Republic of the Philippines
Supreme Court
Manila

EN BANC

CBK POWER COMPANY LIMITED, Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**G.R. No. 202066**
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CBK POWER COMPANY LIMITED, Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**G.R. No. 205353** Present: SERENO, *C.J.*[*] CARPIO, *Acting C.J.*,[**] VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, VILLARAMA, JR., PEREZ,[***] MENDOZA, REYES, PERLAS-BERNABE,[****] LEONEN, and JARDELEZA, *JJ.*[*****]

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[*] On official leave.
[**] Designated Acting Chief Justice per Special Order No. 1803 dated September 24, 2014.
[***] On official leave.
[****] On official leave.
[*****] No part.

Promulgated:

SEPTEMBER 30, 2014

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DECISION

LEONEN, *J.*:

CBK Power Company Limited filed two petitions for review[1] assailing the dismissal of its judicial claim for tax credit of unutilized input taxes on the ground of premature filing.

The first petition[2] was filed on July 16, 2012, docketed as G.R. No. 202066. This involves a tax credit claim for ₱58,802,851.18 covering the period of January 1, 2007 to December 31, 2007.[3]

The other petition[4] was filed on March 4, 2013, docketed as G.R. No. 205353. This involves a tax credit claim for ₱43,806,549.72 covering the period of January 1, 2006 to December 31, 2006.[5]

CBK Power Company Limited is a VAT-registered domestic partnership with the sole purpose of engaging in "all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric powerplants and their related facilities located in the Province of Laguna."[6]

The Bureau of Internal Revenue Ruling No. DA-146-2006 was issued on March 17, 2006, stating that "petitioner is an entity engaged in hydropower generation, and that its billings and fees for the sale of electricity to NPC are subject to VAT at zero percent (0%) rate under Section 108(B)(7) of the Tax Code of 1997, as amended by R.A. No. 9337."[7]

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1 The petitions were filed pursuant to Rule 16, sec. 1 of the Revised Rules of the Court of Tax Appeals, as amended, in relation to Rule 45 of the Revised Rules of Court.
2 *Rollo* (G.R. No. 202066), pp. 108–172.
3 Id. at 171.
4 *Rollo* (G.R. No. 205353), pp. 163–245.
5 Id. at 244.
6 *Rollo* (G.R. No. 202066), p. 387.
7 *Rollo* (G.R. No. 205353), p. 258.

G.R. No. 202066

On March 26, 2009, petitioner filed an administrative claim with the Bureau of Internal Revenue Laguna Regional District Office No. 55 for the issuance of a tax credit certificate for ₱58,802,851.18.[8] This amount represented "unutilized input taxes on its local purchases and/or importation of goods and services, capital goods and payments for services rendered by non-residents, which were all attributable to petitioner's zero-rated sales for the period of January 1, 2007 to December 31, 2007, pursuant to Section 112 (A) of the Tax Code of 1997, as amended."[9]

The next day, March 27, 2009, petitioner filed a petition for review with the Court of Tax Appeals since respondent had not yet issued a final decision on its administrative claim.[10] Respondent raised prematurity of judicial claim as one of its defenses in its answer.[11]

"[P]etitioner presented documentary and testimonial evidence to support its claim [during trial, while] respondent filed a Motion to Dismiss on December 6, 2010."[12] Petitioner filed a comment on/opposition to the motion to dismiss on December 17, 2010.[13]

In the January 28, 2011 resolution,[14] the Court of Tax Appeals Third Division[15] granted respondent's motion and dismissed the petition for having been prematurely filed:

> **WHEREFORE**, premises considered, respondent's "**Motion to Dismiss**" is hereby **GRANTED**. Accordingly, the ***Petition for Review*** filed in the above-captioned case is hereby **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED**.[16]

In the April 5, 2011 resolution,[17] the Court of Tax Appeals Third Division denied reconsideration for lack of merit:

> **WHEREFORE**, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

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8 *Rollo* (G.R. No. 202066), p. 185.
9 Id.
10 Id.
11 Id.
12 Id. at 186.
13 Id.
14 Id. at 85–89.
15 This resolution was signed by Associate Justices Olga Palanca-Enriquez, Amelia R. Cotangco-Manalastas, and Lovell R. Bautista. Associate Justice Lovell R. Bautista penned a dissenting opinion.
16 *Rollo* (G.R. No. 202066), pp. 89 and 186.
17 Id. at 97–101.

