Republic of the Philippines
Supreme Court
Manila

**EN BANC**

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| **REPUBLIC OF THE PHILIPPINES**, represented by the **Commissioner of Internal Revenue**, Petitioner, | **G.R. No. 190872** |
| | Present: SERENO, *C.J.* CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, ABAD, VILLARAMA, JR., PEREZ, MENDOZA, REYES, PERLAS-BERNABE, LEONEN, *JJ.* |
| - versus - | |
| **GST PHILIPPINES, INC.**, Respondent. | Promulgated: OCTOBER 17, 2013 |

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## DECISION

**PERLAS-BERNABE, *J.*:**

It is true that every citizen has a civic responsibility, *nay* an obligation, to honestly pay the right taxes as a contribution to the government in order to keep and maintain a civilized society. Corollarily, the government is expected to implement tax laws in good faith; to discharge its duty to collect what is due to it; and, consistent with the principles of fair play and equity, to justly return what has been erroneously and excessively given to it, after careful verification but without infringing upon the fundamental rights of the taxpayer.

In this Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Republic of the Philippines, represented by the Commissioner of Internal Revenue (CIR), assails the October 30, 2009 Decision[2] and January 5, 2010 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 484, granting respondent GST Philippines, Inc. (GST) a refund of its unutilized excess input value added tax (VAT) attributable to zero-rated sales for the four quarters of taxable year 2004 and the first three quarters of taxable year 2005.

## The Facts

GST is a corporation duly organized and existing under the laws of the Philippines, and primarily engaged in the business of manufacturing, processing, selling, and dealing in all kinds of iron, steel or other metals.[4] It is a duly registered VAT enterprise with taxpayer identification number 000-155-645-000,[5] which deals with companies registered with (1) the Board of Investments (BOI) pursuant to Executive Order No. (EO) 226,[6] whose manufactured products are 100% exported to foreign countries; and (2) the Philippine Economic Zone Authority (PEZA).[7] Sales made by a VAT-registered person to a PEZA-registered entity are considered exports to a foreign country subject to a zero rate.[8]

During the taxable years 2004 and 2005, GST filed Quarterly VAT Returns showing its zero-rated sales, as follows:[9]

| Period | Date of Filing | Zero-Rated Sales |
|---|---|---|
| 1st Quarter of year 2004 | April 16, 2004 | P 77,687,420.54 |
| 2nd Quarter of year 2004 | July 15, 2004 | 53,737,063.05 |
| 3rd Quarter of year 2004 | October 15, 2004 | 74,280,682.00 |
| 4th Quarter of year 2004 | January 11, 2005 | 104,633,604.23 |
| 1st Quarter of year 2005 | April 25, 2005 | 37,742,969.02 |
| 2nd Quarter of year 2005 | July 19, 2005 | 56,133,761.00 |
| 3rd Quarter of year 2005 | October 26, 2005 | 51,147,677.80 |

1 *Rollo*, pp. 8-27.
2 Id. at 28-45. Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta, dissenting, Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez, concurring, and Associate Justices Lovell R. Bautista and Caesar A. Casanova, both concurring and dissenting.
3 Id. at 62-65. Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta, dissenting, and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring.
4 Id. at 9.
5 Id. at 29.
6 Otherwise known as the "Omnibus Investments Code of 1987."
7 *Rollo*, pp. 77-78.
8 See *CIR v. Seagate Technology (Phils.)*, 491 Phil. 317, 338-339 (2005), citing Section 106 (A)(2)(a)(5) of RA 8424 in relation to EO 226 and RA 7916 (The Special Economic Zone Act of 1995).
9 *Rollo*, p. 30.

Claiming unutilized excess input VAT in the total amount of ₱32,722,109.68 attributable to the foregoing zero-rated sales,[10] GST filed before the Bureau of Internal Revenue (BIR) separate claims for refund on the following dates:[11]

| Period | Date of Filing of Administrative Claim for Refund |
|---|---|
| 1st Quarter of 2004 | June 9, 2004 |
| 2nd Quarter of 2004 | August 12, 2004 |
| 3rd Quarter of 2004 | February 18, 2005 |
| 4th Quarter of 2004 | February 18, 2005 |
| 1st Quarter of 2005 | May 11, 2005 |
| 2nd Quarter of 2005 | November 18, 2005 |
| 3rd Quarter of 2005 | November 18, 2005 |

For failure of the CIR to act on its administrative claims, GST filed a petition for review before the CTA on March 17, 2006. After due proceedings, the CTA First Division rendered a Decision[12] on January 27, 2009 granting GST's claims for refund but at the reduced amount of ₱27,369,114.36. The CIR was also ordered to issue the corresponding tax credit certificate.[13]

The CIR moved for reconsideration, which was denied[14] by the CTA First Division for lack of merit, thus, prompting the elevation of the case to the CTA *En Banc* via a petition for review.[15] The CIR raised therein the failure of GST to substantiate its entitlement to a refund,[16] and argued that the judicial appeal to the CTA was filed beyond the reglementary periods prescribed in Section 112 of RA 8424[17] (Tax Code).[18]

On October 30, 2009, the CTA *En Banc* affirmed[19] the Decision of the CTA First Division finding GST's administrative and judicial claims for refund to have been filed well within the prescribed periods provided in the Tax Code.[20] The CIR's motion for reconsideration was denied by the CTA

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10 Id.
11 Id. at 44.
12 The said decision is not attached to the records of this case.
13 *Rollo*, p. 30.
14 The CTA First Division's Resolution dated March 30, 2009 which denied CIR's motion for reconsideration was not attached in the records of this case.
15 *Rollo*, p. 30.
16 Id. at 31.
17 "An Act Amending the National Internal Revenue Code, As Amended, and for Other Purposes." This is otherwise known as the "Tax Reform Act of 1997" or the "National Internal Revenue Code of 1997."
18 *Rollo*, p. 41.
19 Id. at 28-45.
20 Id. at 44.

*En Banc* in its Resolution[21] dated January 5, 2010.

Hence, the instant petition.

## The Issue

The CIR no longer raises the alleged failure of GST to comply with the substantiation requirements for the questioned claims for refund nor questions the reduced award granted by the CTA *En Banc* in the amount of ₱27,369,114.36. Thus, the lone issue for resolution is whether GST's action for refund has complied with the prescriptive periods under the Tax Code.

## The Ruling of the Court

### *Laws Providing Refunds or Tax Credit of Unutilized Excess Input VAT*

Refund or tax credit of unutilized excess input VAT has been allowed as early as in the Original VAT Law – EO 273.[22] This was later amended by RA 7716[23] and RA 8424, and further amended by RA 9337[24] which took

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[21] Id. at 62-65.

[22] "Adopting a Value-Added Tax, Amending for this Purpose Certain Provisions of the National Internal Revenue Code, and for Other Purposes." It added Section 106 in the Tax Code and the pertinent provisions read:

> Sec. 106. **Refunds or tax credits of input tax.** – x x x.
>
> (b) **Zero-rated or effectively zero-rated sales**. – Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
>
> x x x x
>
> (e) **Period within which refund of input taxes may be made by the Commissioner.** – The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.
>
> x x x x

[23] "An Act Restructuring the Value-Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration, and for These Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as Amended, and for Other Purposes." It further amended Section 106 and the pertinent provisions read:

> Sec. 106. *Refunds or tax credits of creditable input tax.* –
>
> (a) 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the 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

effect on November 1, 2005.[25] Since GST's claims for refund covered the periods before the effectivity of RA 9337, the old provision on VAT refund, specifically Section 112, as amended by RA 8424, shall apply.[26] It reads:

> Section 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**

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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.

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 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 the 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.

x x x x

[24] "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes." Pertinent provisions of Section 112 now reads:

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.

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.

x x x x

[25] Its effectivity clause provides that it shall take effect on July 1, 2005 but its effectivity was suspended due to a temporary restraining order (TRO) issued by the Court. The law finally took effect only on November 1, 2005 when the validity of the law was upheld and the TRO was lifted (see *Abakada Guro Party List v. Ermita*, G.R. Nos. 168056, 168207, 168461, 168463 & 168730, September 1, 2005, 469 SCRA 1). See also *CIR v. Philippine Global Communications, Inc.*, G.R. No. 144696, August 16, 2006, 499 SCRA 53 regarding the effect of a TRO on the effectivity of a law. It states that with the issuance of the TRO, the enforcement and/or implementation of an entire law, not only the contested provisions, is stopped.

[26] RA 9337 removed the grant to a taxpayer to refund input VAT arising from purchase of capital goods. Other than that, RA 9337 did not significantly modify Section 112.

