Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 191498**
	Present:
- versus -	SERENO, *CJ*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
MINDANAO II GEOTHERMAL PARTNERSHIP, Respondent.	Promulgated: JAN 15 2014

x - x

DECISION

SERENO, *CJ:*

This Rule 45 Petition[1] requires this Court to address the question of timeliness with respect to petitioner's administrative and judicial claims for refund and credit of accumulated unutilized input Value Added Tax (VAT) under Section 112(A) and Section 112(D) of the 1997 Tax Code.

Petitioner Mindanao II Geothermal Partnership (Mindanao II) assails the Decision[2] and Resolution[3] of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA *En Banc* Case No. 448, affirming the Decision in CTA Case No. 7507 of the CTA Second Division.[4] The latter ordered the refund or issuance of a tax credit certificate in the amount of ₱6,791,845.24 representing unutilized input VAT incurred for the second, third, and fourth quarters of taxable year 2004 in favor of herein respondent, Mindanao II.

---

[1] *Rollo,* pp. 8-42.
[2] Id. at 49-68. CTA *En Banc* Decision dated 11 November 2009, penned by Associate Justice Caesar A. Casanova, concurred in by Presiding Justice Ernesto D. Acosta, and Associate Justices Lovell R. Bautista, Juanito C. Castañeda, Jr., Olga Palanca-Enriquez, and Erlinda P. Uy.
[3] Id. at 70. CTA Resolution dated 3 March 2010.
[4] Id. at 81-95; dated 12 August 2008, penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Associate Justices Erlinda D. Uy and Olga Palanca-Enriquez.

FACTS

Mindanao II is a partnership registered with the Securities and Exchange Commission.[5] It is engaged in the business of power generation and sale of electricity to the National Power Corporation (NAPOCOR)[6] and is accredited by the Department of Energy.[7]

Mindanao II filed its Quarterly VAT Returns for the second, third and fourth quarters of taxable year 2004 on the following dates:[8]

Date filed		Quarter	Taxable Year
Original	Amended		
26 July 2004	12 July 2005	2nd	2004
22 October 2004	12 July 2005	3rd	2004
25 January 2005	12 July 2005	4th	2004

On 6 October 2005, Mindanao II filed with the Bureau of Internal Revenue (BIR) an application for the refund or credit of accumulated unutilized creditable input taxes.[9] In support of the administrative claim for refund or credit, Mindanao II alleged, among others, that it is registered with the BIR as a value-added taxpayer[10] and all its sales are zero-rated under the EPIRA law.[11] It further stated that for the second, third, and fourth quarters of taxable year 2004, it paid input VAT in the aggregate amount of ₱7,167,005.84, which were directly attributable to the zero-rated sales. The input taxes had not been applied against output tax.

---

[5] Id. at 81.
[6] Id.
[7] Id. at 82.
[8] Id. at 85.
[9] Id.
[10] Id. at 81.
[11] On 26 June 2001, Republic Act No. 9136 - or the Electric Power Industry Reform Act of 2000 (EPIRA) - came into law, making the sale of power by a generation company a zero-rated transaction under the Value-Added Tax (VAT) system. Section 6 of EPIRA provides:

> Generation Sector. — Generation of electric power, a business affected with public interest shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.
>
> Upon the implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.
>
> Pursuant to the objective of lowering electricity rates to end-users, **sales of generated power by generation companies shall be value added tax zero-rated.**
>
> The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements. (Emphasis supplied)

Pursuant to Section 112(D) of the 1997 Tax Code, the Commissioner of Internal Revenue (CIR) had a period of 120 days, or until 3 February 2006, to act on the claim. The administrative claim, however, remained unresolved on 3 February 2006.

Under the same provision, Mindanao II could treat the inaction of the CIR as a denial of its claim, in which case, the former would have 30 days to file an appeal to the CTA, that is, on 5 March 2006. Mindanao II, however, did not file an appeal within the 30-day period.

Apparently, Mindanao II believed that a judicial claim must be filed within the two-year prescriptive period provided under Section 112(A) and that such time frame was to be reckoned from the filing of its Quarterly VAT Returns for the second, third, and fourth quarters of taxable year 2004, that is, *from 26 July 2004, 22 October 2004, and 25 January 2005, respectively*. Thus, on 21 July 2006, Mindanao II, claiming inaction on the part of the CIR and that the two-year prescriptive period was about to expire, filed a Petition for Review with the CTA docketed as CTA Case No. 6133.[12]

On 8 June 2007, while the application for refund or credit of unutilized input VAT of Mindanao II was pending before the CTA Second Division, this Court promulgated *Atlas Consolidated Mining and Development Corporation v. CIR*[13] (*Atlas*). *Atlas* held that the two-year prescriptive period for the filing of a claim for an input VAT refund or credit is to be reckoned from the date of filing of the corresponding **quarterly VAT return and payment of the tax**.

On 12 August 2008, the CTA Second Division rendered a Decision[14] ordering the CIR to grant a refund or a tax credit certificate, but only in the reduced amount of ₱6,791,845.24, representing unutilized input VAT incurred for the second, third and fourth quarters of taxable year 2004.[15]

In support of its ruling, the CTA Second Division held that Mindanao II complied with the twin requisites for VAT zero-rating under the EPIRA law: *first*, it is a generation company, and *second*, it derived sales from power generation. It also ruled that Mindanao II satisfied the requirements for the grant of a refund/credit under Section 112 of the Tax Code: (1) there must be zero-rated or effectively zero-rated sales; (2) input taxes must have been incurred or paid; (3) the creditable input tax due or paid must be attributable to zero-rated sales or effectively zero-rated sales; (4) the input VAT payments must not have been applied against any output liability; and (5) the claim must be filed within the two-year prescriptive period.[16]

---

[12] *Rollo*, p. 85. Also, CTA records, pp. 1-8. Petition for Review, pp. 1-8.
[13] GR Nos. 141104 and 148763, 8 June 2007, 524 SCRA 154.
[14] *Rollo*, pp. 81-95.
[15] Id. at 94.
[16] Id. at 88-93.

As to the second requisite, however, the input tax claim to the extent of ₱375,160.60 corresponding to purchases of services from Mitsubishi Corporation was disallowed, since it was not substantiated by official receipts.[17]

As regards to the fifth requirement in section 112 of the Tax Code, the tax court, citing *Atlas*, counted from 26 July 2004, 22 October 2004, and 25 January 2005 – *the dates when Mindanao II filed its Quarterly VAT Returns for the second, third, and fourth quarters of taxable year 2004, respectively* – and determined that both the administrative claim filed on 6 October 2005 and the judicial claim filed on 21 July 2006 fell within the two-year prescriptive period.[18]

On 1 September 2008, the CIR filed a Motion for Partial Reconsideration,[19] pointing out that prescription had already set in, since the appeal to the CTA was filed only on 21 July 2006, which was way beyond the last day to appeal – 5 March 2006.[20] As legal basis for this argument, the CIR relied on Section 112(D) of the 1997 Tax Code.[21]

Meanwhile, on 12 September 2008, this Court promulgated *CIR v. Mirant Pagbilao Corporation* (*Mirant*).[22] *Mirant* fixed the reckoning date of the two-year prescriptive period for the application for refund or credit of unutilized input VAT at the **close of the taxable quarter when the relevant sales were made**, as stated in Section 112(A).[23]

On 3 December 2008, the CTA Second Division denied the CIR's Motion for Partial Reconsideration.[24] The tax court stood by its reliance on *Atlas*[25] and on its finding that both the administrative and judicial claims of Mindanao II were timely filed.[26]

On 7 January 2009, the CIR elevated the matter to the CTA *En Banc* via a Petition for Review.[27] Apart from the contention that the judicial claim of Mindanao II was filed beyond the 30-day period fixed by Section 112(D) of the 1997 Tax Code,[28] the CIR argued that Mindanao II erroneously fixed 26 July 2004, the date when the return for the second quarter was filed, as the date from which to reckon the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT under Section 112(A). As the two-year prescriptive period ended on 30 June 2006, the

---

[17] Id. at 90-92.
[18] Id. at 93.
[19] Id. at 96-103.
[20] Id. at 97-98.
[21] Id.
[22] 586 Phil. 712 (2008).
[23] *Rollo*, p. 116-118.
[24] Id. at 105-107; dated 3 December 2008.
[25] Id. at 106.
[26] Id.
[27] Id. at 108-125.
[28] Id. at 118-122.

Petition for Review of Mindanao II was filed out of time on 21 July 2006.[29] The CIR invoked the recently promulgated *Mirant* to support this theory.

On 11 November 2009, the CTA *En Banc* rendered its Decision denying the CIR's Petition for Review.[30] On the question whether the *application* for refund was timely filed, it held that the CTA Second Division correctly applied the *Atlas* ruling.[31] It reasoned that *Atlas* remained to be the controlling doctrine. *Mirant* was a new doctrine and, as such, the latter should not apply retroactively to Mindanao II who had relied on the old doctrine of *Atlas* and had acted on the faith thereof.[32]

As to the issue of compliance with the 30-day period for appeal to the CTA, the CTA *En Banc* held that this was a requirement only when the CIR **actually** denies the taxpayer's claim. But in cases of CIR **inaction**, the 30-day period is not a mandatory requirement; the judicial claim is seasonably filed as long as it is filed after the lapse of the 120-day waiting period but within two years from the date of filing of the return.[33]

The CIR filed a Motion for Partial Reconsideration[34] of the Decision, but it was denied for lack of merit.[35]

Dissatisfied, the CIR filed this Rule 45 Petition, raising the following arguments in support of its appeal:

> I.
> THE CTA 2ND DIVISION LACKED JURISDICTION TO TAKE COGNIZANCE OF THE CASE.
>
> II.
> THE COURT A QUO'S RELIANCE ON THE RULING IN ATLAS IS MISPLACED.[36]

ISSUES

The resolution of this case hinges on the question of compliance with the following time requirements for the grant of a claim for refund or credit of unutilized input VAT: (1) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT; and (2) the 120+30 day period for filing an appeal with the CTA.

---

[29] Id. at 117.
[30] Id. at 49-68.
[31] Id. at 58. Decision, p. 10.
[32] Id. at 55-58. Decision, pp. 7-10.
[33] Id. at 59-60. Decision, pp. 11-12.
[34] Id. at 148-154; dated 8 December 2009.
[35] Id. at 70-74, dated 3 March 2010.
[36] Id. at 19.

THE COURT'S RULING

We deny Mindanao II's claim for refund or credit of unutilized input VAT on the ground that its judicial claims were filed out of time, even as we hold that its application for refund was filed on time.

I.
MINDANAO II'S APPLICATION FOR REFUND WAS FILED ON TIME

We find no error in the conclusion of the tax courts that the application for refund or credit of unutilized input VAT was timely filed. The problem lies with their bases for the conclusion as to: (1) what should be filed within the prescriptive period; and (2) the date from which to reckon the prescriptive period.

We thus take a different route to reach the same conclusion, initially focusing our discussion on what should be filed within the two-year prescriptive period.

A. The Judicial Claim Need Not Be Filed Within the Two-Year Prescriptive Period

Section 112(A) provides:

> 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 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.

Both the CTA Second Division and CTA *En Banc* decisions held that the phrase "apply for the issuance of a tax credit certificate or refund" in Section 112(A) is construed to refer to both the administrative claim filed with the CIR and the judicial claim filed with the CTA. This view, however, has no legal basis.

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*, we dispelled the misconception that **both the administrative and judicial claims** must be filed within the two-year prescriptive period:[37]

> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two 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." **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.** This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.
>
> In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA. (Emphasis supplied)

The message of *Aichi* is clear: **it is only the administrative claim that must be filed within the two-year prescriptive period;** the judicial claim need not fall within the two-year prescriptive period.

Having disposed of this question, we proceed to the date for reckoning the prescriptive period under Section 112(A).

B. Reckoning Date is the Close of the Taxable Quarter When the Relevant Sales Were Made.

The other flaw in the reasoning of the tax courts is their reliance on the *Atlas* ruling, which fixed the reckoning point to the date of filing the return and payment of the tax.

The CIR's Stand

The CIR's stand is that *Atlas* is not applicable to the case at hand as it involves Section 230 of the 1977 Tax Code, which contemplates recovery of tax payments *erroneously or illegally* collected. On the other hand, this case

---

[37] G.R. No. 184823, 6 October 2010, 632 SCRA 422, 443-444.

deals with claims for tax refund or credit of unutilized input VAT for the second, third, and fourth quarters of 2004, which are covered by Section 112 of the 1977 Tax Code.[38]

The CIR further contends that Mindanao II cannot claim good faith reliance on the *Atlas* doctrine since the case was decided only on 8 June 2007, two years after Mindanao II filed its claim for refund or credit with the CIR and one year after it filed a Petition for Review with the CTA on 21 July 2006.[39]

In lieu of *Atlas*, the CIR proposes that it is the Court's ruling in *Mirant* that should apply to this case despite the fact that the latter was promulgated on 12 September 2008, **after** Mindanao II had filed its administrative claim in 2005.[40] It argues that *Mirant* can be applied retroactively to this case, since the decision merely interprets Section 112, a provision that was already effective when Mindanao II filed its claims for tax refund or credit.

The Taxpayer's Defense

On the other hand, Mindanao II counters that *Atlas*, decided by the Third Division of this Court, could not have been superseded by *Mirant*, a Second Division Decision of this Court. A doctrine laid down by the Supreme Court in a Division may be modified or reversed only through a decision of the Court sitting *en banc*.[41]

Mindanao II further contends that when it filed its Petition for Review, the prevailing rule in the CTA reckons the two-year prescriptive period from the date of the filing of the VAT return.[42]

Finally, after building its case on *Atlas*, Mindanao II assails the CIR's reliance on the *Mirant* doctrine stating that it cannot be applied retroactively to this case, lest it violate the rock-solid rule that a judicial ruling cannot be given retroactive effect if it will impair vested rights.[43]

Section 112(A) is the Applicable Rule

The issue posed is not novel. In the recent case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[44] (*San Roque*), this Court

---

[38] *Rollo*, pp. 33-35.
[39] Id. at 35.
[40] Id. at 36.
[41] Article VIII, Sec. 4(3) of the 1987 Constitution states: "Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: *Provided*, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."
[42] See *Rollo*, p. 83.
[43] Id. at pp. 36-37.
[44] G.R. No. 187485, 12 February 2013, 690 SCRA 336, 397.

resolved the threshold question of when to reckon the two-year prescriptive period for filing an administrative claim for refund or credit of unutilized input VAT under the 1997 Tax Code in view of our pronouncements in *Atlas* and *Mirant.* In that case, we delineated the scope and effectivity of the *Atlas* and *Mirant* doctrines 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. (Emphases supplied)

Furthermore, *San Roque* distinguished between Section 112 and Section 229 of the 1997 Tax Code:

> The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.
>
> In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.

Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, . . . illegally, . . . excessively or in any manner wrongfully collected." The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229.

Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for "excess" input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the output VAT. This prescriptive period has no relation to the date of payment of the "excess" input VAT. The "excess" input VAT may have been paid for more than two years but this does not bar the filing of a judicial claim for "excess" VAT under Section 112(A), which has a different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the input VAT was "excessively" collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

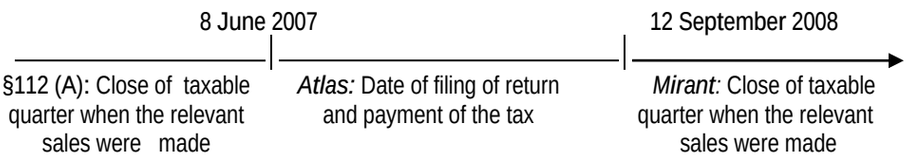
As its name implies, the Value-Added Tax system is a tax on the value added by the taxpayer in the chain of transactions. For simplicity and efficiency in tax collection, the VAT is imposed not just on the value added by the taxpayer, but on the entire selling price of his goods, properties or services. However, the taxpayer is allowed a refund or credit on the VAT previously paid by those who sold him the inputs for his goods, properties, or services. The net effect is that the taxpayer pays the VAT only on the value that he adds to the goods, properties, or services that he actually sells.

Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy. Thus, a non zero-rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. He can only carry-over and apply his "excess" input VAT against his future output VAT. If such "excess" input VAT is an "excessively" collected tax, the taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer. If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the

> purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.
>
> Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.
>
> From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously . . . illegally, . . . excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in Mirant, Section 229 should "apply only to instances of erroneous payment or illegal collection of internal revenue taxes." Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.[45]

Two things are clear from the above quoted *San Roque* disquisitions. *First,* when it comes to recovery of unutilized input VAT, Section 112, and not Section 229 of the 1997 Tax Code, is the governing law. *Second*, prior to 8 June 2007, the applicable rule is neither *Atlas* nor *Mirant,* but Section 112(A).

