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# SECOND DIVISION

# [ G.R. No. 203928, July 22, 2015 ]

## CE CASECNAN WATER AND ENERGY COMPANY, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

## DECISION

**LEONEN, J.:**

The thirty (30)-day period provided in Section 112 of the 1997 National Internal Revenue Code to appeal the decision of the Commissioner of Internal Revenue or its inaction is statutorily provided. Failure to comply is a jurisdictional error. The window of exemption created in *Commissioner of Internal Revenue v. San Roque Power Corporation*[1] is limited to premature filing of the judicial remedy. It does not cure lack of jurisdiction due to late filing.

This Petition for Review on Certiorari[2] seeks to annul and set aside the Decision[3] dated June 26, 2012 and Resolution[4] dated October 4, 2012 of the Court of Tax Appeals En Banc in CTA EB No. 726. Both the Decision and Resolution dismissed petitioner CE Casecnan Water and Energy Company, Inc.'s (CE Casecnan) appeal on the ground that its judicial claim for refund or issuance of tax credit for unutilized excess input value-added tax (VAT) in the amount of P26,066,286.96, attributable to its zero-rated sales for the four (4) quarters of 2006, was filed beyond the thirty (30)-day period stated in Section 112 (c) of the 1997 National Internal Revenue Code (Tax Code).

CE Casecnan was incorporated on September 21, 1994. Its primary purpose was "to design, develop, construct, assemble, commission and operate hydro-electric power plants and related facilities"[5] for government or any of its subdivisions, instrumentalities, or agencies, as well as for any government-owned and controlled corporation engaged in energy development, supply, or distribution. It is registered with the Bureau of Internal Revenue as a VAT taxpayer with Taxpayer Identification No. 004-500-931-000.[6]

CE Casecnan filed its quarterly VAT returns for the first to fourth quarters of 2006 on April 25, 2006, July 25, 2006, October 25, 2006, and January 25, 2007.[7] Subsequently, it filed

amended VAT returns for these taxable quarters on February 22, 2007 and July 25, 2007.[8]

For the first to fourth quarters of 2006, CE Casecnan had unutilized input VAT credits from its domestic purchases of goods, services rendered by non-residents, and importation of non-capital goods in the total amount of P45,445,453.76, detailed as follows:[9]

| | Unutilized Input VAT | | | | | |
|---|---|---|---|---|---|---|
| 2006 Taxable Quarter | Domestic Purchases other than Capital Goods | Domestic Purchases Capital Goods | Importation other than Capital Goods | Domestic Purchases Services | Services Rendered by Non-Residents | Total |
| 1st | 379,544.56 | 0.00 | 12,368.00 | 15,507,614.62 | 129,268.58 | 16,028,795.76 |
| 2nd | 785,961.65 | 0.00 | 90,287.00 | 11,084,959.24 | 6,146.09 | 11,967,353.98 |
| 3rd | 923,658.39 | 5,714.29 | 280,325.06 | 9,184,319.94 | 0.00 | 10,394,017.68 |
| 4th | 831,404.20 | 17,142.87 | 976,334.00 | 5,096,742.58 | 133,662.69 | 7,055,286.34 |
| Total | 2,920,568.80 | 22,857.16 | 1,359,314.06 | 40,873,636.38 | 269,077.36 | 45,445,453.76 |

Of the total accumulated input VAT of P45,445,453.76, the amount of P26,066,286.96 was attributable to CE Casecnan's zero-rated sales of power generation services to the National Irrigation Administration for the first to fourth quarters of 2006.[10]

On **September 26, 2007**, CE Casecnan filed before the Bureau of Internal Revenue an administrative claim for refund or issuance of tax credit certificate for the excess or unutilized input VAT in the total amount of P26,066,286.96.[11]

On **March 14, 2008**, CE Casecnan filed its Petition for Review, docketed as CTA Case No. 7739, due to the inaction of the Commissioner of Internal Revenue on its administrative claim.[12]

In her Answer, the Commissioner alleged the following as special and affirmative defenses:

> 6. The amount of P26,066,286.96 being claimed by petitioner as alleged unutilized input VAT for the first to fourth quarters of calendar year 2006 is not properly documented. . . .
>
> . . . .
>
> 8. Prescription has set in regarding petitioner's claim for refund based on Section 112 (C) of the Tax Code[.][13]

On December 2, 2010,[14] the Court of Tax Appeals Former Second Division denied CE Casecnan's judicial claim for having been filed beyond the thirty (30)-day period prescribed in Section 112 (c) of the Tax Code. Likewise, its Motion for Reconsideration was denied.[15]

CE Casecnan appealed to the Court of Tax Appeals En Banc. Through the Decision[16] dated June 26, 2012, the appeal was denied. Relying upon *Commissioner of Internal Revenue v. Aichi Forging Company Asia, Inc.*,[17] the Court of Tax Appeals En Banc ruled that the one hundred twenty (120)- and thirty (30)-day periods under Section 112 (c) of the Tax Code are mandatory, and non-compliance is fatal to a judicial claim for refund. CE Casecnan's subsequent Motion for Reconsideration was further denied in the Court of Tax Appeals' October 4, 2012 Resolution.[18]

Hence, this Petition[19] raises as its sole issue whether the Court of Tax Appeals En Banc erred in denying petitioner CE Caseenan claim for refund due to prescription.

Petitioner argues that the *Aichi* ruling, which involved an administrative and judicial claim for refund simultaneously filed by the taxpayer, is not squarely applicable to its case.[20] Nonetheless, petitioner submits that *Aichi* should be revisited because there is nothing in Section 112 (c) of the Tax Code[21] stating that compliance by taxpayers with the one hundred twenty (120)- and thirty (30)-day periods is mandatory. On the other hand, unlike Section 112 (c), Section 229 of the Tax Code is allegedly explicit that compliance with the two-year period is mandatory for filing a judicial claim before the Court of Tax Appeals. [22]

Moreover, petitioner proposes a prospective application of the *Aichi* ruling on equitable considerations. Petitioner, as well as other taxpayers, relies upon both the Court of Tax Appeals' and respondent Commissioner of Internal Revenue's previous interpretations that the only jurisdictional requirement for appeals to the Court of Tax Appeals on VAT refund cases was that they be filed within the two-year period set out in Section 229.[23]

Respondent counters[24] that Section 112 is a specific provision referring particularly to VAT, while Section 229 is a general provision referring to general remedies. Hence, with respect to the Rules of Procedure governing VAT matters, Section 112 prevails over Section 229.[25] Furthermore, respondent avers that the word "may" in Section 112 simply means that taxpayers have an avenue of appeal if they so desire to pursue it. It does not give the taxpayer the discretion or the option to choose either the one hundred twenty (120)- and thirty (30)-day rule under Section 112 or the two-year rule under Section 229, as petitioner erroneously contends.[26]

Respondent further argues that the rule on prospectivity is not applicable because *Aichi* is a case of first impression and its ruling did not overturn any doctrinal precedent. The

pronouncement in *Aichi* corrected an erroneous understanding and application of the periods set under Section 112 of the Tax Code by litigants and the Court of Tax Appeals alike. Hence, to limit *Aichi* to a prospective application would be tantamount to sanctioning an erroneous practice in tax litigation.[27]

Lastly, respondent contends that petitioner's failure to comply with the reglementary period prevented the Court of Tax Appeals Former Second Division from acquiring jurisdiction over its claim.[28]

In its Reply,[29] petitioner contends that the doctrine of prospectivity has been applied even in cases of first impression, such as *Land Bank of the Philippines v. De Leon*[30] on equitable considerations and *Co v. Court of Appeals*,[31] in order not to prejudice those who had relied on a contrary administrative interpretation before the adoption of the new doctrine. Petitioner stresses that in *San Roque*, this court did not adopt an iron-clad application of *Aichi*. Rather, it carved out an exception from the rule that the one hundred twenty (120)- and thirty (30)-day periods are mandatory and jurisdictional, such that judicial claims filed by taxpayers who relied on BIR Ruling No. DA-489-03 (BIR Ruling) —from its issuance on December 10, 2003 to its reversal by *Aichi* on October 6, 2010—are shielded from the vice of prematurity. In this regard, petitioner submits that the benefits of the BIR Ruling should also be extended to judicial claims filed beyond the thirty (30)-day period set forth in Section 112 of the Tax Code because the import of the BIR Ruling was that it was the two-year prescriptive period under Section 229 that had jurisdictional significance. Petitioner adds that the BIR Ruling reflected a long-standing practice in tax litigation, which included various administrative issuances and Court of Tax Appeals decisions where, with respect to VAT refunds, the only requirement was that both administrative and judicial claims be filed within the two-year prescriptive period.[32]

We deny the Petition.

Petitioner's judicial claim was filed beyond the thirty (30)-day period required in Section 112 (c) of the Tax Code. The administrative claim for refund was filed on September 26, 2007. Thus, the one hundred twenty (120)-day period for the Bureau of Internal Revenue to act on the claim lapsed on January 24, 2008. Petitioner had until February 23, 2008 to file a petition before the Court of Tax Appeals, but it filed its appeal only on March 14, 2008. Petitioner was late by 19 days.

The prescriptive periods regarding claims for refunds or tax credits of input VAT are explicitly set forth in Section 112 of the Tax Code:

> Section 112. *Refunds or Tax Credits of Input Tax*. —
>
> 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.*** (Emphasis supplied)

There is no room for any other interpretation of the text. Resort to an appeal before the Court of Tax Appeals should be made only within thirty (30) days either from receipt of the decision denying the claim or the expiration of the one hundred twenty (120)-day period given to the Commissioner to decide the claim.

This is consistent with Section 11 of Republic Act No. 1125, as amended by Section 9 of Republic Act No. 9282, which provides a thirty (30)-day period of appeal either from receipt of the adverse decision of the Commissioner or from the lapse of the period fixed by law for action:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal*. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue . . . may *file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action* as referred to in Section 7(a)(2)[33] herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA *within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon*[.] (Emphasis supplied)

In *San Roque*, this court held that compliance with the one hundred twenty (120)-day and the thirty (30)-day periods under Section 112 of the Tax Code is mandatory and jurisdictional, save for VAT refund cases that were prematurely filed—i.e., before the lapse of the one hundred twenty (120)-day period—before the Court of Tax Appeals between December 10, 2003 (when the BIR Ruling was issued) and October 6, 2010.[34]

This court also declared that, following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[35] claims for refund or tax credit of excess input tax are governed not by Section 229 but only by Section 112 of the Tax Code.

San Roque filed a motion for reconsideration and supplemental motion for reconsideration in G.R. No. 187485 arguing for the prospective application of the one hundred twenty (120)-day and thirty (30)-day mandatory and jurisdictional periods. This court denied this

with finality in the Resolution dated October 8, 2013.[36]

In this case, petitioner's claim that the BIR Ruling should cover both prematurely and belatedly filed claims for tax refund is not supported by the text of the law or the doctrine in our latest cases. The query interposed in the BIR Ruling specifically pertained to what to do in cases where the taxpayer did not wait for the lapse of the one hundred twenty (120)-day period.[37] There is nothing in the BIR Ruling that states, expressly or impliedly, that late filings of judicial claims are acceptable.

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*,[38] Mindanao II filed its claim 138 days after the lapse of the thirty (30)-day period. This court held that while the BIR Ruling was in effect when Mindanao II filed its claim, the rule cannot be properly invoked because the ruling contemplates *premature* filing and not *late* filing. This court further emphasized that late filing—i.e., filing beyond the thirty (30)-day period—is absolutely prohibited, even during the time the BIR Ruling was in force.

Similarly, this court rejects petitioner's claim that *Aichi* and *San Roque* should not be applied retroactively as it would be unjust to the other claimants who relied on the old doctrine (that both administrative and judicial claims should be filed before the lapse of the two-year period).

The claims in *Aichi* and *San Roque* were filed before this case. In *Aichi*, this court first squarely addressed the particular issue on prematurity of a judicial claim based on its interpretation of the language of the Tax Code. In that case, this court did not defer application of the rule laid down. Rather, it ordered the Court of Tax Appeals to dismiss *Aichi*'s appeal due to the premature filing of its claim for refund or credit of input VAT.

On the other hand, *Philex Mining Corporation v. Commissioner of Internal Revenue*, one of the cases consolidated in *San Roque*, involved the filing of a judicial claim beyond the thirty (30)-day period to appeal, as in this case. This court rejected Philex Mining Corporation's judicial claim because of late filing:

> 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. Philex failed to comply with the statutory conditions and must thus bear the consequences.[39] (Emphasis supplied, citations omitted)

Reliance on administrative interpretation of an otherwise clear and plain provision of our tax statutes has a tendency to encourage regulatory capture. In this case, there is even no rule, regulation, or doctrine to support petitioner's stance. Clearly, the thirty (30)-day statutory period within which to file a petition for review is jurisdictional. Non-compliance bars the Court of Tax Appeals from taking cognizance of the appeal and determining the veracity of the tax refund or credit claim.[40]

Hence, this court finds no error committed by the Court of Tax Appeals En Banc in affirming the Former Second Division's dismissal of the Petition due to lack of jurisdiction.

**WHEREFORE**, the Petition is **DENIED**.

**SO ORDERED.**

*Carpio, Brion, Del Castillo*, and *Mendoza, JJ.*, concur.

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[1] G.R. No. 187485, February 12, 2013, 690 SCRA 336 [Per J.Carpio, En Banc].

[2] The Petition was filed under Rule 45 of the Rules of Court.

[3] *Rollo*, pp. 83-113.

[4] Id. at 119-127.

[5] Id. at 84.

[6] Id.

[7] Id. at 84-85.

[8] Id.

[9] Id. at 85.

[10] Id. at 86.

[11] Id. at 30.

[12] Id. at 86.

[13] Id. at 86-87.

[14] Id. at 231-247. The Decision, docketed as C.T.A. Case No. 7739, was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castaneda, Jr. (Chair) and Erlinda P. Uy of the Former Second Division of the Court of Tax Appeals Quezon City.

[15] Id. at 282-283.

[16] Id. at 83-113. The Decision was penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castaneda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, and dissented in by Associate Justice Lovell R. Bautista.

[17] 646 Phil. 710 [Per J. Del Castillo, First Division].

[18] *Rollo*, pp. 119-127. The Resolution was penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castaneda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, and Cielito N. Mindaro-Grulla, and dissented in by Associate Justice Lovell R. Bautista. Associate Justice Amelia R. Cotangco-Manalastas was on leave.

[19] Id. at 25-64. This court received this Petition on December 5, 2012.

[20] Id. at 35.

[21] As amended by Rep. Act No. 9337, 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.

[22] *Rollo*, pp. 35-41.

[23] Id. at 41-47.

[24] Id. at 409-431. *See* respondent's Comment dated June 26, 2013.

[25] Id. at 419.

[26] Id. at 421.

[27] Id. at 424-425.

[28] Id. at 427.

[29] Id. at 460-482. This court received the Reply on October 29, 2013.

[30] 447 Phil. 495 (2003) [Per J. Corona, En Banc].

[31] G.R. No. 100776, October 28, 1993, 227 SCRA 444 [Per C.J. Narvasa, Second Division].

[32] *Rollo*, pp. 41-49.

[33] Sec. 7. *Jurisdiction*. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(2) *Inaction by the Commissioner of Internal Revenue in cases involving* disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relations 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*[.]

[34] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 336, 398-399 [Per J. Carpio, En Banc].

[35] 586 Phil. 712 (2008) [Per J. Velasco, Jr., Second Division].

[36] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, October 8, 2013, 707 SCRA 66 [Per J. Carpio, En Banc]. This court also denied

the Commissioner of Internal Revenue's motion for reconsideration in G.R. No. 196113 assailing the validity of BIR Ruling No. DA-489-03.

[37] *See* Re: Lazi Bay Resources Development, Inc., BIR Ruling No. DA-489-03, December 10, 2003.

[38] G.R. No. 191498, January 15, 2014, 713 SCRA 644 [PerC.J. Sereno, First Division].

[39] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 336, 389-390 [Per J. Carpio, En Banc].

[40] *See Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, 550 Phil. 316 (2007) [Per J. Ynares-Santiago, Third Division].

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