Supreme Court E-Library

and integrity as he leaves the government which he served well and faithfully, if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[32]

WHEREFORE, in view of the foregoing, **Judge Oscar E. Dinopol** formerly of the Regional Trial Court, Branch 24, Koronadal City, is hereby found **GUILTY** of gross ignorance of the law. His offense would have warranted his dismissal from the service with forfeiture of all benefits — except leave credits, if any — and disqualification from holding office in the government, including government-owned and –controlled corporations, had he not already been previously dismissed in *Sy v. Judge Dinopol* (A.M. No. RTJ-09-2189).

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Perez, J., no part. Acted on matter as CA of OCA.

EN BANC

[G.R. No. 187485. February 12, 2013]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SAN ROQUE POWER CORPORATION,** *respondent.*

[G.R. No. 196113. February 12, 2013]

TAGANITO MINING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

---

[32] *Id.* at 580-581.

Supreme Court E-Library

[G.R. No. 197156. February 12, 2013]

PHILEX MINING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE; PRESCRIPTIVE PERIODS FOR FILING A CLAIM; THE 120-DAY WAITING PERIOD BEFORE FILING A JUDICIAL CLAIM IS MANDATORY AND JURISDICTIONAL.—** San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

2. **ID.; ID.; ID.; EFFECTS OF FAILURE TO COMPLY WITH THE 120-DAY WAITING PERIOD; CASE AT BAR.—** Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles. The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has

Supreme Court E-Library

no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review. San Roque's failure to comply with the 120-day **mandatory** period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity. x x x For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.

3. ID.; ID.; ID.; LATE FILING OF A JUDICIAL CLAIM IS FATAL; THE "DEEMED A DENIAL" DECISION OF THE COMMISSIONER BECOMES FINAL AND INAPPEALABLE.— Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late. The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of

Supreme Court E-Library

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.

4. **ID.; ID.; ID.; THREE COMPELLING REASONS WHY THE 30-DAY PERIOD NEED NOT NECESSARILY FALL WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD.—** First, x x x the law states that the taxpayer may apply with the Commissioner for a refund or credit "**within two (2) years**," **which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription. Second, x x x **the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner**. As held in *Aichi*, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund' **refers to applications for refund/credit with the CIR and not to appeals made to the CTA**." Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period**. Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive

Supreme Court E-Library

period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period. The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law.

5. ID.; ID.; CONCEPT OF "EXCESS" INPUT VAT AND "EXCESSIVELY" COLLECTED TAX, DISTINGUISHED AND EXPLAINED.— The 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**. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit **outside** of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT. In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected

Supreme Court E-Library

under Section 229. x x x From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, x x x, illegally, x x x excessively or **in any manner wrongfully** collected." In short, there must be a **wrongful payment** because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should "**apply only to instances of erroneous payment or illegal collection of internal revenue taxes.**" Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due.** Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT.

6. ID.; ID.; PRESCRIPTIVE PERIODS AND PROPER PARTY TO FILE A JUDICIAL CLAIM FOR "EXCESS" INPUT VAT AND "EXCESSIVELY" COLLECTED TAX, DISTINGUISHED AND EXPLAINED.— Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, x x x illegally, x x x excessively or in any manner wrongfully collected." The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. **Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229**. Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for "excess" input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the **output** VAT. This prescriptive period has no relation to the date of payment of the "excess" **input** VAT. The "excess" input VAT may have been paid for more than two years but this does not bar the

Supreme Court E-Library

filing of a judicial claim for "excess" VAT under Section 112(A), which has a different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the input VAT was "excessively" collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

7. ID.; ID.; ID.; APPLICATION OF THE 120+30 DAY PERIODS IN FILING A JUDICIAL CLAIM PURSUANT TO *AICHI* DOCTRINE, EXPLAINED; THESE PERIODS ARE MANDATORY AND JURISDICTIONAL. — 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 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. x x x [S]trict 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.

8. ID.; ID.; REVENUE MEMORANDUM CIRCULAR NO. 49-03, CONSTRUED; EFFECTS OF FILING A JUDICIAL CLAIM BEFORE OR AFTER THE 120-DAY WAITING PERIOD.— There is nothing in RMC 49-03 that states, expressly or impliedly, that the taxpayer need not wait for the 120-day period to expire before filing a judicial claim with the CTA. RMC 49-03 merely authorizes the BIR to continue processing the administrative claim even after the taxpayer has filed its judicial claim, without saying that the taxpayer can file its judicial claim before the expiration of the 120-day period. x x x, [I]f the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period. On the other hand, if the taxpayer files its judicial claim after the 120- day period, the Commissioner can still continue to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must **necessarily** continue to enable the BIR to oppose intelligently

Supreme Court E-Library

the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings. **What is important, as far as the present cases are concerned, is that the mere filing by a taxpayer of a judicial claim with the CTA before the expiration of the 120-day period cannot operate to divest the Commissioner of his jurisdiction to decide an administrative claim within the 120-day mandatory period, *unless* the Commissioner has clearly given cause for equitable estoppel to apply as expressly recognized in Section 246 of the Tax Code.**

9. ID.; ID.; BIR RULING NO. DA-489-03, EXPLAINED; TWO EXCEPTIONS FROM THE MANDATORY APPLICATION OF THE 120-DAY PERIOD.— 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 the120-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. x x x 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

Supreme Court E-Library

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 [A] general interpretative rule issued by the Commissioner may be relied upon by 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 under Section 246.

10. ID.; ID.; ID.; BIR RULING NO. DA-489-03 IS A GENERAL INTERPRETATIVE RULE WHICH IS APPLICABLE TO ALL TAXPAYERS.— BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period. Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.

11. ID.; ID.; ID.; ID.; BIR RULING NO. DA-489-03 CANNOT BE GIVEN RETROACTIVE EFFECT; REASONS.— BIR Ruling No. DA-489-03 cannot be given retroactive effect for four reasons: *first*, it is admittedly an erroneous interpretation of the law; *second*, prior to its issuance, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law; *third*, prior to its issuance, no taxpayer can claim that it was misled by the BIR into filing a judicial claim prematurely; and *fourth*, a claim for tax refund

Supreme Court E-Library

or credit, like a claim for tax exemption, is strictly construed against the taxpayer.

12. ID.; ID.; REVENUE REGULATION NO. 7-95 DID NOT AMEND SECTION 106(d) OF THE TAX CODE, AS AMENDED BY RA 7716, BUT MERELY IMPLEMENTED IT; THE 60-DAY PERIOD IS STILL MANDATORY AND JURISDICTIONAL.— There can be no dispute that under Section 106(d) of the 1977 Tax Code, as amended by RA 7716, the Commissioner has a 60-day period to act on the administrative claim. **This 60-day period is mandatory and jurisdictional**. Did Section 4.106-2(c) of Revenue Regulations No. 7-95 change this, so that the 60-day period is no longer mandatory and jurisdictional? The obvious answer is no. Section 4.106-2(c) itself expressly states that if, ***"after the sixty (60) day period,"*** the Commissioner fails to act on the administrative claim, the taxpayer may file the judicial claim even "before the lapse of the two (2) year period." **Thus, under Section 4.106-2(c) the 60-day period is still mandatory and jurisdictional**. Section 4.106-2(c) did not change Section 106(d) as amended by RA 7716, but merely implemented it, for two reasons. *First*, **Section 4.106-2(c) still expressly requires compliance with the 60-day period**. This cannot be disputed. *Second*, under the novel amendment introduced by RA 7716, mere **inaction** by the Commissioner during the 60-day period is **deemed a denial** of the claim. Thus, Section 4.106-2(c) states that "if no action on the claim for tax refund/credit has been taken by the Commissioner ***after the sixty (60) day period,***" the taxpayer "**may**" already file the judicial claim even long before the lapse of the two-year prescriptive period. Prior to the amendment by RA 7716, the taxpayer had to wait until the two-year prescriptive period was **about to expire** if the Commissioner did not act on the claim. With the amendment by RA 7716, the taxpayer need not wait until the two-year prescriptive period is about to expire before filing the judicial claim because mere inaction by the Commissioner during the 60-day period is deemed a denial of the claim. **This is the meaning of the phrase "but before the lapse of the two (2) year period" in Section 4.106-2(c)**. As Section 4.106- 2(c) reiterates that the judicial claim can be filed only ***"after the sixty (60) day period,"*** this period remains mandatory and jurisdictional.

Supreme Court E-Library

LEONEN, *J., separate opinion*:

1. TAXATION; TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE; PRESCRIPTIVE PERIOD FOR FILING JUDICIAL CLAIM; THE 120 + 30-DAY IS MANDATORY AND JURISDICTIONAL.— The 120 + 30-day period is mandatory and jurisdictional and the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. On the other hand, failure of the taxpayer to elevate its claim within 30 days from the lapse of the 120-day period, counted from the filing of its administrative claim for refund, or from the date of receipt of the decision of the CIR, will bar any subsequent judicial claim for refund.

2. ID.; ID.; ID.; THE BIR COMMISSIONER'S ERRONEOUS INTERPRETATION AND APPLICATION OF THE LAW ARE NOT BINDING AND CONCLUSIVE UPON THE COURT.— [W]hile the BIR Commissioner is given the power and authority to interpret tax laws pursuant to Section 4 of the NIRC, it cannot legislate guidelines contrary to the law it is tasked to implement. Hence, its interpretation is not conclusive and will be ignored if judicially found to be erroneous. Concededly, under Section 246 of the NIRC, "[a]ny revocation, modification or reversal of any BIR ruling or circular shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers." However, if it is patently clear that the ruling is contrary to the text of the law, there can be no reliance in good faith by the practitioners. BIR Ruling DA -489-03 which 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," constitutes a clear disregard of the express and categorical provision of Section 112(D) of the NIRC. Thus, the Commissioner's erroneous application of the law is not binding and conclusive upon this Court in any way.

SERENO, *C.J., separate dissenting opinion*:

1. TAXATION; TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE; PRESCRIPTIVE PERIOD FOR FILING

Supreme Court E-Library

JUDICIAL CLAIMS; REVENUE REGULATION NO. 7-95 WAS NOT REVOKED UPON THE ENACTMENT OF THE 1997 NIRC.— Revenue Regulation No. (RR) 7-95 was not superseded and did not become obsolete upon the approval of RA 8424 or the 1997 NIRC. It bears to stress that Section 106 (d) of the 1977 NIRC from which RR 7-95 was construed was not repealed by Section 112 (D) of the 1997 NIRC, thus, the same regulation which implements the same framework of the law may still be given effect for the proper execution of the terms set therein. It is wrong to assume that RR 7-95 was automatically revoked upon the enactment of a new law which conveys the same meaning as the old law. Needless to say, RR 7-95 was created in view of Section 106 (d) of the 1977 NIRC which has the same context and was actually replicated in Section 112 (D) of the 1997 NIRC. Thus, to conclude that RR 7-95 became inconsistent with Section 112 (D) of the 1997 NIRC is misplaced. Moreover, to disregard RR 7-95 upon the enactment of the 1997 NIRC would likewise create a complicated scenario of determining which administrative issuance would govern claims under the said tax code during the intervening period pending the revision on its implementing rules. It would be nearly impossible for the Bureau of Internal Revenue to operate in an administrative vacuum.

2. **ID.; ID.; ID.; THE MANDATORY NATURE OF THE 120 + ≤ 30 DAY PERIOD FOR FILING A JUDICIAL CLAIM SHOULD BE APPLIED PROSPECTIVELY.—** [I]n line with numerous jurisprudence, the mandatory and jurisdictional application of the 120+≤30 [day] period must be applied prospectively, or at the earliest only upon the finality of *Aichi* where this Court categorically ruled on the nature of the 120+≤30 [day] period pursuant to Section 112 (D) of the 1997 NIRC. Prior to *Aichi*, the CTA continuously ruled that the 120+≤30 [day] period is not mandatory and jurisdictional. x x x [T]he CTA's disposition of the issue of the prescriptive period for claims for refund of input VAT, which had never been controverted by this Court until the *Aichi* case, had served as a guide not only to inferior courts but also to taxpayers. Hence, following the pronouncement in *Miranda* case, we must give weight to the dispositions made during the interim period when the issue of mandatory compliance with Section 112 had not yet been resolved, much less raised in this jurisdiction. x x x

Supreme Court E-Library

We find it violative of the right to procedural due process of taxpayers when the Court itself allowed the taxpayers to believe that they were observing the proper procedural periods and, in a sudden jurisprudential turn, deprived them of the relief provided for and earlier relied on by the taxpayers. It is with this reason and in the interest of substantial justice that the strict application of the 120+≤30 day period should be applied prospectively to claims for refund or credit of excess input VAT. To apply these rules retroactively would be tantamount to punishing the public for merely following interpretations of the law that have the imprimatur of this Court. To do so creates a tear in the public order and sow more distrust in public institutions. We would be fostering uncertainty in the minds of the public, especially in the business community, if we cannot guarantee our own obedience to these rules. x x x It is my view that the mandatory nature of 120+≤30 day period must be completely applied prospectively in order to create stability and consistency in our tax laws.

VELASCO, JR., *J., dissenting opinion*:

1. **TAXATION; TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE; PRESCRIPTIVE PERIOD FOR FILING JUDICIAL CLAIMS; REVENUE REGULATION NO. 7-95 (RR 7-95) WAS NOT REPEALED BY THE 1997 NIRC.—Sec. 4.106-2 of RR 7-95**, which provided that such judicial claims for refund/credit of input VAT must be filed "before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter" **was not, however, repealed by the 1997 NIRC**. **There was no provision in RA 8424 explicitly repealing RR 7-95**. Instead, Sec. 4.106-2 of RR 7-95 remained effective as the implementing rule of Sec. 112(D) that was lifted almost verbatim from Sec. 106(d) of the 1977 NIRC, as amended. x x x It is apparent that Sec. 106(d) of the 1977 NIRC, as amended, was substantially adopted and re-enacted by Sec. 112(D) of the 1997 NIRC. In other words, Sec. 106(d) of the 1977 NIRC, as amended, was **not repealed** by Sec. 112(D) of the 1997 NIRC. Thus, **RR 7-95 construing and implementing Sec. 106(d) of the 1977 NIRC, as amended by RA 7716, continued in effect under Sec. 112(D) of the 1997 NIRC.**

Supreme Court E-Library

2. ID.; ID.; ID.; REVENUE MEMORANDUM CIRCULAR (RMC) NO. 49-03 PROVES THAT THE 120-DAY AND 30-DAY PERIODS ARE NON-JURISDICTIONAL IN NATURE.— RMC 49-03 explicitly allowed a taxpayer to file his judicial claim with the CTA while his administrative claim for refund of the same input taxes was still pending before the BIR, *i.e.*, without waiting for the administrative claim to be first resolved, and that both claims, judicial and administrative, could proceed simultaneously; in brief, the administrative agency and the tax court may take cognizance of and act on the claims separately. RMC 49-03 permitted refund-seeking taxpayers to have recourse to the CTA without having to wait for the lapse of the 120-day period granted to the CIR by Section 112(D). At the same time, the BIR was to continue to exercise jurisdiction over the administrative claim for refund, even after the CTA acquired jurisdiction over the judicial claim for refund of the exact same input VAT. This RMC even provided the mechanics for dealing with situations where one claim was resolved ahead of the other, in order to prevent conflicting outcomes or double refunds. Obviously, this RMC provided much needed and reliable guidance to taxpayers in dealing with their claims that were in peril of being time-barred. At bottom, RMC 49-03 conclusively proves that the CIR and the CTA regarded the 120-day and 30-day periods in Sec. 112(D) as being **non-jurisdictional in nature**. It must be reiterated for emphasis that RMC 49-03 was issued and implemented under the aegis of the 1997 NIRC. In addition, it is unarguable that **RMC 49-03 was premised on the belief of the CIR and the CTA that the two-year prescriptive period under Sec. 229 continued to be applicable to judicial claims for refund of input VAT, because otherwise, there would have been no need for, and no point in, allowing both the judicial and administrative claims to proceed simultaneously.**

3. ID.; ID.; ID.; BIR RULING NO. DA-489-03 WAS A MERE APPLICATION OF RR 7-95.— BIR Ruling No. DA-489-03 was a mere application of the still effective rule set by RR 7-95, which, as discussed, was an issuance made by the Secretary of Finance pursuant to the authority granted to him by the Tax Code. On the other hand, BIR Ruling No. DA-489-03 was issued not by the CIR, but by then **Deputy Commissioner** Jose Mario C. Buñag of the Legal & Inspection Group of BIR. It was, therefore, not an issuance authorized

Supreme Court E-Library

under Sec. 4 of the NIRC, which clearly provides that the "power to interpret the provisions of [the NIRC] and other tax laws shall be under the **exclusive** and **original** jurisdiction of the Commissioner, subject to the review by the Secretary." Neither can BIR Ruling No. DA -489-03 be considered an issuance within the delegated authority of the deputy commissioner considering that Sec. 7 of the 1997 NIRC expressly prohibits [that] delegation of x x x powers[.] x x x If this Court is set in sustaining the binding effect of BIR Ruling No. DA-489-03, it must be viewed as simply applying an already established and still effective rule provided by RR 7-95, not an issuance that established a new rule that departed from the 1997 NIRC.

