Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 190021**
	Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
BURMEISTER AND WAIN SCANDINAVIAN CONTRACTOR MINDANAO, INC., Respondent.	Promulgated: OCT 22 2014

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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 August 13, 2009 and the Resolution[3] dated October 22, 2009 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 487 which affirmed the Decision[4] dated September 17, 2008 and the Resolution[5] dated April 13, 2009 of the CTA First Division in C.T.A. Case No. 6220 granting respondent Burmeister and Wain Scandinavian Contractor Mindanao, Inc. (respondent) a refund of its unutilized input taxes attributable to zero-rated sales of services for the fourth quarter of taxable year 1998.

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1 *Rollo*, pp. 7-29.

2 Id. at 32-45. Penned by Associate Justice Juanito C. Castañeda, Jr. with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring.

3 Id. at 47-51.

4 Id. at 52-64. Penned by Associate Justice Lovell R. Bautista with Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, concurring.

5 Id. at 65-70. Penned by Associate Justice Lovell R. Bautista with Associate Justice Caesar A. Casanova, concurring. Presiding Justice Ernesto D. Acosta was on leave.

The Facts

Respondent is a corporation duly organized and existing under the laws of the Philippines, and primarily engaged in the business of constructing, erecting, assembling, commissioning, operating, maintaining, rehabilitating, and managing industrial and power-generating plants and related facilities for the conversion into electricity of coal distillate, and other fuels, provided by and under contract with the Philippine Government, or any government-owned and controlled corporations, or other entities engaged in the development, supply, or distribution of electricity.[6] It is registered as a value-added tax (VAT) taxpayer.[7]

Respondent subcontracted from a consortium[8] of non-resident foreign corporations the actual operation and maintenance of two 100-megawatt power barges owned by the National Power Corporation, which services are subject to zero percent (0%) VAT, pursuant to Bureau of Internal Revenue (BIR) Ruling No. 023-95 issued on February 14, 1995, that was reconfirmed on January 7, 1999 in its VAT Review Committee Ruling No. 003-99.[9]

On January 21, 1999, respondent filed its Quarterly VAT Return for the fourth quarter of taxable year 1998 indicating zero-rated sales of ₱68,761,361.50 and input VAT of ₱1,834,388.55 paid on its domestic purchases of goods and services for the same period.[10]

On July 21, 1999, respondent filed an Application for Tax Credit/Refund of VAT Paid for the period July to December 1998 in the amount of ₱4,154,969.51, which was not acted upon by herein petitioner, the Commissioner of Internal Revenue (CIR).[11]

On January 9, 2001, respondent filed a petition for review before the CTA, praying for the refund or the issuance of a tax credit certificate in the amount of ₱1,834,388.55 representing its alleged unutilized input VAT payment for the fourth quarter of 1998. The petition was denied on January 29, 2003 due to insufficiency of evidence. However, on appeal before the Court of Appeals (CA), docketed as CA-G.R. SP No. 79272, the case was remanded to the CTA on April 19, 2005 for the reception of respondent's evidence consisting of VAT invoices and receipts which had not been submitted earlier, but were already attached to its motion for reconsideration of the denial of the CTA petition.[12]

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6 Id. at 52-53. See CTA First Division Decision dated September 17, 2008.
7 Id. at 54.
8 Composed of Burmeister and Wain Scandinavian Contractor A/S (BWSC Denmark), Mitsui Engineering and Shipbuilding, Ltd., and Mitsui Co., Ltd. (Id. at 53.)
9 See id. at 53-54.
10 Id. at 54.
11 See id. at 54-55.
12 Id. at 55-56.

The CTA First Division Ruling

On September 17, 2008, after due trial, the CTA First Division rendered a Decision[13] in C.T.A. Case No. 6220 ordering the CIR to refund or issue a tax credit certificate in favor of respondent in the **reduced** amount of ₱1,556,913.68 representing the latter's valid claim. It was determined that the administrative claim filed on July 21, 1999 and the petition for review filed on January 9, 2001 fell within the two-year prescriptive period reckoned from January 21, 1999, the date when respondent filed its Quarterly VAT Return for the fourth quarter of taxable year 1998.[14]

The CIR moved for the reconsideration of the aforesaid CTA First Division Decision, but was denied in a Resolution[15] dated April 13, 2009.

Undaunted, the CIR elevated the case to the CTA *En Banc* on petition for review, docketed as C.T.A. EB No. 487, lamenting the alleged failure on the part of respondent to comply with the periods mandated under Section 112 of Republic Act No. (RA) 8424,[16] otherwise known as the Tax Reform Act of 1997. From the time the administrative claim for refund was filed on July 21, 1999, the CIR had 120 days, or until November 18, 1999, to act on the application, failing in which, **respondent may elevate the case before the CTA within 30 days from November 18, 1999, or until December 18, 1999. However, respondent filed its judicial claim only on January 9, 2001.**

The CTA *En Banc* Ruling

In a Decision[17] dated August 13, 2009, the CTA *En Banc* **dismissed** the petition holding that the CIR could not raise for the first time on appeal the issue of prescription in the filing of respondent's judicial claim for refund, *viz.*:

> It is worthy to note that the present case was remanded from the CA to the CTA ordering the latter to admit and consider the VAT receipts and invoices attached to respondent's Motion for Reconsideration to determine respondent's claim for refund. During the proceedings before the CA until this case was remanded to the CTA, [CIR] never questioned the period within which the respondent's judicial claim for refund was filed. When the CTA First Division partially granted respondent's judicial claim for refund, [the CIR] immediately filed his Motion for Reconsideration to which he neither mentioned nor raised the issue of prescription. More than eight years have lapsed before the [CIR] brought the issue of

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13 Id. at 52-64.
14 Id. at 63.
15 Id. at 65-70.
16 Entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES" (January 1, 1998).
17 *Rollo*, pp. 32-45.

prescription and was questioned only now at the CTA *en banc* level after an unfavorable judgment was issued against him.[18]

The CIR filed a motion for reconsideration but was likewise denied in a Resolution[19] dated October 22, 2009 for lack of merit, hence, the present petition.

The Issue Before the Court

The lone issue for the Court's resolution is whether or not the CTA *En Banc* correctly dismissed the petition for review on the ground that the issue of prescription was belatedly raised.

The Court's Ruling

The petition is meritorious.

Section 112 of RA 8424,[20] which was in force at the time of the filing of respondent's claim for credit or refund of its creditable input tax, pertinently reads as follows:

> 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 x x x.
>
> 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 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**

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18 Id. at 43-44.

19 Id. at 47-51.

20 Further amended by RA No. 9337 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 Court. (See *Republic v. GST Philippines, Inc.*, G.R. No. 190872, October 17, 2013, 707 SCRA 695, 700-706.)

> **expiration of the one hundred twenty-day period**, appeal the decision or the unacted claim with the Court of Tax Appeals.[21] (Emphases supplied)

It should be recalled that the CTA First Division declared in its September 17, 2008 Decision that the administrative claim filed on July 21, 1999 and the petition for review filed on January 9, 2001 fell within the two-year prescriptive period reckoned from January 21, 1999, the date when respondent filed its Quarterly VAT Return for the fourth quarter of taxable year 1998.[22]

The CIR argues, on the other hand, that the two-year period for filing both the administrative and judicial claims should be reckoned from the close of the fourth taxable quarter when the relevant sales were made, which fell on December 31, 1998. As such, respondent only had until December 31, 2000 to file both its administrative and judicial claims.[23] While it filed its administrative claim on July 21, 1999 within the two-year prescriptive period, the same is not true with the petition for review that was filed with the CTA only on January 9, 2001.[24] To support its contention, the CIR cited the case of *CIR v. Mirant Pagbilao Corp.*[25] (*Mirant*).

To resolve the matter, the Court deems it fit to briefly discuss the doctrinal metamorphosis of the two-year prescriptive period provided under Section 112 (A) as above-cited.

In the case of *Atlas Consolidated Mining and Dev't. Corp. v. CIR*[26] (*Atlas*), which was promulgated on June 8, 2007, the two-year prescriptive period stated in Section 112 (A)[27] was counted from the **date of payment of the output VAT.**[28] At that time, the output VAT must be paid at the time of filing of the quarterly tax returns, which meant **within 20 days following the end of each quarter.**[29] However, on September 12, 2008, the *Atlas* doctrine was abandoned in the case of *Mirant* which adopted the *verba legis* rule and counted the two-year prescriptive period from the "**close of the taxable quarter when the sales were made**" as expressly stated in the law,[30] regardless when the input VAT was paid.[31] In the recent case of *CIR v. San Roque Power Corporation*[32] (*San Roque*), promulgated on February 12,

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21 Now Section 112 (C), as renumbered by RA 9337. (See footnote 56 of *CIR v. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336, 387.)
22 *Rollo*, p. 63.
23 Id. at 21-22.
24 Id. at 22.
25 586 Phil. 712 (2008).
26 551 Phil. 519 (2007).
27 Referred to as Sec. 106 (b) of the Tax Code of 1977, as amended, which was the law cited by the Court in *Atlas* case.
28 See *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, supra note 26, at 531-539.
29 *CIR v. San Roque Power Corporation*, supra note 21, at 385.
30 See id. at 386 and 397.
31 *CIR v. Mirant Pagbilao Corp.*, supra note 25, at 730.
32 Supra note 21.

2013, the Court clarified that (*a*) the *Atlas* doctrine was effective only from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 in *Mirant*, and (*b*) prior to the *Atlas* doctrine, Section 112 (A) should be applied following the *verba legis* rule adopted in *Mirant*.[33]

Thus, applying Section 112 (A) strictly as worded, it may then be concluded that the administrative claim filed by respondent on July 21, 1999 was filed within the two-year prescriptive period reckoned from the close of the fourth taxable quarter falling on December 31, 1998, the last day of filing being December 31, 2000.

In fact, whether the two-year prescriptive period is counted from the date of payment (January 21, 1999) of the output VAT following *Atlas*, or from the close of the taxable quarter when the sales were made (December 31, 1998) pursuant to *Mirant*, the conclusion that the administrative claim was timely filed would equally stand.

The CIR insists, however, that both the administrative and judicial claims should fall within the two-year prescriptive period. This argument is untenable.

It should be pointed out that on October 6, 2010, the Court held in the case of *CIR v. Aichi Forging Company of Asia, Inc.*[34] (*Aichi*) that the phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" **refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.**[35] The Court gave three (3) compelling reasons for this ruling in *San Roque*, namely:

> *First*, Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer "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 the creditable input tax due or paid to such sales." In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit "**within two (2) years**," **which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.
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> *Second*, Section 112(C) provides that the Commissioner shall decide the application for refund or credit "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)." The reference in Section 112(C) of the submission of documents "in support of the

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33 Id. at 397.
34 G.R. No. 184823, October 6, 2010, 632 SCRA 422.
35 Id. at 444.

> application filed in accordance with Subsection A" means that the application in Section 112(A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two-year prescriptive period in Section 112(A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. **Stated otherwise, the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner**. x x x.
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> *Third*, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period**. Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.[36] (Emphases in the original)

In fine, the taxpayer can file its **administrative claim** for refund or credit at **any time within the two-year prescriptive period**. If it files its claim on the last day of said period, it is still filed on time.[37] The CIR will have 120 days from such filing to decide the claim. If the CIR decides the claim on the 120th day, or does not decide it on that day, **the taxpayer still has 30 days to file its judicial claim with the CTA**;[38] otherwise, the judicial claim would be, properly speaking, dismissed for being filed out of time and not, as the CTA *En Banc* puts it, prescribed.

It bears emphasis that Section 112 (D)[39] (now renumbered as Section 112[C]) of RA 8424, which is explicit on the **mandatory and jurisdictional nature** of the 120+30-day period, was already effective on January 1, 1998.[40] Hence, it is of no consequence that the *Aichi* and *San Roque* rulings were not yet in existence when respondent's administrative claim was filed in 1999, so as to rid itself of the said section's mandatory and jurisdictional application.

That being said, and notwithstanding the fact that respondent's administrative claim had been timely filed, the Court is nonetheless constrained to deny the averred tax refund or credit, as its judicial claim

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36 *CIR v. San Roque Power Corporation*, supra note 21, at 390-392; citations omitted.
37 Id. at 392.
38 Id.
39 Referred to as Sec. 112 (C) in *San Roque* case. (See footnote 56 of *CIR v. San Roque Power Corporation*; id at 387.)
40 Id. at 380-381 and 397-399.

therefor was filed beyond the 120+30-day period, and, hence – as earlier stated – deemed to be filed out of time.

As the records would show, the CIR had 120 days from the filing of the administrative claim on July 21, 1999, or until November 18, 1999, to decide on respondent's application. Since the CIR did not act at all, **respondent had until December 18, 1999, the last day of the 30-day period, to file its judicial claim**. However, respondent filed its petition for review with the CTA **only on January 9, 2001 and, thus, was one (1) year and 22 days late**. As a consequence of the late filing of said petition, the CTA **did not properly acquire jurisdiction over the claim.**[41]

In this relation, it is significant to point out that the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction. Section 7 of RA 1125,[42] as amended by RA 9282,[43] specifically provides:

> SEC. 7. Jurisdiction. — The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation 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**;
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> x x x x (Emphasis supplied)

The inaction of the CIR on the claim during the 120-day period is, by express provision of law, "deemed a denial" of such claim, and the failure of the taxpayer to file its judicial claim within 30 days from the expiration of

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41 See *CIR v. Dash Engineering Philippines, Inc.*, G.R. No. 184145, December 11, 2013.

42 Entitled "AN ACT CREATING THE COURT OF TAX APPEALS" (June 16, 1954).

43 Entitled "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES" (Approved on March 30, 2004). See also *Applied Food Ingredients Company, Inc. v. CIR*, G.R. No. 184266, November 11, 2013, 709 SCRA 164, 173.

the 120-day period shall **render the "deemed a denial" decision of the CIR 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.**[44] Thus, respondent's failure to comply with the statutory conditions is fatal to its claim. This is so, notwithstanding the fact that the CIR, for his part, failed to raise the issue of non-compliance with the mandatory periods at the earliest opportunity.

In the case of *Nippon Express (Philippines) Corporation v. CIR*,[45] the Court ruled that, **because the 120+30-day period is jurisdictional, the issue of whether the taxpayer complied with the said time frame may be broached at any stage, even on appeal. Well-settled is the rule that the question of jurisdiction over the subject matter can be raised at any time during the proceedings.** Jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[46] Therefore, respondent's contention on this score is of no moment.

Indeed, it has been pronounced time and again that taxes are the lifeblood of the government and, consequently, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[47] Hence, with this in mind and in light of the foregoing considerations, the Court so holds that the CTA *En Banc* committed reversible error when it granted respondent's claim for refund or tax credit despite its non-compliance with the mandatory periods under Section 112 (D) (now renumbered as Section 112[C]) of RA 8424. Accordingly, the claim for refund/tax credit must be denied.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 13, 2009 and the Resolution dated October 22, 2009 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 487 are hereby **REVERSED** and **SET ASIDE**. Respondent Burmeister and Wain Scandinavian Contractor Mindanao, Inc.'s judicial claim for refund or tax credit through its petition for review before the CTA is **DENIED**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

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44 *CIR v. San Roque Power Corporation*, supra note 21, at 390.
45 G.R. No. 196907, March 13, 2013, 693 SCRA 456.
46 Id. at 465; citations omitted.
47 See *CIR v. Dash Engineering Philippines, Inc.*, supra note 41.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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

CERTIFIED TRUE COPY:

EDGAR O. ARICHETA
Division Clerk of Court
First Division

JAN 27 2015