Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PANAY POWER CORPORATION (formerly AVON RIVER POWER HOLDINGS CORPORATION), Petitioner,	**G.R. No. 203351**
	Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 21 2015

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 17, 2012 and the Resolution[3] dated August 29, 2012 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 709, which affirmed the Amended Decision[4] dated December 6, 2010 of the CTA Special First Division (CTA Division) in CTA Case No. 7402 and dismissed the claim for refund/credit of excess input value-added tax (VAT) of petitioner Panay Power Corporation, formerly Avon River Power Holdings Corporation (petitioner), for being prematurely filed.

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1 *Rollo*, pp. 13-73.

2 Id. at 79-107. Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, and Olga Palanca-Enriquez, concurring, and Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas, dissenting. Associate Justice Cielito N. Mindaro-Grulla was on wellness leave.

3 Id. at 112-124. Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, Olga Palanca-Enriquez, and Cielito N. Mindaro-Grulla, concurring, and Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas, dissenting.

4 CTA *En Banc rollo*, pp. 56-63. Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta, concurring, and Associate Justice Lovell R. Bautista, dissenting.

The Facts

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws and a VAT-registered entity with Tax Identification No. 223-606-641-000. It is engaged in the business of acquiring, holding, owning, and operating power generation assets for lighting and power purposes and whole selling the electric power to the National Power Corporation, private electric utilities and electric cooperatives, and for the carrying on of all business incident thereto.[5]

On January 26, 2004, petitioner filed its quarterly VAT return[6] for the fourth quarter of 2003. Subsequently, petitioner filed two (2) amendments to its quarterly VAT return for the said period on January 28, 2005[7] and January 19, 2006,[8] respectively, with the latter amendment reflecting a total unutilized input VAT amounting to □14,122,347.21.[9] According to petitioner, the aforesaid amount pertains to the input VAT that it paid on its purchases of capital goods and services consisting of power generation assets located in Iloilo City (subject purchases) which input VAT has not been utilized against any output VAT liability for the fourth quarter of 2003 or even for subsequent quarters.[10]

On December 29, 2005, petitioner filed an administrative claim for refund/credit of its unutilized input VAT in the amount of □14,122,347.21 before the Revenue District Office No. 51 of the Bureau of Internal Revenue (BIR). Thereafter, on January 20, 2006, petitioner filed a judicial claim for tax refund/credit by way of a petition for review before the CTA, docketed as CTA Case No. 7402.[11]

For its part, respondent Commissioner of Internal Revenue (CIR) averred, *inter alia*, that the amount being claimed by petitioner as the alleged unutilized input VAT for the fourth quarter of 2003 must be denied for not being properly documented.[12]

The CTA Division Ruling

In a Decision[13] dated February 18, 2010, the CTA Division denied petitioner's claim for tax refund/credit for lack of merit.[14] The CTA Division

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5 *Rollo*, p. 80.
6 Records, Vol. 1, pp. 374-376
7 Id. at 377-378.
8 Id. at 379-381.
9 Id. at 379.
10 *Rollo*, p. 81.
11 Id.
12 See id. at 81-82.
13 CTA *En Banc rollo*, pp. 72-81. Penned by Associate Justice Caesar A. Casanova with Associate Justices Lovell R. Bautista, concurring, and Presiding Justice Ernesto D. Acosta, dissenting.
14 Id. at 81.

found that while petitioner presented the testimony of its Senior Accounting Manager stating that the subject purchases were for capital goods and services which were capitalized and reflected in petitioner's books as depreciable assets, it nevertheless failed to submit any evidence to corroborate the same since petitioner did not submit its books of accounts and audited financial statements for the calendar year 2003. Hence, on account of such failure, the input VAT arising therefrom cannot be recovered thru a tax refund/credit or an issuance of tax credit certificates in favor of petitioner.[15]

Aggrieved, petitioner moved for reconsideration, as well as for leave of court to present supplemental evidence to bolster its claim for tax refund/credit.[16] The CTA Division granted petitioner's leave of court.[17] After the presentation of the supplemental evidence, the CTA Division, in an Amended Decision[18] dated December 6, 2010, denied petitioner's motion for reconsideration and dismissed its claim for tax refund/credit outright albeit on a different ground. It found that petitioner filed its judicial claim for tax refund/credit on January 20, 2006, or a mere 22 days after it filed its administrative claim on December 29, 2005.[19] Citing the case of *CIR v. Aichi Forging Company of Asia, Inc.* (*Aichi*),[20] the CTA Division held that the observance of the 120-day period provided under Section 112 (D) of the National Internal Revenue Code (NIRC) is mandatory and jurisdictional to the filing of a judicial claim for tax refund/credit, thus concluding that petitioner's judicial claim for tax refund/credit must be dismissed for being prematurely filed.[21]

Dissatisfied, the CIR appealed to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision[22] dated May 17, 2012, the CTA *En Banc* affirmed the Amended Decision of the CTA Division.[23] Also citing *Aichi*, it held that the CTA did not acquire jurisdiction over petitioner's judicial claim for tax refund/credit, since the latter failed to comply with the aforesaid 120-day period. As such, petitioner's claim was correctly dismissed for being prematurely filed.[24]

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15 Id. at 79-80.
16 See Motion for Reconsideration with Motion for Leave to Submit Supplemental Evidence with Reservation to Present Additional Evidence dated March 10, 2010; records, Vol. 2, pp. 766-785.
17 *Rollo*, pp. 84-85.
18 CTA *En Banc rollo*, pp. 56-63.
19 Id. at 62.
20 G.R. No. 184823, October 6, 2010, 632 SCRA 422.
21 See CTA *En Banc rollo*, pp. 57-62.
22 *Rollo*, pp. 79-107.
23 Id. at 106.
24 See id. at 88-91.

