Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE,	**G.R. No. 194105**
Petitioner,	Present:
- versus -	SERENO, *C.J.*, *Chairperson*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
TEAM SUAL CORPORATION (formerly MIRANT SUAL CORPORATION),	Promulgated: FEB 05 2014
Respondent.	

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DECISION

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated June 16, 2010 and the Resolution[3] dated October 14, 2010 of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 504. The CTA *en banc* affirmed the Decision[4] dated January 26, 2009 as well as the Resolution[5] dated June 19, 2009 of the CTA First Division in CTA Case No. 6421. The CTA First Division ordered the Commissioner of Internal Revenue (CIR) to

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1 *Rollo*, pp. 11-35.

2 Penned by Associate Justice Juanito C. Castaneda, Jr., with Associate Justices Erlinda P. Uy, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla and Amelia R. Cotango-Manalastas, concurring. Associate Justice Lovell R. Bautista penned a Concurring and Dissenting Opinion with Associate Justice Caesar A. Casanova, concurring. Then Presiding Justice Ernesto D. Acosta penned a Dissenting Opinion with Associate Justice Esperanza R. Fabon-Victorino, concurring; id. at 38-80.

3 Id. at 82-121.

4 Penned by Associate Justice Lovell R. Bautista, with Associate Justice Caesar A. Casanova, concurring; then Presiding Justice Ernesto D. Acosta penned a Concurring and Dissenting Opinion; id. at 135-156.

5 Id. at 158-168.

refund or credit to Team Sual Corporation (TSC) its unutilized input value-added tax (VAT) for the taxable year 2000.

The Facts

TSC is a corporation that is principally engaged in the business of power generation and the subsequent sale thereof solely to National Power Corporation (NPC); it is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer.

On November 26, 1999, the CIR granted TSC's application for zero-rating arising from its sale of power generation services to NPC for the taxable year 2000. As a VAT-registered entity, TSC filed its VAT returns for the first, second, third, and fourth quarters of taxable year 2000 on April 24, 2000, July 25, 2000, October 25, 2000, and January 25, 2001, respectively.

On March 11, 2002, TSC filed with the BIR an administrative claim for refund, claiming that it is entitled to the unutilized input VAT in the amount of ₱179,314,926.56 arising from its zero-rated sales to NPC for the taxable year 2000.

On April 1, 2002, without awaiting the CIR's resolution of its administrative claim for refund/tax credit, TSC filed a petition for review with the CTA seeking the refund or the issuance of a tax credit certificate in the amount of ₱179,314,926.56 for its unutilized input VAT for the taxable year 2000. The case was subsequently raffled to the CTA First Division.

In his Answer, the CIR claimed that TSC's claim for refund/tax credit should be denied, asserting that TSC failed to comply with the conditions precedent for claiming refund/tax credit of unutilized input VAT. The CIR pointed out that TSC failed to submit complete documents in support of its application for refund/tax credit contrary to Section 112(C)[6] of the National Internal Revenue Code (NIRC).

On January 26, 2009, the CTA First Division rendered a Decision,[7] which granted TSC's claim for refund/tax credit of input VAT. Nevertheless, the CTA First Division found that, from the total unutilized input VAT of ₱179,314,926.56 that it claimed, TSC was only able to substantiate the amount of ₱173,265,261.30. Thus:

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[6] Section 112 of the National Internal Revenue Code of 1997 was amended by Republic Act No. 9337, which took effect on July 1, 2005; subsection (D) thereof now falls under subsection (C).

[7] *Rollo*, pp. 135-156.

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, [CIR] is hereby **ORDERED** to **REFUND** or to **ISSUE TAX CREDIT CERTIFICATE** in favor of [TSC] in the amount of [~~P~~]173,265,261.30.
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> **SO ORDERED**.[8]

The CIR sought a reconsideration of the CTA First Division Decision dated January 26, 2009 maintaining that TSC is not entitled to a refund/tax credit of its unutilized input VAT for the taxable year 2000 since it failed to submit all the necessary and relevant documents in support of its administrative claim.

The CIR further claimed that TSC's petition for review was prematurely filed, alleging that under Section 112(C) of the NIRC, the CIR is given 120 days from the submission of complete documents within which to either grant or deny TSC's application for refund/tax credit of its unutilized input VAT. The CIR pointed out that TSC filed its petition for review with the CTA *sans* any decision on its claim and without waiting for the 120-day period to lapse.

On June 19, 2009, the CTA First Division issued a Resolution,[9] which denied the CIR's motion for reconsideration. The CTA First Division opined that TSC's petition for review was not prematurely filed notwithstanding that the 120-day period given to the CIR under Section 112(C) of the NIRC had not yet lapsed. It ruled that, pursuant to Section 112(A) of the NIRC, claims for refund/tax credit of unutilized input VAT should be filed within two years after the close of the taxable quarter when the sales were made; that the 120-day period under Section 112(C) of the NIRC is also covered by the two-year prescriptive period within which to claim the refund/tax credit of unutilized input VAT. Thus:

> Admittedly, Section 112([C]) of the NIRC of 1997 provides for a one hundred twenty (120)-day period from the submission of the complete documents within which respondent may grant or deny the taxpayer's application for refund or issuance of tax credit certificate. The said 120-day period however is also covered by the two-year prescriptive period to file a claim for refund or tax credit before this Court, as specified in Section 112(A) of the same Code.
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> It has been consistently held that the administrative claim and the subsequent appeal to this Court must be filed within the two-year period. In the case of **Allison J. Gibbs, *et al.* vs. Collector of Internal Revenue, *et al.***, the High Tribunal declared that the suit or proceeding must be started in this Court before the end of the two-year period without awaiting the decision of the Collector (now Commissioner). Accordingly,

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8 Id. at 149.

9 Id. at 158-168.

> as long as an administrative claim is filed prior to the filing of a judicial case, both within the two-year prescriptive period, this Court has jurisdiction to take cognizance of the claim. And once a *Petition for Review* is filed, this Court already acquires jurisdiction over the claim and is not bound to wait indefinitely for whatever action respondent may take. After all, at stake are claims for refund and unlike assessments, no decision of respondent is required before one can go to this Court.[10] (Citations omitted)

Aggrieved by the foregoing disquisition of the CTA First Division, the CIR filed a Petition for Review[11] with the CTA *en banc*. He maintains that TSC's petition with the CTA First Division was prematurely filed; that TSC can only elevate its claim for refund/tax credit of its unutilized input VAT with the CTA only within 30 days from the lapse of the 120-day period granted to the CIR, under Section 112(C) of the NIRC, within which to decide administrative claims for refund/tax credit or from the CIR decision denying its claim.

On June 16, 2010, the CTA *en banc* rendered the herein assailed Decision,[12] which affirmed the Decision dated January 26, 2009 of the CTA First Division, *viz*:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**. The Commissioner is hereby ordered to refund TSC the aggregate amount of [₱]173,265,261.30 representing unutilized input VAT on its domestic purchases and importation of goods and services attributable to zero-rated sales to NPC for the taxable year 2000.
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> **SO ORDERED**.[13]

The CTA *en banc* ruled that, pursuant to Section 112(A) of the NIRC, both the administrative and judicial remedies under Section 112(C) of the NIRC must be undertaken within the two-year period from the close of the taxable quarter when the relevant sales were made. Thus:

> Under the law, the taxpayer-claimant ***may*** seek judicial redress for refund on excess or unutilized input VAT attributable to zero-rated sales or effectively zero-rated sales with the Court of Tax Appeals either within thirty (30) days from receipt of the denial of its claim for refund/tax credit, or after the lapse of the one hundred twenty (120)[-]day period in the event of inaction by the Commissioner; provided that both administrative and judicial remedies must be undertaken within the two (2)[-]year period from the close of the taxable quarter when the relevant sales were made. If the two[-]year period is about to lapse, but the BIR has not yet acted on the application for refund, the taxpayer should file a Petition for Review

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10 Id. at 159-160.
11 Id. at 122-134.
12 Id. at 38-80.
13 Id. at 61.

> with this Court within the two[-]year period. Otherwise, the refund claim for unutilized input value added tax attributable to zero-rated sales or effectively zero-rated sales is time-barred.
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> Subsections (A) and ([C]) of Section 112 of the 1997 NIRC under the heading "Refunds or Tax Credits of Input Tax" should be read in its entirety not in separate parts. Subsection ([C]) cannot be isolated from the rest of the subsections of Section 112 of the 1997 NIRC. A statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot be extracted from any single part thereof but from a general consideration of the statute as a whole.[14] (Citations omitted)

The CIR sought a reconsideration of the CTA *en banc* Decision dated June 16, 2010 but it was denied by the CTA *en banc* in its Resolution[15] dated October 14, 2010.

The Issue

Essentially, the issue presented to the Court for resolution is whether the CTA *en banc* erred in holding that TSC's petition for review with the CTA was not prematurely filed.

The Court's Ruling

The petition is meritorious.

Section 112 of the NIRC provides for the rules to be followed in claiming a refund/tax credit of unutilized input VAT. Subsections (A) and (C) thereof provide that:

> Sec. 112. *Refunds or Tax Credits of Input Tax.* —
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> (A) *Zero-Rated or Effectively Zero-Rated Sales.*—Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to

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14 Id. at 52-53.

15 Id. at 82-121.

> any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> x x x x
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*.—In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.
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> x x x x

Any unutilized input VAT attributable to zero-rated or effectively zero-rated sales may be claimed as a refund/tax credit. Initially, claims for refund/tax credit for unutilized input VAT should be filed with the BIR, together with the complete documents in support of the claim. Pursuant to Section 112(A) of the NIRC, the administrative claim for refund/tax credit must be filed with the BIR within two years after the close of the taxable quarter when the sales were made.

Under Section 112(C) of the NIRC, the CIR is given 120 days from the submission of complete documents in support of the application for refund/tax credit within which to either grant or deny the claim. In case of (1) full or partial denial of the claim or (2) the failure of the CIR to act on the claim within 120 days from the submission of complete documents, the taxpayer-claimant may, within 30 days from receipt of the CIR decision denying the claim or after the lapse of the 120-day period, file a petition for review with the CTA.

The CTA *en banc* and the CTA First Division opined that a taxpayer- claimant is permitted to file a judicial claim for refund/tax credit with the CTA notwithstanding that the 120-day period given to the CIR to decide an administrative claim had not yet lapsed. That TSC, in view of the fact that the two-year prescriptive period for claiming refund/tax credit of unutilized input VAT under Section 112(A) of the NIRC is about to lapse, had the right to seek judicial redress for its claim for refund/tax credit *sans* compliance with the 120-day period under Section 112(C) of the NIRC.

The Court does not agree.

The pivotal question of whether the imminent lapse of the two-year period under Section 112(A) of the NIRC justifies the filing of a judicial claim with the CTA without awaiting the lapse of the 120-day period given to the CIR to decide the administrative claim for refund/tax credit had already been settled by the Court. In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[16] the Court held that:

> However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112([C]) of the NIRC, x x x:
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> x x x x
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> Section 112([C]) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
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> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
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> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
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> **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 ([C]) 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.**

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16 G.R. No. 184823, October 6, 2010, 632 SCRA 422.

> **In fact, applying the two-year period to judicial claims would render nugatory Section 112([C]) 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([C]) 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.**[17] (Citations omitted and emphasis ours)

Further, in *Commissioner of Internal Revenue v. San Roque Power Corporation*,[18] the Court emphasized that the 120-day period that is given to the CIR within which to decide claims for refund/tax credit of unutilized input VAT is **mandatory** and **jurisdictional**. The Court categorically held that the taxpayer-claimant must wait for the 120-day period to lapse, should there be no decision fully or partially denying the claim, before a petition for review may be filed with the CTA. Otherwise, the petition would be rendered premature and without a cause of action. Consequently, the **CTA does not have the jurisdiction to take cognizance of a petition for review filed by the taxpayer-claimant should there be no decision by the CIR on the claim for refund/tax credit or the 120-day period had not yet lapsed**. Thus:

> Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. x x x.
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> Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.
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> The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x

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17 Id. at 442-444.

18 G.R. No. 187485, February 12, 2013, 690 SCRA 336.

> deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review.[19] (Citations omitted and emphasis supplied)

That the two-year prescriptive period within which to file a claim for refund/tax credit of unutilized input VAT under Section 112(A) of the NIRC is about to lapse is inconsequential and would not justify the immediate filing of a petition for review with the CTA *sans* compliance with the 120-day mandatory period. To stress, under Section 112(C) of the NIRC, a taxpayer-claimant may only file a petition for review with the CTA within 30 days from either: (1) the receipt of the decision of the CIR denying, in full or in part, the claim for refund/tax credit; or (2) the lapse of the 120-day period given to the CIR to decide the claim for refund/tax credit.

The 120-day mandatory period may extend beyond the two-year prescriptive period for filing a claim for refund/tax credit under Section 112(A) of the NIRC. Consequently, the 30-day period given to the taxpayer-claimant likewise need not fall under the two-year prescriptive period. What matters is that the administrative claim for refund/tax credit of unutilized input VAT is filed with the BIR within the two-year prescriptive period. In *San Roque*, the Court explained that:

> There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.
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> *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 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**

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[19] Id. at 380-382.

> **refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner**. As held in *Aichi*, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund' **refers to applications for refund/credit with the CIR and not to appeals made to the CTA**."
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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.
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> The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain, and unequivocal language.[20] (Citation omitted and emphasis supplied)

It is undisputed that TSC filed its administrative claim for refund/tax credit with the BIR on March 11, 2002, which is still within the two-year prescriptive period under Section 112(A) of the NIRC. However, without waiting for the CIR decision or the lapse of the 120-day period from the time it submitted its complete documents in support of its claim, TSC filed a petition for review with the CTA on April 1, 2002 – a mere 21 days after it filed its administrative claim with the BIR. Clearly, TSC's petition for review with the CTA was prematurely filed; the CTA had no jurisdiction to take cognizance of TSC's petition since there was no decision as yet by the CIR denying TSC's claim, fully or partially, and the 120-day period under Section 112(C) of the NIRC had not yet lapsed.

Nevertheless, TSC submits that the requirement to exhaust the 120-day period under Section 112(C) of the NIRC prior to filing the judicial claim with the CTA is a species of the doctrine of exhaustion of administrative remedies; that the non-observance of the doctrine merely results in lack of cause of action, which ground may be waived for failure to timely invoke the same. TSC claims that the issue of its non-compliance with the 120-day period, as a ground to deny its claim, was already waived

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[20] Id. at 390-392.

since the CIR did not raise it in the proceedings before the CTA First Division.

The Court does not agree. In *San Roque*, the Court opined that a petition for review that is filed with the CTA without waiting for the 120-day mandatory period renders the same void. The Court then pointed out that a person committing a void act cannot claim or acquire any right from such void act. Thus:

> San Roque's failure to comply with the 120-day **mandatory** period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity.
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> It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.[21] (Citation omitted and emphasis supplied)

Accordingly, TSC's failure to comply with the 120-day mandatory period under Section 112(C) of the NIRC renders its petition for review with the CTA void. It is a mere scrap of paper from which TSC cannot derive or acquire any right notwithstanding the supposed failure on the part of the CIR to raise the issue of TSC's non-compliance with the 120-day period in the proceedings before the CTA First Division. In any case, the Court finds that the CIR raised the issue of TSC's non-compliance with the 120-days mandatory period in the motion for reconsideration that was filed with the CTA First Division. Further, the CIR likewise raised the same issue in the petition for review that was filed with the CTA *en banc*.

In insisting that the 120-day period under Section 112(C) of the NIRC is not mandatory, TSC further points out that the BIR, under BIR Ruling No. DA-489-03 dated December 10, 2003 and Revenue Memorandum Circular No. 49-03 (RMC No. 49-03) dated April 15, 2003, had already laid down the rule that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the

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[21] Id. at 382-383.

CTA. As such, the TSC claims, its failure to comply with the 120-day mandatory period is not cause to deny its judicial claim for refund/tax credit.

TSC's assertion is untenable. RMC No. 49-03, in part, reads:

> In cases where the taxpayer has filed a "Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.
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> If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of the investigation of the investigating/processing office. (Citation omitted and emphasis supplied)

In *San Roque*, the Court had already clarified that nowhere in RMC No. 49-03 was it stated that a taxpayer-claimant need not wait for the lapse of the 120-day mandatory period before it can file its judicial claim with the CTA. RMC No. 49-03 only authorized the BIR to continue the processing of a claim for refund/tax credit notwithstanding that the same had been appealed to the CTA, *viz*:

> There is nothing in RMC 49-03 that states, expressly or impliedly, that the taxpayer need not wait for the 120-day period to expire before filing a judicial claim with the CTA. RMC 49-03 merely authorizes the BIR to continue processing the administrative claim even after the

> taxpayer has filed its judicial claim, without saying that the taxpayer can file its judicial claim before the expiration of the 120-day period. RMC 49-03 states: "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (either the Bureau of Internal Revenue or the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance), the administrative agency and the court may act on the case separately." Thus, if the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period.
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> On the other hand, if the taxpayer files its judicial claim after the 120-day period, the Commissioner can still continue to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must ***necessarily*** continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings.
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> **What is important, as far as the present cases are concerned, is that the mere filing by a taxpayer of a judicial claim with the CTA before the expiration of the 120-day period cannot operate to divest the Commissioner of his jurisdiction to decide an administrative claim within the 120-day mandatory period, *unless* the Commissioner has clearly given cause for equitable estoppel to apply as expressly recognized in Section 246 of the Tax Code.**[22] (Citation omitted and emphasis supplied)

As regards BIR Ruling No. DA-489-03, the Court, in *San Roque*, held that:

> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
>
> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular

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[22] Id. at 399-400.

> taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.
>
> x x x x
>
> 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**. x x x.[23] (Citation omitted and emphasis supplied)

Indeed, BIR Ruling No. DA-489-03 provided that the taxpayer-claimant may already file a judicial claim for refund/tax credit with the CTA notwithstanding that the 120-day mandatory period under Section 112(C) of the NIRC had not yet lapsed. Being a general interpretative rule, the CIR is barred from questioning the CTA's assumption of jurisdiction on the ground that the 120-day mandatory period under Section 112(C) of the NIRC had not yet lapsed since *estoppel* under Section 246[24] of the NIRC had already set in. Nevertheless, the Court clarified that taxpayers can only rely on BIR Ruling No. DA-489-03 **from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010**, where it was held that the 120-day period under Section 112(C) of the NIRC is mandatory and jurisdictional.

TSC filed its judicial claim for refund/tax credit of its unutilized input VAT with the CTA on April 1, 2002 – more than a year before the issuance of BIR Ruling No. DA-489-03. Accordingly, TSC cannot benefit from the declaration laid down in BIR Ruling No. DA-489-03. As stressed by the Court in *San Roque*, prior to the issuance of BIR Ruling No. DA-489-03, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law.

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[23] Id. at 401, 404.

[24] Section 246 of the NIRC of 1997 states that:

Section 246. Non-Retroactivity of Rulings.–Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

TSC nevertheless claims that the Court's ruling in *Aichi* should only be applied prospectively; that prior to *Aichi*, the Court supposedly ruled that a taxpayer-claimant need not await the lapse of the 120-day period under Section 112(C) of the NIRC before filing a petition for review with the CTA as shown by the Court's ruling in the cases of *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,*[25] *San Roque Power Corporation v. Commissioner of Internal Revenue,*[26] and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*.[27]

The Court does not agree. There is no basis to TSC's claim that this Court, prior to *Aichi*, had ruled that a taxpayer may file a judicial claim for refund/tax credit with the CTA *sans* compliance with the 120-day mandatory period. The cases cited by TSC do not even remotely support its contention. Indeed, nowhere in the said cases did the Court even discuss the 120-day mandatory period under Section 112(C) of the NIRC.

In *Intel*, the administrative claim for refund/tax credit of unutilized input VAT was filed with the BIR on May 18, 1999. Due to the CIR's inaction on its claim for refund/tax credit, the petitioner therein filed a petition for review with CTA on June 30, 2000 – more than a year after it filed its administrative claim with the BIR. Further, the issue in the said case is only limited to whether sales invoices, which do not bear the BIR authority to print and do not indicate the TIN-V, are sufficient evidence to prove that the taxpayer is engaged in sales which are zero-rated or effectively zero-rated for purposes of claiming unutilized input VAT refund/tax credit.

Similarly, in *San Roque Power Corporation v. Commissioner of Internal Revenue*, the Court did not even remotely touch on the issue of the application of the 120-day mandatory period under Section 112(C) of the NIRC. The petitioner in the said case filed administrative claims for refund/tax credit of its unutilized input VAT for the first, second, third, and fourth quarters of the taxable year 2002 on June 19, 2002, October 5, 2002, February 27, 2003, and May 29, 2003, respectively. The CIR failed to act on the said claims for refund/tax credit within the 120-day period, which prompted the petitioner therein to file a petition for review with the CTA on April 5, 2004. Moreover, the issue that was resolved by the Court in the said case is whether the petitioner therein was able to prove the existence of zero-rated or effectively zero-rated sales, to which creditable input taxes may be attributed.

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25 550 Phil. 751 (2007).
26 G.R. No. 180345, November 25, 2009, 605 SCRA 536.
27 G.R. No. 182364, August 3, 2010, 626 SCRA 567.

Likewise, *AT&T Communications* only dealt with the substantiation requirements in claiming refund/tax credit of unutilized input VAT, *i.e.,* whether VAT invoices are sufficient evidence to prove the existence of zero-rated or effectively zero-rated sales.

Finally, even if TSC was able to substantiate, through the documents it submitted, that it is indeed entitled to a refund/tax credit of its unutilized input VAT for the taxable year 2000, its claim would still have to be denied. "Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same."[28] "The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied **all the statutory and administrative requirements** to be entitled to the tax refund."[29] TSC, in prematurely filing a petition for review with the CTA, failed to comply with the 120-day mandatory period under Section 112(C) of the NIRC. Thus, TSC's claim for refund/tax credit of its unutilized input VAT should be denied.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition is **GRANTED**. The Decision dated June 16, 2010 and the Resolution dated October 14, 2010 of the Court of Tax Appeals *en banc* in CTA EB No. 504 are hereby **REVERSED** and **SET ASIDE**. Team Sual Corporation's claim for refund/tax credit of its unutilized input valued-added tax for the taxable year 2000 is **DENIED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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28 *Phil. Geothermal, Inc. v. Commissioner of Internal Revenue*, 503 Phil. 278, 286 (2005).

29 *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010, 624 SCRA 340, 358.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
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