Republic of the Philippines
Supreme Court
Manila

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SAN ROQUE POWER CORPORATION,
Respondent.

x - x

TAGANITO MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - x

PHILEX MINING CORPORATION,
Petitioner,

- versus -

G.R. No. 187485

G.R. No. 196113

G.R. No. 197156

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

February 12, 2013

x - x

DECISION

CARPIO, *J.*:

The Cases

G.R. No. 187485 is a petition for review[1] assailing the Decision[2] promulgated on 25 March 2009 as well as the Resolution[3] promulgated on 24 April 2009 by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 408. The CTA EB affirmed the 29 November 2007 Amended Decision[4] as well as the 11 July 2008 Resolution[5] of the Second Division of the Court of Tax Appeals (CTA Second Division) in CTA Case No. 6647. The CTA Second Division ordered the Commissioner of Internal Revenue (Commissioner) to refund or issue a tax credit for ₱483,797,599.65 to San Roque Power Corporation (San Roque) for unutilized input value-added tax (VAT) on purchases of capital goods and services for the taxable year 2001.

G.R. No. 196113 is a petition for review[6] assailing the Decision[7] promulgated on 8 December 2010 as well as the Resolution[8] promulgated on 14 March 2011 by the CTA EB in CTA EB No. 624. In its Decision, the CTA EB reversed the 8 January 2010 Decision[9] as well as the 7 April 2010

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1 Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo* (G.R. No. 187485), pp. 22-54.

2 Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring. Presiding Justice Ernesto D. Acosta penned a Separate Concurring and Dissenting Opinion. Id. at 55-80.

3 Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring. Presiding Justice Ernesto D. Acosta penned a Separate Concurring and Dissenting Opinion. Id. at 81-82.

4 Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. Id. at 83-93.

5 Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. Id. at 101-104.

6 Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo* (G.R. No. 196113), pp. 3-25.

7 Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring. Associate Justice Lovell R. Bautista penned a Dissenting Opinion, while Associate Justice Amelia R. Cotangco-Manalastas was on leave. Id. at 51-67.

8 Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Lovell R. Bautista penned a Dissenting Opinion. Id. at 74-83.

9 Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. Id. at 27-43.

Resolution[10] of the CTA Second Division and granted the CIR's petition for review in CTA Case No. 7574. The CTA EB dismissed, for having been prematurely filed, Taganito Mining Corporation's (Taganito) judicial claim for ₱8,365,664.38 tax refund or credit.

G.R. No. 197156 is a petition for review[11] assailing the Decision[12] promulgated on 3 December 2010 as well as the Resolution[13] promulgated on 17 May 2011 by the CTA EB in CTA EB No. 569. The CTA EB affirmed the 20 July 2009 Decision as well as the 10 November 2009 Resolution of the CTA Second Division in CTA Case No. 7687. The CTA Second Division denied, due to prescription, Philex Mining Corporation's (Philex) judicial claim for ₱23,956,732.44 tax refund or credit.

On 3 August 2011, the Second Division of this Court resolved[14] to consolidate G.R. No. 197156 with G.R. No. 196113, which were pending in the same Division, and with G.R. No. 187485, which was assigned to the Court *En Banc*. The Second Division also resolved to refer G.R. Nos. 197156 and 196113 to the Court *En Banc*, where G.R. No. 187485, the lower-numbered case, was assigned.

G.R. No. 187485
CIR v. San Roque Power Corporation

The Facts

The CTA EB's narration of the pertinent facts is as follows:

> [CIR] is the duly appointed Commissioner of Internal Revenue, empowered, among others, to act upon and approve claims for refund or tax credit, with office at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.
>
> [San Roque] is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Barangay San Roque, San Manuel, Pangasinan. It was incorporated in October 1997 to design, construct, erect, assemble, own, commission and

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10 Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. Id. at 45-49.

11 Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo* (G.R. No. 197156), pp. 3-29.

12 Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Lovell R. Bautista penned a Dissenting Opinion. Id. at 44-67.

13 Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Lovell R. Bautista maintained his Dissenting Opinion. Id. at 31-42.

14 Id. at 75-76.

operate power-generating plants and related facilities pursuant to and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation, or other entity engaged in the development, supply, or distribution of energy.

As a seller of services, [San Roque] is duly registered with the BIR with TIN/VAT No. 005-017-501. It is likewise registered with the Board of Investments ("BOI") on a preferred pioneer status, to engage in the design, construction, erection, assembly, as well as to own, commission, and operate electric power-generating plants and related activities, for which it was issued Certificate of Registration No. 97-356 on February 11, 1998.

On October 11, 1997, [San Roque] entered into a Power Purchase Agreement ("PPA") with the National Power Corporation ("NPC") to develop hydro-potential of the Lower Agno River and generate additional power and energy for the Luzon Power Grid, by building the San Roque Multi-Purpose Project located in San Manuel, Pangasinan. The PPA provides, among others, that [San Roque] shall be responsible for the design, construction, installation, completion, testing and commissioning of the Power Station and shall operate and maintain the same, subject to NPC instructions. During the cooperation period of twenty-five (25) years commencing from the completion date of the Power Station, NPC will take and pay for all electricity available from the Power Station.

On the construction and development of the San Roque Multi-Purpose Project which comprises of the dam, spillway and power plant, [San Roque] allegedly incurred, excess input VAT in the amount of ₱559,709,337.54 for taxable year 2001 which it declared in its Quarterly VAT Returns filed for the same year. [San Roque] duly filed with the BIR separate claims for refund, in the total amount of ₱559,709,337.54, representing unutilized input taxes as declared in its VAT returns for taxable year 2001.

However, on March 28, 2003, [San Roque] filed amended Quarterly VAT Returns for the year 2001 since it increased its unutilized input VAT to the amount of ₱560,200,283.14. Consequently, [San Roque] filed with the BIR on even date, separate amended claims for refund in the aggregate amount of ₱560,200,283.14.

[CIR's] inaction on the subject claims led to the filing by [San Roque] of the Petition for Review with the Court [of Tax Appeals] in Division on April 10, 2003.

Trial of the case ensued and on July 20, 2005, the case was submitted for decision.[15]

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[15] *Rollo* (G.R. No. 187485), pp. 56-58.

The Court of Tax Appeals' Ruling: Division

The CTA Second Division initially denied San Roque's claim. In its Decision[16] dated 8 March 2006, it cited the following as bases for the denial of San Roque's claim: lack of recorded zero-rated or effectively zero-rated sales; failure to submit documents specifically identifying the purchased goods/services related to the claimed input VAT which were included in its Property, Plant and Equipment account; and failure to prove that the related construction costs were capitalized in its books of account and subjected to depreciation.

The CTA Second Division required San Roque to show that it complied with the following requirements of Section 112(B) of Republic Act No. 8424 (RA 8424)[17] to be entitled to a tax refund or credit of input VAT attributable to capital goods imported or locally purchased: (1) it is a VAT-registered entity; (2) its input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipts; (3) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and (4) its claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

The CTA Second Division found that San Roque complied with the first, third, and fourth requirements, thus:

> The fact that [San Roque] is a VAT registered entity is admitted (*par. 4, Facts Admitted, Joint Stipulation of Facts, Records, p. 157*). It was also established that the instant claim of ₱560,200,823.14 is already net of the ₱11,509.09 output tax declared by [San Roque] in its amended VAT return for the first quarter of 2001. Moreover, the entire amount of ₱560,200,823.14 was deducted by [San Roque] from the total available input tax reflected in its amended VAT returns for the last two quarters of 2001 and first two quarters of 2002 (*Exhibits M-6, O-6, OO-1 & QQ-1*). This means that the claimed input taxes of ₱560,200,823.14 did not form part of the excess input taxes of ₱83,692,257.83, as of the second quarter of 2002 that was to be carried-over to the succeeding quarters. Further, [San Roque's] claim for refund/tax credit certificate of excess input VAT was filed within the two-year prescriptive period reckoned from the dates of filing of the corresponding quarterly VAT returns.
>
> For the first, second, third, and fourth quarters of 2001, [San Roque] filed its VAT returns on April 25, 2001, July 25, 2001, October 23, 2001 and January 24, 2002, respectively (*Exhibits "H, J, L, and N"*). These returns were all subsequently amended on March 28, 2003 (*Exhibits "I, K, M, and O"*). On the other hand, [San Roque] originally filed its separate claims for refund on July 10, 2001, October 10, 2001, February 21, 2002, and May 9, 2002 for the first, second, third, and fourth

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16 Id. at 27-29.

17 The short title of RA 8424 is Tax Reform Act of 1997. It is also sometimes referred to as the National Internal Revenue Code (NIRC). In this *ponencia*, we refer to RA 8424 as 1997 Tax Code.

