# Republic of the Philippines
# Supreme Court
# Manila

**SECOND DIVISION**

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| **TAGANITO MINING CORPORATION,** Petitioner, | **G.R. No. 197591** Present: |
| - versus - | BRION, *J.*, Acting Chairperson,* DEL CASTILLO, PEREZ, MENDOZA,** and PERLAS-BERNABE, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: JUN 18 2014 |

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## D E C I S I O N

**PERLAS-BERNABE, *J.*:**

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated January 11, 2011 and the Resolution[3] dated June 27, 2011 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 609 which reversed and set aside the Decision[4] dated November 24, 2009 and the Resolution[5] dated March 12, 2010 of the CTA First Division (CTA Division) in C.T.A. Case No. 7428, and ordered the dismissal of petitioner Taganito

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* Designated Acting Chairperson per Special Order No. 1699 dated June 13, 2014.

** Designated Acting Member per Special Order No. 1696 dated June 13, 2014.

1 *Rollo*, pp. 3-61.

2 Id. at 64-78. Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring; and Associate Justice Lovell R. Bautista, dissenting.

3 Id. at 86-94.

4 Id. at 98-110. Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, concurring.

5 Id. at 112-117. Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta, concurring and dissenting, and Associate Justice Caesar A. Casanova, concurring.

Mining Corporation's (Taganito) claim for refund of excess input value-added tax (VAT) for having been prematurely filed.

## The Facts

Taganito is a duly-registered Philippine corporation and a VAT-registered entity primarily engaged in the business of exploring, extracting, mining, selling, and exporting precious metals, such as nickel, chromite, cobalt, gold, silver, iron, and all kinds of ores and metals and their by-products. For the 1st, 2nd, 3rd, and 4th quarters of the year 2004, Taganito filed its Quarterly VAT Returns on April 20, 2004, July 20, 2004, October 20, 2004, and January 18, 2005, respectively. Subsequently, it filed Amended Quarterly VAT Returns on July 20, 2005 for the 4th quarter of 2004 and on December 28, 2005 for the first three quarters of 2004.[6]

On December 28, 2005, Taganito filed before the Bureau of Internal Revenue (BIR) an administrative claim for the refund of input VAT paid on its domestic purchases of taxable goods and services and importation of goods in the amount of □1,885,140.22 covering the period January 1, 2004 to December 31, 2004, in accordance with Section 112, subsections (A) and (B) of the National Internal Revenue Code (NIRC).[7] Thereafter, or on March 31, 2006, fearing that the period for filing a judicial claim for refund was about to expire, Taganito proceeded to file a petition for review before the CTA Division, docketed as C.T.A. Case No. 7428.[8]

## The CTA Division Ruling

In a Decision[9] dated November 24, 2009, the CTA Division partially granted Taganito's claim for refund, ordering respondent, the Commissioner of Internal Revenue (CIR), to refund to Taganito the amount of □537,645.43 representing its unutilized input VAT for the period January 1, 2004 to March 9, 2004. It found that Taganito's export sales qualified as VAT zero-rated sales. However, of the □1,885,140.22 claimed refund for excess input VAT, the CTA Division disallowed □10,263.37[10] for being based on non-VAT official receipts.[11]

Moreover, it observed that the Board of Investments (BOI) issued a certification in Taganito's favor, stating that it is a BOI-registered entity with

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6 Id. at 66.

7 Republic Act No. 8424, entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES."

8 *Rollo*, pp. 66-67. See also id. at 99-100.

9 Id. at 98-110.

10 Broken down as follows: □717.91 for first quarter of 2004, and □9,545.46 for the third quarter of 2004. (See id. at 105.)

11 See id. at 105-110.

100% exports. In effect, for the period March 10, 2004 to December 31, 2004, Taganito's local suppliers may avail of zero-rating benefits on their sales to Taganito, and, thus, no output VAT should be shifted from the former to the latter. Considering the absence of sufficient proof that said suppliers did not avail of such benefits, Taganito cannot therefore claim input VAT on its domestic purchases for the aforesaid period.[12]

Lastly, the CTA Division found that Taganito's refund claims were filed within the two (2)-year prescriptive period and the 120-day period provided under Section 112(D) of the NIRC, considering that its administrative claim was filed on December 28, 2005, and its judicial claim was filed on March 31, 2006.[13]

The CIR filed a motion for reconsideration praying for the reversal of the partial refund granted in Taganito's favor, which was, however, denied in a Resolution[14] dated March 12, 2010.

Dissatisfied, the CIR elevated the matter to the CTA *En Banc*. Records are bereft of any showing that Taganito appealed the partial denial of its claim of refund which had, thus, lapsed into finality.

## The CTA *En Banc* Ruling

In a Decision[15] dated January 11, 2011, the CTA *En Banc* reversed and set aside the Decision of the CTA Division, and ordered that Taganito's claim of refund be denied in its entire amount. It found that Taganito filed its judicial claim for refund on March 31, 2006, or a mere 93 days after it filed its administrative claim on December 28, 2005. Explaining that the observance of the 120-day period provided under Section 112(D) of the NIRC is mandatory and jurisdictional to the filing of a judicial claim for refund pursuant to the case of *CIR v. Aichi Forging Company of Asia, Inc.* (*Aichi*),[16] it held that Taganito's filing of a judicial claim was premature, and, thus, the CTA Division had yet to acquire jurisdiction over the same.[17]

Aggrieved, Taganito moved for reconsideration, which was, however, denied in a Resolution[18] dated June 27, 2011, hence, this petition.

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12 Id. at 105-107.
13 Id. at 109.
14 Id. at 112-117.
15 Id. at 64-78.
16 G.R. No. 184823, October 6, 2010, 632 SCRA 422.
17 See *rollo*, pp. 72-77.
18 Id. at 86-94.

## The Issues Before the Court

The issues for the Court's resolution are as follows: (*a*) whether or not the CTA *En Banc* correctly dismissed Taganito's judicial claim for refund of excess input VAT; and (*b*) whether or not Taganito should be entitled to its claim for refund in the total amount of □1,885,140.22.

## The Court's Ruling

The petition is partly meritorious.

The first provision that allowed the refund or credit of unutilized excess input VAT is found in Executive Order No. 273, series of 1987,[19] the original VAT Law. Since then, this provision was amended numerous times, by Republic Act No. (RA) 7716,[20] RA 8424, and, lastly, by RA 9337[21] which took effect on July 1, 2005. Since Taganito's claim for refund covered periods before the effectivity of RA 9337, Section 112 of the NIRC, as amended by RA 8424, should apply.[22] The pertinent parts of the said provision read as follows:

> Section 112. *Refunds or Tax Credits of Input Tax.* –
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> (A) *Zero-rated or Effectively Zero-rated Sales*. – any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made**, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x.
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> x x x x
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> (D) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within

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19 Entitled "ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES."

20 Entitled "AN ACT AMENDING REPUBLIC ACT NO. 7716, OTHERWISE KNOWN AS THE EXPANDED VALUE-ADDED TAX LAW AND OTHER PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED."

21 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."

22 See *Republic v. GST Philippines, Inc.*, G.R. No. 190872, October 17, 2013.

> the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**. (Emphases and underscoring supplied)
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> x x x x

As correctly pointed out by the CTA *En Banc*, the Court, in the 2010 *Aichi* case, ruled that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. Consequently, non-observance thereof would lead to the dismissal of the judicial claim due to the CTA's lack of jurisdiction. The Court, in the same case, also clarified that the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims. In other words, the *Aichi* case instructs that once the administrative claim is filed within the 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.

In the recent case of *CIR v. San Roque Power Corporation* (*San Roque*),[23] the Court, however, recognized an exception to the mandatory and jurisdictional treatment of the 120-day period as pronounced in *Aichi*. In *San Roque*, the Court ruled that BIR Ruling No. DA-489-03 dated December 10, 2003 – wherein the BIR 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" – provided taxpayers-claimants the opportunity to raise a valid claim for equitable estoppel under Section 246[24] of the NIRC, *viz.*:

> 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

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

[24] 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 form 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)

> 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.**[25]
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> Section 4 of the Tax Code, a new provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:
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> > Sec. 4. *Power of the Commissioner To Interpret Tax Laws and To Decide Tax Cases*. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
> >
> > The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.
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> **Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court**. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. x x x. (Emphases and underscoring supplied)

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.

In this case, records disclose that Taganito filed its administrative and judicial claims for refund on December 28, 2005 and March 31, 2006, respectively – or during the period when BIR Ruling No. DA-489-03 was in place. As such, it need not have waited for the expiration of the 120-day period before filing its judicial claim for refund before the CTA. In view of

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[25] *CIR v. San Roque Power Corporation*, supra note 23, at 401-402.

the foregoing, the CTA *En Banc*, thus, erred in dismissing Taganito's claim on the ground of prematurity.

However, as adverted to earlier, Taganito did not appeal the CTA Division's partial denial of its claim for refund on the ground that it failed to provide sufficient evidence that its suppliers did not avail of the benefits of zero-rating. It is well-settled that a party who does not appeal from a judgment can no longer seek modification or reversal of the same.[26] For this reason, Taganito may no longer question the propriety and correctness of the said partial disallowance as it had lapsed into finality and may no longer be modified. In fine, Taganito is only entitled to the partial refund of its unutilized input VAT in the amount of ₱537,645.43, as was originally granted to it by the CTA Division and herein upheld.

**WHEREFORE** the petition is **PARTIALLY GRANTED**. The Decision dated January 11, 2011 and the Resolution dated June 27, 2011 of the Court of Tax Appeals *En Banc* in CTA EB No. 609 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated November 24, 2009 of the Court of Tax Appeals First Division in C.T.A. Case No. 7428 ordering the refund to petitioner Taganito Mining Corporation of its unutilized input VAT for the period January 1, 2004 to March 9, 2004, in the amount of ₱537,645.43, is **REINSTATED**.

**SO ORDERED.**

**ESTELA M. PERLAS-BERNABE**
Associate Justice

**WE CONCUR:**

**ARTURO D. BRION**
Associate Justice
Acting Chairperson

**MARIANO C. DEL CASTILLO**
Associate Justice

**JOSE PORTUGAL PEREZ**
Associate Justice

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[26] *Communities Cagayan, Inc. v. Nanol*, G.R. No. 176791, November 14, 2012, 685 SCRA 453, 463; see *Yano v. Sanchez*, G.R. No. 186640, February 11, 2010, 612 SCRA 347, 358; and see also *Loy, Jr. v. San Miguel Corporation Employees Union-Philippine Transport and General Workers Organization (SMCEU-PTGWO)*, G.R. No. 164886, November 24, 2009, 605 SCRA 212, 230.

**JOSE CATRAL MENDOZA**
Associate Justice

## ATTESTATION

I attest 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.

**ARTURO D. BRION**
Associate Justice
Acting Chairperson, Second Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, 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