4. ID.; ID.; ID.; RULINGS OF THE COURT ESTABLISHED THAT THE 120-DAY AND 30-DAY PERIODS ARE MERELY DISCRETIONARY AND DISPENSABLE.— [A] reading of the rulings of this Court on claims for refund/credit of input VAT initiated from 1996 to 2005 made the impression that this Court was simply applying a well and long established rule that the period provided in Sec. 112(D) of the 1997 NIRC is merely discretionary and dispensable. As long as the judicial claim is filed within the 2-year period provided in Sec. 112(A), it was considered irrelevant whether the claim with the CTA is filed a day or a year after the administrative claim was filed with the CIR. x x x The common thread that runs through these cases is the cavalier treatment of the 120 and 30-day periods prescribed by Sec. 112 of the 1997 NIRC. If it is the Court's position that the prescribed periods of 120 days for administrative claim and 30 days for judicial claims are jurisdictional at the time the judicial claims were filed in these cases, then the cases should have been decided adversely against the taxpayers for filing the claim in breach of Sec. 112 of the 1997 NIRC. When these cases were entertained by the Court despite the clear departure from Sec. 112, the Court, wittingly or unwittingly, led the taxpayers to believe that the 120 and 30-day periods are dispensable as long as both the administrative and judicial claims for refund/credit of input VAT were filed within 2 years from the close of the relevant taxable quarter. Simply put, **the taxpayers relied in good faith on RR 7-95** and honestly believed and regarded the 120 and 30-day periods as merely discretionary and dispensable.

Supreme Court E-Library

5. ID.; ID.; ID.; ID.; LITANY OF CTA DECISIONS TREAT THE 120-DAY AND 30-DAY PERIODS AS MERELY DISCRETIONARY AND DISPENSABLE; IT CONSTITUTES AN OPERATIVE FACT AND SERVES AS GUIDANCE TO TAXPAYERS IN FILING THEIR CLAIMS.— [W]hile CTA Decisions are not binding on the Court, **the actual manner in which the BIR and the CTA themselves regarded the 120 and 30-day periods —** in the course of handling administrative and judicial claims for refund/tax credit during the period in question, **as evidenced by the factual recitals in the CTA Decisions — constitutes an operative fact that cannot simply be ignored.** The truth of the matter is that, **whatever may have been the law and the regulation in force at the time, taxpayers took guidance from and relied heavily upon the manner in which the BIR and the CTA viewed the 120- and 30-day periods, as reflected in their treatment of claims for input VAT refund/credit, and these taxpayers acted accordingly by filing their claims in the manner permitted and encouraged by the BIR and the CTA.** This is a reality that even this Court cannot afford to turn a blind eye to. Numerous decisions of the CTA in Division and *En Banc* reveal that the **BIR and CTA by their very actuations in the period between 1996 and 2005, did, in fact, permit, tolerate and encourage taxpayers to file their refund/tax credit claims without regard to the 120 and 30-day periods provided in Sec. 112(D)**. x x x There is a host of other CTA cases that illustrate the same point, *i.e.*, that despite non-compliance with the 120 and 30-day periods, the judicial claim was not opposed by the BIR nor rejected by the CTA on the ground of prematurity of the judicial claim, or lack of jurisdiction to take cognizance thereof. On the other hand, there are also CTA *En Banc* decisions treating of the exact opposite of prematurity. x x x Thus, it is exceedingly clear that, historically speaking, in order to enable refund-seeking taxpayers to file their judicial claims within the two- year prescriptive period, the BIR and the CTA did in actual practice treat the 120-day and 30-day periods provided in Sec. 112(D) as merely discretionary and dispensable; and this served as guidance for the taxpayers. **The taxpaying public took heed of the prevailing practices of the BIR and CTA and acted accordingly. This is a matter which this Court must acknowledge and accept**. In addition, there is no doubt in

Supreme Court E-Library

our mind that the guidance provided to taxpayers by actual BIR and CTA practices, as portrayed in the foregoing discussion, carried as much, if not more, weight and persuasive force as compared to the formal issuances of the BIR such as revenue regulations, RMCs and the like. Thus, adherence to the then prevailing practices of the BIR and CTA , even in the absence of formal issuances like RR 7-95, would be sufficient to clothe the taxpayer with good faith.

6. **ID.; ID.; ID.; IT IS *AICHI* CASE THAT CATEGORICALLY DECLARED THE 120-DAY AND 30-DAY PERIODS AS MANDATORY AND JURISDICTIONAL.—** All doubts on whether or not the 120 and 30-day periods are merely discretionary and dispensable were erased when the Court promulgated *Aichi* on October 6, 2010. There, the Court is definite and categorical that the prescriptive period of 120 and 30 days under Sec. 112 of the 1997 NIRC is mandatory and jurisdictional. *Aichi* explained that the 2-year period provided in **Sec. 112(A)** of the 1997 NIRC refers **only** to the prescription period for the filing of an **administrative claim** with the CIR. Meanwhile, the **judicial claim** contemplated under said **Sec. 112(C)** must be filed within a **mandatory and jurisdictional period** of thirty (30) days after the taxpayer's receipt of the CIR's decision denying the claim, or within thirty (30) days after the CIR's inaction for a period of 120 days from the submission of the complete documents supporting the claim. Hence, the period for filing the judicial claim under Sec. 112(C) may stretch out beyond the 2-year threshold provided in Sec. 112(A) as long as the administrative claim is filed within the said 2-year period.

7. **ID.; ID.; ID.; TAXPAYERS WHO BONA FIDE RELIED ON THE PREVIOUS RULES AND PREVAILING PRACTICES PRIOR TO *AICHI* MUST BE GIVEN DUE CREDIT.— [T]his Court, x x x, is duty-bound to sustain and give due credit to the taxpayers' bona fide reliance on RR Nos. 7-95 and 14- 2005, RMC Nos. 42-03 and 49-03**, along with guidance provided by the then prevailing practices of the BIR and the CTA, prior to their modification by RR 16-2005. Such prospective application of the latter revenue regulation comports with the simplest notions of what is fair and just—the precepts of due process. The Court has previously held that "in declaring a law or executive action null and void, or, by extension, no

Supreme Court E-Library

> longer without force and effect, **undue harshness and resulting unfairness must be avoided**." Such pronouncement can be applied to a change in the implementing rules of the law. The reliance on the previous rules, in particular RR Nos. 7-95 and 14-2005, along with RMC Nos. 42-03 and 49-03, and the guidance provided by the then prevailing practices of the BIR and the CTA, most certainly have had irreversible consequences that cannot just be ignored; the past cannot always be erased by a new judicial declaration. x x x Indeed, denying claims for the issuance of TCCs or refund of unutilized input VAT amounting to millions, if not billions, of hard-earned money that rightfully belongs to these taxpayers on the facile ground that the judicial claim was not timely filed in accordance with a **later** rule, virtually sanctions the perpetration of injustice.

APPEARANCES OF COUNSEL

Ilao & Ilao Law Offices for San Roque Power Corp. and Taganito Mining Corp.

Tirso A. Tejada for Philex Mining Corp.

The Solicitor General for Commissioner of Internal Revenue.

D E C I S I O N

CARPIO, *J.*:

The Cases

G.R. No. 187485 is a petition for review[1] assailing the Decision[2] promulgated on 25 March 2009 as well as the Resolution[3]

---

[1] Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo* (G.R. No. 187485), pp. 22-54.

[2] Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring. Presiding Justice Ernesto D. Acosta penned a Separate Concurring and Dissenting Opinion. *Id.* at 55-80.

[3] Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring. Presiding Justice Ernesto D. Acosta penned a Separate Concurring and Dissenting Opinion. *Id.* at 81-82.

Supreme Court E-Library

promulgated on 24 April 2009 by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 408. The CTA EB affirmed the 29 November 2007 Amended Decision[4] as well as the 11 July 2008 Resolution[5] of the Second Division of the Court of Tax Appeals (CTA Second Division) in CTA Case No. 6647. The CTA Second Division ordered the Commissioner of Internal Revenue (Commissioner) to refund or issue a tax credit for ₱483,797,599.65 to San Roque Power Corporation (San Roque) for unutilized input value-added tax (VAT) on purchases of capital goods and services for the taxable year 2001.

G.R. No. 196113 is a petition for review[6] assailing the Decision[7] promulgated on 8 December 2010 as well as the Resolution[8] promulgated on 14 March 2011 by the CTA EB in CTA EB No. 624. In its Decision, the CTA EB reversed the 8 January 2010 Decision[9] as well as the 7 April 2010 Resolution[10] of the CTA Second Division and granted the CIR's petition for review

---

[4] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. *Id.* at 83-93.