> **two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x. (Emphasis supplied)
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> x x x x
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> (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 Subsections (A) and (B) 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.** (Emphasis supplied)

The CIR, adopting the dissenting opinion[27] of CTA Presiding Justice Ernesto D. Acosta to the CTA *En Banc* Decision dated October 30, 2009, maintains that the two-year prescriptive period under Section 112 (A) of the Tax Code reckoned from the close of the taxable quarter involved is limited only to the filing of an administrative – not judicial – claim.[28] In turn, under paragraph (D) of the same Section, the CIR has 120 days to decide on the claim counted from the date of the submission of complete documents and not from the mere filing of the administrative claim. The taxpayer then has 30 days from receipt of the adverse decision, or from the expiration of the 120-day period without the CIR acting upon the claim, to institute his judicial claim before the CTA.[29]

Thus, in the present case, the claims filed for the four quarters of taxable year 2004, as well as the first quarter of taxable year 2005, had already prescribed. While those of the second and third quarters of taxable year 2005 were prematurely filed, as summarized in the table presented by Justice Acosta, to wit:

> Applying the above discourse in the case at bar, a table is prepared for easy reference:

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27 *Rollo*, pp. 46-54.
28 Id. at 50.
29 Id. at 52.

| Filing of Administrative Claim | 120th day [Section 112 (D), NIRC of 1997] | 30th day [Section 112 (D), 2nd par., NIRC of 1997) | Filing of the Petition before the First Division of this Court | Remarks |
|---|---|---|---|---|
| June 9, 2004 | October 7, 2004 | November 6, 2004 | March 17, 2006 | Prescribed |
| August 12, 2004 | December 10, 2004 | January 9, 2005 | March 17, 2006 | Prescribed |
| February 18, 2005 | June 18, 2005 | July 18, 2005 | March 17, 2006 | Prescribed |
| May 11, 2005 | September 8, 2005 | October 8, 2005 | March 17, 2006 | Prescribed |
| November 18, 2005 | March 18, 2006 | April 17, 2006 | March 17, 2006 | Premature |

> Based on the above, the filing of the Petition for Review before the First Division has already prescribed with respect to the administrative claim filed on June 9, 2004; August 12, 2004; February 18, 2005; and May 11, 2005 for being filed beyond the 30th day provided under the second paragraph of Section 112 (D) of the NIRC of 1997. The petition is therefore dismissible for being out of time.
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> Anent the administrative claim filed on November 18, 2005, the filing of the petition before the First Division is premature for failure of respondent to wait for the 120-day period to expire. It failed to exhaust the available administrative remedies. Hence, the instant petition is likewise dismissible for lack of cause of action.[30]

For its part, GST asserts that under Section 112 (A) of the Tax Code, the prescriptive period is complied with if both the administrative and judicial claims are filed within the two-year prescriptive period; [31] and that compliance with the 120-day and 30-day periods under Section 112 (D) of the Tax Code is not mandatory.[32] It explained that the 30-day period only refers to a case where a decision is rendered by the CIR and not when the claim for refund is not acted upon, in which case, the taxpayer may appeal to the CTA anytime even prior to or after the expiration of the 120-day period as long as it is within the two-year prescriptive period. On the other hand, the CIR may still choose to resolve the administrative claim even beyond the 120-day period. In any case, compliance with the 120-day and 30-day periods is merely directory and permissive, not mandatory nor jurisdictional.[33]

***The 120+30 day periods are mandatory and jurisdictional.***

The Court had already clarified in the case of *CIR v. Aichi Forging Company of Asia, Inc.* (*Aichi),*[34] promulgated on October 6, 2010, that the two-year prescriptive period applies only to administrative claims and not to

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30 Id. at 53-54.
31 Id. at 82.
32 Id. at 84.
33 Id. at 82-84.
34 G.R. No. 184823, October 6, 2010, 632 SCRA 422.

judicial claims. Morever, it was ruled that the 120-day and 30-day periods are not merely directory but **mandatory**. Accordingly, the judicial claim of *Aichi*, which was simultaneously filed with its administrative claim, was found to be premature. The Court held:

> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) [now Section 112 (C)] of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D) [now Section 112 (C)] 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.**[35] (Emphasis supplied)

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 tax credit of unutilized excess input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.[36] Failure to comply with the 120-day waiting period 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.[37]

***San Roque case provides exception to the strict compliance with the 120-day period***

While the Court *En Banc* reiterated in the recent consolidated cases of *CIR v. San Roque Power Corporation* (*San Roque*),[38] promulgated on February 12, 2013, that the 120-day period is mandatory and jurisdictional, however, it categorically held that BIR Ruling No. DA-489-03 dated December 10, 2003 provided a valid claim for **equitable estoppel** under Section 246[39] of the Tax Code. BIR Ruling No. DA-489-03 expressly states

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35 Id. at 444.

36 *CIR v. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336, 398.

37 Id. at 381.

38 Id.

39 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

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**."[40] Speaking through Associate Justice Antonio T. Carpio, the Court ratiocinated as follows:

> 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.
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> 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:
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> > 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.
>
> 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. x x x.[41]

BIR Ruling No. DA-489-03 was classified in *San Roque* as a **general interpretative rule** having been made in response to a query by a government agency tasked with processing tax refunds and credits – the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. As such, *all* taxpayers can rely on said ruling

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(c) Where the taxpayer acted in bad faith.

40 Supra note 35, at 401.

41 Id. at 401-402.

from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, where it was held that the 120+30 day periods are mandatory and jurisdictional.[42]

Therefore, GST can benefit from BIR Ruling No. DA-489-03 with respect to its claims for refund of unutilized excess input VAT for the second and third quarters of taxable year 2005 which were filed before the CIR on November 18, 2005 but elevated to the CTA on March 17, 2006 ***before*** the expiration of the 120-day period (March 18, 2006 being the 120th day). BIR Ruling No. DA-489-03 effectively shielded the filing of GST's judicial claim from the vice of prematurity.[43]

GST's claims, however, for the four quarters of taxable year 2004 and the first quarter of taxable year 2005 should be denied for **late filing** of the petition for review before the CTA. GST filed its VAT Return for the first quarter of 2004 on April 16, 2004. Reckoned from the close of the first taxable quarter of 2004 on March 31, 2004, the administrative claim filed on June 9, 2004 was well within the required two-year prescriptive period from the close of the taxable quarter, the last day of filing being March 31, 2006. The CIR then had 120 days from June 9, 2004, or until October 7, 2004, to decide the claim. Since the Commissioner did not act on the claim within the said period, GST had 30 days from October 7, 2004, or until November 6, 2004, to file its judicial claim. However, GST filed its petition for review before the CTA only on March 17, 2006, or 496 days ***after*** the last day of filing. In short, **GST was late by one year and 131 days in filing its judicial claim**.

For the second quarter of taxable year 2004, GST filed its administrative claim on August 12, 2004. The 120-day period from the filing of such claim ended on December 10, 2004, and the 30th day within which to file a judicial claim fell on January 9, 2005. However, GST filed its petition for review before the CTA only on March 17, 2006, or 432 days ***after*** the last day of filing. **GST was late by one year and 67 days in filing its judicial claim**.

For the third and fourth quarters of taxable year 2004, GST filed its administrative claims on February 18, 2005. The 120th day, or June 18, 2005, lapsed without any action from the CIR. Thus, GST had 30 days therefrom, or until July 18, 2005, to file its judicial claim, but it did so only on March 17, 2006, or 242 days ***after*** the last day of filing. **GST was late by 242 days in filing its judicial claim.**

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42 Id. at 404.
43 Id. at 405.

Finally, for the first quarter of taxable year 2005, GST filed its administrative claim on May 11, 2005. The 120-day period ended on September 8, 2005, again with no action from the CIR. Nonetheless, GST failed to elevate its claim to the CTA within 30 days, or until October 8, 2005. The petition for review filed by GST on March 17, 2006, or 160 days ***after*** the last day of filing was, therefore, **late**.

Following is a tabular summation of the relevant dates of GST's administrative and judicial claims, and the corresponding action on said claims:

| Taxable Period | Filing of Administrative claim | 120th day [Section 112 (D), NIRC of 1997] | 30th day [Section 112 (D), NIRC of 1997] | Filing of Judicial Claim | Remarks | Action on Claim |
|---|---|---|---|---|---|---|
| 1st Quarter 2004 | June 9, 2004 | October 7, 2004 | November 6, 2004 | March 17, 2006 | Filed late | **DENY**, pursuant to Section 112 (C), NIRC of 1997 |
| 2nd Quarter 2004 | August 12, 2004 | December 10, 2004 | January 9, 2005 | March 17, 2006 | Filed late | **DENY**, pursuant to Section 112 (C), NIRC of 1997 |
| 3rd Quarter 2004 | February 18, 2005 | June 18, 2005 | July 18, 2005 | March 17, 2006 | Filed late | **DENY**, pursuant to Section 112 (C), NIRC of 1997 |
| 4th Quarter 2004 | February 18, 2005 | June 18, 2005 | July 18, 2005 | March 17, 2006 | Filed late | **DENY**, pursuant to Section 112 (C), NIRC of 1997 |
| 1st Quarter 2005 | May 11, 2005 | September 8, 2005 | October 8, 2005 | March 17, 2006 | Filed late | **DENY**, pursuant to Section 112 (C), NIRC of 1997 |
| 2nd Quarter 2005 | November 18, 2005 | March 18, 2006 | April 17, 2006 | March 17, 2006 | Prematurely filed | **GRANT**, pursuant to BIR Ruling No. DA-489-03 |
| 3rd Quarter 2005 | November 18, 2005 | March 18, 2006 | April 17, 2006 | March 17, 2006 | Prematurely filed | **GRANT**, pursuant to BIR Ruling No. DA-489-03 |