> quarters of 2001, respectively, (*Exhibits "EE, FF, GG, and HH"*) and subsequently filed amended claims for all quarters on March 28, 2003 (*Exhibits "II, JJ, KK, and LL"*). Moreover, the Petition for Review was filed on April 10, 2003. Counting from the respective dates when [San Roque] originally filed its VAT returns for the first, second, third and fourth quarters of 2001, the administrative claims for refund (original and amended) and the Petition for Review fall within the two-year prescriptive period.[18]

San Roque filed a Motion for New Trial and/or Reconsideration on 7 April 2006. In its 29 November 2007 Amended Decision,[19] the CTA Second Division found legal basis to partially grant San Roque's claim. The CTA Second Division ordered the Commissioner to refund or issue a tax credit in favor of San Roque in the amount of ₱483,797,599.65, which represents San Roque's unutilized input VAT on its purchases of capital goods and services for the taxable year 2001. The CTA based the adjustment in the amount on the findings of the independent certified public accountant. The following reasons were cited for the disallowed claims: erroneous computation; failure to ascertain whether the related purchases are in the nature of capital goods; and the purchases pertain to capital goods. Moreover, the reduction of claims was based on the following: the difference between San Roque's claim and that appearing on its books; the official receipts covering the claimed input VAT on purchases of local services are not within the period of the claim; and the amount of VAT cannot be determined from the submitted official receipts and invoices. The CTA Second Division denied San Roque's claim for refund or tax credit of its unutilized input VAT attributable to its zero-rated or effectively zero-rated sales because San Roque had no record of such sales for the four quarters of 2001.

The dispositive portion of the CTA Second Division's 29 November 2007 Amended Decision reads:

> WHEREFORE, [San Roque's] "Motion for New Trial and/or Reconsideration" is hereby PARTIALLY GRANTED and this Court's Decision promulgated on March 8, 2006 in the instant case is hereby MODIFIED.
>
> Accordingly, [the CIR] is hereby ORDERED to REFUND or in the alternative, to ISSUE A TAX CREDIT CERTIFICATE in favor of [San Roque] in the reduced amount of Four Hundred Eighty Three Million Seven Hundred Ninety Seven Thousand Five Hundred Ninety Nine Pesos and Sixty Five Centavos (₱483,797,599.65) representing unutilized input VAT on purchases of capital goods and services for the taxable year 2001.
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> SO ORDERED.[20]

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18 *Rollo* (G.R. No. 187485), pp. 70-71.
19 Id. at 83-93.
20 Id. at 92.

The Commissioner filed a Motion for Partial Reconsideration on 20 December 2007. The CTA Second Division issued a Resolution dated 11 July 2008 which denied the CIR's motion for lack of merit.

The Court of Tax Appeals' Ruling: En Banc

The Commissioner filed a Petition for Review before the CTA EB praying for the denial of San Roque's claim for refund or tax credit in its entirety as well as for the setting aside of the 29 November 2007 Amended Decision and the 11 July 2008 Resolution in CTA Case No. 6647.

The CTA EB dismissed the CIR's petition for review and affirmed the challenged decision and resolution.

The CTA EB cited *Commissioner of Internal Revenue v. Toledo Power, Inc.*[21] and Revenue Memorandum Circular No. 49-03,[22] as its bases for ruling that San Roque's judicial claim was not prematurely filed. The pertinent portions of the Decision state:

> More importantly, the Court *En Banc* has squarely and exhaustively ruled on this issue in this wise:
>
> > **It is true that Section 112(D) of the abovementioned provision applies to the present case. However, what the petitioner failed to consider is Section 112(A) of the same provision.** The respondent is also covered by the two (2) year prescriptive period. We have repeatedly held that the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period.
> >
> > Accordingly, the Supreme Court held in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* that the two-year prescriptive period for filing a claim for input tax is reckoned from the date of the filing of the quarterly VAT return and payment of the tax due. **If the said period is about to expire but the BIR has not yet acted on the application for refund, the taxpayer may interpose a petition for review with this Court within the two year period.**
> >
> > In the case of *Gibbs vs. Collector,* the Supreme Court held that if, however, the Collector (now Commissioner) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding

[21] CTA EB Case No. 321 (CTA Case Nos. 6805 and 6851), 7 May 2008.

[22] Dated 18 August 2003.

> must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.
>
> Furthermore, in the case of *Commissioner of Customs and Commissioner of Internal Revenue vs. The Honorable Court of Tax Appeals and Planters Products, Inc.*, **the Supreme Court held that 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 Collector (now Commissioner) of Internal Revenue, would have, at his personal convenience, given his go signal.
>
> This Court ruled in several cases that once the petition is filed, the Court has already acquired jurisdiction over the claims and the Court is not bound to wait indefinitely for no reason for whatever action respondent (herein petitioner) may take. **At stake are claims for refund and unlike disputed assessments, no decision of respondent (herein petitioner) is required before one can go to this Court.** (Emphasis supplied and citations omitted)

Lastly, it is apparent from the following provisions of Revenue Memorandum Circular No. 49-03 dated August 18, 2003, that [the CIR] knows that claims for VAT refund or tax credit filed with the Court [of Tax Appeals] can proceed simultaneously with the ones filed with the BIR and that taxpayers need not wait for the lapse of the subject 120-day period, to wit:

> In response to [the] request of selected taxpayers for adoption of procedures in handling refund cases that are aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law, certain provisions of RMC No. 42-2003 are hereby amended and new provisions are added thereto.
>
> In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:
>
> I.) A-17 of Revenue Memorandum Circular No. 42-2003 is hereby revised to read as follows:
>
> **In cases where the taxpayer has filed a "Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or**

> **OSS-DOF), the administrative agency and the tax court may act on the case separately.** While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.
>
> **If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim.** On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA.[23] (Emphasis supplied)

G.R. No. 196113
Taganito Mining Corporation v. CIR

The Facts

The CTA Second Division's narration of the pertinent facts is as follows:

> Petitioner, Taganito Mining Corporation, is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 4th Floor, Solid Mills Building, De La Rosa St., Lega[s]pi Village, Makati City. It is duly registered with the Securities and Exchange Commission with Certificate of Registration No. 138682 issued on March 4, 1987 with the following primary purpose:
>
> > To carry on the business, for itself and for others, of mining lode and/or placer mining, developing, exploiting, extracting, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging, shipping, transporting, and otherwise producing and dealing in nickel, chromite, cobalt, gold, silver, copper, lead, zinc, brass, iron, steel, limestone, and all kinds of ores, metals and their by-products and

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[23] *Rollo* (G.R. No. 187485), pp. 67-69.

> which by-products thereof of every kind and description and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, locate, exchange, lease, acquire and deal in lands, mines, and mineral rights and claims and to conduct all business appertaining thereto, to purchase, locate, lease or otherwise acquire, mining claims and rights, timber rights, water rights, concessions and mines, buildings, dwellings, plants machinery, spare parts, tools and other properties whatsoever which this corporation may from time to time find to be to its advantage to mine lands, and to explore, work, exercise, develop or turn to account the same, and to acquire, develop and utilize water rights in such manner as may be authorized or permitted by law; to purchase, hire, make, construct or otherwise, acquire, provide, maintain, equip, alter, erect, improve, repair, manage, work and operate private roads, barges, vessels, aircraft and vehicles, private telegraph and telephone lines, and other communication media, as may be needed by the corporation for its own purpose, and to purchase, import, construct, machine, fabricate, or otherwise acquire, and maintain and operate bridges, piers, wharves, wells, reservoirs, plumes, watercourses, waterworks, aqueducts, shafts, tunnels, furnaces, cook ovens, crushing works, gasworks, electric lights and power plants and compressed air plants, chemical works of all kinds, concentrators, smelters, smelting plants, and refineries, matting plants, warehouses, workshops, factories, dwelling houses, stores, hotels or other buildings, engines, machinery, spare parts, tools, implements and other works, conveniences and properties of any description in connection with or which may be directly or indirectly conducive to any of the objects of the corporation, and to contribute to, subsidize or otherwise aid or take part in any operations;

and is a VAT-registered entity, with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000017494. Likewise, [Taganito] is registered with the Board of Investments (BOI) as an exporter of beneficiated nickel silicate and chromite ores, with BOI Certificate of Registration No. EP-88-306.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of the said office, including *inter alia*, the power to decide refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by Bureau of Internal Revenue (BIR) under Section 4 of the NIRC. He holds office at the BIR National Office Building, Diliman, Quezon City.

[Taganito] filed all its Monthly VAT Declarations and Quarterly Vat Returns for the period January 1, 2005 to December 31, 2005. For easy reference, a summary of the filing dates of the original and amended Quarterly VAT Returns for taxable year 2005 of [Taganito] is as follows:

Exhibit(s)	Quarter	Nature of the Return	Mode of filing	Filing Date
L to L-4	1st	Original	Electronic	April 15, 2005
M to M-3		Amended	Electronic	July 20, 2005
N to N-4		Amended	Electronic	October 18, 2006
Q to Q-3	2nd	Original	Electronic	July 20, 2005
R to R-4		Amended	Electronic	October 18, 2006
U to U-4	3rd	Original	Electronic	October 19, 2005
V to V-4		Amended	Electronic	October 18, 2006
Y to Y-4	4th	Original	Electronic	January 20, 2006
Z to Z-4		Amended	Electronic	October 18, 2006

As can be gleaned from its amended Quarterly VAT Returns, [Taganito] reported zero-rated sales amounting to ₱1,446,854,034.68; input VAT on its domestic purchases and importations of goods (other than capital goods) and services amounting to ₱2,314,730.43; and input VAT on its domestic purchases and importations of capital goods amounting to ₱6,050,933.95, the details of which are summarized as follows:

Period Covered	Zero-Rated Sales	Input VAT on Domestic Purchases and Importations of Goods and Services	Input VAT on Domestic Purchases and Importations of Capital Goods	Total Input VAT
01/01/05 - 03/31/05	₱551,179,871.58	₱1,491,880.56	₱239,803.22	₱1,731,683.78
04/01/05 - 06/30/05	64,677,530.78	204,364.17	5,811,130.73	6,015,494.90
07/01/05 - 09/30/05	480,784,287.30	144,887.67	-	144,887.67
10/01/05 - 12/31/05	350,212,345.02	473,598.03	-	473,598.03
TOTAL	**₱1,446,854,034.68**	**₱2,314,730.43**	**₱6,050,933.95**	**₱8,365,664.38**

On November 14, 2006, [Taganito] filed with [the CIR], through BIR's Large Taxpayers Audit and Investigation Division II (LTAID II), a letter dated November 13, 2006 claiming a tax credit/refund of its supposed input VAT amounting to ₱8,365,664.38 for the period covering January 1, 2004 to December 31, 2004. On the same date, [Taganito] likewise filed an Application for Tax Credits/Refunds for the period covering January 1, 2005 to December 31, 2005 for the same amount.

On November 29, 2006, [Taganito] sent again another letter dated November 29, 2004 to [the CIR], to correct the period of the above claim for tax credit/refund in the said amount of ₱8,365,664.38 as actually referring to the period covering January 1, 2005 to December 31, 2005.

As the statutory period within which to file a claim for refund for said input VAT is about to lapse without action on the part of the [CIR], [Taganito] filed the instant Petition for Review on February 17, 2007.

In his Answer filed on March 28, 2007, [the CIR] interposes the following defenses:

4. [Taganito's] alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue (BIR);

5. The amount of ₱8,365,664.38 being claimed by [Taganito] as alleged unutilized input VAT on domestic purchases of goods and services and on importation of capital goods for the period January 1, 2005 to December 31, 2005 is not properly documented;

6. [Taganito] must prove that it has complied with the provisions of Sections 112 (A) and (D) and 229 of the National Internal Revenue Code of 1997 (1997 Tax Code) on the prescriptive period for claiming tax refund/credit;

7. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma, which is a condition sine qua non prior to the filing of judicial claim** in accordance with the provision of Section 229 of the 1997 Tax Code. Further, Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the BIR before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law.** Hence, [Taganito's] failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

8. [Taganito] must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to provisions of Revenue Regulations No. 7-95.

9. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil. 670);**

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).**

SPECIAL AND AFFIRMATIVE DEFENSES

11. The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of [Taganito] to comply with the provision of Section 112 (D) of the 1997 Tax Code which provides, thus:

> Section 112. *Refunds or Tax Credits of Input Tax. –*
>
> xxx xxx xxx
>
> (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 (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
>
> In cases of full or partial denial 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.** (Emphasis supplied.)

12. As stated, [Taganito] filed the administrative claim for refund with the Bureau of Internal Revenue on November 14, 2006. Subsequently on February 14, 2007, the instant petition was filed. Obviously the 120 days given to the Commissioner to decide on the claim has not yet lapsed when the petition was filed. The petition was prematurely filed, hence it must be dismissed for lack of jurisdiction.

During trial, [Taganito] presented testimonial and documentary evidence primarily aimed at proving its supposed entitlement to the refund in the amount of ₱8,365,664.38, representing input taxes for the period covering January 1, 2005 to December 31, 2005. [The CIR], on the other hand, opted not to present evidence. Thus, in the Resolution promulgated on January 22, 2009, this case was submitted for decision as of such date, considering [Taganito's] "Memorandum" filed on January 19, 2009 and [the CIR's] "Memorandum" filed on December 19, 2008.[24]

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[24] *Rollo* (G.R. No. 196113), pp. 27-33. Emphases in the original.

The Court of Tax Appeals' Ruling: Division

The CTA Second Division partially granted Taganito's claim. In its Decision[25] dated 8 January 2010, the CTA Second Division found that Taganito complied with the requirements of Section 112(A) of RA 8424, as amended, to be entitled to a tax refund or credit of input VAT attributable to zero-rated or effectively zero-rated sales.[26]

The pertinent portions of the CTA Second Division's Decision read:

> Finally, records show that [Taganito's] administrative claim filed on November 14, 2006, which was amended on November 29, 2006, and the Petition for Review filed with this Court on February 14, 2007 are well within the two-year prescriptive period, reckoned from March 31, 2005, June 30, 2005, September 30, 2005, and December 31, 2005, respectively, the close of each taxable quarter covering the period January 1, 2005 to December 31, 2005.
>
> In fine, [Taganito] sufficiently proved that it is entitled to a tax credit certificate in the amount of ₱8,249,883.33 representing unutilized input VAT for the four taxable quarters of 2005.
>
> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, [the CIR] is hereby ORDERED to REFUND to [Taganito] the amount of EIGHT MILLION TWO HUNDRED FORTY NINE THOUSAND EIGHT HUNDRED EIGHTY THREE PESOS AND THIRTY THREE CENTAVOS (₱8,249,883.33) representing its unutilized input taxes attributable to zero-rated sales from January 1, 2005 to December 31, 2005.
>
> SO ORDERED.[27]

The Commissioner filed a Motion for Partial Reconsideration on 29 January 2010. Taganito, in turn, filed a Comment/Opposition on the Motion for Partial Reconsideration on 15 February 2010.

In a Resolution[28] dated 7 April 2010, the CTA Second Division denied the CIR's motion. The CTA Second Division ruled that the legislature did not intend that Section 112 (Refunds or Tax Credits of Input Tax) should be read in isolation from Section 229 (Recovery of Tax Erroneously or Illegally Collected) or vice versa. The CTA Second Division applied the mandatory statute of limitations in seeking judicial recourse prescribed under Section 229 to claims for refund or tax credit under Section 112.

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25 Id. at 27-43.
26 Id. at 35-36.
27 Id. at 42.
28 Id. at 45-49.

The Court of Tax Appeals' Ruling: En Banc

On 29 April 2010, the Commissioner filed a Petition for Review before the CTA EB assailing the 8 January 2010 Decision and the 7 April 2010 Resolution in CTA Case No. 7574 and praying that Taganito's entire claim for refund be denied.

In its 8 December 2010 Decision,[29] the CTA EB granted the CIR's petition for review and reversed and set aside the challenged decision and resolution.

The CTA EB declared that Section 112(A) and (B) of the 1997 Tax Code both set forth the reckoning of the two-year prescriptive period for filing a claim for tax refund or credit over input VAT to be the close of the taxable quarter when the sales were made. The CTA EB also relied on this Court's rulings in the cases of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*[30] and *Commisioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant).*[31] Both *Aichi* and *Mirant* ruled that the two-year prescriptive period to file a refund for input VAT arising from zero-rated sales should be reckoned from the close of the taxable quarter when the sales were made. *Aichi* further emphasized that the failure to await the decision of the Commissioner or the lapse of 120-day period prescribed in Section 112(D) amounts to a premature filing.

The CTA EB found that Taganito filed its administrative claim on 14 November 2006, which was well within the period prescribed under Section 112(A) and (B) of the 1997 Tax Code. However, the CTA EB found that Taganito's judicial claim was prematurely filed. Taganito filed its Petition for Review before the CTA Second Division on 14 February 2007. The judicial claim was filed after the lapse of only 92 days from the filing of its administrative claim before the CIR, in violation of the 120-day period prescribed in Section 112(D) of the 1997 Tax Code.

The dispositive portion of the Decision states:

> WHEREFORE, the instant Petition for Review is hereby GRANTED. The assailed Decision dated January 8, 2010 and Resolution dated April 7, 2010 of the Special Second Division of this Court are hereby REVERSED and SET ASIDE. Another one is hereby entered DISMISSING the Petition for Review filed in CTA Case No. 7574 for having been prematurely filed.
>
> SO ORDERED.[32]

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29 Id. at 51-67.
30 G.R. No. 184823, 6 October 2010, 632 SCRA 422.
31 G.R. No. 172129, 12 September 2008, 565 SCRA 154.
32 *Rollo* (G.R. No. 196113), p. 66.

In his dissent,[33] Associate Justice Lovell R. Bautista insisted that Taganito timely filed its claim before the CTA. Justice Bautista read Section 112(C) of the 1997 Tax Code (Period within which Refund or Tax Credit of Input Taxes shall be Made) in conjunction with Section 229 (Recovery of Tax Erroneously or Illegally Collected). Justice Bautista also relied on this Court's ruling in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (Atlas)*,[34] which stated that refundable or creditable input VAT and illegally or erroneously collected national internal revenue tax are the same, insofar as both are monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Justice Bautista concluded:

> Being merely permissive, a taxpayer claimant has the option of seeking judicial redress for refund or tax credit of excess or unutilized input tax with this Court, either within 30 days from receipt of the denial of its claim, or after the lapse of the 120-day period in the event of inaction by the Commissioner, provided that both administrative and judicial remedies must be undertaken within the 2-year period.[35]

Taganito filed its Motion for Reconsideration on 29 December 2010. The Commissioner filed an Opposition on 26 January 2011. The CTA EB denied for lack of merit Taganito's motion in a Resolution[36] dated 14 March 2011. The CTA EB did not see any justifiable reason to depart from this Court's rulings in *Aichi* and *Mirant*.

G.R. No. 197156
Philex Mining Corporation v. CIR

The Facts

The CTA EB's narration of the pertinent facts is as follows:

> [Philex] is a corporation duly organized and existing under the laws of the Republic of the Philippines, which is principally engaged in the mining business, which includes the exploration and operation of mine properties and commercial production and marketing of mine products, with office address at 27 Philex Building, Fairlaine St., Kapitolyo, Pasig City.
>
> [The CIR], on the other hand, is the head of the Bureau of Internal Revenue ("BIR"), the government entity tasked with the duties/functions of assessing and collecting all national internal revenue taxes, fees, and

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33 Id. at 68-73.
34 G.R. Nos. 141104 & 148763, 8 June 2007, 524 SCRA 73.
35 *Rollo* (G.R. No. 196113), p. 73.
36 Id. at 74-83.

> charges, and enforcement of all forfeitures, penalties and fines connected therewith, including the execution of judgments in all cases decided in its favor by [the Court of Tax Appeals] and the ordinary courts, where she can be served with court processes at the BIR Head Office, BIR Road, Quezon City.
>
> On October 21, 2005, [Philex] filed its Original VAT Return for the third quarter of taxable year 2005 and Amended VAT Return for the same quarter on December 1, 2005.
>
> On March 20, 2006, [Philex] filed its claim for refund/tax credit of the amount of ₱23,956,732.44 with the One Stop Shop Center of the Department of Finance. However, due to [the CIR's] failure to act on such claim, on October 17, 2007, pursuant to *Sections 112 and 229 of the NIRC of 1997, as amended*, [Philex] filed a Petition for Review, docketed as C.T.A. Case No. 7687.
>
> In [her] Answer, respondent CIR alleged the following special and affirmative defenses:
>
> > 4. Claims for refund are strictly construed against the taxpayer as the same partake the nature of an exemption;
> >
> > 5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of [Philex] to prove the same is fatal to its cause of action;
> >
> > 6. [Philex] should prove its legal basis for claiming for the amount being refunded.[37]

The Court of Tax Appeals' Ruling: Division

The CTA Second Division, in its Decision dated 20 July 2009, denied Philex's claim due to prescription. The CTA Second Division ruled that the two-year prescriptive period specified in Section 112(A) of RA 8424, as amended, applies not only to the filing of the administrative claim with the BIR, but also to the filing of the judicial claim with the CTA. Since Philex's claim covered the 3rd quarter of 2005, its administrative claim filed on 20 March 2006 was timely filed, while its judicial claim filed on 17 October 2007 was filed late and therefore barred by prescription.

On 10 November 2009, the CTA Second Division denied Philex's Motion for Reconsideration.

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[37] *Rollo* (G.R. No. 197156), pp. 46-48.

The Court of Tax Appeals' Ruling: En Banc

Philex filed a Petition for Review before the CTA EB praying for a reversal of the 20 July 2009 Decision and the 10 November 2009 Resolution of the CTA Second Division in CTA Case No. 7687.

The CTA EB, in its Decision[38] dated 3 December 2010, denied Philex's petition and affirmed the CTA Second Division's Decision and Resolution.

The pertinent portions of the Decision read:

> In this case, while there is no dispute that [Philex's] administrative claim for refund was filed within the two-year prescriptive period; however, as to its judicial claim for refund/credit, records show that on March 20, 2006, [Philex] applied the administrative claim for refund of unutilized input VAT in the amount of ₱23,956,732.44 with the One Stop Shop Center of the Department of Finance, per Application No. 52490. From March 20, 2006, which is also presumably the date [Philex] submitted supporting documents, together with the aforesaid application for refund, the CIR has 120 days, or until July 18, 2006, within which to decide the claim. Within 30 days from the lapse of the 120-day period, or from July 19, 2006 until August 17, 2006, [Philex] should have elevated its claim for refund to the CTA. However, [Philex] filed its Petition for Review only on October 17, 2007, which is 426 days way beyond the 30-day period prescribed by law.
>
> Evidently, the Petition for Review in CTA Case No. 7687 was filed 426 days late. Thus, the Petition for Review in CTA Case No. 7687 should have been dismissed on the ground that the Petition for Review was filed way beyond the 30-day prescribed period; thus, no jurisdiction was acquired by the CTA in Division; and not due to prescription.
>
> WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED DUE COURSE, and accordingly, DISMISSED. The assailed Decision dated July 20, 2009, dismissing the Petition for Review in CTA Case No. 7687 due to prescription, and Resolution dated November 10, 2009 denying [Philex's] Motion for Reconsideration are hereby AFFIRMED, with modification that the dismissal is based on the ground that the Petition for Review in CTA Case No. 7687 was filed way beyond the 30-day prescribed period to appeal.
>
> SO ORDERED.[39]

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38 Id. at 44-67.

39 Id. at 64-66.

The Issues

G.R. No. 187485
CIR v. San Roque Power Corporation

The Commissioner raised the following grounds in the Petition for Review:

> I. The Court of Tax Appeals *En Banc* erred in holding that [San Roque's] claim for refund was not prematurely filed.
>
> II. The Court of Tax Appeals *En Banc* erred in affirming the amended decision of the Court of Tax Appeals (Second Division) granting [San Roque's] claim for refund of alleged unutilized input VAT on its purchases of capital goods and services for the taxable year 2001 in the amount of ₱483,797,599.65. [40]

G.R. No. 196113
Taganito Mining Corporation v. CIR

Taganito raised the following grounds in its Petition for Review:

> I. The Court of Tax Appeals *En Banc* committed serious error and acted with grave abuse of discretion tantamount to lack or excess of jurisdiction in erroneously applying the *Aichi* doctrine in violation of [Taganito's] right to due process.
>
> II. The Court of Tax Appeals committed serious error and acted with grave abuse of discretion amounting to lack or excess of jurisdiction in erroneously interpreting the provisions of Section 112 (D).[41]

G.R. No. 197156
Philex Mining Corporation v. CIR

Philex raised the following grounds in its Petition for Review:

> I. The CTA *En Banc* erred in denying the petition due to alleged prescription. The fact is that the petition was filed with the CTA within the period set by prevailing court rulings at the time it was filed.
>
> II. The CTA *En Banc* erred in retroactively applying the Aichi ruling in denying the petition in this instant case.[42]

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40 *Rollo* (G.R. No. 187485), p. 33.
41 *Rollo* (G.R. No. 196113), p. 11.
42 *Rollo* (G.R. No. 197156), p. 9.

The Court's Ruling

For ready reference, the following are the provisions of the Tax Code applicable to the present cases:

Section 105:

> ***Persons Liable***. — **Any person who, in the course of trade or business, sells**, barters, exchanges, leases **goods or properties, renders services**, and any person who imports goods **shall be subject to the value-added tax (VAT)** imposed in Sections 106 to 108 of this Code.
>
> **The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services**. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> x x x x

Section 110(B):

> Sec. 110. *Tax Credits*. —
>
> (B) *Excess Output or Input Tax*. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. **If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters**: [Provided, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT:][43] Provided, however, That **any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112**.

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[43] Bracketed proviso was deleted by RA 9361, which took effect on 13 December 2006.

Section 112:[44]

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: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

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[44] RA 9337 amended Section 112 to read:

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: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) *Cancellation of VAT Registration*. - 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.

(D) *Manner of Giving Refund*. - x x x x

(B) *Capital Goods*.- A VAT — registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

(C) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes

(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** in support of the application filed in accordance with Subsection (A) and (B) 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.

(E) *Manner of Giving Refund*. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, that refunds under this paragraph shall be subject to post audit by the Commission on Audit.

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**, 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.

(All emphases supplied)

I. **Application of the 120+30 Day Periods**

a. G.R. No. 187485 - CIR v. San Roque Power Corporation

On 10 April 2003, a mere 13 days after it filed its amended administrative claim with the Commissioner on 28 March 2003, San Roque filed a Petition for Review with the CTA docketed as CTA Case No. 6647. From this we gather two crucial facts: *first*, San Roque did not wait for the 120-day period to lapse before filing its judicial claim; *second*, San Roque filed its judicial claim more than four (4) years **before** the *Atlas*[45] doctrine, which was promulgated by the Court on 8 June 2007.

Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.[46]

The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes."[47] When a taxpayer

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45 Supra note 34.

46 *Delos Reyes v. Flores,* G.R. No. 168726, 5 March 2010, 614 SCRA 270; *Figuerres v. Court of Appeals,* 364 Phil. 683 (1999); *Aboitiz and Co., Inc. v. Collector of Customs of Cebu,* 172 Phil. 617 (1978); *Ham v. Bachrach Motor Co., Inc.*, 109 Phil. 949 (1960).

47 The charter of the CTA, RA 1125, as amended, provides:

prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**"[48] of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review.[49]

San Roque's failure to comply with the 120-day **mandatory** period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity.

It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others."[50] For

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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 Code or other laws administered by the Bureau of Internal Revenue;
x x x x (Emphasis supplied)

See also *Adamson v. Court of Appeals*, G.R. Nos. 120935 and 124557, 21 May 2009, 588 SCRA 27.

[48] Section 7. Jurisdiction. — The CTA shall exercise:

(a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
(1) x x x x
(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 provides a specific period of action, in which case the inaction shall be deemed a denial**;
x x x x (Emphasis supplied)

[49] *Commissioner of Internal Revenue v. Villa,* 130 Phil. 3 (1968); *Caltex (Philippines) Inc. v. Commissioner of Internal Revenue*, 121 Phil. 1390 (1965).

[50] See *Alcantara v. Department of Environment and Natural Resources,* G.R. No. 161881, 31 July 2008, 560 SCRA 753; *Heirs of Zari v. Santos*, 137 Phil. 79 (1969); *Hilado v. Collector of Internal Revenue,* 100 Phil. 288 (1956).

violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.

This Court cannot brush aside the grave issue of the mandatory and jurisdictional nature of the 120-day period just because the Commissioner merely asserts that the case was prematurely filed with the CTA and does not question the entitlement of San Roque to the refund. The mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. **Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer**.[51] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

This Court cannot disregard mandatory and jurisdictional conditions mandated by law simply because the Commissioner chose not to contest the numerical correctness of the claim for tax refund or credit of the taxpayer. Non-compliance with mandatory periods, non-observance of prescriptive periods, and non-adherence to exhaustion of administrative remedies **bar** a taxpayer's claim for tax refund or credit, whether or not the Commissioner questions the numerical correctness of the claim of the taxpayer. This Court should not establish the precedent that non-compliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements, for then every tax refund case will have to be decided on the numerical correctness of the amounts claimed, regardless of non-compliance with mandatory and jurisdictional conditions.

San Roque cannot also claim being misled, misguided or confused by the *Atlas* doctrine because **San Roque filed its petition for review with the CTA more than four years before *Atlas* was promulgated.** The *Atlas* doctrine did not exist at the time San Roque failed to comply with the 120-day period. Thus, San Roque cannot invoke the *Atlas* doctrine as an excuse for its failure to wait for the 120-day period to lapse. In any event, the *Atlas* doctrine merely stated that the two-year prescriptive period should be counted from the date of payment of the output VAT, not from the close of the taxable quarter when the sales involving the input VAT were made. **The**

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[51] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219; *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp.*, G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549; *La Carlota Sugar Central v. Jimenez*, 112 Phil. 232 (1961).

***Atlas* doctrine does not interpret, expressly or impliedly, the 120+30[52] day periods**.

In fact, Section 106(b) and (e) of the Tax Code of 1977 as amended, which was the law cited by the Court in *Atlas* as the applicable provision of the law did not yet provide for the 30-day period for the taxpayer to appeal to the CTA from the decision or inaction of the Commissioner.[53] **Thus, the *Atlas* doctrine cannot be invoked by anyone to disregard compliance with the 30-day mandatory and jurisdictional period**. Also, the difference between the *Atlas* doctrine on one hand, and the *Mirant*[54] doctrine on the other hand, is a mere 20 days. The *Atlas* doctrine counts the two-year prescriptive period from the date of payment of the output VAT, which means within 20 days after the close of the taxable quarter. The output VAT at that time must be paid at the time of filing of the quarterly tax returns, which were to be filed "within 20 days following the end of each quarter."

Thus, in *Atlas*, the three tax refund claims listed below were deemed timely filed because the administrative claims filed with the Commissioner, and the petitions for review filed with the CTA, were all filed within two years from the date of payment of the output VAT, following Section 229:

Period Covered	Date of Filing Return & Payment of Tax	Date of Filing Administrative Claim	Date of Filing Petition With CTA
2nd Quarter, 1990 Close of Quarter **30 June 1990**	**20 July 1990**	21 August 1990	**20 July 1992**
3rd Quarter, 1990 Close of Quarter **30 September 1990**	**18 October 1990**	21 November 1990	**9 October 1992**
4th Quarter, 1990 Close of Quarter **31 December 1990**	**20 January 1991**	19 February 1991	**14 January 1993**

Atlas paid the output VAT at the time it filed the quarterly tax returns on the 20th, 18th, and 20th day **after** the close of the taxable quarter. Had the two-year prescriptive period been counted from the "close of the taxable quarter" as expressly stated in the law, the tax refund claims of Atlas would have already prescribed. In contrast, 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

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52 The 30-day period refers to the time given to the taxpayer to file its judicial claim with the CTA, counted from the denial by the Commissioner of the administrative claim or from the expiration of the 120-day period. See Section 112(C), second paragraph of the Tax Code.

53 The 30-day period was introduced in the Tax Code under RA 7716, which was approved on 5 May 1994.

54 Supra note 31.

taxable quarter. **The 20-day difference**[55] **between the *Atlas* doctrine and the later *Mirant* doctrine is not material to San Roque's claim for tax refund**.

Whether the *Atlas* doctrine or the *Mirant* doctrine is applied to San Roque is immaterial because what is at issue in the present case is San Roque's non-compliance with the 120-day mandatory and jurisdictional period, which is counted from the date it filed its administrative claim with the Commissioner. The 120-day period may extend beyond the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period. However, San Roque's fatal mistake is that it did not wait for the Commissioner to decide within the 120-day period, a mandatory period whether the *Atlas* or the *Mirant* doctrine is applied.

At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C)[56] expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: "x x x 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." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.

Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

> x x x the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one**

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[55] This assumes the taxpayer pays the VAT on time on the date required by law to file the quarterly return. Since 1 January 1998 when the Tax Reform Act of 1997 took effect, Section 114(A) of the NIRC has required VAT-registered persons to pay the VAT "**on a monthly basis**." Section 114 of the NIRC provides:

> (A) *In General* – Every person liable to pay the value-added tax imposed under the Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each of the taxable quarter prescribed for each taxpayer: **Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis**.
>
> (B) x x x x (Emphasis supplied)

[56] In RA 8424, the section is numbered 112(D). RA 9337 renumbered the section to 112(C). In this Decision, we refer to Section 112(D) under RA 8424 as Section 112(C) as it is currently numbered.

> **hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

b. G.R. No. 196113 - Taganito Mining Corporation v. CIR

Like San Roque, Taganito also filed its petition for review with the CTA without waiting for the 120-day period to lapse. Also, like San Roque, Taganito filed its judicial claim **before** the promulgation of the *Atlas* doctrine. Taganito filed a Petition for Review on 14 February 2007 with the CTA. This is almost four months **before** the adoption of the *Atlas* doctrine on 8 June 2007. Taganito is similarly situated as San Roque - both cannot claim being misled, misguided, or confused by the *Atlas* doctrine.

However, Taganito can invoke BIR Ruling No. DA-489-03[57] dated 10 December 2003, which expressly ruled 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**." Taganito filed its judicial claim *after* the issuance of BIR Ruling No. DA-489-03 but before the adoption of the *Aichi* doctrine. Thus, as will be explained later, Taganito is deemed to have filed its judicial claim with the CTA on time.

c. G.R. No. 197156 – Philex Mining Corporation v. CIR

Philex (1) filed on 21 October 2005 its original VAT Return for the third quarter of taxable year 2005; (2) filed on 20 March 2006 its administrative claim for refund or credit; (3) filed on 17 October 2007 its Petition for Review with the CTA. The close of the third taxable quarter in 2005 is 30 September 2005, which is the reckoning date in computing the two-year prescriptive period under Section 112(A).