[5] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. *Id.* at 101-104.

[6] Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo* (G.R. No. 196113), pp. 3-25.

[7] Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring. Associate Justice Lovell R. Bautista penned a Dissenting Opinion, while Associate Justice Amelia R. Cotangco-Manalastas was on leave. *Id.* at 51-67.

[8] Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Lovell R. Bautista penned a Dissenting Opinion. *Id.* at 74-83.

[9] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. *Id.* at 27-43.

[10] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. *Id.* at 45-49.

Supreme Court E-Library

in CTA Case No. 7574. The CTA EB dismissed, for having been prematurely filed, Taganito Mining Corporation's (Taganito) judicial claim for ₱8,365,664.38 tax refund or credit.

G.R. No. 197156 is a petition for review[11] assailing the Decision[12] promulgated on 3 December 2010 as well as the Resolution[13] promulgated on 17 May 2011 by the CTA EB in CTA EB No. 569. The CTA EB affirmed the 20 July 2009 Decision as well as the 10 November 2009 Resolution of the CTA Second Division in CTA Case No. 7687. The CTA Second Division denied, due to prescription, Philex Mining Corporation's (Philex) judicial claim for ₱23,956,732.44 tax refund or credit.

On 3 August 2011, the Second Division of this Court resolved[14] to consolidate G.R. No. 197156 with G.R. No. 196113, which were pending in the same Division, and with G.R. No. 187485, which was assigned to the Court *En Banc*. The Second Division also resolved to refer G.R. Nos. 197156 and 196113 to the Court *En Banc*, where G.R. No. 187485, the lower-numbered case, was assigned.

G.R. No. 187485
CIR v. San Roque Power Corporation

The Facts

The CTA EB's narration of the pertinent facts is as follows:

---

[11] Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo* (G.R. No. 197156), pp. 3-29.

[12] Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Lovell R. Bautista penned a Dissenting Opinion. *Id.* at 44-67.

[13] Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Lovell R. Bautista maintained his Dissenting Opinion. *Id.* at 31-42.

[14] *Id.* at 75-76.

Supreme Court E-Library

[CIR] is the duly appointed Commissioner of Internal Revenue, empowered, among others, to act upon and approve claims for refund or tax credit, with office at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.

[San Roque] is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Barangay San Roque, San Manuel, Pangasinan. It was incorporated in October 1997 to design, construct, erect, assemble, own, commission and operate power-generating plants and related facilities pursuant to and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation, or other entity engaged in the development, supply, or distribution of energy.

As a seller of services, [San Roque] is duly registered with the BIR with TIN/VAT No. 005-017-501. It is likewise registered with the Board of Investments ("BOI") on a preferred pioneer status, to engage in the design, construction, erection, assembly, as well as to own, commission, and operate electric power-generating plants and related activities, for which it was issued Certificate of Registration No. 97-356 on February 11, 1998.

On October 11, 1997, [San Roque] entered into a Power Purchase Agreement ("PPA") with the National Power Corporation ("NPC") to develop hydro-potential of the Lower Agno River and generate additional power and energy for the Luzon Power Grid, by building the San Roque Multi-Purpose Project located in San Manuel, Pangasinan. The PPA provides, among others, that [San Roque] shall be responsible for the design, construction, installation, completion, testing and commissioning of the Power Station and shall operate and maintain the same, subject to NPC instructions. During the cooperation period of twenty-five (25) years commencing from the completion date of the Power Station, NPC will take and pay for all electricity available from the Power Station.

On the construction and development of the San Roque Multi-Purpose Project which comprises of the dam, spillway and power plant, [San Roque] allegedly incurred, excess input VAT in the amount of ₱559,709,337.54 for taxable year 2001 which it declared in its Quarterly VAT Returns filed for the same year. [San Roque] duly filed with the BIR separate claims for refund, in the total amount of ₱559,709,337.54, representing unutilized input taxes as declared in its VAT returns for taxable year 2001.

Supreme Court E-Library

However, on March 28, 2003, [San Roque] filed amended Quarterly VAT Returns for the year 2001 since it increased its unutilized input VAT to the amount of ₱560,200,283.14. Consequently, [San Roque] filed with the BIR on even date, separate amended claims for refund in the aggregate amount of ₱560,200,283.14.

[CIR's] inaction on the subject claims led to the filing by [San Roque] of the Petition for Review with the Court [of Tax Appeals] in Division on April 10, 2003.

Trial of the case ensued and on July 20, 2005, the case was submitted for decision.[15]

The Court of Tax Appeals' Ruling: Division

The CTA Second Division initially denied San Roque's claim. In its Decision[16] dated 8 March 2006, it cited the following as bases for the denial of San Roque's claim: lack of recorded zero-rated or effectively zero-rated sales; failure to submit documents specifically identifying the purchased goods/services related to the claimed input VAT which were included in its Property, Plant and Equipment account; and failure to prove that the related construction costs were capitalized in its books of account and subjected to depreciation.

The CTA Second Division required San Roque to show that it complied with the following requirements of Section 112(B) of Republic Act No. 8424 (RA 8424)[17] to be entitled to a tax refund or credit of input VAT attributable to capital goods imported or locally purchased: (1) it is a VAT-registered entity; (2) its input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipts; (3) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and (4) its claim for refund was filed within the two- year prescriptive period both in the administrative and judicial levels.

---

[15] *Rollo* (G.R. No. 187485), pp. 56-58.

[16] *Id.* at 27-29.

[17] The short title of RA 8424 is Tax Reform Act of 1997. It is also sometimes referred to as the National Internal Revenue Code (NIRC). In this *ponencia*, we refer to RA 8424 as 1997 Tax Code.

Supreme Court E-Library

The CTA Second Division found that San Roque complied with the first, third, and fourth requirements, thus:

> The fact that [San Roque] is a VAT registered entity is admitted (*par. 4, Facts Admitted, Joint Stipulation of Facts, Records, p. 157*). It was also established that the instant claim of ₱560,200,823.14 is already net of the ₱11,509.09 output tax declared by [San Roque] in its amended VAT return for the first quarter of 2001. Moreover, the entire amount of ₱560,200,823.14 was deducted by [San Roque] from the total available input tax reflected in its amended VAT returns for the last two quarters of 2001 and first two quarters of 2002 (*Exhibits M-6, O-6, OO-1 & QQ-1*). This means that the claimed input taxes of ₱560,200,823.14 did not form part of the excess input taxes of ₱83,692,257.83, as of the second quarter of 2002 that was to be carried-over to the succeeding quarters. Further, [San Roque's] claim for refund/tax credit certificate of excess input VAT was filed within the two-year prescriptive period reckoned from the dates of filing of the corresponding quarterly VAT returns.
>
> For the first, second, third, and fourth quarters of 2001, [San Roque] filed its VAT returns on April 25, 2001, July 25, 2001, October 23, 2001 and January 24, 2002, respectively (*Exhibits "H, J, L, and N"*). These returns were all subsequently amended on March 28, 2003 (*Exhibits "I, K, M, and O"*). On the other hand, [San Roque] originally filed its separate claims for refund on July 10, 2001, October 10, 2001, February 21, 2002, and May 9, 2002 for the first, second, third, and fourth quarters of 2001, respectively, (*Exhibits "EE, FF, GG, and HH"*) and subsequently filed amended claims for all quarters on March 28, 2003 (*Exhibits "II, JJ, KK, and LL"*). Moreover, the Petition for Review was filed on April 10, 2003. Counting from the respective dates when [San Roque] originally filed its VAT returns for the first, second, third and fourth quarters of 2001, the administrative claims for refund (original and amended) and the Petition for Review fall within the two-year prescriptive period.[18]

San Roque filed a Motion for New Trial and/or Reconsideration on 7 April 2006. In its 29 November 2007 Amended Decision,[19] the CTA Second Division found legal basis to partially grant San Roque's claim. The CTA Second Division ordered the

---

[18] *Rollo* (G.R. No. 187485), pp. 70-71.

[19] *Id.* at 83-93.

Supreme Court E-Library

Commissioner to refund or issue a tax credit in favor of San Roque in the amount of ₱483,797,599.65, which represents San Roque's unutilized input VAT on its purchases of capital goods and services for the taxable year 2001. The CTA based the adjustment in the amount on the findings of the independent certified public accountant. The following reasons were cited for the disallowed claims: erroneous computation; failure to ascertain whether the related purchases are in the nature of capital goods; and the purchases pertain to capital goods. Moreover, the reduction of claims was based on the following: the difference between San Roque's claim and that appearing on its books; the official receipts covering the claimed input VAT on purchases of local services are not within the period of the claim; and the amount of VAT cannot be determined from the submitted official receipts and invoices. The CTA Second Division denied San Roque's claim for refund or tax credit of its unutilized input VAT attributable to its zero-rated or effectively zero-rated sales because San Roque had no record of such sales for the four quarters of 2001.