As may be observed from the Court's application of the 120+30 day periods to GST's claims, the 120-day period is *uniformly* reckoned from the

date of the filing of the administrative claims. The CIR insists,[44] however, that the filing of the administrative claim was *not* necessarily the same time when the complete supporting documents were submitted to the Commissioner.

*The Court agrees*. However, this issue is *not* determinative of the resolution of this case for failure of the CIR to show that GST further submitted supporting documents subsequent to the filing of its administrative claims. Thus, the reckoning date of the 120-day period commenced *simultaneously*[45] with the filing of the administrative claims when GST was presumed to have attached the relevant documents to support its applications for refund or tax credit.

As a final note, it is incumbent on the Court to emphasize that tax refunds partake of the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State.[46] Thus, as emphasized in *Aichi*, a taxpayer must prove not only its entitlement to a refund but also its compliance with prescribed procedures.[47]

**WHEREFORE,** the petition is **PARTLY GRANTED**. The Decision dated October 30, 2009 of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 484, affirming the Decision dated January 27, 2009 of the CTA First Division in C.T.A. Case No. 7419, is **AFFIRMED with MODIFICATION**. The claims of respondent GST Philippines, Inc. for refund or tax credit for unutilized excess input VAT for the four quarters of taxable year 2004, as well as the first quarter of taxable year 2005 are hereby **DENIED** for being filed beyond the prescriptive period, while the claims for refund for the second and third quarters of taxable year 2005 are **GRANTED**. Accordingly, the Commissioner of Internal Revenue is ordered to refund or, in the alternative, to issue a tax credit certificate to respondent GST Philippines, Inc. corresponding only to the amount representing unutilized excess input VAT for the second and third quarters of taxable year 2005 out of the total amount of ₱27,369,114.36 awarded by the CTA.

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44 *Rollo*, p. 22.

45 This is consistent with several CTA decisions, as follows: *Procter & Gamble Asia, PTE. LTD. v. Commissioner of Internal Revenue*, CTA EB No. 830 (CTA Case No. 7982), December 20, 2012; *Taganito Mining Corporation v. Commissioner of Internal Revenue*, CTA EB No. 656 (CTA Case No. 7769), October 19, 2011; *UCPB Properties, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 645 (CTA Case Nos. 6543 & 6589), July 18, 2011; *Commissioner of Internal Revenue v. Team Energy Corporation (formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.)*, CTA EB No. 652 (CTA Case No. 7461).

46 *Gulf Air Company, Philippine Branch (GF) v. CIR*, G.R. No. 182045, September 19, 2012, 681 SCRA 377, 389.

47 Supra note 33, at 425.

**SO ORDERED.**

**ESTELA M. PERLAS-BERNABE**
Associate Justice

**WE CONCUR:**

**MARIA LOURDES P. A. SERENO**
Chief Justice

**ANTONIO T. CARPIO**
Associate Justice

**PRESBITERO J. VELASCO, JR.**
Associate Justice

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

**ARTURO D. BRION**
Associate Justice

**DIOSDADO M. PERALTA**
Associate Justice

**LUCAS P. BERSAMIN**
Associate Justice

On Official Leave
**MARIANO C. DEL CASTILLO**
Associate Justice

On Official Leave
**ROBERTO A. ABAD**
Associate Justice

**MARTIN S. VILLARAMA, JR.**
Associate Justice

**JOSE PORTUGAL PEREZ**
Associate Justice

**JOSE CATRAL MENDOZA**
Associate Justice

**BIENVENIDO L. REYES**
Associate Justice

On Official Leave
**MARVIC MARIO VICTOR F. LEONEN**
Associate Justice

## CERTIFICATION

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