Philex timely filed its administrative claim on 20 March 2006, within the two-year prescriptive period. Even if the two-year prescriptive period is computed from the date of payment of the output VAT under Section 229, Philex still filed its administrative claim on time. **Thus, the *Atlas* doctrine is immaterial in this case**. The Commissioner had until 17 July 2006, the last

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[57] Issued by then BIR Commissioner Jose Mario C. Bunag.

day of the 120-day period, to decide Philex's claim. Since the Commissioner did not act on Philex's claim on or before 17 July 2006, Philex had until 17 August 2006, the last day of the 30-day period, to file its judicial claim. **The CTA EB held that 17 August 2006 was indeed the last day for Philex to file its judicial claim**. However, Philex filed its Petition for Review with the CTA only on 17 October 2007, or four hundred twenty-six (426) days after the last day of filing. **In short, Philex was late by one year and 61 days in filing its judicial claim**. As the CTA EB correctly found:

> **Evidently, the Petition for Review in C.T.A. Case No. 7687 was filed 426 days late**. Thus, the Petition for Review in C.T.A. Case No. 7687 should have been dismissed on the ground that the Petition for Review was filed way beyond the 30-day prescribed period; thus, no jurisdiction was acquired by the CTA Division; x x x[58] (Emphasis supplied)

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.[59] Philex failed to comply with the statutory conditions and must thus bear the consequences.

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58 *Rollo* (G.R. No. 197156), p. 65.

59 *Yao v. Court of Appeals*, 398 Phil. 86 (2000).

II. **Prescriptive Periods under Section 112(A) and (C)**

There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.

First, Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer "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 the creditable input tax due or paid to such sales." In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit "**within two (2) years**," **which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.

Second, Section 112(C) provides that the Commissioner shall decide the application for refund or credit "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)." The reference in Section 112(C) of the submission of documents "in support of the application filed in accordance with Subsection A" means that the application in Section 112(A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two-year prescriptive period in Section 112(A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. **Stated otherwise, the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner**. As held in *Aichi*, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund' **refers to applications for refund/credit with the CIR and not to appeals made to the CTA**."

Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days[60]), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period**. Thus, if the taxpayer files his administrative claim on the 611th day, the

[60] Article 13 of the Civil Code provides: "When the law speaks of years, x x x it shall be understood that years are three hundred sixty five days each; x x x"

Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.

The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain, and unequivocal language.

Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).

III. **"Excess" Input VAT and "Excessively" Collected Tax**

The input VAT is **not** "excessively" collected as understood under Section 229 because **at the time the input VAT is collected the amount paid is correct and proper**. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller[61] of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT.[62] If the input VAT

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[61] Section 105, 1997 Tax Code.

[62] Section 4.110-2 of Revenue Regulations 16-05, also known as the Consolidated Value-Added Tax Regulations of 2005, provides:
Persons Who Can Avail of the Input Tax Credit. — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:
(a) To the importer upon payment of VAT prior to the release of goods from customs custody;
(b) **To the purchaser of the domestic goods or properties upon consummation of the sale**; or
(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee. (Emphasis supplied)

is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT - who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit **outside** of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.

In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.

Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, x x x illegally, x x x excessively or in any manner wrongfully collected." The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. **Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229**.[63]

Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for "excess" input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the ***output*** VAT. This prescriptive period has no relation to the date of payment of the "excess" ***input*** VAT. The "excess" input VAT may have been paid for more than two years but this does not bar the filing of a judicial claim for "excess" VAT under Section 112(A), which has a different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the

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[63] In *Commissioner of Internal Revenue v. Smart Communications, Inc.*, G.R. Nos. 179045-06, 25 August 2010, 629 SCRA 342, 353, the Court held that "the person entitled to claim tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim."

input VAT was "excessively" collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

As its name implies, the Value-Added Tax system is a tax on the value added by the taxpayer in the chain of transactions. For simplicity and efficiency in tax collection, the VAT is imposed not just on the value added by the taxpayer, but on the entire selling price of his goods, properties or services. However, the taxpayer is allowed a refund or credit on the VAT previously paid by those who sold him the inputs for his goods, properties, or services. The net effect is that the taxpayer pays the VAT only on the value that he adds to the goods, properties, or services that he actually sells.

Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy.[64] Thus, a **non** zero-rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. **He can only carry-over and apply his "excess" input VAT against his future output VAT**. If such "excess" input VAT is an "excessively" collected tax, the taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer. If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.

Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.

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[64] Section 108(B), 1997 Tax Code. Also, Section 110(B) provides in part that "any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, x x x illegally, x x x excessively or **in any manner wrongfully** collected." In short, there must be a **wrongful payment** because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should "**apply only to instances of erroneous payment or illegal collection of internal revenue taxes**." Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due**. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.

IV. **Effectivity and Scope of the *Atlas*, *Mirant* and *Aichi* Doctrines**

The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant*.** The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the *Atlas* doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule. The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.

The *Atlas* doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in *Atlas*. The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative

remedies, a ground for dismissing the judicial suit due to prematurity. Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies.[65] Such doctrine is basic and elementary.

When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from 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," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.

The old rule[66] that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period**. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

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65 See note 1.

66 *Gibbs v. Collector of Internal Revenue,* 107 Phil. 232 (1960).

V. **Revenue Memorandum Circular No. 49-03 (RMC 49-03) dated 15 April 2003**

There is nothing in RMC 49-03 that states, expressly or impliedly, that the taxpayer need not wait for the 120-day period to expire before filing a judicial claim with the CTA. RMC 49-03 merely authorizes the BIR to continue processing the administrative claim even after the taxpayer has filed its judicial claim, without saying that the taxpayer can file its judicial claim before the expiration of the 120-day period. RMC 49-03 states: "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (either the Bureau of Internal Revenue or the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance), the administrative agency and the court may act on the case separately." Thus, if the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period.

On the other hand, if the taxpayer files its judicial claim after the 120-day period, the Commissioner can still continue to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must ***necessarily*** continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings.

What is important, as far as the present cases are concerned, is that the mere filing by a taxpayer of a judicial claim with the CTA before the expiration of the 120-day period cannot operate to divest the Commissioner of his jurisdiction to decide an administrative claim within the 120-day mandatory period, *unless* the Commissioner has clearly given cause for equitable estoppel to apply as expressly recognized in Section 246 of the Tax Code.[67]

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[67] Section 246 of the 1997 Tax Code provides:

> Sec. 246. *Non-Retroactivity of Rulings*. — Any revocation, modification or reversal of any of the **rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:

VI. **BIR Ruling No. DA-489-03 dated 10 December 2003**

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,[68] 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.

Section 4 of the Tax Code, a *new* provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:

> Sec. 4. *Power of the Commissioner To Interpret Tax Laws and To Decide Tax Cases*. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith. (Emphasis supplied)

[68] *Commissioner of Internal Revenue v. Hitachi Computer Products (Asia) Corporation*, CA-G.R. SP No. 63340, 7 February 2002.

Since the Commissioner has **exclusive and original jurisdiction to interpret tax laws**, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code 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. Section 246 provides as follows:

> Sec. 246. *Non-Retroactivity of Rulings*. — Any revocation, modification or reversal of any of the **rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (Emphasis supplied)

Thus, a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, "***Any*** revocation, modification or reversal" without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi*[69] is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a

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[69] Supra note 30.

specific BIR ruling under Section 246, should also apply prospectively. As held by this Court in *CIR v. Philippine Health Care Providers, Inc.*:[70]

> In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
>
> This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp*. in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd*., *Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp*., *Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc*., and *Commissioner of Internal Revenue v. Court of Appeals*. **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case**.
>
> More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer. (Emphasis supplied)

Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of

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[70] G.R. No. 168129, 24 April 2007, 522 SCRA 131, 142-143.

its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.

However, BIR Ruling No. DA-489-03 cannot be given retroactive effect for four reasons: *first*, it is admittedly an erroneous interpretation of the law; *second*, prior to its issuance, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law; *third*, prior to its issuance, no taxpayer can claim that it was misled by the BIR into filing a judicial claim prematurely; and *fourth*, a claim for tax refund or credit, like a claim for tax exemption, is strictly construed against the taxpayer.

San Roque, therefore, cannot benefit from BIR Ruling No. DA-489-03 because it filed its judicial claim prematurely on 10 April 2003, ***before*** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. To repeat, San Roque cannot claim that it was misled by the BIR into filing its judicial claim prematurely because BIR Ruling No. DA-489-03 was issued only after San Roque filed its judicial claim. At the time San Roque filed its judicial claim, the law as applied and administered by the BIR was that the Commissioner had 120 days to act on administrative claims. This was in fact the position of the BIR prior to the issuance of BIR Ruling No. DA-489-03. **Indeed, San Roque never claimed the benefit of BIR Ruling No. DA-489-03 or RMC 49-03, whether in this Court, the CTA, or before the Commissioner**.

Taganito, however, filed its judicial claim with the CTA on 14 February 2007, ***after*** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. Truly, Taganito can claim that in filing its judicial claim prematurely without waiting for the 120-day period to expire, it was misled by BIR Ruling No. DA-489-03. Thus, Taganito can claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity.

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.

VII. **Existing Jurisprudence**

There is no basis whatsoever to the claim that in five cases this Court had already made a ruling that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. The effect of the claim of the dissenting opinions is that San Roque's failure to wait for the 120-day mandatory period to lapse is inconsequential, thus allowing San Roque to claim the tax refund or credit. However, the five cases cited by the dissenting opinions do not support even remotely the claim that this Court had already made such a ruling. **None of these five cases mention, cite, discuss, rule or even hint that compliance with the 120-day mandatory period is inconsequential as long as the administrative and judicial claims are filed within the two-year prescriptive period.**

In *CIR v. Toshiba Information Equipment (Phils.), Inc.*,[71] the issue was whether any output VAT was actually passed on to Toshiba that it could claim as input VAT subject to tax credit or refund. The Commissioner argued that "although Toshiba may be a VAT-registered taxpayer, it is not engaged in a VAT-taxable business." The Commissioner cited Section 4.106-1 of Revenue Regulations No. 75 that "refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT-taxable business." In the words of the Court, "Ultimately, however, the issue still to be resolved herein shall be whether respondent Toshiba is entitled to the tax credit/refund of its input VAT on its purchases of capital goods and services, to which this Court answers in the affirmative." Nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

In *Intel Technology Philippines, Inc. v. CIR*,[72] the Court stated: "The issues to be resolved in the instant case are (1) whether the absence of the BIR authority to print or the absence of the TIN-V in petitioner's export sales invoices operates to forfeit its entitlement to a tax refund/credit of its unutilized input VAT attributable to its zero-rated sales; and (2) whether petitioner's failure to indicate "TIN-V" in its sales invoices automatically invalidates its claim for a tax credit certification." Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

In *AT&T Communications Services Philippines, Inc. v. CIR*,[73] the Court stated: "x x x the CTA First Division, conceding that petitioner's

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71 503 Phil. 823 (2005).
72 G.R. No. 166732, 27 April 2007, 522 SCRA 657.
73 G.R. No. 182364, 3 August 2010, 626 SCRA 567.

transactions fall under the classification of zero-rated sales, nevertheless denied petitioner's claim '**for lack of substantiation**,' x x x." The Court quoted the ruling of the First Division that "**valid VAT official receipts, and not mere sale invoices, should have been submitted**" by petitioner to substantiate its claim. The Court further stated: "x x x the CTA *En Banc*, x x x affirmed x x x the CTA First Division," and "petitioner's motion for reconsideration having been denied x x x, the present petition for review was filed." Clearly, the sole issue in this case is whether petitioner complied with the substantiation requirements in claiming for tax refund or credit. Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

In *CIR v. Ironcon Builders and Development Corporation*,[74] the Court put the issue in this manner: "Simply put, the sole issue the petition raises is whether or not the CTA erred in granting respondent Ironcon's application for refund of its **excess** creditable VAT withheld." The Commissioner argued that "since the NIRC does not specifically grant taxpayers the option to refund **excess** creditable VAT withheld, it follows that such refund cannot be allowed." Thus, this case is solely about whether the taxpayer has the right under the NIRC to ask for a cash refund of **excess** creditable VAT withheld. Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

In *CIR v. Cebu Toyo Corporation*,[75] the issue was whether Cebu Toyo was exempt or subject to VAT. Compliance with the 120-day period was never an issue in *Cebu Toyo*. As the Court explained:

> Both the Commissioner of Internal Revenue and the Office of the Solicitor General argue that respondent Cebu Toyo Corporation, as a PEZA-registered enterprise, **is exempt from national and local taxes, including VAT**, under Section 24 of Rep. Act No. 7916 and Section 109 of the NIRC. Thus, they contend that respondent Cebu Toyo Corporation is not entitled to any refund or credit on input taxes it previously paid as provided under Section 4.103-1 of Revenue Regulations No. 7-95, notwithstanding its registration as a VAT taxpayer. For petitioner claims that said registration was erroneous and did not confer upon the respondent any right to claim recognition of the input tax credit.
>
> The respondent counters that it availed of the income tax holiday under E.O. No. 226 for four years from August 7, 1995 making it exempt from income tax but not from other taxes such as VAT. **Hence, according to respondent, its export sales are not exempt from VAT, contrary to petitioner's claim, but its export sales is subject to 0% VAT**. Moreover, it argues that it was able to establish through a report certified by an

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74 G.R. No. 180042, 8 February 2010, 612 SCRA 39.

75 491 Phil. 625, 637-638 (2005).

> independent Certified Public Accountant that the input taxes it incurred from April 1, 1996 to December 31, 1997 were directly attributable to its export sales. Since it did not have any output tax against which said input taxes may be offset, it had the option to file a claim for refund/tax credit of its unutilized input taxes.
>
> Considering the submission of the parties and the evidence on record, we find the petition bereft of merit.
>
> **Petitioner's contention that respondent is not entitled to refund for being exempt from VAT is untenable**. This argument turns a blind eye to the fiscal incentives granted to PEZA-registered enterprises under Section 23 of Rep. Act No. 7916. Note that under said statute, the respondent had two options with respect to its tax burden. It could avail of an income tax holiday pursuant to provisions of E.O. No. 226, thus exempt it from income taxes for a number of years but not from other internal revenue taxes such as VAT; or it could avail of the tax exemptions on all taxes, including VAT under P.D. No. 66 and pay only the preferential tax rate of 5% under Rep. Act No. 7916. Both the Court of Appeals and the Court of Tax Appeals found that respondent availed of the income tax holiday for four (4) years starting from August 7, 1995, as clearly reflected in its 1996 and 1997 Annual Corporate Income Tax Returns, where respondent specified that it was availing of the tax relief under E.O. No. 226. **Hence, respondent is not exempt from VAT and it correctly registered itself as a VAT taxpayer. In fine, it is engaged in taxable rather than exempt transactions**. (Emphasis supplied)

Clearly, the issue in *Cebu Toyo* was whether the taxpayer was exempt from VAT or subject to VAT at 0% tax rate. If subject to 0% VAT rate, the taxpayer could claim a refund or credit of its input VAT. Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

While this Court stated in the narration of facts in *Cebu Toyo* that the taxpayer "did not bother to wait for the Resolution of its (administrative) claim by the CIR" before filing its judicial claim with the CTA, this issue was not raised before the Court. Certainly, this statement of the Court is not a binding precedent that the taxpayer need not wait for the 120-day period to lapse.

Any issue, whether raised or not by the parties, *but not passed upon by the Court,* does not have any value as precedent. As this Court has explained as early as 1926:

> It is contended, however, that the question before us was answered and resolved against the contention of the appellant in the case of *Bautista vs. Fajardo* (38 Phil. 624). In that case no question was raised nor was it even suggested that said section 216 did not apply to a public officer. That question was not discussed nor referred to by any of the parties interested

> in that case. It has been frequently decided that the fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity, where that question is squarely and properly raised and presented. **Where a question passes the Court *sub silentio*, the case in which the question was so passed is not binding on the Court (*McGirr vs. Hamilton and Abreu*, 30 Phil. 563), nor should it be considered as a precedent**. (*U.S. vs. Noriega and Tobias*, 31 Phil. 310; *Chicote vs. Acasio*, 31 Phil. 401; *U.S. vs. More*, 3 Cranch [U.S.] 159, 172; *U.S. vs. Sanges*, 144 U.S. 310, 319; *Cross vs. Burke*, 146 U.S. 82.) For the reasons given in the case of *McGirr vs. Hamilton and Abreu*, supra, the decision in the case of *Bautista vs. Fajardo*, supra, can have no binding force in the interpretation of the question presented here.[76] (Emphasis supplied)

In *Cebu Toyo*, the nature of the 120-day period, whether it is mandatory or optional, was not even raised as an issue by any of the parties. **The Court never passed upon this issue**. Thus, *Cebu Toyo* does not constitute binding precedent on the nature of the 120-day period.

There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.[77] As held by this Court in *The Philippine Veterans Affairs Office v. Segundo*:[78]

> x x x Let it be admonished that decisions of the Supreme Court "applying or interpreting the laws or the Constitution . . . form part of the legal system of the Philippines," and, as it were, "laws" by their own right because they interpret what the laws say or mean. **Unlike rulings of the lower courts, which bind the parties to specific cases alone, our judgments are universal in their scope and application, and equally mandatory in character**. Let it be warned that to defy our decisions is to court contempt. (Emphasis supplied)

The same basic doctrine was reiterated by this Court in *De Mesa v. Pepsi Cola Products Phils., Inc.*:[79]

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76 *Agcaoili v. Suguitan*, 48 Phil. 676, 697 (1926).