SO ORDERED.[18]

In the February 1, 2012 decision,[19] the Court of Tax Appeals En Banc[20] dismissed the petition and affirmed the Third Division's resolutions:

> **WHEREFORE**, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED**. Accordingly, the Resolutions of CTA Third Division dated January 28, 2011 and April 5, 2011 are hereby **AFFIRMED**.
>
> **SO ORDERED**.[21]

In the May 24, 2012 resolution,[22] the Court of Tax Appeals denied reconsideration for lack of merit:

> **WHEREFORE**, finding no reversible error committed by this Court in the assailed Decision promulgated on February 1, 2012, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[23]

Hence, CBK Power Company Limited filed the instant petition docketed as G.R. No. 202066.

Petitioner argues that Section 112(C)[24] of the Tax Code, as amended,

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18 Id. at 100 and 187. This resolution was penned by Associate Justice Olga Palanca-Enriquez, and concurred in by Associate Justice Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista penned a dissenting opinion.

19 *Rollo* (G.R. No. 202066), pp. 182–202.

20 This resolution was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, and Cielito N. Mindaro-Grulla. Presiding Justice Ernesto D. Acosta penned a separate concurring opinion, concurred in by Associate Justices Esperanza R. Fabon-Victorino and Amelia R. Contangco-Manalastas. Associate Justice Lovell R. Bautista maintained his dissenting opinions.

21 *Rollo* (G.R. No. 202066), p. 201.

22 Id. at 208–214.

23 Id. at 213.

24 Sec .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.

"is directory and permissive, and not mandatory nor jurisdictional, as long as it is made within the two (2)-year prescriptive period prescribed under Section 229[25] of the same Code,"[26] citing cases such as *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*[27] and *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation.*[28]

Petitioner submits that the recent cases of *Silicon Philippines Inc. v. Commissioner of Internal Revenue*[29] and *Southern Philippines Power Corp. v. Commissioner of Internal Revenue*[30] should have been considered. These are inconsistent with the ruling in the earlier case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia*;[31] thus, *Aichi* should not be applied.[32]

Petitioner further asserts that assuming arguendo that the interpretations in *Aichi* and *Mirant Pagbilao* on the two-year prescription period were those intended by law, the lower court would have erred in retroactively applying such ruling to the instant case.[33]

Lastly, petitioner faults the lower court for not considering "the huge negative financial impact on the [p]etitioner and other businesses and the business community as a whole of the denial of refunds or issuance of tax credit certificates for unutilized input taxes."[34]

Respondent counters that *Aichi* and *Mirant* merely interpreted Section 112 of the Tax Code.[35] Consequently, these formed part of the law at the time of its original enactment and properly applied to petitioner.[36]

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25 Sec. 229. Recovery of Tax Erroneously or Illegally Collected. –

> No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.
>
> In any case, *no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty* regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

26 *Rollo* (G.R. No. 202066), p. 393.
27 551 Phil. 519 (2007) [Per J. Chico-Nazario, Third Division].
28 535 Phil. 481 (2006) [Per J. Chico-Nazario, First Division].
29 G.R. No. 172378, January 17, 2011, 639 SCRA 521 [Per J. Del Castillo, First Division].
30 G.R. No. 179632, October 19, 2011, 659 SCRA 658 [Per J. Abad, Third Division].
31 G.R. No. 184823, October 6, 2010, 632 SCRA 422 [Per J. Del Castillo, First Division].
32 *Rollo* (G.R. No. 202066), pp. 393–394.
33 Id. at 394.
34 Id.
35 Id. at 314.
36 Id.

Respondent is bound by the *Aichi* ruling.[37]

On February 18, 2013, petitioner filed its reply.[38] Both parties then filed their respective memoranda.[39]

On August 27, 2013, this court En Banc accepted the consolidation of the petition docketed as G.R. No. 205353[40] with the petition docketed as G.R. No. 202066.[41]

G.R. No. 205353

Petitioner filed its original and amended quarterly VAT returns for the four quarters of 2006 on the following dates:[42]

2006 Taxable Quarter	Original VAT Return (date filed)	Amended VAT Return (date filed)
1st	April 25, 2006	December 28, 2007 March 31, 2008
2nd	July 25, 2006	April 18, 2008
3rd	October 20, 2006	May 7, 2008
4th	January 24, 2007	July 21, 2008

