Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

TEAM ENERGY CORPORATION (Formerly MIRANT PAGBILAO CORPORATION),	**G.R. No. 197760**
	Present:
Petitioner,	VELASCO, JR., *J., Chairperson,*
	PERALTA,
	ABAD,
- versus -	MENDOZA, and
	LEONEN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	**Promulgated:**
Respondent.	January 13, 2014

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DECISION

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the May 2, 2011[1] and the July 15, 2011[2] Resolutions of the Court of Tax Appeals (*CTA*) *En Banc* in CTA EB Case No. 706. The assailed resolutions affirmed the November 26, 2010 Amended Decision[3] of the CTA Special First Division in CTA Case No. 7617, which dismissed petitioner's claim for tax refund or issuance of a tax credit certificate for failure to comply with the 120-day period provided under Section 112 (C) of the National Internal Revenue Code (*NIRC*).

The facts, as found by the CTA, follow:

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1 Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas, concurring; Associate Justice Lovell R. Bautista, dissenting; Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, on wellness leave, *rollo*, pp. 48-61.

2 *Rollo,* pp. 66-70.

3 Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta, concurring and Associate Justice Lovell R. Bautista, dissenting; *id.* at 35-39.

Petitioner is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer (BOT) scheme. As such, it is registered with the BIR as a VAT taxpayer in accordance with Section 107 of the National Internal Revenue Code (NIRC) of 1977 (now Section 236 of the NIRC of 1997), with Tax Identification No. 001-726-870-000, as shown on its BIR Certificate of Registration No. OCN8RC0000017854.

On December 17, 2004, petitioner filed with the BIR Audit Information, Tax Exemption and Incentives Division an Application for VAT Zero-Rate for the supply of electricity to the NPC from January 1, 2005 to December 31, 2005, which was subsequently approved.

Petitioner filed with the BIR its Quarterly VAT Returns for the first three quarters of 2005 on April 25, 2005, July 26, 2005, and October 25, 2005, respectively. Likewise, petitioner filed its Monthly VAT Declaration for the month of October 2005 on November 21, 2005, which was subsequently amended on May 24, 2006. These VAT Returns reflected, among others, the following entries:

Exhibit	Period Covered	Zero-Rated Sales/Receipts	Taxable Sales	Output VAT	Input VAT
"C"	1st Qtr-2005	₱ 3,044,160,148.16	₱ 1,397,107.80	₱ 139,710.78	₱ 16,803,760.82
"D"	2nd Qtr-2005	3,038,281,557.57	1,241,576.30	124,157.63	32,097,482.29
"E"	3rd Qtr-2005	3,125,371,667.08	452,411.64	45,241.16	16,937,644.73
"G" (amended)	October 2005		910,949.50	91,094.95	14,297,363.76
	Total	**₱ 9,207,813,372.81**	**₱ 4,002,045.24**	**₱ 400,204.52**	**₱ 80,136,251.60**

On December 20, 2006, petitioner filed an administrative claim for cash refund or issuance of tax credit certificate corresponding to the input VAT reported in its Quarterly VAT Returns for the first three quarters of 2005 and Monthly VAT Declaration for October 2005 in the amount of ₱80,136,251.60, citing as legal bases Section 112 (A), in relation to Section 108 (B)(3) of the NIRC of 1997, Section 4.106-2(c) of Revenue Regulations No. 7-95, Revenue Memorandum Circular No. 61-2005, and the case of **Maceda v. Macaraig**.

Due to respondent's inaction on its claim, petitioner filed the instant Petition for Review before this Court on April 18, 2007.

In his Answer filed on May 27, 2007, respondent interposed the following Special and Affirmative Defenses:

> 5. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.
>
> 6. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent.
>
> 7. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law.

8. To support its claim for refund, it is imperative for petitioner to prove the following, viz.:

   a. The registration requirements of a value-added taxpayer in compliance with the pertinent provision of the Tax Code, of 1997, as amended, and its implementing revenue regulations;

   b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended;

   c. Proof of compliance with the submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (D) of the Tax Code of 1997, as amended, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended;

   d. That the input taxes of ₱80,136,261.60 allegedly representing unutilized input VAT from its domestic purchases of capital goods, domestic purchases of goods other than capital goods, domestic purchases of services, services rendered by nonresidents, importation of capital goods and importation of goods other than capital goods were:

      d.i paid by petitioner;
      d.ii attributable to its zero-rated sales;
      d.iii used in the course of its trade or business; and
      d.iv such have not been applied against any output tax;

   e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended;

   f. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code, as amended.

   g. Petitioner failed to prove compliance with the aforementioned requirements.

9. Furthermore, in action for refund the burden of proof is on the taxpayer to establish its right to refund and failure

> to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications. (*Asiatic Petroleum Co. [P.I.] v. Llanes, 49 Phil 446,* cited in *Collector of Internal Revenue v. Manila Jockey Club, 98 Phil. 670*);
>
> 10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.
>
> During trial, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, waived his right to present evidence.
>
> This case was submitted for decision on July 13, 2009, after the parties filed their respective Memorandum.[4]

In a Decision[5] dated July 13, 2010, the CTA Special First Division partially granted petitioner's claim for refund or issuance of tax credit certificate. It held as follows:

> WHEREFORE, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND or in the alternative, ISSUE A TAX CREDIT CERTIFICATE in the amount of SEVENTY-NINE MILLION ONE HUNDRED EIGHTY-FIVE THOUSAND SIX HUNDRED SEVENTEEN AND 33/100 PESOS (₱79,185,617.33) in favor of petitioner, representing unutilized input VAT, attributable to its effectively zero-rated sales of power generation services to NPC for the period covering January 1, 2005 to October 31, 2005.
>
> SO ORDERED.

Disgruntled, respondent filed a Motion for Reconsideration against said decision.

On November 26, 2010, the CTA Special First Division rendered an Amended Decision granting respondent's Motion for Reconsideration. In light of this Court's ruling in *Commissioner of Internal Revenue v. Aichi Forging Company, Inc.*[6] (*Aichi*), it reversed and set aside the earlier decision of the CTA Special First Division. Thus:

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4 *Id*. at 15-18. (Citations omitted; emphasis in the original)
5 *Id*. at 14-33.
6 G.R. No. 184823, October 6, 2010, 632 SCRA 422.

> In the case at bench, petitioner's administrative claim was filed on December 20, 2006 which is well within the two-year [prescriptive] period prescribed under Section 112 (A) of the NIRC. Observing the 120-day period for the Commissioner to render a decision on the administrative claim, as required under Section 112 (D) of the NIRC, petitioner's judicial claim should have been filed not earlier than April 19, 2007. Petitioner, however, filed its judicial claim on April 18, 2007 or only 199 days from December 20, 2006, thus, prematurely filed.
>
> Accordingly, petitioner's claim for refund/credit of excess input VAT, covering the period January 1 to October 31, 2005, warrants a dismissal for having been prematurely filed.
>
> **WHEREFORE**, the Motion for Reconsideration (Re: Decision promulgated 13 July 2010) of the respondents is hereby **GRANTED**. The assailed July 13, 2010 Decision is hereby **REVERSED** and **SET ASIDE** and CTA Case No. 7617 is hereby considered **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED**.[7]

Petitioner then filed a Petition for Review with the CTA *En Banc* arguing that the requirement to exhaust the 120-day period for respondent to act on its administrative claim for input VAT refund/credit under Section 112 (C) of the NIRC is merely a species of the doctrine of exhaustion of administrative remedies and is, therefore, not jurisdictional.

In a Resolution dated May 2, 2011, the CTA *En Banc* denied the petition for lack of merit. Its *fallo* reads:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED DUE COURSE** for lack of merit.
>
> Attys. Rachel P. Follosco and Froilyn P. Doyaoen-Pagayatan are hereby **ADMONISHED** to be more careful in the discharge of their duty to the court as a lawyer under the Code of Professional Responsibility.
>
> **SO ORDERED**.[8]

Unfazed, petitioner filed a Motion for Reconsideration. However, the same was denied in a Resolution dated July 15, 2011.

Hence, the present petition.

Petitioner invokes the following grounds to support its petition:

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7 *Rollo*, pp. 38-39. (Emphasis in the original)

8 *Id*. at 60. (Emphasis in the original)

I.

THE CTA ACQUIRED JURISDICTION OVER THE PETITION FOR REVIEW FILED WITH AND TRIED BY THE SPECIAL FIRST DIVISION OF THE CTA DUE TO FAILURE OF THE RESPONDENT CIR TO INVOKE THE RULE OF NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES.

II.

THE CTA *EN BANC*'S APPLICATION OF THE RECENT JUDICIAL INTERPRETATION OF THE SUPREME COURT IN THE AICHI CASE TO THE INSTANT PETITION FOR REVIEW IS ERRONEOUS BECAUSE:

A) IT VIOLATES ESTABLISHED RULES PROHIBITING RETROACTIVE APPLICATION OF JUDICIAL DECISIONS;

B) IT WILL BE UNJUST AND INEQUITABLE TO THE PETITIONER WHO RELIED IN GOOD FAITH ON PREVAILING JURISPRUDENCE AT THE TIME OF INSTITUTING THE ADMINISTRATIVE AND JUDICIAL CLAIMS; AND,

C) IT WILL UNJUSTLY ENRICH THE GOVERNMENT AT THE EXPENSE OF THE PETITIONER.[9]

In essence, the issue is whether or not the CTA has jurisdiction to take cognizance of the instant case.

Prefatorily, to address the issue of lack of jurisdiction, there is a need to discuss Section 112 (A) and (C) which states:

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

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9 *Id*. at 84.

> 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.

From the foregoing, it is clear that a VAT-registered taxpayer claiming for refund or tax credit of their excess and unutilized input VAT must file their administrative claim within two years from the close of the taxable quarter when the sales were made. After that, the taxpayer must await the decision or ruling of denial of its claim, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim. Once the taxpayer receives the decision or ruling of denial or expiration of the 120-day period, it may file its petition for review with the CTA within thirty (30) days.

In the *Aichi* case, this Court ruled that the 120-30-day period in Section 112 (C) of the NIRC is mandatory and its non-observance is fatal to the filing of a judicial claim with the CTA. In this case, the Court explained that if after the 120-day mandatory period, the Commissioner of Internal Revenue (*CIR*) fails to act on the application for tax refund or credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within thirty (30) days. The judicial claim, therefore, need not be filed within the two-year prescriptive period but has to be filed within the required 30-day period after the expiration of the 120 days. Thus:

> Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to [the] CTA within 30 days.
>
> x x x x
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two 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." The phrase "within two years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.

> **In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR**. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. **In both instances, the taxpayer has 30 days within which to file an appeal with the CTA**. **As we see it then, the 120-day period is crucial in filing an appeal with the CTA**.[10] (Emphasis supplied)

Recently, however, in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[11] (*San Roque*), the Court clarified that the mandatory and jurisdictional nature of the 120-30-day rule does not apply on claims for refund that were prematurely filed during the interim period from the issuance of Bureau of Internal Revenue (*BIR*) Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the *Aichi* doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of the *Aichi* decision, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 where the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA. It expounded on the matter in this wise:

> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states 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**." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
>
> 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.
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> x x x x

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[10] *Commissioner of Internal Revenue v. Aichi Forging Company, Inc.*, *supra* note 6, at 443-444. (Emphasis in the original)

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

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. Section 246 provides as follows:

> Section 246. *Non-retroactivity of Rulings*. – Any 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:
>
> (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;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (Emphasis supplied)

Thus, a general interpretative rule issued by the Commissioner may be relied upon by the taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, "**Any** revocation, modification or reversal" without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered by Section 246.

x x x x

Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

BIR Ruling No. DA-489-03 is a general interpretative rule because it is 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 120-130 day periods are mandatory and jurisdictional.[12]

In the present case, petitioner filed its judicial claim on April 18, 2007 or after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 but before October 6, 2010, the date when the *Aichi* case was promulgated. Thus, even though petitioner's judicial claim was prematurely filed without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the instant case as it was filed within the period exempted from the 120-30-day mandatory period.

WHEREFORE, the foregoing considered, the instant Petition for Review on *Certiorari* is hereby **GRANTED**. The May 2, 2011 and the July 15, 2011 Resolutions of the Court of Tax Appeals *En Banc* in CTA EB Case No. 706 are **REVERSED** and **SET ASIDE**. Let this case be remanded to the Court of Tax Appeals for the proper determination of the refundable amount.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

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[12] *Commissioner of Internal Revenue v. San Roque Power Corporation, supra,* at 401-404. (Citations omitted, emphasis in the original)

I dissent consistent with my position in CIR v. San Roque (2019)

MARVIC MARIO VICTOR 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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