Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SAN ROQUE POWER CORPORATION, Petitioner, - *versus* - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**G.R. No. 205543** Present: SERENO, *CJ.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, and REYES, *JJ.* Promulgated: **JUN 30 2014**

x- -x

DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 16, Section 1 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals, in relation to Rule 45 of the Rules of Court, filed by San Roque Power Corporation (San Roque), seeking the reversal of the Decision[1] dated June 4, 2012 and Resolution[2] dated January 21, 2013 of the Court of Tax Appeals (CTA) *en banc* in C.T.A. EB No. 789. The CTA *en banc*, in its assailed Decision, affirmed the Decision[3] dated January 10, 2011 of the CTA First Division in C.T.A. Case Nos. 7744 & 7802, which dismissed the judicial claims of San Roque for the refund or tax credit of its excess/unutilized creditable input taxes for the four quarters of 2006; and in its assailed Resolution, denied the Motion for Reconsideration of San Roque.

---

1 *Rollo*, pp. 95-119; penned by Associate Justice Olga Palanca-Enriquez with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring, and Associate Justice Lovell R. Bautista, dissenting.

2 Id. at 88-91; penned by Associate Justice Esperanza R. Fabon-Victorino with Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justices Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring, and Associate Justice Lovell R. Bautista, dissenting.

3 Id. at 125-133; penned by Presiding Justice Ernesto D. Acosta with Associate Justices Erlinda P. Uy and Esperanza Fabon-Victorino, concurring.

San Roque is a domestic corporation principally engaged in the power-generation business. It is registered with the Board of Investments on a preferred pioneer status for the construction and operation of hydroelectric power-generating plants, as well as with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer.

On October 11, 1997, San Roque entered into a Power Purchase Agreement (PPA) with the National Power Corporation (NPC) to develop the San Roque hydroelectric facilities located at Lower Agno River in San Miguel, Pangasinan (Project) on a build-operate-transfer basis. During the co-operation period of 25 years, commencing from the completion date of the power station, all the electricity generated by the Project would be sold to and purchased exclusively by NPC. San Roque commenced commercial operations in May 2003.

San Roque alleged that in 2006, it incurred creditable input taxes from its purchase of capital goods, importation of goods other than capital goods, and payment for the services of non-residents. San Roque subsequently filed with the BIR separate claims for refund or tax credit of its creditable input taxes for all four quarters of 2006. San Roque averred that it did not have any output taxes to which it could have applied said creditable input taxes because: (a) the sale by San Roque of electricity, generated through hydropower, a renewable source of energy, is subject to 0% VAT under Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended; and (b) NPC is exempted from all taxes, direct and indirect, under Republic Act No. 6395, otherwise known as the NPC Charter, so the sale by San Roque of electricity exclusively to NPC, under the PPA dated October 11, 1997, is effectively zero-rated under Section 108(B)(3) of the NIRC of 1997, as amended.[4] When the Commissioner of Internal Revenue (CIR) failed to take action on its administrative claims, San Roque filed two separate Petitions for Review before the CTA, particularly, C.T.A. Case No. 7744 (covering the first, third, and fourth quarters of 2006) and C.T.A. Case No. 7802 (covering the second quarter of 2006). The two cases were consolidated before the CTA First Division.

---

[4] SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

x x x x

B. *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered person shall be subject to zero percent (0%) rate:

x x x x

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate.

x x x x

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.

The details concerning the administrative and judicial claims of San Roque for refund or tax credit of its creditable input taxes for the four quarters of 2006 are summarized in table form below:

Tax Period 2006	**VAT Return**	**Administrative Claim**	**Judicial Claim**
First Quarter	Filed: April 21, 2006 Amended: November 7, 2006	Filed: April 11, 2007 Amount: ₱2,857,174.95 Amended: March 10, 2008 Amount: ₱3,128,290.74	Filed: March 28, 2008 CTA Case No. 7744 Amount: ₱12,114,877.34 (for 1st, 3rd, and 4th Quarters of 2006)
Second Quarter	Filed: July 15, 2006 Amended: November 8, 2006 Amended: February 5, 2007	Filed: July 10, 2007 Amount: ₱15,044,030.82 Amended: March 10, 2008 Amount: ₱15,548,630.55	Filed: June 27, 2008 CTA Case No. 7802 Amount: ₱15,548,630.55
Third Quarter	Filed: October 19, 2006 Amended: February 5, 2007	Filed: August 31, 2007 Amount: ₱4,122,741.54 Amended: September 21, 2007 Amount: ₱3,675,574.21	Filed: March 28, 2008 CTA Case No. 7744 Amount: ₱12,114,877.34 (for 1st, 3rd, and 4th Quarters of 2006)
Fourth Quarter	Filed: January 22, 2007 Amended: May 12, 2007	Filed: August 31, 2007 Amount: ₱6,223,682.61 Amended: September 21, 2007 Amount: ₱5,311,012.39	Filed: March 28, 2008 CTA Case No. 7744 Amount: ₱12,114,877.34 (for 1st, 3rd, and 4th Quarters of 2006)

On January 10, 2011, the CTA First Division rendered a Decision on the consolidated judicial claims of San Roque, with the following findings:

> As to [San Roque's] original applications for refund is concerned, the Commissioner of Internal Revenue has one hundred twenty days or until August 9, 2007, November 7, 2007 and December 29, 2007 within which to make decision. After the lapse of the one hundred twenty[-]day period, [San Roque] should have elevated its claim with the Court within thirty (30) days starting from August 10, 2007 to September 8, 2007 for its first quarter claim, November 8, 2007 to December 7, 2007 for its second quarter claim, and December 30, 2007 to January 28, 2008 for its third and fourth quarters claims pursuant to Section 112(D) of the NIRC in relation to Section 11 of [Republic Act No.] 1125, as amended by Section 9 of [Republic Act No.] 9282. Unfortunately, the Petitions for Review on March 28, 2008 for the first, third and fourth quarters claims and on June 27, 2008 for the second quarter claim, were filed beyond the 30-day period set by law and therefore, the Court has no jurisdiction to entertain the subject matter of the case considering that the 30-day appeal period provided under Section 11 of [Republic Act No.] 1125 is a jurisdictional requirement as held in the case of *Ker & Co., Ltd. vs. Court of Tax Appeals*, x x x:

x x x x

Likewise, if we reckoned the one hundred twenty[-]day period from the date of the amended applications for refund on March 10, 2008 for the first and second quarters claims and September 21, 2007 for the third and fourth quarters claims, both Petitions for Review would still be denied.

With respect to the amended application for refund of input tax for the first and second quarters of 2006 on March 10, 2008, the Commissioner of Internal Revenue has one hundred twenty days or until July 8, 2008 within which to make a decision. After the lapse of the said 120-day period, [San Roque] had thirty days or until August 7, 2008 within which to appeal to this Court. [San Roque], however, appealed via Petitions for Review on March 28, 2008 for its first quarter claim and on June 27, 2008 for its second quarter claim, which are clearly before the lapse of the 120-day period. This violates the rule on exhaustion of administrative remedies.

x x x x

The premature invocation of the court's intervention, *like the instant Petitions for Review*, is fatal to one's cause of action; and the case is susceptible of dismissal for failure to state a cause of action. Moreover, such premature appeal will also warrant the dismissal of the Petitions for Review inasmuch as no jurisdiction was acquired by the Court in line with the recent pronouncement made by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*

As far as the amended application for refund covering the third and fourth quarter[s] filed on September 21, 2007 is concerned, the Commissioner of Internal Revenue has one hundred twenty days or until January 19, 2008 within which to make a decision. After the lapse of the said one hundred twenty day[-]period, [San Roque] should have elevated its claim with the Court within thirty (30) days starting from January 20, 2008 to February 18, 2008. Unfortunately, the Petition for Review covering said third and fourth quarter[s] was filed March 28, 2008 beyond the 30-day period set by law and therefore, the Court has no jurisdiction to entertain the subject matter of the case.

Other issues raised now become moot and academic.[5]

The dispositive portion of the foregoing Decision of the CTA First Division reads:

WHEREFORE, these consolidated Petitions for Review, CTA Case Nos. 7744 covering the first, third and fourth quarter[s] and 7802 covering [the] second quarter are hereby **DISMISSED** since the Court has no jurisdiction thereof.[6]

---

5 *Rollo*, pp. 130-132.

6 Id. at 132.

San Roque filed a Motion for Reconsideration but it was denied by the CTA First Division in a Resolution[7] dated May 31, 2011.

San Roque filed a Petition for Review before the CTA *en banc*, protesting against the retroactive application of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc*.[8] In *Aichi*, promulgated on October 6, 2010, the Supreme Court strictly required compliance with the 120+30 day periods under Section 112 of the NIRC of 1997, as amended.

In its Decision dated June 4, 2012, the CTA *en banc* upheld the application of *Aichi* and explained that there was no retroactive application of the same. The 120+30 day periods had already been provided in the NIRC of 1997, as amended, even before the promulgation of *Aichi*. *Aichi* merely interpreted the provisions of Section 112 of the NIRC of 1997, as amended.

The CTA *en banc* applied the 120+30 day periods and found, same as the CTA First Division, that while San Roque timely filed its administrative claims for refund or tax credit of creditable input taxes for the four quarters of 2006, it filed its judicial claims beyond the 30-day prescriptive period, reckoned from the lapse of the 120-day period for the CIR to act on the original administrative claims. The CTA *en banc* stressed that the 30-day period within which to appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction.[9]

The CTA *en banc* further stated in its Decision that even if it counted the 120-day period from the filing of the amended administrative claims for refund on March 10, 2008 for the first and second quarter claims, and on September 21, 2007 for the third and fourth quarter claims, the CTA still did not acquire jurisdiction over C.T.A. Case Nos. 7744 and 7802. Following the 120+30 day periods, the judicial claims of San Roque for the first and second quarters were prematurely filed, while the judicial claims for the third and fourth quarters were filed late.

Lastly, the CTA *en banc* adjudged that San Roque cannot rely on *San Roque Power Corporation v. Commissioner of Internal Revenue*, promulgated on November 25, 2009 [*San Roque (2009)*],[10] which granted the claims for refund or tax credit of the creditable input taxes of San Roque for the four quarters of 2002, on the following grounds: (a) The main issue in *San Roque (2009)* was whether or not San Roque had zero-rated or effectively zero-rated sales in 2002, to which the creditable input taxes could be attributed, while the pivotal issue in the instant case is whether or not San

---

7 Id. at 145-157; penned by Presiding Justice Ernesto D. Acosta with Associate Justices Erlinda P. Uy, on leave, and Esperanza R. Fabon-Victorino, concurring.

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

9 Citing *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, 550 Phil. 316, 324 (2007).

10 G.R. No. 180345, November 25, 2009, 605 SCRA 536.

Roque complied with the prescriptive periods under Section 112 of the NIRC of 1997, as amended, when it filed its administrative and judicial claims for refund or tax credit of its creditable input taxes for the four quarters of 2006; (b) The claims for refund or tax credit in *San Roque (2009)* involved the four quarters of 2002, when sales of electric power by generation companies to the NPC were explicitly VAT zero-rated under Section 6 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001. Eventually, Republic Act No. 9337, otherwise known as the Extended VAT Law (EVAT Law), took effect on November 1, 2005, and Section 24 of said law already expressly repealed Section 6 of the EPIRA; and (3) In *San Roque (2009)*, San Roque failed to comply with Section 112(A)[11] of the NIRC of 1997, as amended, and prematurely filed its administrative claim for the third quarter of 2002 on October 25, 2002, when its zero-rated sales of electric power to NPC were made only in the fourth quarter of 2002, which closed on December 31. 2002. In the instant case, San Roque did not comply with the 120+30 day periods under Section 112(C) of the NIRC, as amended, thus, the CTA did not acquire jurisdiction over the judicial claims.

In the end, the CTA *en banc* decreed:

> Finding no reversible error, we affirm the assailed Decision dated January 10, 2011 and Resolution dated May 31, 2011 rendered by the First Division in C.T.A. Case Nos. 7744 and 7802.
>
> **WHEREFORE**, premises considered, the present Petition for Review is hereby **DENIED**, and accordingly **DISMISSED** for lack of merit.[12]

In its Resolution dated January 21, 2013, the CTA *en banc* denied the Motion for Reconsideration of San Roque.

Hence, San Roque filed the Petition at bar assigning six reversible errors on the part of the CTA *en banc*, *viz*:

> I.
>
> THE HONORABLE CTA *EN BANC* COMMITTED REVERSIBLE ERROR IN DISMISSING [SAN ROQUE'S] PETITIONS FOR REVIEW AND APPLYING RETROACTIVELY THE AICHI RULING IN THAT AT THE TIME IT FILED ITS PETITIONS FOR REVIEW, [SAN ROQUE] ACTED IN GOOD FAITH IN ACCORDANCE WITH THE THEN PREVAILING RULE AND JURISPRUDENCE CONSISTENTLY UPHELD FOR ALMOST A DECADE BY THE HONORABLE CTA IN THE ABSENCE THEN OF A RULING FROM THIS HONORABLE COURT.

---

11 Under Section 112(A) of the NIRC of 1997, as amended, the VAT-registered taxpayer, "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." (Emphasis supplied.)

12 *Rollo*, p. 114.

II.

THE HONORABLE CTA *EN BANC* COMMITTED REVERSIBLE ERROR IN APPLYING THE AICHI RULING TO [SAN ROQUE'S] CLAIM FILED YEARS BEFORE ITS PROMULGATION IN THAT THE AICHI RULING, WHICH LAID DOWN A NEW RULE OF PROCEDURE WHICH AFFECTS SUSBSTANTIVE RIGHTS, SHOULD BE APPLIED PROSPECTIVELY IN LIGHT OF THE LAW AND SETTLED JURISPRUDENCE UPHOLDING THE PRINCIPLE OF PROSPECTIVITY.

III.

THE HONORABLE CTA *EN BANC* COMMITTED REVERSIBLE ERROR IN APPLYING RETROACTIVELY THE AICHI RULING IN THAT ITS RETROACTIVE APPLICATION TO [SAN ROQUE'S] PENDING CLAIM WILL BE UNJUST AND UNFAIR AND WILL CERTAINLY PRODUCE SUBSTANTIAL INEQUITABLE RESULTS AND GRAVE INJUSTICE TO [SAN ROQUE] AND MANY TAXPAYERS WHO RELIED IN GOOD FAITH ON ITS THEN CONSISTENT RULINGS FOR ALMOST A DECADE.

IV.

THE HONORABLE CTA *EN BANC* COMMITTED REVERSIBLE ERROR IN APPLYING RETROACTIVELY THE AICHI RULING IN THAT ITS RETROACTIVE APPLICATION GOES AGAINST THE BASIC POLICIES AND THE SPIRIT OF THE EPIRA LAW.

V.

[SAN ROQUE] SHOULD BE GIVEN THE SAME TREATMENT AS THOSE DECIDED IN PRECEDENT CASES PROMULGATED PRIOR TO THE PROMULGATION OF THE AICHI RULING IN ACCORDANCE WITH THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION AND THE DOCTRINE OF EQUITABLE ESTOPPEL.

VI.

RECENTLY, THIS HONORABLE COURT *EN BANC* HAS CATEGORICALLY RULED THAT THE AICHI RULING SHALL BE APPLIED PROSPECTIVELY.[13]

There is no merit in the instant Petition.

At the crux of the controversy are the prescriptive periods for the filing of administrative and judicial claims for refund or tax credit of creditable input taxes under Section 112 of the NIRC of 1997, as amended, which provide:

---

13 Id. at 50-51.

> *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
>
> x x x x
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeal. (Emphases supplied.)

Contrary to the assertion of San Roque, it was only in *Aichi* that the issue of the prescriptive periods under Section 112 of the NIRC of 1997, as amended, was first squarely raised before and addressed by the Court. The Court significantly ruled in *Aichi* that: (a) Section 112 of the NIRC of 1997, as amended, particularly governs claims for refund or tax credit of creditable input taxes, which is distinct from Sections 204(C) and 229 of the same statute which concern erroneously or illegally collected taxes; (b) The two-year prescriptive period under Section 112(A) of the NIRC of 1997, as amended, pertains only to administrative claims for refund or tax credit of creditable input taxes, and not to judicial claims for the same; (c) Following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[14] the two-year prescriptive period under Section 112(A) of the NIRC of 1997, as amended, is reckoned from the close of the taxable quarter when the sales were made; (d) In determining the end of the two-year prescriptive period under Section 112(A) of the NIRC of 1997, as amended, the Administrative Code of 1987 prevails over the Civil Code, so that a year is composed of 12 calendar months; and (e) The 120-day period, under what is presently Section 112(C) of the NIRC of 1997, as amended, is crucial in filing an appeal with the CTA, for whether the CIR issues a decision on the administrative claim before the lapse of the 120-day period or the CIR made no decision on the administrative claim after the 120-day period, the taxpayer has 30 days within which to file an appeal with the CTA.

---

[14] 586 Phil. 712 (2008).

The Court *en banc* had the opportunity to further expound on the prescriptive periods under Section 112 of the NIRC of 1997, as amended, in its Decision in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*, *Taganito Mining Corporation v. Commissioner of Internal Revenue*, and *Philex Mining Corporation v. Commissioner of Internal Revenue*, promulgated in 2013 [*San Roque (2013)*].[15]

According to the Court in *San Roque (2013)*, the prescriptive periods under Section 112 of the NIRC of 1997, as amended, shall be interpreted as follows:

> 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).[16] (Emphasis deleted.)

The Court emphasized in *San Roque (2013)* that a claim for refund or tax credit, like a claim for tax exemption, is construed strictly against the taxpayer. It cited *Aichi* and pointed out that one of the conditions for a judicial claim for refund or tax credit under the VAT system is compliance with the 120+30 day mandatory and jurisdictional periods under Section 112(C) of the NIRC of 1997, as amended.[17]

Guided by the aforementioned law and jurisprudence, the Court now determines whether or not San Roque complied in the instant case with the prescriptive periods under Section 112 of the NIRC of 1997, as amended.

As the following tables will show, San Roque filed its administrative claims for refund or tax credit of its creditable input taxes for the four quarters of 2006 within the two-year prescriptive period under Section 112(A) of the NIRC of 1997, as amended, whether reckoned from the close of the taxable quarter when the relevant zero-rated or effectively zero-rated sales were made, in accordance with *Mirant* and *Aichi*; or from the date of filing of the quarterly VAT return and payment of the tax due 20 days after the close of the taxable quarter, following *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* [18]:

---

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

16 Id. at 392.

17 Id. at 399.

18 551 Phil. 519 (2007). In *San Roque (2013)*, the Court ruled that *Atlas* "should be effective only from its promulgation on 8 June 2007 until its abandonment on September 12, 2008 in *Mirant*" (Id. at 397). Some of the administrative claims of San Roque in the present case were filed within the period of effectivity of *Atlas*.

.

According to *Mirant* and *Aichi*			
Tax Period 2006	**Close of Quarter When Relevant Sales were Made**	**End of the Two-Year Prescriptive Period**	**Date of Filing of Administrative Claim**
First Quarter	March 31, 2006	March 31, 2008	April 11, 2007
Second Quarter	June 30, 2006	June 30, 2008	July 10, 2007
Third Quarter	September 30, 2006	September 30, 2008	August 31, 2007
Fourth Quarter	December 31, 2006	December 31, 2008	August 31, 2007

According to *Atlas*			
Tax Period 2006	**Filing of Returns and Payment of Taxes 20 Days after the Close of Taxable Quarter**	**End of the Two-Year Prescriptive Period**	**Date of Filing of Administrative Claim**
First Quarter	April 20, 2006	April 20, 2008	April 11, 2007
Second Quarter	July 20, 2006	July 20, 2008	July 10, 2007
Third Quarter	October 20, 2006	October 20, 2008	August 31, 2007
Fourth Quarter	January 21, 2006[19]	January 21, 2009	August 31, 2007

San Roque, however, failed to comply with the 120+30 day periods for the filing of its judicial claims, as can be gleaned from the table below:

Tax Period 2006	**Date of Filing of Administrative Claim**	**End of 120-Day Period for CIR to Decide**	**End of 30-day Period to File Appeal with CTA**	**Date of Actual Filing of Judicial Claim**	**No. of Days: End of 120-day Period to Filing of Judicial Claim**
First Quarter	April 11, 2007	August 9, 2007	September 8, 2007[20]	March 28, 2008	232 days
Second Quarter	July 10, 2007	November 7, 2007	December 7, 2007	June 27, 2008	233 days
Third Quarter	August 31, 2007	December 29, 2007	January 28, 2008	March 28, 2008	90 days
Fourth Quarter	August 31, 2007	December 29, 2007	January 28, 2008	March 28, 2008	90 days

[19] January 20, 2006 fell on a Sunday.

[20] September 8, 2007 is a Saturday. San Roque had until September 10, 2007 to file its Petition for Review with the CTA.

Because San Roque filed C.T.A. Case Nos. 7744 and 7802 beyond the 30-day mandatory period under Section 112(C) of the NIRC of 1997, as amended, the CTA First Division did not acquire jurisdiction over said cases and correctly dismissed the same.

San Roque in the present case is in exactly the same position as Philex Mining Corporation (Philex) in *San Roque (2013)*. Hence, the ruling of the Court on the judicial claim of Philex in *San Roque (2013)* is worth reproducing hereunder:

> Philex timely filed its administrative claim on 20 March 2006, within the two-year prescriptive period. Even if the two-year prescriptive period is computed from the date of payment of the output VAT under Section 229, Philex still filed its administrative claim on time. **Thus, the *Atlas* doctrine is immaterial in this case.** The Commissioner had until 17 July 2006, the last day of the 120-day period, to decide Philex's claim. Since the Commissioner did not act on Philex's claim on or before 17 July 2006, Philex had until 17 August 2006, the last day of the 30-day period, to file its judicial claim. **The CTA EB held that 17 August 2006 was indeed the last day for Philex to file its judicial claim.** However, Philex filed its Petition for Review with the CTA only on 17 October 2007, or four hundred twenty-six (426) days after the last day of filing. **In short, Philex was late by one year and 61 days in filing its judicial claim.** As the CTA EB correctly found:
>
> > **Evidently, the Petition for Review in C.T.A. Case No. 7687 was filed 426 days late.** Thus, the Petition for Review in C.T.A. Case No. 7687 should have been dismissed on the ground that the Petition for Review was filed way beyond the 30-day prescribed period; thus, no jurisdiction was acquired by the CTA Division; x x x.
>
> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
>
> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory

> privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.[21] (Citations omitted.)

Both the CTA First Division and CTA *en banc* went a step further and also computed the 120+30 day periods from the date of filing by San Roque of its amended administrative claims on March 10, 2008 for the first and second quarters of 2006, and on September 21, 2007 for the third and fourth quarters of 2006. According to the CTA First Division and CTA *en banc*, if the 120-day period was reckoned from the dates of filing of the amended administrative claims, the judicial claims for the first and second quarters were premature, while the judicial claims for the third and fourth quarters were late.

For the Court, there is no more point in considering the amended administrative claims for the first and second quarters of 2006. The amended administrative claims were filed on **March 10, 2008** after the 120+30 day periods for filing the judicial claims, counting from the date of filing of the original administrative claims for the first and second quarters of 2006, had already expired on **September 8, 2007** and **December 7, 2007**, respectively. Taking cognizance of the amended administrative claims in such a situation would result in the revival of judicial claims that had already prescribed.

Meanwhile, San Roque filed its amended administrative claims for the third and fourth quarters of 2006 on September 21, 2007, before the end of the 120-day period for the CIR to decide on the original administrative claims for the same taxable quarters. Nonetheless, even if the Court counts the 120+30 day periods from the date of filing of said amended administrative claims, the judicial claims of San Roque would still be belatedly filed:

Tax Period 2006	**Date of Filing of Amended Administrative Claim**	**End of 120-Day Period for CIR to Decide**	**End of 30-day Period to File Appeal with CTA**	**Date of Actual Filing of Judicial Claim**	**No. of Days: End of 120-day Period to Filing of Judicial Claim**
Third Quarter	September 21, 2007	January 19, 2008	February 18, 2008	March 28, 2008	69 days
Fourth Quarter	September 21, 2007	January 19, 2008	February 18, 2008	March 28, 2008	69 days

[21] *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue,* and *Philex Mining Corporation v. Commissioner of Internal Revenue*, supra note 15 at 389-390.

Unable to contest the belated filing of its judicial claims, San Roque argues against the supposedly retroactive application of *Aichi* and the strict observance of the 120+30 day periods.

As the CTA *en banc* held, *Aichi* was not applied retroactively to San Roque in the instant case. The 120+30 day periods have already been prescribed under Section 112(C) of the NIRC of 1997, as amended, when San Roque filed its administrative and judicial claims for refund or tax credit of its creditable input taxes for the four quarters of 2006. The Court highlights the pronouncement in *San Roque (2013)* that **strict compliance** with the 120+30 day periods is necessary for the judicial claim to prosper, **except for the period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010** when *Aichi* was promulgated, which again reinstated the 120+30 day periods as mandatory and jurisdictional.[22]

It is still necessary for the Court to explain herein how BIR Ruling No. DA-489-03 is an exception to the strict observance of the 120+30 day periods for judicial claims. BIR Ruling No. DA-489-03 affected only the 120-day period as the BIR held therein that "a 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. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe." Consequently, BIR Ruling No. DA-489-03 may only be invoked by taxpayers who relied on the same and **prematurely filed** their judicial claims before the expiration of the 120-day period for the CIR to act on their administrative claims, provided that the taxpayers filed such judicial claims from December 10, 2003 to October 6, 2010. BIR Ruling No. DA-489-03 did not touch upon the 30-day prescriptive period for filing an appeal with the CTA and cannot be cited by taxpayers, such as San Roque, who **belatedly filed** their judicial claims more than 30 days after receipt of the adverse decision of the CIR on their administrative claims or the lapse of 120 days without the CIR acting on their administrative claims. Pertaining to the similarly situated Philex, the Court ruled in *San Roque (2013)* that:

> 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.[23]

---

22 Id. at 403.

23 Id. at 405-406.

San Roque harps that the Court itself categorically declared in the following paragraph in *San Roque (2013)* that *Aichi* shall be applied prospectively:

> **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.[24] (Emphases included.)

The Court is not persuaded. The aforequoted paragraph should be understood in the context of the entire *San Roque (2013)*. The statement of the Court on applying *Mirant* and *Aichi* prospectively should be understood relative to, and never apart from, *Atlas* and BIR Ruling No. DA-489-03.

The Court explained in *San Roque (2013)*, under the heading "Effectivity and Scope of the Atlas, Mirant and Aichi Doctrines," that:

> **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.**
>
> The *Atlas* doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in *Atlas*. The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional. x x x.
>
> x x x x
>
> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, **strict compliance with the 120+30 day periods is necessary for**

---

[24] Id. at 403.

> **such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.**[25] (Emphases supplied.)

As for BIR Ruling No. DA-489-03, the Court clarified its period of effectivity, thus:

> 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 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. 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.[26] (Emphasis supplied.)

Based on the foregoing, "prospective application" of *Aichi* and *Mirant*, in the context of *San Roque (2013)*, only meant that the rulings in said cases would not retroactively affect taxpayers who relied on *Atlas* and/or DA-489-03 when they filed their administrative and judicial claims for refund or tax credit of creditable input taxes during the period when *Atlas* and DA-489-03 were still in effect. *Aichi* and *Mirant* can still be applied to cases involving administrative and judicial claims filed prior to the promulgation of said

---

25 Id. at 397-399.

26 Id. at 401-404.

cases and outside the period of effectivity of *Atlas* and DA-489-03, such as the instant case.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** and the Decision dated June 4, 2012 and Resolution dated January 21, 2013 of the Court of Tax Appeals *en banc* in C.T.A. EB No. 789 are **AFFIRMED**.

No costs.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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