Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SILICON PHILIPPINES, INC., (formerly Intel Philippines Manufacturing, Inc.), Petitioner,	**G.R. No. 184360 & 184361**
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 184384**
	Present:
- versus -	SERENO, *C.J.*, *Chairperson*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
SILICON PHILIPPINES, INC., (formerly Intel Philippines Manufacturing, Inc.), Respondent.	Promulgated: FEB 19 2014
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DECISION

VILLARAMA, JR., *J.*:

Before us are three consolidated petitions for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing

(1) the Decision[1] dated February 18, 2008 of the Court of Tax Appeals (CTA) *En Banc* in CTA E.B. No. 219; (2) the Decision[2] dated February 20, 2008 of the CTA *En Banc* in CTA E.B. Case No. 209; and (3) the two Resolutions[3] both dated September 2, 2008 of the CTA *En Banc* denying the motions for reconsideration from the aforementioned assailed decisions.

The facts as summarized by the CTA in Division and adopted by the CTA *En Banc* are as follows:

Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is primarily engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components.[4] It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer with Certificate of Registration bearing RDO Control No. 94-048-02621.[5] It is likewise registered with the Board of Investments (BOI) as a preferred pioneer enterprise.[6]

On the other hand, the Commissioner of Internal Revenue (CIR) is the government official vested with the power and authority to refund any internal revenue tax erroneously or illegally assessed or collected under the National Internal Revenue Code of 1997, as amended[7] (hereafter NIRC or Tax Code).

For the 1st quarter of 1999, Silicon seasonably filed its Quarterly VAT Return on April 22, 1999 reflecting, among others, output VAT in the amount of ₱145,316.96; input VAT on domestic purchases in the amount of ₱20,041,888.41; input VAT on importation of goods in the amount of ₱44,560,949.00; and zero-rated export sales in the sum of ₱929,186,493.91.[8]

On August 6, 1999, Silicon filed with the CIR, through its One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF), a claim for tax credit or refund of ₱64,457,520.45 representing VAT input taxes on its domestic purchases of goods and services and importation of goods and capital equipment which are attributable to zero-rated sales for the period January 1, 1999 to March 31, 1999.

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1 *Rollo* (G.R. No. 184361), pp. 11-27; *rollo* (G.R. No. 184384), pp. 33-50. Penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez concurring.

2 *Rollo* (G.R. No. 184360), pp. 10-28. Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez concurring; Presiding Justice Ernesto D. Acosta filed a Concurring and Dissenting Opinion.

3 Id. at 37-42; *rollo* (G.R. No. 184361), pp. 28-31; *rollo* (G.R. No. 184384), pp. 51-54.

4 Id. at 11.

5 Id. Originally under RDO Control No. 32A-3-002649 dated January 1, 1988. Id. at 138.

6 Id.

7 Id.

8 Id. at 138.

Due to the inaction of the CIR, Silicon filed a Petition for Review[9] with the CTA on March 30, 2001, to toll the running of the two-year prescriptive period. The petition was docketed as *CTA Case No. 6263*.

The CIR filed its Answer[10] dated June 1, 2001 raising, among others, the following special and affirmative defenses: (1) that Silicon failed to show compliance with the substantiation requirements under the provisions of Section 16(c)(3)[11] of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88; and (2) that Silicon has not shown proof that the alleged domestic purchases of goods and services and importation of goods/capital equipment on which the VAT input taxes were paid are attributable to its export sales or have not yet been applied to the output tax for the period covered in its claim or any succeeding period and that the alleged total foreign exchange proceeds have been accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas.*

During the pendency of the case, Silicon manifested that it was granted by the DOF a tax credit certificate equivalent to 50% of its total claimed input VAT on local purchases of ₱19,896,571.45 or for the amount of ₱9,948,285.73. Hence, the CTA Division limited its review on the amounts of ₱9,896,571.45[12] and ₱44,560,949.00.[13]

Meanwhile, on August 10, 2000, Silicon filed a second claim for tax credit or refund in the amount of ₱20,411,419.07 for the period April 1, 2000 to June 30, 2000.

To toll the running of the two-year prescriptive period, Silicon filed on June 28, 2002 with the CTA a Petition for Review,[14] which was docketed as *CTA Case No. 6493*.

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9 Id. at 121-130.

10 Id. at 131-132.

11 SECTION 16. Refunds or tax credits of input tax. –

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(c) *Claims for tax credits/refunds*. – Application For Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

A photo copy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

x x x x

3. Effectively zero-rated sale of goods and services.

i) photo copy of approved application for zero rate if filing for the first time.

ii) sales invoice or receipt showing name of the person or entity to whom the sale of goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered.

iii) evidence of actual receipt of goods or services.

x x x x

12 Should be ₱9,948,285.73.

13 *Rollo* (G.R. No. 184360), pp. 139-140.

14 *Rollo* (G.R. No. 184361), pp. 86-97.

The CIR filed an Answer[15] asserting, among others, that Silicon's claim for refund/tax credit in the amount of ₱20,411,419.07 was not duly substantiated and that said claim for refund is not subject to zero-percent (0%) rate of VAT under Sections 106(A)(2)(a)(1)[16] and 108(B)(1)[17] of the NIRC. Further, the claim for refund has already prescribed pursuant to Section 112(A) and (B)[18] of the NIRC.

CTA Case Nos. 6263 (Second Division) and 6493 (First Division)

On March 6, 2006, the CTA Second Division rendered a Decision[19] in CTA Case No. 6263 denying Silicon's claim for refund or issuance of tax credit certificate for the first quarter of 1999 in the amount of ₱9,896,571.45 representing the input VAT on its alleged domestic purchases of goods and services because it failed to substantiate its claimed zero-rated export sales. The CTA Second Division held that the export sales invoices have no probative value in establishing its zero-rated sales for VAT purposes as the same were not duly registered with the BIR and the required information, particularly the BIR authority to print, was likewise not indicated therein in

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15 Id. at 98-100.

16 SEC. 106. **Value-added Tax on Sale of Goods or Properties. –**

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

x x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* – The term "*export sales*" means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)[.]

17 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 persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)[.]

18 SEC. 112. **Refunds or Tax Credits of Input Tax. –**

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

(B) *Capital Goods.* – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

19 *Rollo* (G.R. No. 184360), pp. 137-146. Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez concurring.

violation of the provisions of Sections 113,[20] 237[21] and 238[22] of the NIRC. The other evidence presented by Silicon, *i.e.*, the certification of inward remittance, export declarations, and airway bills were likewise found to be insufficient to prove actual exportation of goods.

With respect to the claim of ₱44,560,949.00 representing Silicon's input VAT paid on imported goods, the same was not granted by the CTA Second Division since Silicon did not present duly machine-validated Import Entry and Revenue Declarations or Bureau of Customs official receipts or any other document proving actual payment of VAT on the imported goods as required under Section 4.104-5[23] of Revenue Regulations No. 7-95.

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[20] SEC. 113. **Invoicing and Accounting Requirements for VAT-Registered Persons.** –

(A) *Invoicing Requirements.* - A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

(B) *Accounting Requirements.* – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

[21] SEC. 237. **Issuance of Receipts or Sales or Commercial Invoices.** – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.

[22] SEC. 238. **Printing of Receipts or Sales or Commercial Invoices.** – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayers who availed of their printing services. The logbook/register shall contain the following information:

(1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices were printed; and

(2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet.

[23] SEC. 4.104-5. **Substantiation of claims for input tax credit.** – (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Sections 108(a) and 238 of the Code. Input tax on purchases of real property should be supported by a

Neither did Silicon submit any evidence to prove that the subject imported capital equipment qualify as capital goods pursuant to Section 4.106-1(b)[24] of Revenue Regulations No. 7-95.

Silicon filed a motion for reconsideration from the aforementioned decision but the motion was denied in a Resolution[25] dated June 22, 2006.

Likewise, in a Decision[26] dated June 14, 2006 in CTA Case No. 6493, the CTA First Division denied Silicon's claim for refund or tax credit of ₱20,411,419.07 for the second quarter of 2000 on the ground that its reported export sales did not qualify for zero-rating under Section 106(A)(2)(a)(1) of the NIRC since the sales invoices were not duly registered VAT sales invoices containing the required information, particularly the BIR authority to print, Silicon's TIN-VAT number and the imprinted word "zero-rated."

On October 5, 2006, Silicon's motion for reconsideration was denied by the CTA First Division.[27]

Silicon appealed the two decisions of the CTA in Division to the CTA *En Banc* as CTA E.B. No. 209 and CTA E.B. No. 219.

Decision of the CTA En Banc (CTA E.B. Nos. 209 & 219)

On **February 18, 2008**, the CTA *En Banc* rendered the herein first assailed Decision in CTA E.B. No. 219 partially granting the petition for

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copy of the public instrument, *i.e.*, deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.

A cash register machine tape issued to a VAT-registered buyer by a VAT-registered seller from a machine duly registered with the BIR in lieu of the regular sales invoice, shall constitute valid proof of substantiation of tax credit only if the name and TIN of the purchaser is indicated in the receipt and authenticated by a duly authorized representative of the seller.

(b) Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods.

(c) Presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(d) Input tax on "deemed sale" transactions shall be substantiated with the required invoices.

(e) Input tax from payments made to non-residents shall be supported by a copy of the VAT declaration/return filed by the resident licensee/lessee in behalf of the non-resident licensor/lessor evidencing remittance of the VAT due.

[24] SEC. 4.106-1. **Refunds or tax credits of input tax.** – x x x

(b) *Capital Goods*. – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

"*Capital goods or properties*" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services.

[25] *Rollo* (G.R. No. 184360), pp. 179-180.

[26] *Rollo* (G.R. No. 184361), pp. 106-117. Penned by Associate Justice Caesar A. Casanova with Associate Justice Lovell R. Bautista concurring and Presiding Justice Ernesto D. Acosta dissenting.

[27] Id. at 154-156.

review and ordering the CIR to refund or issue a tax credit certificate in favor of Silicon Philippines in the reduced amount of ₱2,139,431.00 representing its unutilized input VAT attributable to its zero-rated sales for the period April 1, 2000 to June 30, 2000. After reviewing the records, the CTA *En Banc* stated that the amount of ₱13,916,752.43 may be a valid claim for tax credit or refund which is composed of input VAT on local purchases of ₱11,777,321.43 and input VAT on importations of ₱2,139,431.00. However, because Silicon is a BOI-registered entity with 100% exports and sales of properties or services made by VAT-registered suppliers to Silicon are automatically zero-rated, there is no VAT that has to be passed on to Silicon. Consequently, Silicon would not gain input taxes on its purchases of goods, properties or services. Thus, the CTA *En Banc* ruled that in the absence of any clear and convincing proof that Silicon's local suppliers passed on or shifted the VAT on such domestic purchases to Silicon, Silicon cannot claim the amount of ₱11,777,321.43 as input tax credits on its domestic purchases for the period April 1, 2000 to June 30, 2000.

On **February 20, 2008**, the CTA *En Banc* also rendered the second assailed Decision in CTA E.B. No. 209 denying the petition for review for lack of merit. After it reviewed and examined the invoices and other documentary evidence of Silicon for the first quarter of 1999, the CTA *En Banc* found that Silicon's valid input VAT for refund was only ₱9,531,635.69. But since the DOF had already granted Silicon a tax credit certificate on January 24, 2002 in the amount of ₱9,948,285.73, the CTA *En Banc* held that Silicon is no longer entitled to refund or issuance of a tax credit certificate for its input tax for the first quarter of 1999.

The Consolidated Petitions before this Court

In **G.R. No. 184360**, petitioner Silicon assails the Decision dated February 20, 2008 and the Resolution dated September 2, 2008 of the CTA *En Banc* in CTA E.B. Case No. 209.

In its Memorandum, Silicon discussed two important issues. One, whether the CTA *En Banc* erred in denying its claim for refund of input VAT derived from domestic purchases of goods and services attributable to its zero-rated sales on the ground of failure to imprint the words "TIN-VAT" and "ZERO-RATED" on its export sales invoices. And two, whether the CTA *En Banc* erred in denying Silicon's claim for refund on the ground that Silicon failed to prove its input VAT derived from its importation of capital goods and equipment and in not considering the recommendation and findings of the Court-commissioned Independent Certified Public Accountant that Silicon has substantially supported its export sales, importation of capital goods/equipment and its input VAT on local purchases.

In **G.R. Nos. 184384 & 184361**, Silicon and the CIR assail the Decision dated February 18, 2008 and the Resolution dated September 2,

2008 of the CTA *En Banc* in CTA E.B. No. 219 which ordered the CIR to refund, or issue a tax credit certificate to Silicon for the amount of ₱2,139,431.00 (from the original claim of ₱20,411,419.07) representing its unutilized excess input VAT on domestic purchases of goods and services and importation of goods/capital equipment attributable to its zero-rated sales for the period April 1, 2000 to June 30, 2000.

The issues raised in the three petitions boil down to (1) whether the CTA *En Banc* correctly denied Silicon's claim for refund or issuance of a tax credit certificate for its input VAT for its domestic purchases of goods and services and importation of goods/capital equipment attributable to zero-rated sales for the period January 1, 1999 to March 31, 1999; and (2) whether the CTA *En Banc* correctly ordered the CIR to refund or issue a tax credit certificate in favor of Silicon for the reduced amount of ₱2,139,431.00 representing Silicon's unutilized input VAT attributable to its zero-rated sales for the period April 1, 2000 to June 30, 2000.

Notwithstanding the above issues, we emphasize that when a case is on appeal, this Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case.[28]

In the present case, while the parties never raised as an issue the timeliness of Silicon's judicial claims, we deem it proper to look into whether the petitions for review filed by Silicon before the CTA were filed within the prescribed period provided under the Tax Code in order to determine whether the CTA validly acquired jurisdiction over the petitions filed by Silicon.

The pertinent provision, Section 112(C) (formerly subparagraph D)[29] of the NIRC reads:

> SEC. 112. *Refunds or Tax Credits of Input Tax. –*
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> 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 (30) days from the receipt of the decision denying the**

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[28] *Aliling v. Feliciano*, G. R. No. 185829, April 25, 2012, 671 SCRA 186, 198-199.

[29] In R.A. No. 8424, the section is number 112(D). R.A. No. 9337 re-numbered the section to 112(C). In this Decision, we refer to Section 112(D) under R.A. No. 8424 as Section 112(C) as it is currently numbered.

> **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. (Emphasis supplied.)

The above-mentioned provision expressly grants the CIR 120 days within which to decide the taxpayer's claim for refund or tax credit. In addition, the taxpayer is granted a 30-day period to appeal to the CTA the decision or inaction of the CIR after the 120-day period.

Meanwhile, the charter of the CTA, Republic Act (R.A.) No. 1125, as amended, provides:

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

The CTA has exclusive appellate jurisdiction to review on appeal decisions of the CIR in cases involving refunds of internal revenue taxes. Moreover, if the CIR fails to decide within the 120-day period provided by law, such inaction shall be deemed a denial of the application for tax refund which the taxpayer can elevate to the CTA through a petition for review.

In the recently decided consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation,*[30] *(San Roque* for brevity*)* this Court stressed the mandatory and jurisdictional nature of the 120+30 day period provided under Section 112(C) of the NIRC. Therein, we ruled that

> x x x 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. The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within

[30] G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 690 SCRA 336.

> which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies. Such doctrine is basic and elementary.
>
> When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals," the law does not make the 120+30 day periods optional just because the law uses the word "**may.**" The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.
>
> The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period**. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.
>
> 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 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.[31]

In the case of *Philex Mining Corporation v. Commissioner of Internal Revenue,* which was consolidated with the case of *San Roque,* this Court denied Philex's claim for refund since its petition for review was filed with the CTA beyond the 120+30 day period. The Court explained:

> 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***

[31] Id. at 397-399.

> **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.[32]

Also, in the recent case of *Commissioner of Internal Revenue v. Dash Engineering Philippines, Inc.*,[33] this Court likewise denied the claim for tax refund for having been filed late or after the expiration of the 30-day period from the denial by the CIR or failure of the CIR to make a decision within 120 days from the submission of the documents in support of its administrative claim. We held:

> Petitioner is entirely correct in its assertion that compliance with the periods provided for in the abovequoted provision is indeed mandatory and jurisdictional, as affirmed in this Court's ruling in *San Roque*, where the Court *En Banc* settled the controversy surrounding the application of the 120+30-day period provided for in Section 112 of the NIRC and reiterated the *Aichi* doctrine that the 120+30-day period is mandatory and jurisdictional. Nonetheless, the Court took into account the issuance by the Bureau of Internal Revenue (*BIR*) of BIR Ruling No. DA-489-03 which misled taxpayers by explicitly stating that taxpayers may file a petition for review with the CTA even before the expiration of the 120-day period given to the CIR to decide the administrative claim for refund. Even though observance of the periods in Section 112 is compulsory and failure to do so will deprive the CTA of jurisdiction to hear the case, such a strict application will be made from the effectivity of the Tax Reform Act of 1997 on January 1, 1998 until the present, except for the period from December 10, 2003 (the issuance of the erroneous BIR ruling) to October 6, 2010 (the promulgation of *Aichi*), during which taxpayers need not wait for the lapse of the 120+30-day period before filing their judicial claim for refund.[34]

After a careful perusal of the records in the instant case, we find that Silicon's judicial claims were filed late and way beyond the prescriptive period. Silicon's claims do not fall under the exception mentioned above. Silicon filed its Quarterly VAT Return for the 1st quarter of 1999 on April

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32 Id. at 389-390.
33 G.R. No. 184145, December 11, 2013.
34 Id. at 6-7.

22, 1999 and subsequently filed on August 6, 1999 a claim for tax credit or refund of its input VAT taxes for the same period. From August 6, 1999, the CIR had until December 4, 1999, the last day of the 120-day period, to decide Silicon's claim for tax refund. But since the CIR did not act on Silicon's claim on or before the said date, Silicon had until January 3, 2000, the last day of the 30-day period to file its judicial claim. However, Silicon failed to file an appeal within 30 days from the lapse of the 120-day period, and it only filed its petition for review with the CTA on March 30, 2001 which was **451 days late**. Thus, in consonance with our ruling in *Philex* in the *San Roque ponencia*, Silicon's judicial claim for tax credit or refund should have been dismissed for having been filed late. The CTA did not acquire jurisdiction over the petition for review filed by Silicon.

Similarly, Silicon's claim for tax refund for the second quarter of 2000 should have been dismissed for having been filed out of time. Records show that Silicon filed its claim for tax credit or refund on August 10, 2000. The CIR then had 120 days or until December 8, 2000 to grant or deny the claim. With the inaction of the CIR to decide on the claim which was deemed a denial of the claim for tax credit or refund, Silicon had until January 7, 2001 or 30 days from December 8, 2000 to file its petition for review with the CTA. However, Silicon again failed to comply with the 120+30 day period provided under Section 112(C) since it filed its judicial claim only on June 28, 2002 or **536 days late**. Thus, the petition for review, which was belatedly filed, should have been dismissed by the CTA which acquired no jurisdiction to act on the petition.

Courts are bound by prior decisions. Thus, once a case has been decided one way, courts have no choice but to resolve subsequent cases involving the same issue in the same manner.[35]

As this Court has repeatedly emphasized, a tax credit or refund, like tax exemption, is strictly construed against the taxpayer.[36] The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund by showing that he has strictly complied with the conditions for the grant of the tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper.[37] Noncompliance with the mandatory periods, nonobservance of the prescriptive periods, and nonadherence to exhaustion of administrative remedies bar a taxpayer's claim for tax refund or credit, whether or not the CIR questions the numerical correctness of the claim of the taxpayer.[38] For failure of Silicon

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35 *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 177127, October 11, 2010, 632 SCRA 517, 518, citing *Agencia Exquisite of Bohol, Incorporated v. Commissioner of Internal Revenue*, G.R. Nos. 150141, 157359 and 158644, February 12, 2009, 578 SCRA 539, 550.

36 *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011, 647 SCRA 398, 403.

37 *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. Nos. 193301 & 194637, March 11, 2013, 693 SCRA 49, 77, citing the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*, supra note 30, at 383.

38 Id. at 78.

comply with the provisions of Section 112(C) of the NIRC, its judicial claims for tax refund or credit should have been dismissed by the CTA for lack of jurisdiction.

Considering the foregoing disquisition, we deem it unnecessary to rule upon the other issues raised by the parties in the three consolidated petitions.

WHEREFORE, the assailed February 18, 2008 Decision and September 2, 2008 Resolution of the Court of Tax Appeals *En Banc* in CTA E.B. No. 219 and the assailed February 20, 2008 Decision and September 2, 2008 Resolution of the Court of Tax Appeals *En Banc* in CTA E.B. No. 209 are **REVERSED and SET ASIDE.** Silicon's judicial claims for refund for the 1st quarter of 1999 and the 2nd quarter of 2000 through its petitions for review docketed as CTA Case Nos. 6263 and 6493 filed with the Court of Tax Appeals are hereby **DISMISSED** for having been filed out of time.

No pronouncement as to costs.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 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