Aggrieved, petitioner moved for reconsideration,[25] which was, however, denied in a Resolution[26] dated August 29, 2012, hence, this petition.[27]

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CTA *En Banc* correctly affirmed the CTA Division's outright dismissal of petitioner's claim for tax refund/credit on the ground of prematurity.

The Court's Ruling

The petition is partly meritorious.

Section 112 of the NIRC, as amended by RA 9337,[28] provides:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
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> (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: x x x.
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> x x x x
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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**

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25 See Motion for Reconsideration dated June 11, 2012; CTA *En Banc rollo*, pp. 186-231.

26 *Rollo*, pp. 112-124.

27 Id. at 13-77.

28 Entitled "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." Its effectivity clause provides that it shall take effect on July 1, 2005 but due to a temporary restraining order (TRO) filed by some taxpayers, the law took effect on November 1, 2005 when the TRO was finally lifted by the Supreme Court. (Republic of the Philippines, Bureau of Internal Revenue: Tax Code <http://www.bir.gov.ph/index.php/tax-code.html> [visited January 6, 2014].)

> **claim with the Court of Tax Appeals**.
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> x x x x (Emphases and underscoring supplied)

In the *Aichi* case cited by both the CTA Division and the CTA *En Banc*, the Court held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. Consequently, its non-observance would lead to the dismissal of the judicial claim on the ground of lack of jurisdiction. *Aichi* also clarified that the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims.[29] Succinctly put, once the administrative claim is filed within the two (2)-year prescriptive period, the claimant must wait for the 120-day period to end and, thereafter, he is given a 30-day period to file his judicial claim before the CTA, even if said 120-day and 30-day periods would exceed the aforementioned two (2)-year prescriptive period.[30]

However, in *CIR v. San Roque Power Corporation* (*San Roque*),[31] the Court recognized an exception to the mandatory and jurisdictional nature of the 120-day period. It ruled that BIR Ruling No. DA-489-03 dated December 10, 2003 provided a valid claim for equitable *estoppel* under Section 246[32] of the NIRC. In essence, the aforesaid BIR Ruling stated that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."[33]

Recently, in *Taganito Mining Corporation v. CIR*,[34] the Court reconciled the pronouncements in the *Aichi* and *San Roque* cases in the following manner:

> Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that **during the period December 10, 2003**

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29 See *CIR v. Aichi Forging Company of Asia, Inc.*, supra note 20, at 435-445.

30 See *Taganito Mining Corporation v. CIR*, G.R. No. 197591, June 18, 2014.

31 G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

32 Section 246 of the NIRC 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:
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> (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;
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> (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
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> (c) Where the taxpayer acted in bad faith. (Emphases and underscoring supplied)

33 *CIR v. San Roque Power Corporation*, supra note 31, at 401.

34 Supra note 30.

> (when BIR Ruling No. DA-489-03 was issued) **to October 6, 2010** (when the *Aichi* case was promulgated), **taxpayers-claimants need not observe the 120-day period** before it could file a judicial claim for refund of excess input VAT before the CTA. **Before and after the aforementioned period (*i.e.*, December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim**.[35] (Emphases and underscoring supplied)

In this case, records disclose that petitioner filed its administrative and judicial claims for refund/credit of its input VAT on December 29, 2005 and January 20, 2006, respectively, or during the period when BIR Ruling No. DA-489-03 was in place, *i.e.*, from December 10, 2003 to October 6, 2010. As such, it need not wait for the expiration of the 120-day period before filing its judicial claim before the CTA, and hence, is deemed timely filed. In view of the foregoing, the CTA *En Banc* erred in dismissing outright petitioner's claim on the ground of prematurity.

Be that as it may, the Court is not inclined to grant outright petitioner's claim of tax refund/credit in the amount of ₱14,122,347.21 representing unutilized input VAT for the fourth quarter of 2003. This is because the determination of petitioner's entitlement to such claim would necessarily involve questions of fact, which are not reviewable and cannot be passed upon by the Court in the exercise of its power to review under Rule 45 of the Rules of Court.[36] Hence, the Court deems it prudent to remand the case to the CTA Division for resolution of the instant case on the merits.

WHEREFORE, the petition is **PARTLY GRANTED**. Accordingly, the Decision dated May 17, 2012 and the Resolution dated August 29, 2012 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 709 are hereby **SET ASIDE**. The instant case is **REMANDED** to the CTA Special First Division for its resolution on the merits.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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35 Id.

36 See *Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH) v. Asia Pacific Integrated Steel Corporation*, G.R. No. 192100, March 12, 2014.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice