Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HEDCOR SIBULAN, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 202093

Present:

PERLAS-BERNABE, *SAJ.*,
Chairperson,
HERNANDO,
INTING,
GAERLAN, and
ROSARIO,[*] *JJ.*

Promulgated:
SEP 15 2021

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DECISION

HERNANDO, *J.*:

This Petition for Review[1] assails the March 14, 2012 Decision[2] and the May 29, 2012 Resolution[3] of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA EB Case No. 774 (CTA Case No. 8125), which affirmed the January 31, 2011[4] and April 18, 2011[5] Resolutions of the CTA Third Division (CTA Division) dismissing the petition for review filed by petitioner Hedcor Sibulan, Inc. (petitioner) for having been prematurely filed.

The Antecedent Facts:

Petitioner is a domestic corporation engaged in the business of hydroelectric power generation and subsequent sale of power generation to

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* Designated as additional Member per Special Order No. 2835 dated July 15, 2021.
1 *Rollo*, pp. 18-109.
2 Id. at 116-130. Penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Contangco-Manalastas; Associate Justice Lovell R. Bautista, dissented.
3 Id. at 132-136.
4 Id. at 138-143.
5 Id. at 152-156.

Davao Light and Power Company, Inc. (DLPCI). It is duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) entity.[6]

On July 21, 2008, petitioner filed its Original Quarterly VAT Return[7] for the 2nd quarter of 2008 with the Revenue District Office (RDO) No. 115 of the BIR. Two years later, or on June 23, 2010, it filed an Amended Quarterly VAT Return[8] for the same period. Afterwards, on June 25, 2010, petitioner filed with the BIR a written application for the refund or issuance of a tax credit certificate[9] (TCC), and an administrative claim in the amount of ₱29,299,077.37 for tax credit/refund as to unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the 2nd quarter of 2008.[10] On June 29, 2010, pending resolution of its administrative claim, petitioner filed a petition for review[11] before the CTA Division. Petitioner sought the refund, or in the alternative, the issuance of a TCC in its favor for the unutilized input VAT. It further averred that it was constrained to file the petition in order to suspend the running of the two-year prescriptive period for filing of claims for refunds as prescribed under the National Internal Revenue Code (Tax Code) and Revenue Regulation No. 16-2005, as amended.

In its answer,[12] respondent Commissioner of Internal Revenue (CIR) sought the dismissal of the petition on the ground of prematurity since only four days had lapsed from the time petitioner filed its administrative claim. Hence, petitioner did not observe the prescribed period of 120 days for the CIR to rule on its claim. Respondent further argued that not only did petitioner prematurely filed its petition, it also, in effect, did not exhaust the administrative remedies.

Ruling of the CTA Division:

The CTA Division, in its January 31, 2011 Resolution,[13] treated respondent's affirmative defense as a motion to dismiss. It then dismissed petitioner's judicial claim on the ground of prematurity. The CTA Division observed that petitioner filed its claim only on June 25, 2010. It also presumed that petitioner had filed its supporting documents on the same date, hence, the period of 120 days commenced to run. Pursuant to Section 112(D) of the Tax Code, the CIR had 120 days within which to either grant or deny petitioner's administrative claim. Since petitioner filed its judicial claim merely four (4) days after filing its administrative claim, the CTA Division ruled that it had not acquired jurisdiction since its action was not yet ripe for judicial determination. The *fallo* of the January 31, 2011 Resolution reads:

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6 See *rollo*, p. 117.
7 See id.
8 See id.
9 See id.
10 See id.
11 Records, pp. 1-12.
12 Id. at 172-181.
13 *Rollo*, pp. 138-143.

> WHEREFORE, premises considered the instant *Motion to Dismiss* is hereby GRANTED. Accordingly, the instant Petition for Review is hereby DISMISSED for having been prematurely filed.
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> SO ORDERED.[14]

Petitioner's motion for reconsideration[15] was denied by the CTA Division in its April 18, 2011 Resolution.[16]

Consequently, petitioner filed a Petition for Review[17] before the CTA *En Banc*. It maintained that the filing of its petition was not premature and that the CTA Division erred in dismissing its petition when no motion to dismiss was filed by the CIR. Further, petitioner reiterated its argument that the dismissal on the basis of prematurity is not among the grounds mentioned under Rule 16 of the Rules of Court.

Ruling of the CTA *En Banc*:

On March 14, 2012, the CTA *En Banc* rendered the assailed Decision[18] affirming the dismissal of the petition for having been prematurely filed. It ruled that the affirmative defense of prematurity had the effect of a motion to dismiss pursuant to Section 6, Rule 16 of the Rules of Court. Moreover, the premature filing of the petition was in violation of the doctrine of exhaustion of administrative remedies as the CIR was deprived of the opportunity to decide the administrative claim for refund within the 120-day period prescribed by law.

Petitioner moved for reconsideration but it was denied by the CTA *En Banc* in its May 29, 2012 Resolution.[19] Hence, the instant petition.

Issue

Whether petitioner's judicial claim was prematurely filed.

Our Ruling

The petition is impressed with merit.

Section 112(C) of the NIRC, as amended, states:

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[14] Id. at 143.
[15] Records, pp. 370-416
[16] *Rollo*, 152-156.
[17] CTA *rollo*, pp. 7-57.
[18] *Rollo*, pp. 116-130.
[19] Id. at 132-136.