The dispositive portion of the CTA Second Division's 29 November 2007 Amended Decision reads:

> WHEREFORE, [San Roque's] "Motion for New Trial and/or Reconsideration" is hereby PARTIALLY GRANTED and this Court's Decision promulgated on March 8, 2006 in the instant case is hereby MODIFIED.
>
> Accordingly, [the CIR] is hereby ORDERED to REFUND or in the alternative, to ISSUE A TAX CREDIT CERTIFICATE in favor of [San Roque] in the reduced amount of Four Hundred Eighty Three Million Seven Hundred Ninety Seven Thousand Five Hundred Ninety Nine Pesos and Sixty Five Centavos (₱483,797,599.65) representing unutilized input VAT on purchases of capital goods and services for the taxable year 2001.
>
> SO ORDERED.[20]

The Commissioner filed a Motion for Partial Reconsideration on 20 December 2007. The CTA Second Division issued a

[20] *Id.* at 92.

Supreme Court E-Library

Resolution dated 11 July 2008 which denied the CIR's motion for lack of merit.

The Court of Tax Appeals' Ruling: *En Banc*

The Commissioner filed a Petition for Review before the CTA EB praying for the denial of San Roque's claim for refund or tax credit in its entirety as well as for the setting aside of the 29 November 2007 Amended Decision and the 11 July 2008 Resolution in CTA Case No. 6647.

The CTA EB dismissed the CIR's petition for review and affirmed the challenged decision and resolution.

The CTA EB cited *Commissioner of Internal Revenue v. Toledo Power, Inc*.[21] and Revenue Memorandum Circular No. 49-03,[22] as its bases for ruling that San Roque's judicial claim was not prematurely filed. The pertinent portions of the Decision state:

> More importantly, the Court *En Banc* has squarely and exhaustively ruled on this issue in this wise:
>
> > **It is true that Section 112(D) of the abovementioned provision applies to the present case. However, what the petitioner failed to consider is Section 112(A) of the same provision.** The respondent is also covered by the two (2) year prescriptive period. We have repeatedly held that the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period.
> >
> > Accordingly, the Supreme Court held in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* that the two-year prescriptive period for filing a claim for input tax is reckoned from the date of the filing of the quarterly VAT return and payment of the tax due. **If the said period is about to expire but the BIR has not yet acted on the application for refund, the taxpayer may interpose a petition for review with this Court within the two year period.**

---

[21] CTA EB Case No. 321 (CTA Case Nos. 6805 and 6851), 7 May 2008.

[22] Dated 18 August 2003.

Supreme Court E-Library

> In the case of *Gibbs vs. Collector*, the Supreme Court held that if, however, the Collector (now Commissioner) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.
>
> Furthermore, in the case of *Commissioner of Customs and Commissioner of Internal Revenue vs. The Honorable Court of Tax Appeals and Planters Products, Inc.*, **the Supreme Court held that the taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect.** It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector (now Commissioner) of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Collector (now Commissioner) of Internal Revenue, would have, at his personal convenience, given his go signal.
>
> This Court ruled in several cases that once the petition is filed, the Court has already acquired jurisdiction over the claims and the Court is not bound to wait indefinitely for no reason for whatever action respondent (herein petitioner) may take. **At stake are claims for refund and unlike disputed assessments, no decision of respondent (herein petitioner) is required before one can go to this Court.** (Emphasis supplied and citations omitted)

Lastly, it is apparent from the following provisions of Revenue Memorandum Circular No. 49-03 dated August 18, 2003, that [the CIR] knows that claims for VAT refund or tax credit filed with the Court [of Tax Appeals] can proceed simultaneously with the ones filed with the BIR and that taxpayers need not wait for the lapse of the subject 120-day period, to wit:

> In response to [the] request of selected taxpayers for adoption of procedures in handling refund cases that are aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law, certain provisions of RMC No. 42-2003 are hereby amended and new provisions are added thereto.

In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:

I.) A-17 of Revenue Memorandum Circular No. 42-2003 is hereby revised to read as follows:

In cases where the taxpayer has filed a "Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.

If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA.[23] (Emphasis supplied)

G.R. No. 196113
Taganito Mining Corporation v. CIR

The Facts

The CTA Second Division's narration of the pertinent facts is as follows:

Petitioner, Taganito Mining Corporation, is a corporation duly organized and existing under and by virtue of the laws of the

[23] *Rollo* (G.R. No. 187485), pp. 67-69.

Supreme Court E-Library

Philippines, with principal office at 4th Floor, Solid Mills Building, De La Rosa St., Lega[s]pi Village, Makati City. It is duly registered with the Securities and Exchange Commission with Certificate of Registration No. 138682 issued on March 4, 1987 with the following primary purpose:

> To carry on the business, for itself and for others, of mining lode and/or placer mining, developing, exploiting, extracting, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging, shipping, transporting, and otherwise producing and dealing in nickel, chromite, cobalt, gold, silver, copper, lead, zinc, brass, iron, steel, limestone, and all kinds of ores, metals and their by-products and which by-products thereof of every kind and description and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, locate, exchange, lease, acquire and deal in lands, mines, and mineral rights and claims and to conduct all business appertaining thereto, to purchase, locate, lease or otherwise acquire, mining claims and rights, timber rights, water rights, concessions and mines, buildings, dwellings, plants machinery, spare parts, tools and other properties whatsoever which this corporation may from time to time find to be to its advantage to mine lands, and to explore, work, exercise, develop or turn to account the same, and to acquire, develop and utilize water rights in such manner as may be authorized or permitted by law; to purchase, hire, make, construct or otherwise, acquire, provide, maintain, equip, alter, erect, improve, repair, manage, work and operate private roads, barges, vessels, aircraft and vehicles, private telegraph and telephone lines, and other communication media, as may be needed by the corporation for its own purpose, and to purchase, import, construct, machine, fabricate, or otherwise acquire, and maintain and operate bridges, piers, wharves, wells, reservoirs, plumes, watercourses, waterworks, aqueducts, shafts, tunnels, furnaces, cook ovens, crushing works, gasworks, electric lights and power plants and compressed air plants, chemical works of all kinds, concentrators, smelters, smelting plants, and refineries, matting plants, warehouses, workshops, factories, dwelling houses, stores, hotels or other buildings, engines, machinery, spare parts, tools, implements and other works, conveniences and properties of any description in connection with or which may be directly or indirectly conducive to any

Supreme Court E-Library

of the objects of the corporation, and to contribute to, subsidize or otherwise aid or take part in any operations;

and is a VAT-registered entity, with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000017494. Likewise, [Taganito] is registered with the Board of Investments (BOI) as an exporter of beneficiated nickel silicate and chromite ores, with BOI Certificate of Registration No. EP-88-306.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of the said office, including inter alia, the power to decide refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by Bureau of Internal Revenue (BIR) under Section 4 of the NIRC. He holds office at the BIR National Office Building, Diliman, Quezon City.

[Taganito] filed all its Monthly VAT Declarations and Quarterly Vat Returns for the period January 1, 2005 to December 31, 2005. For easy reference, a summary of the filing dates of the original and amended Quarterly VAT Returns for taxable year 2005 of [Taganito] is as follows:

Exhibit(s)	Quarter	Nature of the Return	Mode of filing	Filing Date
L to L-4	1st	Original	Electronic	April 15, 2005
M to M-3		Amended	Electronic	July 20, 2005
N to N-4		Amended	Electronic	October 18, 2006
Q to Q-3	2nd	Original	Electronic	July 20, 2005
R to R-4		Amended	Electronic	October 18, 2006
U to U-4	3rd	Original	Electronic	October 19, 2005
V to V-4		Amended	Electronic	October 18, 2006
Y to Y-4	4th	Original	Electronic	January 20, 2006
Z to Z-4		Amended	Electronic	October 18, 2006

As can be gleaned from its amended Quarterly VAT Returns, [Taganito] reported zero-rated sales amounting to ₱1,446,854,034.68; input VAT on its domestic purchases and importations of goods (other than capital goods) and services amounting to ₱2,314,730.43; and input VAT on its domestic purchases and importations of capital

Supreme Court E-Library

goods amounting to ₱6,050,933.95, the details of which are summarized as follows:

Period Covered	Zero-Rated Sales	Input VAT on Domestic Purchases and Importations of Goods and Services	Input VAT on Domestic Purchases and Importations of Capital Goods	Total Input VAT
01/01/05 - 03/31/05	₱551,179,871.58	₱1,491,880.56	₱239,803.22	₱1,731,683.78
04/01/05 - 06/30/05	64,677,530.78	204,364.17	5,811,130.73	6,015,494.90
07/01/05 - 09/30/05	480,784,287.30	144,887.67	-	144,887.67
10/01/05 - 12/31/05	350,212,345.02	473,598.03	-	473,598.03
TOTAL	**₱1,446,854,034.68**	**₱2,314,730.43**	**₱6,050,933.95**	**₱8,365,664.38**

On November 14, 2006, [Taganito] filed with [the CIR], through BIR's Large Taxpayers Audit and Investigation Division II (LTAID II), a letter dated November 13, 2006 claiming a tax credit/refund of its supposed input VAT amounting to ₱8,365,664.38 for the period covering January 1, 2004 to December 31, 2004. On the same date, [Taganito] likewise filed an Application for Tax Credits/Refunds for the period covering January 1, 2005 to December 31, 2005 for the same amount.

On November 29, 2006, [Taganito] sent again another letter dated November 29, 2004 to [the CIR], to correct the period of the above claim for tax credit/refund in the said amount of ₱8,365,664.38 as actually referring to the period covering January 1, 2005 to December 31, 2005.

As the statutory period within which to file a claim for refund for said input VAT is about to lapse without action on the part of the [CIR], [Taganito] filed the instant Petition for Review on February 17, 2007.

In his Answer filed on March 28, 2007, [the CIR] interposes the following defenses:

Supreme Court E-Library

4. [Taganito's] alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue (BIR);

5. The amount of ₱8,365,664.38 being claimed by [Taganito] as alleged unutilized input VAT on domestic purchases of goods and services and on importation of capital goods for the period January 1, 2005 to December 31, 2005 is not properly documented;

6. [Taganito] must prove that it has complied with the provisions of Sections 112 (A) and (D) and 229 of the National Internal Revenue Code of 1997 (1997 Tax Code) on the prescriptive period for claiming tax refund/credit;

7. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro- forma, which is a condition *sine qua non* prior to the filing of judicial claim** in accordance with the provision of Section 229 of the 1997 Tax Code. Further, Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the BIR before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law.** Hence, [Taganito's] failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

8. [Taganito] must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to provisions of Revenue Regulations No. 7-95.

9. In an action for refund/credit, 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 **(*Asiatic Petroleum Co. vs. Llanes*, 49 Phil. 466 cited in *Collector of Internal Revenue vs. Manila Jockey Club, Inc.*, 98 Phil. 670);**

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from

Supreme Court E-Library

taxation **(*Commissioner of Internal Revenue vs. Ledesma*, 31 SCRA 95)** and as such, they are looked upon with disfavor **(*Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 1211).**

SPECIAL AND AFFIRMATIVE DEFENSES

11. The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of [Taganito] to comply with the provision of Section 112 (D) of the 1997 Tax Code which provides, thus:

> Section 112. *Refunds or Tax Credits of Input Tax.* —
>
> x x x x x x x x x
>
> (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 (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
>
> In cases of full or partial denial 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.** (Emphasis supplied.)

12. As stated, [Taganito] filed the administrative claim for refund with the Bureau of Internal Revenue on November 14, 2006. Subsequently on February 14, 2007, the instant petition was filed. Obviously the 120 days given to the Commissioner to decide on the claim has not yet lapsed when the petition was filed. The petition was prematurely filed, hence it must be dismissed for lack of jurisdiction.

During trial, [Taganito] presented testimonial and documentary evidence primarily aimed at proving its supposed entitlement to the refund in the amount of ₱8,365,664.38, representing input taxes for the period covering January 1, 2005 to December 31, 2005. [The CIR], on the other hand, opted not to present evidence. Thus, in the

Supreme Court E-Library

Resolution promulgated on January 22, 2009, this case was submitted for decision as of such date, considering [Taganito's] "Memorandum" filed on January 19, 2009 and [the CIR's] "Memorandum" filed on December 19, 2008.[24]

The Court of Tax Appeals' Ruling: Division

The CTA Second Division partially granted Taganito's claim. In its Decision[25] dated 8 January 2010, the CTA Second Division found that Taganito complied with the requirements of Section 112(A) of RA 8424, as amended, to be entitled to a tax refund or credit of input VAT attributable to zero-rated or effectively zero-rated sales.[26]

The pertinent portions of the CTA Second Division's Decision read:

Finally, records show that [Taganito's] administrative claim filed on November 14, 2006, which was amended on November 29, 2006, and the Petition for Review filed with this Court on February 14, 2007 are well within the two-year prescriptive period, reckoned from March 31, 2005, June 30, 2005, September 30, 2005, and December 31, 2005, respectively, the close of each taxable quarter covering the period January 1, 2005 to December 31, 2005.

In fine, [Taganito] sufficiently proved that it is entitled to a tax credit certificate in the amount of ₱8,249,883.33 representing unutilized input VAT for the four taxable quarters of 2005.

WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, [the CIR] is hereby ORDERED to REFUND to [Taganito] the amount of EIGHT MILLION TWO HUNDRED FORTY NINE THOUSAND EIGHT HUNDRED EIGHTY THREE PESOS AND THIRTY THREE CENTAVOS (₱8,249,883.33) representing its unutilized input taxes attributable to zero-rated sales from January 1, 2005 to December 31, 2005.

SO ORDERED.[27]

---

[24] *Rollo* (G.R. No. 196113), pp. 27-33. Emphases in the original.

[25] *Id.* at 27-43.

[26] *Id.* at 35-36.

[27] *Id.* at 42.

Supreme Court E-Library

The Commissioner filed a Motion for Partial Reconsideration on 29 January 2010. Taganito, in turn, filed a Comment/ Opposition on the Motion for Partial Reconsideration on 15 February 2010.

In a Resolution[28] dated 7 April 2010, the CTA Second Division denied the CIR's motion. The CTA Second Division ruled that the legislature did not intend that Section 112 (Refunds or Tax Credits of Input Tax) should be read in isolation from Section 229 (Recovery of Tax Erroneously or Illegally Collected) or vice versa. The CTA Second Division applied the mandatory statute of limitations in seeking judicial recourse prescribed under Section 229 to claims for refund or tax credit under Section 112.

The Court of Tax Appeals' Ruling: *En Banc*

On 29 April 2010, the Commissioner filed a Petition for Review before the CTA EB assailing the 8 January 2010 Decision and the 7 April 2010 Resolution in CTA Case No. 7574 and praying that Taganito's entire claim for refund be denied.

In its 8 December 2010 Decision,[29] the CTA EB granted the CIR's petition for review and reversed and set aside the challenged decision and resolution.

The CTA EB declared that Section 112(A) and (B) of the 1997 Tax Code both set forth the reckoning of the two-year prescriptive period for filing a claim for tax refund or credit over input VAT to be the close of the taxable quarter when the sales were made. The CTA EB also relied on this Court's rulings in the cases of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*[30] and *Commisioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant)*.[31] Both *Aichi* and *Mirant* ruled that the two-year prescriptive period to file a refund for input VAT arising from zero-rated sales should be

---

[28] *Id.* at 45-49.

[29] *Id.* at 51-67.

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

[31] G.R. No. 172129, 12 September 2008, 565 SCRA 154.

Supreme Court E-Library

reckoned from the close of the taxable quarter when the sales were made. *Aichi* further emphasized that the failure to await the decision of the Commissioner or the lapse of 120-day period prescribed in Section 112(D) amounts to a premature filing.

The CTA EB found that Taganito filed its administrative claim on 14 November 2006, which was well within the period prescribed under Section 112(A) and (B) of the 1997 Tax Code. However, the CTA EB found that Taganito's judicial claim was prematurely filed. Taganito filed its Petition for Review before the CTA Second Division on 14 February 2007. The judicial claim was filed after the lapse of only 92 days from the filing of its administrative claim before the CIR, in violation of the 120-day period prescribed in Section 112(D) of the 1997 Tax Code.

The dispositive portion of the Decision states:

> WHEREFORE, the instant Petition for Review is hereby GRANTED. The assailed Decision dated January 8, 2010 and Resolution dated April 7, 2010 of the Special Second Division of this Court are hereby REVERSED and SET ASIDE. Another one is hereby entered DISMISSING the Petition for Review filed in CTA Case No. 7574 for having been prematurely filed.
>
> SO ORDERED.[32]

In his dissent,[33] Associate Justice Lovell R. Bautista insisted that Taganito timely filed its claim before the CTA. Justice Bautista read Section 112(C) of the 1997 Tax Code (Period within which Refund or Tax Credit of Input Taxes shall be Made) in conjunction with Section 229 (Recovery of Tax Erroneously or Illegally Collected). Justice Bautista also relied on this Court's ruling in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (Atlas)*,[34] which stated that refundable or creditable input

---

[32] *Rollo* (G.R. No. 196113), p. 66.

[33] *Id.* at 68-73.

[34] G.R. Nos. 141104 & 148763, 8 June 2007, 524 SCRA 73.

Supreme Court E-Library

VAT and illegally or erroneously collected national internal revenue tax are the same, insofar as both are monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Justice Bautista concluded:

> Being merely permissive, a taxpayer claimant has the option of seeking judicial redress for refund or tax credit of excess or unutilized input tax with this Court, either within 30 days from receipt of the denial of its claim, or after the lapse of the 120-day period in the event of inaction by the Commissioner, provided that both administrative and judicial remedies must be undertaken within the 2-year period.[35]

Taganito filed its Motion for Reconsideration on 29 December 2010. The Commissioner filed an Opposition on 26 January 2011. The CTA EB denied for lack of merit Taganito's motion in a Resolution[36] dated 14 March 2011. The CTA EB did not see any justifiable reason to depart from this Court's rulings in *Aichi* and *Mirant*.

G.R. No. 197156
Philex Mining Corporation v. CIR

The Facts

The CTA EB's narration of the pertinent facts is as follows:

> [Philex] is a corporation duly organized and existing under the laws of the Republic of the Philippines, which is principally engaged in the mining business, which includes the exploration and operation of mine properties and commercial production and marketing of mine products, with office address at 27 Philex Building, Fairlaine St., Kapitolyo, Pasig City.
>
> [The CIR], on the other hand, is the head of the Bureau of Internal Revenue ("BIR"), the government entity tasked with the duties/ functions of assessing and collecting all national internal revenue taxes, fees, an charges, and enforcement of all forfeitures, penalties and fines connected therewith, including the execution of judgments in all cases decided in its favor by [the Court of Tax Appeals] and

---

[35] *Rollo* (G.R. No. 196113), p. 73.

[36] *Id.* at 74-83.

Supreme Court E-Library

the ordinary courts, where she can be served with court processes at the BIR Head Office, BIR Road, Quezon City.

On October 21, 2005, [Philex] filed its Original VAT Return for the third quarter of taxable year 2005 and Amended VAT Return for the same quarter on December 1, 2005.

On March 20, 2006, [Philex] filed its claim for refund/tax credit of the amount of ₱23,956,732.44 with the One Stop Shop Center of the Department of Finance. However, due to [the CIR's] failure to act on such claim, on October 17, 2007, pursuant to *Sections 112 and 229 of the NIRC of 1997, as amended*, [Philex] filed a Petition for Review, docketed as C.T.A. Case No. 7687.

In [her] Answer, respondent CIR alleged the following special and affirmative defenses:

> 4. Claims for refund are strictly construed against the taxpayer as the same partake the nature of an exemption;
>
> 5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of [Philex] to prove the same is fatal to its cause of action;
>
> 6. [Philex] should prove its legal basis for claiming for the amount being refunded.[37]

The Court of Tax Appeals' Ruling: Division

The CTA Second Division, in its Decision dated 20 July 2009, denied Philex's claim due to prescription. The CTA Second Division ruled that the two-year prescriptive period specified in Section 112(A) of RA 8424, as amended, applies not only to the filing of the administrative claim with the BIR, but also to the filing of the judicial claim with the CTA. Since Philex's claim covered the 3rd quarter of 2005, its administrative claim filed on 20 March 2006 was timely filed, while its judicial claim filed on 17 October 2007 was filed late and therefore barred by prescription.

On 10 November 2009, the CTA Second Division denied Philex's Motion for Reconsideration.

---

[37] *Rollo* (G.R. No. 197156), pp. 46-48.

Supreme Court E-Library

The Court of Tax Appeals' Ruling: *En Banc*

Philex filed a Petition for Review before the CTA EB praying for a reversal of the 20 July 2009 Decision and the 10 November 2009 Resolution of the CTA Second Division in CTA Case No. 7687.

The CTA EB, in its Decision[38] dated 3 December 2010, denied Philex's petition and affirmed the CTA Second Division's Decision and Resolution.

The pertinent portions of the Decision read:

> In this case, while there is no dispute that [Philex's] administrative claim for refund was filed within the two-year prescriptive period; however, as to its judicial claim for refund/credit, records show that on March 20, 2006, [Philex] applied the administrative claim for refund of unutilized input VAT in the amount of ₱23,956,732.44 with the One Stop Shop Center of the Department of Finance, per Application No. 52490. From March 20, 2006, which is also presumably the date [Philex] submitted supporting documents, together with the aforesaid application for refund, the CIR has 120 days, or until July 18, 2006, within which to decide the claim. Within 30 days from the lapse of the 120-day period, or from July 19, 2006 until August 17, 2006, [Philex] should have elevated its claim for refund to the CTA. However, [Philex] filed its Petition for Review only on October 17, 2007, which is 426 days way beyond the 30-day period prescribed by law.
>
> Evidently, the Petition for Review in CTA Case No. 7687 was filed 426 days late. Thus, the Petition for Review in CTA Case No. 7687 should have been dismissed on the ground that the Petition for Review was filed way beyond the 30-day prescribed period; thus, no jurisdiction was acquired by the CTA in Division; and not due to prescription.
>
> WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED DUE COURSE, and accordingly, DISMISSED. The assailed Decision dated July 20, 2009, dismissing the Petition for Review in CTA Case No. 7687 due to prescription, and Resolution dated November 10, 2009 denying [Philex's] Motion for

---

[38] *Id.* at 44-67.

Supreme Court E-Library

Reconsideration are hereby AFFIRMED, with modification that the dismissal is based on the ground that the Petition for Review in CTA Case No. 7687 was filed way beyond the 30-day prescribed period to appeal.

SO ORDERED.[39]

The Issues

G.R. No. 187485
CIR v. San Roque Power Corporation

The Commissioner raised the following grounds in the Petition for Review:

I. The Court of Tax Appeals *En Banc* erred in holding that [San Roque's] claim for refund was not prematurely filed.

II. The Court of Tax Appeals *En Banc* erred in affirming the amended decision of the Court of Tax Appeals (Second Division) granting [San Roque's] claim for refund of alleged unutilized input VAT on its purchases of capital goods and services for the taxable year 2001 in the amount of ₱483,797,599.65.[40]

G.R. No. 196113
Taganito Mining Corporation v. CIR

Taganito raised the following grounds in its Petition for Review:

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 in violation of [Taganito's] right to due process.

II. The Court of Tax Appeals committed serious error and acted with grave abuse of discretion amounting to lack or excess of jurisdiction in erroneously interpreting the provisions of Section 112 (D).[41]

---

[39] *Id.* at 64-66.

[40] *Rollo* (G.R. No. 187485), p. 33.

[41] *Rollo* (G.R. No. 196113), p. 11.

Supreme Court E-Library

G.R. No. 197156
Philex Mining Corporation v. CIR

Philex raised the following grounds in its Petition for Review:

I. The CTA *En Banc* erred in denying the petition due to alleged prescription. The fact is that the petition was filed with the CTA within the period set by prevailing court rulings at the time it was filed.

II. The CTA *En Banc* erred in retroactively applying the Aichi ruling in denying the petition in this instant case.[42]

The Court's Ruling

For ready reference, the following are the provisions of the Tax Code applicable to the present cases:

Section 105:

> ***Persons Liable***. — **Any person who, in the course of trade or business, sells**, barters, exchanges, leases **goods or properties, renders services**, and any person who imports goods **shall be subject to the value-added tax (VAT)** imposed in Sections 106 to 108 of this Code.
>
> **The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services**. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> x x x x x x x x x

Section 110(B):

> Sec. 110. *Tax Credits*. —
>
> (B) *Excess Output or Input Tax*. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. **If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters**: [Provided, That the input tax inclusive of input VAT carried over from the previous quarter that may be

---

[42] *Rollo* (G.R. No. 197156), p. 9.

Supreme Court E-Library

credited in every quarter shall not exceed seventy percent (70%) of the output VAT:][43] Provided, however, That **any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112**.

Section 112:[44]

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**

---

[43] Bracketed proviso was deleted by RA 9361, which took effect on 13 December 2006.

[44] RA 9337 amended Section 112 to read:

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. Provided, finally, That for a person making sales that are zero-rated under Section 108 (B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) *Cancellation of VAT Registration*. — 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.

Supreme Court E-Library

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.