77 Article 8, Civil Code of the Philippines. *De Mesa v. Pepsi Cola Products Phils., Inc.*, 504 Phil. 685 (2005); *The Philippine Veterans Affairs Office v. Segundo*, 247 Phil. 330 (1988); *Ang Ping v. RTC, Manila, Branch 40*, 238 Phil. 77 (1987); *Floresca v. Philex Mining Corporation*, 220 Phil. 533 (1985).

78 247 Phil. 330, 336 (1988).

79 504 Phil. 685, 691 (2005).

The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:

> ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

It enjoins adherence to judicial precedents. **It requires our courts to follow a rule already established in a final decision of the Supreme Court**. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. (Emphasis supplied)

VIII. **Revenue Regulations No. 7-95 Effective 1 January 1996**

Section 4.106-2(c) of Revenue Regulations No. 7-95, by its own express terms, applies only if the taxpayer files the judicial claim "***after***" the lapse of the 60-day period, a period with which San Roque failed to comply. **Under Section 4.106-2(c), the 60-day period is still mandatory and jurisdictional**.

Moreover, it is a hornbook principle that a prior administrative regulation can ***never*** prevail over a later contrary law, more so in this case where the later law was enacted precisely to amend the prior administrative regulation and the law it implements.

The laws and regulation involved are as follows:

1977 Tax Code, as amended by Republic Act No. 7716 (1994)

> Sec. 106. *Refunds or tax credits of creditable input tax*. —
>
> (a) x x x x
>
> (d) Period within which refund or tax credit of input tax shall be made - In proper cases, the Commissioner shall grant a refund or issue the tax credit for creditable input taxes **within sixty (60) days** from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) 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 receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**.

Revenue Regulations No. 7-95 (1996)

Section 4.106-2. Procedures for claiming refunds or tax credits of input tax — (a) 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 tax credit/refund for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with subparagraphs (a) and (b) above.

In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise the decision will become final. However, **if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue *after the sixty (60) day period* from the date of submission of the application but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals**.

x x x x

1997 Tax Code

Section 112. *Refunds or Tax Credits of Input Tax* —

(A) x x x

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 the 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 Subsections (A) and (B) 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 hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

There can be no dispute that under Section 106(d) of the 1977 Tax Code, as amended by RA 7716, the Commissioner has a 60-day period to act on the administrative claim. **This 60-day period is mandatory and jurisdictional**.

Did Section 4.106-2(c) of Revenue Regulations No. 7-95 change this, so that the 60-day period is no longer mandatory and jurisdictional? The obvious answer is no.

Section 4.106-2(c) itself expressly states that if, "***after the sixty (60) day period,"*** the Commissioner fails to act on the administrative claim, the taxpayer may file the judicial claim even "before the lapse of the two (2) year period." **Thus, under Section 4.106-2(c) the 60-day period is still mandatory and jurisdictional**.

Section 4.106-2(c) did not change Section 106(d) as amended by RA 7716, but merely implemented it, for two reasons. *First*, **Section 4.106-2(c) still expressly requires compliance with the 60-day period**. This cannot be disputed.

Second, under the novel amendment introduced by RA 7716, mere **inaction** by the Commissioner during the 60-day period is **deemed a denial** of the claim. Thus, Section 4.106-2(c) states that "if no action on the claim for tax refund/credit has been taken by the Commissioner ***after the sixty (60) day period,***" the taxpayer "**may**" already file the judicial claim *even long before* the lapse of the two-year prescriptive period. Prior to the amendment by RA 7716, the taxpayer had to wait until the two-year prescriptive period was **about to expire** if the Commissioner did not act on the claim.[80] With the amendment by RA 7716, the taxpayer need not wait until the two-year prescriptive period is about to expire before filing the judicial claim because mere inaction by the Commissioner during the 60-day period is deemed a denial of the claim. **This is the meaning of the phrase "but before the lapse of the two (2) year period" in Section 4.106-2(c)**. As Section 4.106-2(c) reiterates that the judicial claim can be filed only "***after the sixty (60) day period,"*** this period remains mandatory and jurisdictional. Clearly, Section 4.106-2(c) did not amend Section 106(d) but merely faithfully implemented it.

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[80] The rule before the amendment by RA 7716 was succinctly stated in *Insular Lumber Co. v. Court of Tax Appeals* (192 Phil. 221, 232-233 [1981]):

> We agree with the respondent court. This Court has consistently adhered to the rule that the claim for refund should first be filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must be instituted, within the said two-year period. **If, however, the Commissioner takes time in deciding the claim, and *the period of two years is about to end*, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Commissioner**. x x x. (Emphasis supplied)

Even assuming, for the sake of argument, that Section 4.106-2(c) of Revenue Regulations No. 7-95, an administrative issuance, amended Section 106(d) of the Tax Code to make the period given to the Commissioner non-mandatory, still the 1997 Tax Code, a much later law, reinstated the original intent and provision of Section 106(d) by extending the 60-day period to 120 days and **re-adopting the original wordings of Section 106(d)**. Thus, Section 4.106-2(c), a mere administrative issuance, becomes inconsistent with Section 112(D), a later law. Obviously, the later law prevails over a prior inconsistent administrative issuance.

Section 112(D) of the 1997 Tax Code is clear, unequivocal, and categorical that the Commissioner has 120 days to act on an administrative claim. The taxpayer can file the judicial claim (1) ***only within thirty days after the Commissioner partially or fully denies the claim*** within the 120-day period, or (2) ***only within thirty days from the expiration of the 120-day period*** if the Commissioner does not act within the 120-day period.

There can be no dispute that upon effectivity of the 1997 Tax Code on 1 January 1998, or **more than five years *before* San Roque filed its administrative claim on 28 March 2003**, the law has been clear: the 120-day period is mandatory and jurisdictional. San Roque's claim, having been filed administratively on 28 March 2003, is governed by the 1997 Tax Code, not the 1977 Tax Code. Since San Roque filed its judicial claim before the expiration of the 120-day mandatory and jurisdictional period, San Roque's claim cannot prosper.

San Roque cannot also invoke Section 4.106-2(c), which expressly provides that the taxpayer can only file the judicial claim "***after***" the lapse of the 60-day period from the filing of the administrative claim. **San Roque filed its judicial claim just 13 days after filing its administrative claim**. To recall, San Roque filed its judicial claim on 10 April 2003, a mere 13 days after it filed its administrative claim.

Even if, *contrary to all principles of statutory construction as well as plain common sense*, we gratuitously apply now Section 4.106-2(c) of Revenue Regulations No. 7-95, still **San Roque cannot recover any refund or credit because San Roque did not wait for the 60-day period to lapse, contrary to the express requirement in Section 4.106-2(c)**. In short, San Roque does not even comply with Section 4.106-2(c). A claim for tax refund or credit is strictly construed against the taxpayer, who must prove that his claim clearly complies with all the conditions for granting the tax refund or credit. San Roque did not comply with the express condition for such statutory grant.

A final word. Taxes are the lifeblood of the nation. The Philippines has been struggling to improve its tax efficiency collection for the longest time with minimal success. Consequently, the Philippines has suffered the economic adversities arising from poor tax collections, forcing the government to continue borrowing to fund the budget deficits. This Court cannot turn a blind eye to this economic malaise by being unduly liberal to taxpayers who do not comply with statutory requirements for tax refunds or credits. The tax refund claims in the present cases are not a pittance. Many other companies stand to gain if this Court were to rule otherwise. The dissenting opinions will turn on its head the well-settled doctrine that tax refunds are strictly construed against the taxpayer.

WHEREFORE, the Court hereby (1) **GRANTS** the petition of the Commissioner of Internal Revenue in G.R. No. 187485 to **DENY** the ₱483,797,599.65 tax refund or credit claim of San Roque Power Corporation; (2) **GRANTS** the petition of Taganito Mining Corporation in G.R. No. 196113 for a tax refund or credit of ₱8,365,664.38; and (3) **DENIES** the petition of Philex Mining Corporation in G.R. No. 197156 for a tax refund or credit of ₱23,956,732.44.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

WE CONCUR:

I join the dissent of J. Velasco; but I partly dissent (See separate dissenting Opinion)

MARIA LOURDES P. A. SERENO
Chief Justice

I dissent.
(Please see dissenting opinion)

PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

I join J. Leonen in his separate opinion

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

I join the dissent of J. Velasco

JOSE C. MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

I join the dissent of J. Velasco

ESTELA M. PERLAS-BERNABE
Associate Justice

see separate opinion

MARVIC MARIO VICTOR F. LEONEN
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.

MARIA LOURDES P. A. SERENO
Chief Justice