Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CBK POWER COMPANY LIMITED, Petitioner,	**G.R. Nos. 198729-30**
	Present:
- versus -	SERENO, *CJ*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 15 2014

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D E C I S I O N

SERENO, *CJ:*

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by CBK Power Company Limited (petitioner). The Petition assails the Decision[2] dated 27 June 2011 and Resolution[3] dated 16 September 2011 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in C.T.A. EB Nos. 658 and 659. The assailed Decision and Resolution reversed and set aside the Decision[4] dated 3 March 2010 and Resolution[5] dated 6 July 2010 rendered by the CTA Special Second Division in C.T.A. Case No. 7621, which partly granted the claim of petitioner for the issuance of a tax credit certificate representing the latter's alleged unutilized input taxes on local purchases of goods and services attributable to effectively zero-rated sales to National Power Corporation (NPC) for the second and third quarters of 2005.

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[1] *Rollo*, pp. 94-160.
[2] Id. at 11-36; 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 and Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia Contangco-Manalastas with Associate Justice Lovell R. Bautista dissenting.
[3] Id. at 39-42.
[4] Id. at 63-83; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda Jr. and Olga Palanca-Enriquez.
[5] Id. at 85-92.

THE FACTS

Petitioner is engaged, among others, in the operation, maintenance, and management of the Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, Caliraya, Botocan; and the Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.[6]

On 29 December 2004, petitioner filed an Application for VAT Zero-Rate with the Bureau of Internal Revenue (BIR) in accordance with Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended. The application was duly approved by the BIR. Thus, petitioner's sale of electricity to the NPC from 1 January 2005 to 31 October 2005 was declared to be entitled to the benefit of effectively zero-rated value added tax (VAT).[7]

Petitioner filed its administrative claims for the issuance of tax credit certificates for its alleged unutilized input taxes on its purchase of capital goods and alleged unutilized input taxes on its local purchases and/or importation of goods and services, other than capital goods, pursuant to Sections 112(A) and (B) of the NIRC of 1997, as amended, with BIR Revenue District Office (RDO) No. 55 of Laguna, as follows:[8]

Period Covered	Date Of Filing
1st quarter of 2005	30-Jun-05
2nd quarter of 2005	15-Sep-05
3rd quarter of 2005	28-Oct-05

Alleging inaction of the Commissioner of Internal Revenue (CIR), petitioner filed a Petition for Review with the CTA on 18 April 2007.

THE CTA SPECIAL SECOND DIVISION RULING

After trial on the merits, the CTA Special Second Division rendered a Decision on 3 March 2010.

Applying *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* (*Mirant*),[9] the court *a quo* ruled that petitioner had until the following dates within which to file both administrative and judicial claims:

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[6] Id. at 98-99; Petition for Review on Certiorari Under Rule 45 of the Revised Rules of Court.
[7] Id. at 220; CTA Special Second Division Decision.
[8] Id. at 221.
[9] G.R. No. 172129, 12 September 2008, 565 SCRA 154.

Taxable Quarter		Last Day to File Claim for Refund
2005	**Close of the quarter**	
1st quarter	31-Mar-05	31-Mar-07
2nd quarter	30-Jun-05	30-Jun-07
3rd quarter	30-Sep-05	30-Sep-07

Accordingly, petitioner timely filed its administrative claims for the three quarters of 2005. However, considering that the judicial claim was filed on 18 April 2007, the CTA Division denied the claim for the first quarter of 2005 for having been filed out of time.

After an evaluation of petitioner's claim for the second and third quarters of 2005, the court *a quo* partly granted the claim and ordered the issuance of a tax credit certificate in favor of petitioner in the reduced amount of ₱27,170,123.36.

The parties filed their respective Motions for Partial Reconsideration, which were both denied by the CTA Division.

THE CTA EN BANC RULING

On appeal, relying on *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc*. (*Aichi*),[10] the CTA *En Banc* ruled that petitioner's judicial claim for the first, second, and third quarters of 2005 were belatedly filed.

The CTA Special Second Division Decision and Resolution were reversed and set aside, and the Petition for Review filed in CTA Case No. 7621 was dismissed. Petitioner's Motion for Reconsideration was likewise denied for lack of merit.

Hence, this Petition.

