Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MINDANAO II GEOTHERMAL PARTNERSHIP,	**G.R. No. 204745**
Petitioner,	Present:
- versus -	SERENO, *C.J.*, Chairperson, CARPIO,* LEONARDO-DE CASTRO, REYES,** and PERLAS-BERNABE, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	DEC 0 8 2014

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 5, 2012 and the Resolution[3] dated November 29, 2012 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 750, which affirmed the Resolutions dated January 20, 2011[4] and March 15, 2011[5] of the CTA Second Division (CTA Division) in CTA Case Nos. 8082 and 8106 dismissing the claim for refund of excess input value-added tax (VAT) of petitioner Mindanao II Geothermal Partnership (petitioner) in CTA Case No. 8082 for being prematurely filed.

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* Designated Acting Member per Special Order No. 1899 dated December 3, 2014.

** Designated Acting Member per Special Order No. 1892 dated November 28, 2014.

1 *Rollo*, pp. 29-80.

2 Id. at 9-16. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring, and Associate Justice Lovell R. Bautista, dissenting.

3 Id. at 22-27. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring, and Associate Justice Lovell R. Bautista, dissenting. Associate Justice Olga Palanca-Enriquez was on leave.

4 Id. at 126-130. Signed by Associate Justices Caesar A. Casanova and Cielito N. Mindaro-Grulla. Associate Justice Juanito C. Castañeda, Jr. was on leave.

5 Id. at 140-141. Signed by Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, and Cielito N. Mindaro-Grulla.

The Facts

Petitioner, a partnership duly registered with the Securities and Exchange Commission, is a VAT-registered entity with VAT/ Tax Identification No. 004-766-953, and is engaged in the generation, collection, and distribution of electricity.[6] On March 11, 1997, it entered into a Build-Operate-Transfer Contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the finance, engineering, supply, installation, testing, commissioning, operation, and maintenance of a 48.25 megawatt geothermal power plant, provided that the PNOC-EDC shall supply and deliver steam to petitioner at no cost. In turn, petitioner shall convert the steam into electric capacity and energy for the PNOC-EDC, and shall deliver the same to the National Power Corporation for and on behalf of the PNOC-EDC.[7] For this purpose, petitioner's 48.25 megawatt geothermal power plant was accredited by the Department of Energy as a Block Power Production Facility, pursuant to the provisions of Executive Order No. 215. The Energy Regulatory Commission likewise issued Certificate of Compliance Nos. 03-10-GXT25-0025 and 08-12-GXT25-0025 in petitioner's favor.[8]

On April 24, 2008, July 25, 2008, October 24, 2008, and January 2, 2009, petitioner filed its quarterly VAT returns for the four (4) quarters of 2008 reflecting the amount of ₱6,149,256.25 as unutilized/excess input VAT.[9]

On December 28, 2009, petitioner filed before the Bureau of Internal Revenue (BIR) District Office No. 108 of Kidapawan City, Cotabato an administrative claim for refund/credit of its unapplied and unutilized input VAT for the year 2008 in the aforesaid amount.[10] Thereafter, or on March 30, 2010, petitioner filed its judicial claim for refund/credit of its unutilized/excess input VAT for the first quarter of 2008 in the amount of ₱1,624,603.33[11] before the CTA, docketed as CTA Case No. 8082.[12] About two (2) months later, or on May 27, 2010, petitioner filed its judicial claim for refund/credit of its unutilized/excess input VAT for the second to fourth quarters of 2008 in the amount of ₱4,524,652.92 [13] before the CTA, docketed as CTA Case No. 8106. Eventually, the two cases were consolidated by the CTA.[14]

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6 Id. at 11.
7 Id. at 10.
8 Id. at 10-11.
9 Id. at 11.
10 Id.
11 Id. at 37 and 112.
12 Id. at 11.
13 Id. at 37.
14 Id. at 11.

On December 7, 2010, respondent Commissioner of Internal Revenue (CIR) filed a Motion to Dismiss,[15] praying for the dismissal of CTA Case No. 8082 on the ground of lack of jurisdiction.[16] Relying on the case of *CIR v. Aichi Forging Company of Asia, Inc.* (*Aichi*),[17] the CIR contended that since the judicial claim for refund/credit in Case No. 8082 was filed only 107 days from the filing of the administrative claim,[18] it should be dismissed for being prematurely filed for petitioner's failure to comply with the 120-day period prescribed under Section 112 (D) of the National Internal Revenue Code (NIRC).[19]

The CTA Division Ruling

In a Resolution[20] dated January 20, 2011, the CTA Division granted the CIR's motion to dismiss, and accordingly, dismissed CTA Case No. 8082 for being prematurely filed.[21] It agreed with the CIR's contention and held that pursuant to jurisprudence laid down in *Aichi*, the expiration of the 120-day period is crucial before a taxpayer may file a judicial claim for refund before the CTA.[22] The CTA Division then concluded that petitioner's premature filing of its judicial claim for refund/credit warrants a dismissal inasmuch as the CTA acquired no jurisdiction over the same.[23]

Petitioner moved for reconsideration,[24] which was, however, denied in a Resolution[25] dated March 15, 2011. Aggrieved, petitioner appealed to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision[26] dated July 5, 2012, the CTA *En Banc* dismissed petitioner's appeal for lack of merit, and thereby affirmed the ruling of the CTA Division. Also citing *Aichi*, the CTA *En Banc* held that compliance with the 120-day period stated in Section 112 (D) of the NIRC is a mandatory and judicial requisite in the filing of a judicial claim for refund/credit of input VAT before the CTA.[27] Hence, petitioner's non-compliance therewith is fatal to its refund/credit claim in Case No. 8082, and

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15 Id. at 112-115. See also id. at 12.
16 Id. at 114.
17 G.R. No. 184823, October 6, 2010, 632 SCRA 422.
18 *Rollo*, p. 112.
19 Id. at 112-113.
20 Id. at 126-130.
21 Id. at 130.
22 Id. at 128-129.
23 Id. at 128-130.
24 See Motion for Reconsideration dated February 4, 2011; id. at 131-139.
25 Id. at 140-141.
26 Id. at 9-16.
27 See id. at 13-14.

as such, the CTA Division correctly dismissed the same on the ground of prematurity.[28]

Undaunted, petitioner moved for reconsideration,[29] which was, however, denied in a Resolution[30] dated November 29, 2012, hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CTA *En Banc* correctly affirmed the CTA Division's dismissal of petitioner's judicial claim for refund/credit of input VAT in CTA Case No. 8082 for being prematurely filed.

The Court's Ruling

The petition is meritorious.

Section 112 of the NIRC, as amended by RA 9337,[31] 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: x x x.
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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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28 Id. at 12-15.

29 See Motion for Reconsideration dated July 26, 2012; id. at 191-216.

30 Id. at 22-27.

31 Entitled "AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES." Its effectivity clause provides that it shall take effect on July 1, 2005 but due to a Temporary Restraining Order (TRO) filed by some taxpayers, the law took effect on November 1, 2005 when the TRO was finally lifted by the Court. (Republic of the Philippines, Bureau of Internal Revenue: Tax Code <http://www.bir.gov.ph/index.php/tax-code.html> [visited December 2, 2014].)

> 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 (Emphases and underscoring supplied)

In the *Aichi* case cited by both the CTA Division and the CTA *En Banc*, the Court held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund/credit of input VAT before the CTA. Consequently, its non-observance would lead to the dismissal of the judicial claim on the ground of lack of jurisdiction. *Aichi* also clarified that the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims.[32] Succinctly put, once the administrative claim is filed within the two (2)-year prescriptive period, the claimant must wait for the 120-day period to end and, thereafter, he is given a 30-day period to file his judicial claim before the CTA, even if said 120-day and 30-day periods would exceed the aforementioned two (2)-year prescriptive period.[33]

However, in *CIR v. San Roque Power Corporation* (*San Roque*),[34] the Court recognized an exception to the mandatory and jurisdictional nature of the 120-day period. It ruled that BIR Ruling No. DA-489-03 dated December 10, 2003 provided a valid claim for equitable *estoppel* under Section 246[35] of the NIRC. In essence, the aforesaid BIR Ruling stated 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."[36]

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32 See *CIR v. Aichi Forging Company of Asia, Inc.*, supra note 17, at 435-445.

33 See *Taganito Mining Corporation v. CIR*, G.R. No. 197591, June 18, 2014.

34 G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

35 Section 246 of the NIRC provides:

> SEC. 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:
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> (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;
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> (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
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> (c) Where the taxpayer acted in bad faith. (Emphases and underscoring supplied)

36 *CIR v. San Roque Power Corporation*, supra note 34, at 401.

Recently, in *Taganito Mining Corporation v. CIR*,[37] the Court reconciled the pronouncements in the *Aichi* and *San Roque* cases in the following manner:

> Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that **during the period December 10, 2003** (when BIR Ruling No. DA-489-03 was issued) **to October 6, 2010** (when the *Aichi* case was promulgated), **taxpayers-claimants need not observe the 120-day period** before it could file a judicial claim for refund of excess input VAT before the CTA. **Before and after the aforementioned period (*i.e.*, December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim**. (Emphases and underscoring supplied)[38]

In this case, records disclose that petitioner filed its administrative and judicial claims for refund/credit of its input VAT in CTA Case No. 8082 on December 28, 2009 and March 30, 2010, respectively, or during the period when BIR Ruling No. DA-489-03 was in place, *i.e.*, from December 10, 2003 to October 6, 2010. As such, it need not wait for the expiration of the 120-day period before filing its judicial claim before the CTA, and hence, is deemed timely filed. In view of the foregoing, both the CTA Division and the CTA *En Banc* erred in dismissing outright petitioner's claim on the ground of prematurity.

Be that as it may, the Court is not inclined to grant outright petitioner's claim for refund/credit of input VAT in CTA Case No. 8082 in the amount of □1,624,603.33 representing unutilized input VAT for the first quarter of 2008. This is because the determination of petitioner's entitlement to such claim would necessarily involve questions of fact, which are not reviewable and cannot be passed upon by the Court in the exercise of its power of review under Rule 45 of the Rules of Court.[39] In addition, the CTA Division, as affirmed by the CTA *En Banc*, dismissed the judicial claim on a preliminary procedural technicality. Hence, the Court deems it prudent to remand the case to the CTA Division for resolution of the instant case on the merits.

WHEREFORE, the petition is **GRANTED**. The Decision dated July 5, 2012 and the Resolution dated November 29, 2012 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 750 are hereby **REVERSED** and **SET ASIDE**. Accordingly, CTA Case No. 8082 is **REMANDED** to the CTA Second Division for its resolution on the merits.

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37 Supra note 33.

38 Id.

39 See *Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH) v. Asia Pacific Integrated Steel Corporation*, G.R. No. 192100, March 12, 2014.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

ANTONIO T. CARPIO
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
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