The amended returns reported zero-rated sales and input tax credits as follows:[43]

Zero-Rated Sales for the period of January 01 to December 31, 2006	
2006 Taxable Quarter	Zero-Rated Sales/Receipts
1st	1,583,390,407.46
2nd	1,648,748,033.50
3rd	1,599,882,354.64
4th	1,547,858,529.27
TOTAL	**6,379,879,324.87**

Input Tax Credits for the period of January 1 to December 31, 2006						
2006 Taxable Quarter	Purchase of Capital Goods exceeding P1 Million	Domestic Purchase of Goods Other than Capital	Importation of Goods Other than Capital Goods	Domestic Purchase of Services	Services Rendered by Non-Residents	Total Input Tax Credits

37 Id. at 321.
38 Id. at 338–373.
39 Id. at 384–472, petitioner's memorandum, and 484–498, respondent's memorandum.
40 *Rollo* (G.R. No. 205353), p. 244. The petition docketed as G.R. No. 205353 prayed for the referral of the case to this court En Banc.
41 Id. at 415.
42 Id. at 258–259.
43 Id. at 259.

		Goods				
1st	1,870,700.70	1,821,359.38	556,816.00	4,151,387.81	968,642.68	9,368,906.57
2nd	1,346,348.83	1,209,055.88	1,152,424.00	5,797,606.67	1,199,547.36	10,704,981.94
3rd	2,998,466.11	1,425,019.73	810,906.00	10,921,541.86	302,627.14	16,458,560.84
4th	344,377.46	1,620,670.63	654,763.00	8,586,528.36	1,608,644.90	12,814,984.35
TOTAL	6,559,893.10	6,076,104.82	3,174,909.00	29,457,064.70	4,079,462.08	**49,347,433.70**

From the total reported input tax of ₱49,347,433.70 for 2006, petitioner sought tax credit certificates in the amount of ₱43,806,549.72.[44]

On March 31, 2008, petitioner filed an administrative claim with the Bureau of Internal Revenue Laguna Regional District Office No. 55 for the issuance of a tax credit certificate for ₱7,559,943.44, representing unutilized input tax for the period of January 1, 2006 to March 31, 2006.[45]

On April 23, 2008, petitioner filed a petition for review[46] with the Court of Tax Appeals Division, alleging respondent's inaction on its administrative claim.[47]

On July 23, 2008, petitioner filed another administrative claim with the Bureau of Internal Revenue Laguna Regional District Office No. 55 for the issuance of a tax credit certificate for ₱36,246,606.28, representing unutilized input tax for the period of April 1, 2006 to December 31, 2006.[48]

The next day, July 24, 2008, petitioner filed a petition for review[49] with the Court of Tax Appeals Division on the same claim.[50]

The Court of Tax Appeals Division consolidated these two petitions on judicial claims for unutilized input tax covering the taxable year of 2006. Petitioner adduced evidence during trial while respondent rested its case without presenting any.[51]

On December 3, 2010, the Court of Tax Appeals Third Division[52] dismissed the consolidated cases for having been prematurely filed:

> **WHEREFORE**, premises considered, the instant Petitions for

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44 Id. at 259–260.
45 Id. at 260.
46 This petition was docketed as CTA Case No. 7771.
47 *Rollo* (G.R. No. 205353), p. 260.
48 Id.
49 This petition was docketed as CTA Case No. 7814.
50 *Rollo* (G.R. No. 205353), p. 260.
51 Id. at 261.
52 This decision was penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justice Olga Palanca-Enriquez. Associate Justice Lovell R. Bautista penned a dissenting opinion.

> Review are hereby **DISMISSED** for having been prematurely filed.[53]

On April 7, 2011, it likewise denied reconsideration for lack of merit:

> **WHEREFORE**, premises considered, petitioner's ***Motion for Reconsideration*** is **DENIED** for lack of merit.[54]

On October 4, 2012, the Court of Tax Appeals En Banc[55] denied the petition for lack of merit.

> **WHEREFORE**, the Petition for Review filed by petitioner CBK Power Company Limited on May 06, 2011, is hereby **DENIED**, for lack of merit.
>
> SO ORDERED.[56]

On January 15, 2013, it denied reconsideration for lack of merit.

> **WHEREFORE**, the Motion for Reconsideration dated November 7, 2012, filed by petitioner is hereby **DENIED**, for lack of merit.
>
> SO ORDERED.[57]

Hence, CBK Power Company Limited filed the instant petition, docketed as G.R. No. 205353, raising substantially the same arguments made in its earlier petition docketed as G.R. No. 202066.

In its consolidated comment, respondent explained that the two-year period pertains to administrative claims with the Commissioner of Internal Revenue, while judicial claims with the Court of Tax Appeals must be made within 30 days reckoned from either receipt of the Commissioner's decision or after the lapse of the 120-day period for the Commissioner to act on the administrative claim.[58] Observance of the 120-day period under Section 112 of the Tax Code is mandatory and jurisdictional, and non-compliance results in the denial of the claim.[59] Respondent submits that *Aichi* and *Mirant*

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53 *Rollo* (G.R. No. 205353), pp. 262 and 385.

54 Id. at 262 and 402. This resolution was penned by Associate Justice Amelia R. Cotangco-Manalastas. Associate Justice Olga Palanca-Enriquez concurred only in the result. Associate Justice Lovell R. Bautista penned a dissenting opinion.

55 This decision was penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, and Cielito N. Mindaro-Grulla. Associate Justice Amelia R. Contangco-Manalastas was on leave. Associate Justice Lovell R. Bautista maintained his dissenting opinions.

56 *Rollo* (G.R. No. 205353), p. 281.

57 Id. at 284.

58 *Rollo* (G.R. No. 202066), p. 552.

59 Id. at 548.

Pagbilao apply.[60]

This court noted petitioner's reply on June 3, 2014.

The main issue in these consolidated cases involves the timeliness of petitioner's judicial claims for the issuance of tax credit certificates considering Section 112(C) of the Tax Code, as amended:

> Section 112. *Refunds or Tax Credits of Input Tax. —*
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> . . . .
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes *within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed* in accordance with Subsection (A) hereof.
>
> ***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)

Timeliness of judicial claim

A simple reading of the provision quoted above reveals that the taxpayer may appeal the denial or the inaction of the Commissioner of Internal Revenue only within thirty (30) days from receipt of the decision that denied the claim or the expiration of the 120-day period given to the Commissioner to decide the claim.

In the fairly recent case of *Commissioner of Internal Revenue v. San Roque Power Corporation,*[61] this court En Banc affirmed with qualification the decision of its First Division in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[62] This court held that compliance with the 120-day and the 30-day periods under Section 112 of the Tax Code, save for those Value-added Tax refund cases that were prematurely (i.e., before the lapse of the 120-day period) filed with the Court of Tax Appeals between December 10, 2003 (when the Bureau of Internal Revenue Ruling No. DA-

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60 Id. at 552.
61 G.R. No. 187485, February 12, 2013, 690 SCRA 336 [Per J. Carpio, En Banc].
62 G.R. No. 184823, October 6, 2010, 632 SCRA 422 [Per J. Del Castillo, First Division].

489-03 was issued) and October 6, 2010, is mandatory and jurisdictional.[63]

This court also declared that, following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,*[64] claims for refund or tax credit of excess input tax are governed not by Section 229 but only by Section 112 of the 1997 National Internal Revenue Code.[65]

In *San Roque*, a motion for reconsideration and supplemental motion for reconsideration in G.R. No. 187485 were filed, arguing for the prospective application of the 120-day and 30-day mandatory and jurisdictional periods. This court denied the motion for reconsideration with finality in the resolution[66] dated October 10, 2013. The same resolution also denied the Commissioner's motion for reconsideration in G.R. No. 196113 assailing the validity of Ruling No. DA-489-03.[67]

In G.R. No. 202066, petitioner filed its judicial claim on March 27, 2009, only a day after it had filed its administrative claim on March 26, 2009.

In G.R. No. 205353, petitioner filed its judicial claim on April 23, 2008 for the taxable period of January 1, 2006 to March 31, 2006, just 23 days after it had filed its administrative claim on March 31, 2008. Petitioner also filed its judicial claim on July 24, 2008 for the taxable period of April 1, 2006 to December 31, 2006, only a day after it had filed its administrative claim on July 23, 2008.

Clearly, petitioner failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner of Internal Revenue to decide whether to grant or deny its application for tax refund or credit.

Nevertheless, since the judicial claims were filed within the window created in *San Roque,* the petitions are exempted from the strict application of the 120-day mandatory period.

Timeliness of administrative claim

In G.R. No. 205353, the Court of Tax Appeals En Banc ruled that the

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63 *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].

64 586 Phil. 712 (2008) [Per J. Velasco, Jr., Second Division].

65 *Commissioner of Internal Revenue v. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013, 690 SCRA 336, 392–397 [Per J. Carpio, En Banc].

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

67 Id. at 86.

administrative claim for the second quarter of 2006 was belatedly filed on July 23, 2008.[68] This is consistent with Section 112(A) of the Tax Code, as amended, reckoning the two-year period from the close of the taxable quarter when the sales were made:

> 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 of [sic] 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 volumes of sales. . . . (Emphasis supplied)

With the close of the second taxable quarter of 2006 being June 30, 2006, petitioner should have filed its administrative claim for this quarter on or before June 30, 2008, and not on July 23, 2008. This applies the clear text of Section 112(A).

The June 8, 2007 case of *Atlas Consolidated Mining v. Commissioner of Internal Revenue* explained that "it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter."[69]

The September 12, 2008 case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* abandoned *Atlas* when it ruled that "[t]he reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid,"[70] applying Section 112(A) of the Tax Code and not other provisions that pertain to erroneous tax payments.[71]

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68 *Rollo* (G.R. No. 205353), p. 271.
69 551 Phil. 519, 537 (2007) [Per J. Chico-Nazario, Third Division].
70 586 Phil. 712, 730 (2008) [Per J. Velasco, Jr., Second Division].
71 Id. at 733.

Thus, the 2013 *San Roque* case clarified the effectivity of the *Atlas* and *Mirant* doctrines on when to reckon the two-year prescriptive period as follows:

> The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be *effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in Mirant. The Atlas doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT.* Prior to the *Atlas* doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule. The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.[72] (Emphasis supplied)

Since July 23, 2008 falls within the window of effectivity of *Atlas*, petitioner's administrative claim for the second quarter of 2006 was filed on time considering that petitioner filed its original VAT return for the second quarter on July 25, 2006.

We note that there were dissents submitted by other members of this court in the 2013 *San Roque* case.[73] The ponente of a case, however, always writes a decision for this court.

WHEREFORE, the petitions docketed as G.R. Nos. 202066 and 205353 are **GRANTED**. Accordingly, the Court of Tax Appeals En Banc's February 1, 2012 decision and May 24, 2012 resolution assailed in the petition docketed as G.R. No. 202066, and the Court of Tax Appeals En Banc's October 4, 2012 decision and January 15, 2013 resolution assailed in

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72 *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 336, 397 [Per J. Carpio, En Banc].

73 Chief Justice Sereno joined Justice Velasco's dissent with partial disagreement. She wrote a separate dissenting opinion for the prospective application of the mandatory nature of the 120≤30 day period, "or at the earliest only upon the finality of *Aichi,"* as "previous regard to [this rule] is an exceptional circumstance which warrant this Court to suspend the rules of procedure and accord liberality to the taxpayers who relied on such interpretations."

Justice Velasco wrote a dissenting opinion, joined by Justice Mendoza and Justice Perlas-Bernabe, maintaining that this court is "duty-bound to sustain and give due credit to the taxpayers' bona fide reliance on RR. Nos. 7-95 and 14-2005, RMC Nos. 42-03 and 49-03." Consequently, the 120-30 period rule may be considered merely discretionary for judicial claims filed "from January 1, 1996 (effectivity of RR 7-95) up to October 31, 2005 (prior to effectivity of RR 16-2005)," and RR 16-2005, fortified in *Aichi,* should be applied prospectively.

The ponente wrote a separate opinion, joined by Justice Del Castillo, in that the clear text of the law provides for a mandatory and jurisdictional 120-30 period, and its erroneous application by the Commissioner in BIR Ruling DA-489-03 is not binding and conclusive upon this court.

the petition docketed as G.R. No. 205353, are **REVERSED** and **SET ASIDE**.

The consolidated cases are **REMANDED** to the Court of Tax Appeals for the determination and computation of the amounts valid for refund or the issuance of a tax credit certificate.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

(On official leave)
MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice
Acting Chief 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

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

(On official leave)
JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

(No part)
FRANCIS H. JARDELEZA
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.

ANTONIO T. CARPIO
Acting Chief Justice