ISSUE

Petitioner's assigned errors boil down to the principal issue of the applicable prescriptive period on its claim for refund of unutilized input VAT for the first to third quarters of 2005.[11]

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[10] G.R. No. 184823, 6 October 2010, 632 SCRA 422.

[11] Supra note 6, at 116-117.

THE COURT'S RULING

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

Petitioner's sales to NPC are effectively zero-rated

As aptly ruled by the CTA Special Second Division, petitioner's sales to NPC are effectively subject to zero percent (0%) VAT. The NPC is an entity with a special charter, which categorically exempts it from the payment of any tax, whether direct or indirect, including VAT. Thus, services rendered to NPC by a VAT-registered entity are effectively zero-rated. In fact, the BIR itself approved the application for zero-rating on 29 December 2004, filed by petitioner for its sales to NPC covering January to

October 2005.[12] As a consequence, petitioner claims for the refund of the alleged excess input tax attributable to its effectively zero-rated sales to NPC.

In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*,[13] this Court ruled:

> Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer.

The crux of the controversy arose from the proper application of the prescriptive periods set forth in Section 112 of the NIRC of 1997, as amended, and the interpretation of the applicable jurisprudence.

Although the *ponente* in this case expressed a different view on the mandatory application of the 120+30 day period as prescribed in Section 112, with the finality of the Court's pronouncement on the consolidated tax cases *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue* [14] (hereby collectively referred as *San Roque*), we are constrained to apply the dispositions therein to the facts herein which are similar.

Administrative Claim

Section 112(A) provides that after the close of the taxable quarter when the sales were made, there is a two-year prescriptive period within which a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax.

Our VAT Law provides for a mechanism that would allow VAT-registered persons to recover the excess input taxes over the output taxes they had paid in relation to their sales. For the refund or credit of excess or unutilized input tax, Section 112 is the governing law. Given the distinctive nature of creditable input tax, the law under Section 112 (A) provides for a different reckoning point for the two-year prescriptive period, specifically for the refund or credit of that tax only.

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[12] Supra note 7, at 220, 231-233.
[13] G.R. No. 178090, 8 February, 2010, 612 SCRA 28, 34, citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 333 (2005).
[14] G.R. Nos. 187485, 196113 and 197156, 12 February 2013.

We agree with petitioner that *Mirant* was not yet in existence when their administrative claim was filed in 2005; thus, it should not retroactively be applied to the instant case.

However, the fact remains that Section 112 is the controlling provision for the refund or credit of input tax during the time that petitioner filed its claim with which they ought to comply. It must be emphasized that the Court merely clarified in *Mirant* that Sections 204 and 229, which prescribed a different starting point for the two-year prescriptive limit for filing a claim for a refund or credit of excess input tax, were not applicable. Input tax is neither an erroneously paid nor an illegally collected internal revenue tax.[15]

Section 112(A) is clear that for VAT-registered persons whose sales are zero-rated or effectively zero-rated, a claim for the refund or credit of creditable input tax that is due or paid, and that is attributable to zero-rated or effectively zero-rated sales, must be filed within two years after the close of the taxable quarter when such sales were made. The reckoning frame would always be the end of the quarter when the pertinent sale or transactions were made, regardless of when the input VAT was paid.[16]

Pursuant to Section 112(A), petitioner's administrative claims were filed well within the two-year period from the close of the taxable quarter when the effectively zero-rated sales were made, to wit:

Period Covered	**Close of the Taxable Quarter**	**Last day to File Administrative Claim**	**Date of Filing**
1st quarter 2005	31-Mar-05	31-Mar-07	30-Jun-05
2nd quarter 2005	30-Jun-05	30-Jun-07	15-Sep-05
3rd quarter 2005	30-Sep-05	30-Sep-07	28-Oct-05

Judicial Claim

Section 112(D) further provides that the CIR has to decide on an administrative claim within one hundred twenty (120) days from the date of submission of complete documents in support thereof.

Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary.

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[15] Supra note 9.
[16] Id.

Thereafter, the taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from the receipt of the decision or from the expiration of the 120-day period within which the claim has not been acted upon.

Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, compliance with both periods is jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA.

Prescinding from *San Roque* in the consolidated case *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue and Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*,[17] this Court has ruled thus:

> Notwithstanding a strict construction of any claim for tax exemption or refund, **the Court in San Roque recognized that BIR Ruling No. DA-489-03 constitutes equitable estoppel in favor of taxpayers**. **BIR Ruling No. DA-489-03 expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."** This Court discussed BIR Ruling No. DA-489-03 and its effect on taxpayers, thus:
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> > 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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> > Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer. BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency asked 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

[17] G.R. Nos. 193301 and 194637, 11 March 2013.

> 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. (Emphasis supplied)

In applying the foregoing to the instant case, we consider the following pertinent dates:

Period Covered	Administrative Claim Filed	Expiration of 120-days	Last day to file Judicial Claim	Judicial Claim Filed
1st quarter 2005	30-Jun-05	28-Oct-05	27-Nov-05	18-Apr-07
2nd quarter 2005	15-Sep-05	13-Jan-06	13-Feb-06	
3rd quarter 2005	28-Oct-05	26-Feb-06	28-Mar-06	

It must be emphasized that this is not a case of premature filing of a judicial claim. Although petitioner did not file its judicial claim with the CTA prior to the expiration of the 120-day waiting period, it failed to observe the 30-day prescriptive period to appeal to the CTA counted from the lapse of the 120-day period.

Petitioner is similarly situated as *Philex* in the same case, *San Roque,*[18] in which this Court ruled:

> 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

[18] Supra note 14.

> 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. (Emphases in the original)

Likewise, while petitioner filed its administrative and judicial claims during the period of applicability of BIR Ruling No. DA-489-03, it cannot claim the benefit of the exception period as it did not file its judicial claim prematurely, but did so long after the lapse of the 30-day period following the expiration of the 120-day period. Again, BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim,[19] but not its late filing.

As this Court enunciated in *San Roque*, petitioner cannot rely on *Atlas* either, since the latter case was promulgated only on 8 June 2007. Moreover, the doctrine in *Atlas* which reckons the two-year period from the date of filing of the return and payment of the tax, does not interpret − expressly or impliedly − the 120+30 day periods.[20] Simply stated, *Atlas* referred only to the reckoning of the prescriptive period for filing an administrative claim.

For failure of petitioner to comply with the 120+30 day mandatory and jurisdictional period, petitioner lost its right to claim a refund or credit of its alleged excess input VAT.

With regard to petitioner's argument that *Aichi* should not be applied retroactively, we reiterate that even without that ruling, the law is explicit on the mandatory and jurisdictional nature of the 120+30 day period.

Also devoid of merit is the applicability of the principle of *solutio indebiti* to the present case. According to this principle, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In that situation, a creditor-debtor relationship is created under a quasi-contract, whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive the payment becomes obligated to return it.[21] The quasi-contract of *solutio*

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[19] Id.
[20] Id.
[21] *Siga-an v. Villanueva*, G.R. No. 173227, 20 January 2009, 576 SCRA 696, 708.

indebiti is based on the ancient principle that no one shall enrich oneself unjustly at the expense of another.[22]

There is *solutio indebiti* when:

> (1) Payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and
>
> (2) Payment is made through mistake, and not through liberality or some other cause.[23]

Though the principle of *solutio indebiti* may be applicable to some instances of claims for a refund, the elements thereof are wanting in this case.

First, there exists a binding relation between petitioner and the CIR, the former being a taxpayer obligated to pay VAT.

Second, the payment of input tax was not made through mistake, since petitioner was legally obligated to pay for that liability. The entitlement to a refund or credit of excess input tax is solely based on the distinctive nature of the VAT system. At the time of payment of the input VAT, the amount paid was correct and proper.[24]

Finally, equity, which has been aptly described as "a justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure.[25] Section 112 is a positive rule that should preempt and prevail over all abstract arguments based only on equity.

Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[26] The burden is on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit.[27]

WHEREFORE, premises considered, the instant Petition is **DENIED**.

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[22] Id., citing *Moreño-Lentfer v. Wolff*, 484 Phil. 552, 559-560 (2004).
[23] *BPI v. Sarmiento*, 519 Phil. 247, 256 (2006).
[24] Supra note 14.
[25] *Mendiola v. Court of Appeals*, 327Phil. 1156, 1166 (1996), citing *Causapin v. Court of Appeals*, 233 SCRA 615, 625 (1994).
[26] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219, 235; *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp.*, G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549, 552; *La Carlota Sugar Central v. Jimenez*, 112 Phil. 232, 235 (1961).
[27] Supra note 14.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
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