carpio J.**, on official leave, **Del Castillo, J.**, designated Acting Chairperson and **Peralta, J.**, designated Acting Member, per Special Order Nos. 2087 (Revised) and 2088, both dated July 1, 2015; **Brion, J.**, on leave, **Bersamin, J.**, designated Acting Member, per Special Order No. 2079, dated June 29, 2015).*

SO ORDERED.

Very truly yours,

MA. LOURDES C. PERFECTO
Division Clerk of Court

By:

TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

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