We present the rules laid down by *San Roque* in determining the proper reckoning date of the two-year prescriptive period through the following timeline:



Thus, the task at hand is to determine the applicable period for this case.

---

[45] Id. at 392-397.

In this case, Mindanao II filed its administrative claims for refund or credit for the second, third and fourth quarters of 2004 on 6 October 2005. The case thus falls within the first period as indicated in the above timeline. In other words, it is covered by the rule prior to the advent of either *Atlas* or *Mirant.*

Accordingly, the proper reckoning date in this case, as provided by **Section 112(A) of the 1997 Tax Code,** is **the close of the taxable quarter when the relevant sales were made**.

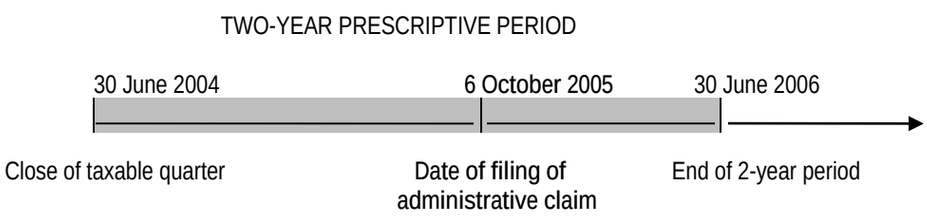
C. The Administrative Claims Were Timely Filed

We sum up our conclusions so far: (1) it is only the administrative claim that must be filed within the two-year prescriptive period; and (2) the two-year prescriptive period begins to run from the close of the taxable quarter when the relevant sales were made.

Bearing these in mind, we now proceed to determine whether Mindanao II's administrative claims for the second, third, and fourth quarters of 2004 were timely filed.

Second Quarter

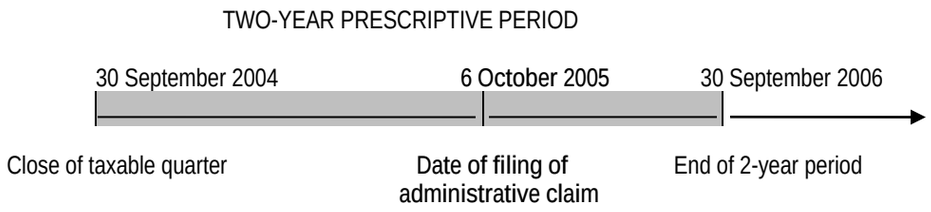
Since the zero-rated sales were made in the second quarter of 2004, the date of reckoning the two-year prescriptive period is the close of the second quarter, which is on 30 June 2004. Applying Section 112(A), Mindanao II had two years from 30 June 2004, or **until 30 June 2006** to file an administrative claim with the CIR. Mindanao II filed its administrative claim on **6 October 2005**, which is within the two-year prescriptive period. The administrative claim for the second quarter of 2004 was thus timely filed. For clarity, we present the rules laid down by *San Roque* in determining the proper reckoning date of the two-year prescriptive period through the following timeline:



Third Quarter

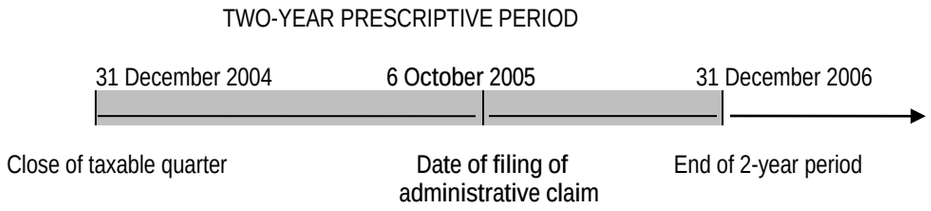
As regards the claim for the third quarter of 2004, the two-year prescriptive period started to run on 30 September 2004, the close of the

taxable quarter. It ended on 30 September 2006, pursuant to Section 112(A) of the 1997 Tax Code. Mindanao II filed its administrative claim on 6 October 2005. Thus, since the administrative claim was filed well within the two-year prescriptive period, the administrative claim for the third quarter of 2004 was timely filed. (See timeline below)



Fourth Quarter

Here, the two-year prescriptive period is counted starting from the close of the fourth quarter which is on 31 December 2004. The last day of the prescriptive period for filing an application for tax refund/credit with the CIR was on **31 December 2006.** Mindanao II filed its administrative claim with the CIR on 6 October 2005. Hence, the claims were filed on time, pursuant to Section 112(A) of the 1997 Tax Code. (See timeline below)



II.
MINDANAO II'S JUDICIAL CLAIMS WERE FILED OUT OF TIME

Notwithstanding the timely filing of the administrative claims, we find that the CTA *En Banc* erred in holding that Mindanao II's judicial claims were timely filed.

A. 30-Day Period Also Applies to Appeals from Inaction

Section 112(D) of the 1997 Tax Code states the time requirements for filing a judicial claim for refund or tax credit of input VAT:

> (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 Subsection (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. (Emphases supplied)

Section 112(D) speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund or credit, and the period of 30 days, which refers to the period for interposing an appeal with the CTA. It is with the 30-day period that there is an issue in this case.

The CTA *En Banc*'s holding is that, since the word "or" – a disjunctive term that signifies dissociation and independence of one thing from another – is used in Section 112(D), the taxpayer is given two options: 1) file an appeal within 30 days from the CIR's denial of the administrative claim; or 2) file an appeal with the CTA after expiration of the 120-day period, in which case the 30-day appeal period does not apply. The judicial claim is seasonably filed so long as it is filed after the lapse of the 120-day waiting period but before the lapse of the two-year prescriptive period under Section 112(A).[46]

We do not agree.

The 30-day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by the CIR as well. This is the correct interpretation of the law, as held in *San Roque*:[47]

> Section 112(C)[48] also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:
>
> > x x x 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.
>
> This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, **appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the**

---

[46] *Rollo*, pp. 59-60. Decision, pp. 11-12.
[47] Supra note 44, at 387-388.
[48] The section is numbered 112(D) under RA 8424. However, RA 9337 renumbered the section to 112(C). In *San Roque*, the Court refers to Section 112(D) under RA 8424 as Section 112(C) as it is currently numbered. Elsewhere in this Decision, we refer to the provision as Section 112(D) to make it consistent with references to it made by the Court in other cases.

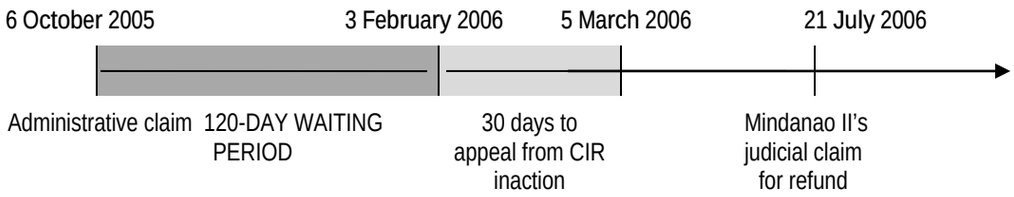
> **Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.** (Emphasis supplied)

The *San Roque* pronouncement is clear. The taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

B. The Judicial Claim Was Belatedly Filed

In this case, the facts are not up for debate. Mindanao II filed its administrative claim for refund or credit for the second, third, and fourth quarters of 2004 on 6 October 2005. The CIR, therefore, had a period of 120 days, or until 3 February 2006, to act on the claim. The CIR, however, failed to do so. Mindanao II then could treat the inaction as a denial and appeal it to the CTA within 30 days from 3 February 2006, or until 5 March 2006.

Mindanao II, however, filed a Petition for Review only on 21 July 2006, 138 days after the lapse of the 30-day period on 5 March 2006. The judicial claim was therefore filed late. (See timeline below.)



C. The 30-Day Period to Appeal is Mandatory and Jurisdictional

However, what is up for debate is the nature of the 30-day time requirement. The CIR posits that it is mandatory. Mindanao II contends that the requirement of judicial recourse within 30 days is only directory and permissive, as indicated by the use of the word "may" in Section 112(D).[49]

The answer is found in *San Roque.* There, we declared that the 30-day period to appeal is both mandatory and jurisdictional:

> Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:
>
> x x x the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the**

[49] Id. at pp. 179-181.

> **expiration of the one hundred twenty day-period,** appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)
>
> This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.
>
> x x x x
>
> Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).
>
> x x x x
>
> When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from 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," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." **The word "may" simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period.** x x x.[50]

D. Exception to the mandatory and jurisdictional nature of the 120+30 day period not applicable

Nevertheless, *San Roque* provides an exception to the mandatory and jurisdictional nature of the 120+30 day period ─ *BIR Ruling No. DA-489-03 dated 10 December 2003.* The BIR ruling declares 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."

Although Mindanao II has not invoked the BIR ruling, we deem it prudent as well as necessary to dwell on this issue to determine whether this case falls under the exception.

---

[50] *Rollo*, pp. 179-181.

For this question, we come back to *San Roque,* which provides that BIR Ruling No. DA-489-03 is a general interpretative rule; thus, taxpayers can rely on it from the time of its issuance **on 10 December 2003** until its reversal by this Court in *Aichi* **on 6 October 2010**, when the 120+30 day periods were held to be mandatory and jurisdictional. The Court reasoned as follows:

> 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.
>
> x x x x
>
> 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 tasked 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 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.
>
> 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.[51]

Thus, in *San Roque*, the Court applied this exception to Taganito Mining Corporation (Taganito), one of the taxpayers in *San Roque.* Taganito filed its judicial claim on 14 February 2007, **after** the BIR ruling took effect on 10 December 2003 and before the promulgation of *Mirant*. The Court stated:

---

[51] Supra note 44, at 403-404.

> Taganito, however, filed its judicial claim with the CTA on 14 February 2007, ***after*** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. Truly, Taganito can claim that in filing its judicial claim prematurely without waiting for the 120-day period to expire, it was misled by BIR Ruling No. DA-489-03. Thus, Taganito can claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity.[52]

San Roque was also careful to point out that the BIR ruling does not retroactively apply to premature judicial claims filed *before* the issuance of the BIR ruling:

> However, BIR Ruling No. DA-489-03 cannot be given retroactive effect for four reasons: *first*, it is admittedly an erroneous interpretation of the law; *second*, prior to its issuance, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law; *third*, prior to its issuance, no taxpayer can claim that it was misled by the BIR into filing a judicial claim prematurely; and *fourth*, a claim for tax refund or credit, like a claim for tax exemption, is strictly construed against the taxpayer.[53]

Thus, *San Roque* held that taxpayer San Roque Power Corporation, could not seek refuge in the BIR ruling as it jumped the gun when it filed its judicial claim on 10 April 2003, prior to the issuance of the BIR ruling on 10 December 2003. The Court stated:

> San Roque, therefore, cannot benefit from BIR Ruling No. DA-489-03 because it filed its judicial claim prematurely on 10 April 2003, ***before*** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. To repeat, San Roque cannot claim that it was misled by the BIR into filing its judicial claim prematurely because BIR Ruling No. DA-489-03 was issued only after San Roque filed its judicial claim. At the time San Roque filed its judicial claim, the law as applied and administered by the BIR was that the Commissioner had 120 days to act on administrative claims. This was in fact the position of the BIR prior to the issuance of BIR Ruling No. DA-489-03. **Indeed, San Roque never claimed the benefit of BIR Ruling No. DA-489-03 or RMC 49-03, whether in this Court, the CTA, or before the Commissioner**.[54]

San Roque likewise ruled out the application of the BIR ruling to cases of late filing. The Court held that the BIR ruling, as an exception to the mandatory and jurisdictional nature of the 120+30 day periods, is limited to premature filing *and does not extend to late filing of a judicial claim*.

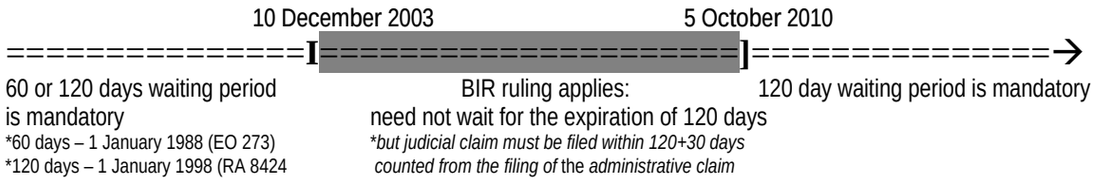
Thus, the Court found that since Philex Mining Corporation, the other party in the consolidated case *San Roque*, filed its claim 426 days **after** the lapse of the 30-day period, it could not avail itself of the benefit of the BIR ruling:

---

[52] Id. at 405.
[53] Id.
[54] Id.

> Philex's situation is not a case of premature filing of its judicial claim but of late filing, indeed *very* late filing. 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. Philex cannot claim the benefit of BIR Ruling No. DA-489-03 because Philex did not file its judicial claim prematurely but filed it long after the lapse of the 30-day period **following the expiration of the 120-day period**. In fact, Philex filed its judicial claim 426 days after the lapse of the 30-day period.[55]

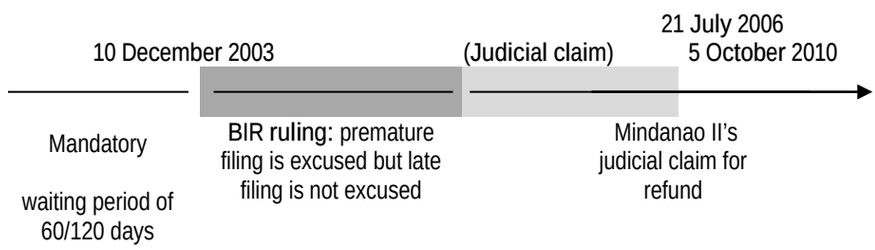
We sum up the rules established by *San Roque* on the mandatory and jurisdictional nature of the 30-day period to appeal through the following timeline:



Bearing in mind the foregoing rules for the timely filing of a judicial claim for refund or credit of unutilized input VAT, we rule on the present case of Mindanao II as follows:

We find that Mindanao II's situation is similar to that of Philex in *San Roque*.

As mentioned above, Mindanao II filed its judicial claim with the CTA on **21 July 2006**. This was **after** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003, but before its reversal on 5 October 2010. However, while the BIR ruling was in effect when Mindanao II filed its judicial claim, the rule cannot be properly invoked. The BIR ruling, as discussed earlier, contemplates **premature** filing. The situation of Mindanao II is one of **late** filing. To repeat, its judicial claim was filed on 21 July 2006 – long after 5 March 2006, the last day of the 30-day period for appeal. In fact, it filed its judicial claim 138 days after the lapse of the 30-day period. (See timeline below)



[55] Id. at 405-406.

E. Undersigned dissented in San Roque to the retroactive application of the mandatory and jurisdictional nature of the 120+30 day period.

It is worthy to note that in *San Roque*, this *ponente* registered her dissent to the retroactive application of the mandatory and jurisdictional nature of the 120+30 day period provided under Section 112(D) of the Tax Code which, in her view, is unfair to taxpayers. It has been the view of this *ponente* that the mandatory nature of 120+30 day period must be completely applied prospectively or, at the earliest, only upon the finality of *Aichi* in order to create stability and consistency in our tax laws. Nevertheless, this *ponente* is mindful of the fact that judicial precedents cannot be ignored. Hence, the majority view expressed in *San Roque* must be applied.

SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)

3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008.** *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. (*San Roque*)

B. 120+30 Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-

day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi* and *San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque)*

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque)*

SUMMARY AND CONCLUSION

In sum, our finding is that the three administrative claims for the refund or credit of unutilized input VAT were all timely filed, while the corresponding judicial claims were belatedly filed.

The foregoing considered, the CTA lost jurisdiction over Mindanao II's claims for refund or credit. The CTA EB erred in granting these claims.

WHEREFORE, we **GRANT** the Petition. The assailed Court of Tax Appeals *En Banc* Decision dated 11 November 2009 and Resolution dated 3 March 2010 of the in CTA EB Case No. 448 (CTA Case No. 7507) are hereby **REVERSED** and **SET ASIDE.** A new ruling is entered **DENYING** respondent's claim for a tax refund or credit of ₱6,791,845.24.

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