Section 112(C) of the NIRC, as amended, states:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* -
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> (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.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Under the foregoing provision, the CIR has 120 days from the date of submission of complete documents to rule on an administrative claim of a taxpayer. In case of denial of the claim for tax refund or tax credit, either in whole or in part, or if the CIR failed to act on an application within the prescribed period, the taxpayer shall file a judicial claim by filing an appeal before the CTA within 30 days from the receipt of the decision denying the claim or after the expiration of the 120-day period. The 120-day period is mandatory and jurisdictional.[20] It should therefore be strictly observed in order for a claim for tax credit refund to prosper.[21] Otherwise, non-observance of the period would warrant the dismissal of a petition filed before the CTA as it would not acquire jurisdiction over the claim.[22]

The mandatory nature of the 120-day period was explained in *Commissioner of Internal Revenue v. Aichi Forging Co. of Asia, Inc.*[23] *(Aichi)* promulgated on October 6, 2010, thus:

> Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two 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." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.
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> In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific

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[20] *Commissioner of Internal Revenue v. Hedcor Sibulan, Inc.*, 818 Phil. 971, 977 (2017).
[21] *Hedcor Sibulan, Inc. v. Commissioner of Internal Revenue*, 764 Phil. 161, 167 (2015).
[22] *Commissioner of Internal Revenue v. Aichi Forging Co. of Asia, Inc.*, 646 Phil. 710, 732 (2010).
[23] Id. at 731-732.

> period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.
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> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
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> In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA. (Citations omitted)

The pronouncement in *Aichi*, however, is not without exception.

There are two recognized exceptions to the mandatory and jurisdictional nature of the period. *First*, if the CIR, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA.[24] Such specific ruling is applicable only to the particular taxpayer. *Second,* if the CIR issued a general interpretative rule in accordance with Section 4[25] of the Tax Code which misleads all the taxpayers into prematurely filing judicial claims with the CTA.[26] The CIR, in such case, is not 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[27] of the Tax Code.[28]

BIR Ruling No. DA-489-03 falls under the second exception. Issued on December 10, 2003, BIR Ruling No. DA-489-03 expressly provides that a taxpayer-claimant may seek judicial relief with the CTA by filing a petition for review without waiting for the 120-day period to lapse.[29]

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[24] *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 373 (2013).

[25] Section 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.

[26] Supra note 18.

[27] Section 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.

[28] *Commissioner of Internal Revenue v. Aichi Forging Co. of Asia, Inc.*, supra note 22.

[29] *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, 706 Phil. 48, 85 (2013).

The Court, in *Commissioner of Internal Revenue v. San Roque Power Corp.*[30] *(San Roque)* recognized BIR Ruling No. DA-489-03 as an equitable estoppel in favor of taxpayers and whose date of issuance on December 10, 2003 up to October 6, 2010 (when *Aichi* was adopted), may be relied upon by taxpayers for purposes of their filing of tax refunds or credits, *viz.*:

> 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* 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 specific BIR ruling under Section 246, should also apply prospectively. x x x
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> x x x x
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> 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.
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> 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 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.[31] (Citations omitted)

Taganito Mining Corp. v. Commissioner of Internal Revenue[32] subsequently reconciled *Aichi* and *San Roque*. It held that a taxpayer-claimant need not observe the 120-day period before it could file a judicial claim for refund of excess input VAT before the CTA from December 10, 2003, when BIR Ruling No. DA-489-03 was issued, until October 6, 2010, when *Aichi* was promulgated.[33] Before and after the said periods, compliance to the 120-day period is mandatory and jurisdictional to the filing of such claim.[34]

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30 Supra note 24.
31 Id. at 374-376.
32 736 Phil. 591 (2014).
33 Id. at 600.
34 Id.

In light of the foregoing, we rule that the petition for review for judicial claim filed by petitioner before the CTA was not prematurely filed.

The administrative claim was filed on June 25, 2010. Four days later, or on June 29, 2010, petitioner filed its judicial claim. It is evident that the judicial claim was filed well within the issuance of BIR Ruling No. DA-489-03 before it was invalidated by *Aichi*. Thus, petitioner's immediate filing of its petition for review before the CTA without waiting for the prescribed period of 120 days to lapse is thus permissible. Thus, the CTA *En Banc* erred in affirming the dismissal of petitioner's judicial claim on the ground of prematurity. The instant case should therefore be remanded to the CTA Division for the determination of the refundable or creditable amount due to petitioner, if any.

On a final note, for the guidance of the Bench and the Bar, We reiterate the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT under Section 112 of the Tax Code as summarized in *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*:[35]

> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
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> (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
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> (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.
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> (4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.[36]

WHEREFORE, the petition is **GRANTED**. The March 14, 2012 Decision and the May 29, 2012 Resolution of the Court of Tax Appeals *En Banc* in CTA EB Case No. 774 (CTA Case No. 8125) are **REVERSED and SET ASIDE**. Thus, the case is **REMANDED** to the Court of Tax Appeals Third Division for the proper determination of the refundable or creditable amount due to petitioner Hedcor Sibulan, Inc., if any.

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35 706 Phil. 48-92 (2013).
36 Id. at 86-87.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice