Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

TAGANITO MINING CORPORATION, Petitioner,	**G.R. No. 198076** Present: CARPIO, *J., Chairperson,* BRION,
- versus -	DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 19 2014

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DECISION

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the April 18, 2011 Decision[1] and the August 9, 2011 Resolution[2] of the Court of Tax Appeals (*CTA*) En Banc, in CTA EB Case No. 559, which reversed and set aside the July 31, 2009 Decision[3] of the Second Division of the CTA *(CTA Division)* in CTA Case No. 6867, ordering the refund of unutilized input taxes in the amount of ₱3,636,854.07 to petitioner Taganito Mining Corporation *(Taganito).*

The Facts

Taganito is a corporation duly organized and existing under the laws of the Philippines, primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores. It is a duly registered VAT (value-added tax) entity and likewise registered with the Board of Investments as an exporter.

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[1] *Rollo*, pp. 62-76; penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justice Juanito C. Castaneda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, and Associate Justice Olga Palanca-Enriquez, concurring; and Presiding Justice Ernesto D. Acosta, Associate Justice Lovell R. Bautista, Associate Justice Esperanza R. Fabon-Victorino, and Associate Justice Amelia R. Cotangco-Manalastas, dissenting.

[2] Id. at 96-106.

[3] Id. at 115-132.

Taganito filed all its monthly and quarterly VAT returns from January 1, 2002 to December 31, 2002, as follows:

Period Covered	Date Filed
1st Quarter 2002	April 13, 2002
2nd Quarter 2002	July 11, 2002
3rd Quarter 2002	October 21, 2002
4th Quarter 2002	January 17, 2003

On December 30, 2003, Taganito filed with respondent Commissioner of Internal Revenue (*CIR*), through its Excise Taxpayers' Assistance Division under the Large Taxpayers Division, an application for refund of its excess input VAT paid on its domestic purchases of taxable goods and services and importation of goods amounting to □4,447,651.32 for the period January 1, 2002 to December 3, 2002.

On February 19, 2004, 51 days after the filing of its application with the CIR, Taganito filed with the CTA a petition for review. At that time, the CIR had not yet finally acted upon Taganito's application for refund. The CIR answered that the claim for refund was still subject to investigation.

On October 27, 2009, the CTA Division partially granted Taganito's petition and ordered the CIR to refund the amount of □3,636,854.07. The dispositive portion of the decision reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of **THREE MILLION SIX HUNDRED THIRTY SIX THOUSAND EIGHT HUNDRED FIFTY FOUR PESOS AND 7/100 CENTAVOS (□3,636,854.07)**, representing its unutilized input taxes attributable to zero-rated sales from January 1, 2002 to December 31, 2002.
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> **SO ORDERED.**[4]

The CIR moved for reconsideration, arguing that the petition for review was prematurely filed because Taganito did not wait for the lapse of 120 days mandated by Section 112(D) of the National Internal Revenue Code of 1997 (*NIRC*). Therefore, the CTA was bereft of jurisdiction to rule on the petition. The said motion was denied.

The CIR then filed a petition for review before the CTA En Banc, claiming that Taganito failed to exhaust administrative remedies under

[4] Id. at 131.

Section 112(D) of the NIRC before resorting to judicial appeal, and that it failed to present concrete and convincing proof that the CIR did not have enough reason to deny its administrative claim for refund.

In the assailed Decision, dated April 18, 2011, the CTA En Banc granted the petition, reversed and set aside the decision and the resolution of the CTA Division, and ordered the case dismissed for being prematurely filed.

Citing the case of *CIR v. Aichi Forging Company of Asia, Inc.*[5] *(Aichi),* the CTA En Banc concluded that the premature filing of a petition for review before the CTA in a claim for refund or credit of input VAT warranted a dismissal inasmuch as no jurisdiction was acquired by the CTA. It stated that in claiming a tax refund or tax credit under Section 112 of the NIRC, the taxpayer should apply for refund/credit of unutilized input VAT within two years after the close of the taxable quarter when the sales were made. Thereafter, the CIR has 120 days from the date of the submission of the complete documents within which to grant or deny the claim. If the CIR decided during the 120-day period, or failed to act on the application for tax refund/credit after the 120-day period, the remedy of the tax payer is to appeal the decision or inaction of the CIR to the CTA within 30 days from the decision or inaction.

The CTA En Banc ruled that a violation of Section 112 would lead to the dismissal of the petitioner's appeal or petition due to prematurity, notwithstanding the timely filing of the administrative application for refund or tax credit. It stated that the petition did not comply with the prescribed period because Taganito filed its application for tax refund or tax credit on December 30, 2003, but it appealed before the CTA only 51 days later, on February 19, 2004, in clear contravention of Section 112 and *Aichi*. In fine, the CTA En Banc dismissed the petition on the ground that the CTA Division failed to acquire jurisdcition over the case.

In the assailed Resolution, dated August 9, 2011, the CTA En Banc denied Taganito's motion for reconsideration.

Hence, the present petition.

Grounds for the Petition

I. The Court of Tax Appeals En Banc committed serious error and acted with grave abuse of discretion tantamount to lack or excess of jurisdiction in erroneously applying the *Aichi* doctrine to the instant case for the following reasons:

[5] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

A. The *Aichi* ruling is issued in violation of Art. VIII, Sec. 4(3)[6] of the 1987 Constitution.
B. The *Aichi* doctrine is an erroneous application of the law.
C. Even if the *Aichi* doctrine is good law, its application to the instant case will be in violation of Petitioner's right to due process and the principles of *stare decisis* and *lex prospicit, non respicit.*

II. Respondent disputes Petitioner's entitlement to the VAT refund merely on the basis of the technicality offered by *Aichi*, and on an unsupported allegation that Petitioner did not prove that the Respondent did not have enough reason to deny Petitioner's claim.[7]

Taganito argued that prior to *Aichi*, it was well-settled that a taxpayer need not wait for the decision of the CIR on its administrative claim for refund before it could file its judicial claim for refund, consonant with the period provided in Section 229 of the NIRC stating that no suit for the recovery of erroneously or illegally collected tax should be filed after the expiration of two years from the date of payment of the tax.

The CIR commented that the *Aichi* decision is a sound ruling which merely applied the clear provisions of the law; that Section 229 of the NIRC does not apply because unutilized input VAT is not an erroneously or illegally collected tax; and that Section 112 of the NIRC specifically governs refunds of unutilized input VAT.[8]

Taganito replied that the issue on the prescriptive periods for filing the application for tax credit/refund of unutilized input tax has been finally put to rest in the Court's decision in the consolidated cases of *Commission of Internal Revenue vs. San Roque Power Corporation* (G.R. No. 187485), *Taganito Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 196113), and *Philex Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 197156) *(San Roque).*[9]

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[6] (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: *Provided*, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc.*

[7] *Rollo*, pp. 17-18.

[8] Id. at 170.

[9] February 12, 2013, 690 SCRA 336.

Taganito, in accordance with the said decision, argued that since it filed its judicial claim after the issuance of BIR Ruling No. DA-489-03, but before the adoption of the *Aichi* doctrine, it can invoke BIR Ruling No. DA-489-03 which ruled 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." Therefore, its petition for review was not prematurely filed before the CTA.

Ruling of the Court

The sole issue at hand is whether or not Taganito's judicial claim for refund/credit was prematurely filed.

The Court finds merit in Taganito's position in its Reply.

The Court, in *San Roque*,[10] conclusively settled that it is Section 112 of the NIRC which applies specifically to claims for tax credit certificates and tax refunds specifically for unutilized creditable input VAT, and not Section 229. The recent case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*,[11] encapsulates the relevant ruling in *San Roque*, as follows:

> Two sections of the NIRC are pertinent to the issue at hand, namely Section 112 (A) and (D) and Section 229, to wit:
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> **SEC. 112. Refunds or Tax Credits of Input Tax. –**
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> **(A) Zero-rated or Effectively Zero-rated Sales.- Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely

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[10] Id.

[11] G.R. No. 197525, June 4, 2014.

> attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> 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 the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day period, appeal the decision or the unacted claim with the Court of Tax Appeals.**
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> **SEC. 229. Recovery of Tax Erroneously or Illegally Collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected**, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.
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> [Emphases supplied]

It has been definitively settled in the recent En Banc case of *CIR v. San Roque Power Corporation* (*San Roque*), that it is Section 112 of the NIRC which applies to claims for tax credit certificates and tax refunds arising from sales of VAT-registered persons that are zero-rated or effectively zero-rated, which are, simply put, claims for unutilized creditable input VAT.

Thus, under Section 112(A), the taxpayer may, within 2 years after the close of the taxable quarter when the sales were made, via an administrative claim with the CIR, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Under Section 112(D), the CIR must then act on the claim within 120 days from the submission of the taxpayer's complete documents. In case of (a) a full or partial denial by the CIR of the claim, or (b) the CIR's failure to act on the claim within 120 days, the taxpayer may file a judicial claim via an appeal with the CTA of the CIR decision or unacted claim, within 30 days (a) from receipt of the decision; or (b) after the expiration of the 120-day period.

The 2-year period under Section 229 does not apply to appeals before the CTA in relation to claims for a refund or tax credit for unutilized creditable input VAT. Section 229 pertains to the recovery of taxes erroneously, illegally, or excessively collected. *San Roque* stressed that "input VAT is not 'excessively' collected as understood under Section 229 because, at the time the input VAT is collected, the amount paid is correct and proper." It is, therefore, Section 112 which applies specifically with regard to claiming a refund or tax credit for unutilized creditable input VAT.

Upholding the ruling in *Aichi*, *San Roque* held that the 120+30 day period prescribed under Section 112(D) is mandatory and jurisdictional. The jurisdiction of the CTA over decisions or inaction of the CIR is only appellate in nature and, thus, necessarily requires the prior filing of an administrative case before the CIR under Section 112. The CTA can only acquire jurisdiction over a case after the CIR has rendered its decision, or after the lapse of the period for the CIR to act, in which case such inaction is considered a denial. A petition filed prior to the lapse of the 120-day period prescribed under said Section would be premature for violating the doctrine on the exhaustion of administrative remedies.

There is, however, an exception to the mandatory and jurisdictional nature of the 120+30 day period. The Court in *San Roque* noted that BIR Ruling No. DA-489-03, dated December 10, 2003, expressly 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." This BIR Ruling was recognized as a general interpretative rule issued by the CIR under Section 4 of the NIRC and, thus, applicable to all taxpayers. Since the CIR has exclusive and original jurisdiction to interpret tax laws, it was held that taxpayers acting in good faith should not be made to suffer for adhering to such interpretations. Section 246 of the Tax Code, in consonance with equitable estoppel, 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. Hence, taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, where it was held that the 120+30 day period was mandatory and jurisdictional.

> Accordingly, the **general rule** is that the 120+30 day period is mandatory and jurisdictional from the effectivity of the 1997 NIRC on January 1, 1998, up to the present. As an **exception**, judicial claims filed from December 10, 2003 to October 6, 2010 need not wait for the exhaustion of the 120-day period.[12]

From the foregoing, it is clear that the two-year period under Section 229 does not apply to claims for a refund or tax credit for unutilized creditable input VAT because it is not considered "excessively" collected. Instead, *San Roque* settled that Section 112 applies to claims for a refund or tax credit for unutilized creditable input VAT, thereby making the 120+30 day period prescribed therein mandatory and jurisdictional in nature.

As an *exception* to the mandatory and jurisdictional nature of the 120+30 day period, judicial claims filed between December 10, 2003 or from the issuance of BIR Ruling No. DA-489-03, up to October 6, 2010 or the reversal of the ruling in *Aichi*, need not wait for the lapse of the 120+30 day period in consonance with the principle of equitable estoppel.

In the present case, Taganito filed its judicial claim with the CTA on February 19, 2004, clearly **within the period of exception** of December 10, 2003 to October 6, 2010. Its judicial claim was, therefore, not prematurely filed and should not have been dismissed by the CTA En Banc.

WHEREFORE, the petition is **GRANTED**. The April 18, 2011 Decision and the August 9, 2011 Resolution of the Court of Tax Appeals En Banc, in CTA EB Case No. 559 are **REVERSED** and **SET ASIDE**. The July 31, 2009 Decision and the October 27, 2009 Resolution of the CTA Former Second Division in CTA Case No. 6867 are hereby **REINSTATED**.

The Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or, in the alternative, **TO ISSUE A TAX CREDIT CERITICATE** in favor of Taganito Mining Corporation the amount of **THREE MILLION SIX HUNDRED THIRTY SIX THOUSAND EIGHT HUNDRED FIFTY FOUR PESOS AND 7/100 (₱3,636,854.07)**, representing the unutilized input taxes attributable to its zero-rated sales from January 1, 2002 to December 31, 2002.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[12] *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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