(C) *Cancellation of VAT Registration*. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes

(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

---

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.

(D) *Manner of Giving Refund*. — x x x

Supreme Court E-Library

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) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals.

(E) *Manner of Giving Refund.* — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, that refunds under this paragraph shall be subject to post audit by the Commission on Audit.

Section 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, 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.

(All emphases supplied)

Supreme Court E-Library

I. **Application of the 120+30 Day Periods**

a. ***G.R. No. 187485 - CIR v. San Roque Power Corporation***

On 10 April 2003, a mere 13 days after it filed its amended administrative claim with the Commissioner on 28 March 2003, San Roque filed a Petition for Review with the CTA docketed as CTA Case No. 6647. From this we gather two crucial facts: *first*, San Roque did not wait for the 120-day period to lapse before filing its judicial claim; *second*, San Roque filed its judicial claim more than four (4) years **before** the *Atlas*[45] doctrine, which was promulgated by the Court on 8 June 2007.

Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.[46]

The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the Commissioner of Internal

---

[45] *Supra* note 34.

[46] *Delos Reyes v. Flores*, G.R. No. 168726, 5 March 2010, 614 SCRA 270; *Figuerres v. Court of Appeals*, 364 Phil. 683 (1999); *Aboitiz and Co., Inc. v. Collector of Customs of Cebu*, 172 Phil. 617 (1978); *Ham v. Bachrach Motor Co., Inc.*, 109 Phil. 949 (1960).

Supreme Court E-Library

Revenue in cases involving x x x refunds of internal revenue taxes."[47] When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**"[48] of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial"

---

[47] The charter of the CTA, RA 1125, as amended, provides:

Section 7. Jurisdiction. — The CTA shall exercise:

(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 Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x x x x

(Emphasis supplied)

See also *Adamson v. Court of Appeals*, G.R. Nos. 120935 and 124557, 21 May 2009, 588 SCRA 27.

[48] Section 7. Jurisdiction. — The CTA shall exercise:

(a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

(1) x x x x x x x x x

(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;**

x x x x x x x x x

(Emphasis supplied)

Supreme Court E-Library

of the Commissioner, the CTA has no jurisdiction over a petition for review.[49]

San Roque's failure to comply with the 120-day **mandatory** period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity.

It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others."[50] For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.

This Court cannot brush aside the grave issue of the mandatory and jurisdictional nature of the 120-day period just because the Commissioner merely asserts that the case was prematurely filed with the CTA and does not question the entitlement of San Roque to the refund. The mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit.

---

[49] *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3 (1968); *Caltex (Philippines), Inc. v. Commissioner of Internal Revenue*, 121 Phil. 1390 (1965).

[50] See *Alcantara v. Department of Environment and Natural Resources*, G.R. No. 161881, 31 July 2008, 560 SCRA 753; *Heirs of Zari v. Santos*, 137 Phil. 79 (1969); *Hilado v. Collector of Internal Revenue*, 100 Phil. 288 (1956).

Supreme Court E-Library

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. **Well- settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer**.[51] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

This Court cannot disregard mandatory and jurisdictional conditions mandated by law simply because the Commissioner chose not to contest the numerical correctness of the claim for tax refund or credit of the taxpayer. Non-compliance with mandatory periods, non-observance of prescriptive periods, and non-adherence to exhaustion of administrative remedies **bar** a taxpayer's claim for tax refund or credit, whether or not the Commissioner questions the numerical correctness of the claim of the taxpayer. This Court should not establish the precedent that non-compliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements, for then every tax refund case will have to be decided on the numerical correctness of the amounts claimed, regardless of non-compliance with mandatory and jurisdictional conditions.

San Roque cannot also claim being misled, misguided or confused by the *Atlas* doctrine because **San Roque filed its petition for review with the CTA more than four years before *Atlas* was promulgated.** The *Atlas* doctrine did not exist at the time San Roque failed to comply with the 120- day period. Thus, San Roque cannot invoke the *Atlas* doctrine as an excuse for its failure to wait for the 120-day period to lapse. In any event, the *Atlas* doctrine merely stated that the two-year prescriptive

---

[51] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219; *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp*., G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549; *La Carlota Sugar Central v. Jimenez*, 112 Phil. 232 (1961).

Supreme Court E-Library

period should be counted from the date of payment of the output VAT, not from the close of the taxable quarter when the sales involving the input VAT were made. **The *Atlas* doctrine does not interpret, expressly or impliedly, the 120+30[52] day periods.**

In fact, Section 106(b) and (e) of the Tax Code of 1977 as amended, which was the law cited by the Court in *Atlas* as the applicable provision of the law did not yet provide for the 30-day period for the taxpayer to appeal to the CTA from the decision or inaction of the Commissioner.[53] **Thus, the *Atlas* doctrine cannot be invoked by anyone to disregard compliance with the 30-day mandatory and jurisdictional period**. Also, the difference between the *Atlas* doctrine on one hand, and the *Mirant*[54] doctrine on the other hand, is a mere 20 days. The *Atlas* doctrine counts the two-year prescriptive period from the date of payment of the output VAT, which means within 20 days after the close of the taxable quarter. The output VAT at that time must be paid at the time of filing of the quarterly tax returns, which were to be filed "within 20 days following the end of each quarter."

Thus, in *Atlas*, the three tax refund claims listed below were deemed timely filed because the administrative claims filed with the Commissioner, and the petitions for review filed with the CTA, were all filed within two years from the date of payment of the output VAT, following Section 229:

Period Covered	Date of Filing Return & Payment of Tax	Date of Filing Administrative Claim	Date of Filing Petition With CTA
2nd Quarter, 1990 Close of Quarter **30 June 1990**	**20 July 1990**	21 August 1990	**20 July 1992**

[52] The 30-day period refers to the time given to the taxpayer to file its judicial claim with the CTA, counted from the denial by the Commissioner of the administrative claim or from the expiration of the 120-day period. See Section 112 (C), second paragraph of the Tax Code.

[53] The 30-day period was introduced in the Tax Code under RA 7716, which was approved on 5 May 1994.

[54] *Supra* note 31.

Supreme Court E-Library

3rd Quarter, 1990 **18 October 1990** 21 November 1990 **9 October 1992**
Close of Quarter
30 September 1990

4th Quarter, 1990 **20 January 1991** 19 February 1991 **14 January 1993**
Close of Quarter **31**
December 1990

Atlas paid the output VAT at the time it filed the quarterly tax returns on the 20th, 18th, and 20th day **after** the close of the taxable quarter. Had the two-year prescriptive period been counted from the "close of the taxable quarter" as expressly stated in the law, the tax refund claims of Atlas would have already prescribed. In contrast, the *Mirant* doctrine counts the two-year prescriptive period from the "close of the taxable quarter when the sales were made" as expressly stated in the law, which means the last day of the taxable quarter. **The 20-day difference**[55] **between the *Atlas* doctrine and the later *Mirant* doctrine is not material to San Roque's claim for tax refund**.

Whether the *Atlas* doctrine or the *Mirant* doctrine is applied to San Roque is immaterial because what is at issue in the present case is San Roque's non-compliance with the 120-day mandatory and jurisdictional period, which is counted from the date it filed its administrative claim with the Commissioner. The 120-day period may extend beyond the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period. However, San Roque's fatal mistake is that

---

[55] This assumes the taxpayer pays the VAT on time on the date required by law to file the quarterly return. Since 1 January 1998 when the Tax Reform Act of 1997 took effect, Section 114 (A) of the NIRC has required VAT-registered persons to pay the VAT "**on a monthly basis**." Section 114 of the NIRC provides:

> (A) *In General* — Every person liable to pay the value-added tax imposed under the Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each of the taxable quarter prescribed for each taxpayer: **Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.**
>
> (B) x x x (Emphasis supplied).

Supreme Court E-Library

it did not wait for the Commissioner to decide within the 120-day period, a mandatory period whether the *Atlas* or the *Mirant* doctrine is applied.

At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C)[56] expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: "x x x 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." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.

Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

> x x x 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. (Emphasis supplied)

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law

---

[56] In RA 8424, the section is numbered 112 (D). RA 9337 renumbered the section to 112 (C). In this Decision, we refer to Section 112 (D) under RA 8424 as Section 112 (C) as it is currently numbered.

Supreme Court E-Library

states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

b. ***G.R. No. 196113 — Taganito Mining Corporation v. CIR***

Like San Roque, Taganito also filed its petition for review with the CTA without waiting for the 120-day period to lapse. Also, like San Roque, Taganito filed its judicial claim **before** the promulgation of the *Atlas* doctrine. Taganito filed a Petition for Review on 14 February 2007 with the CTA. This is almost four months **before** the adoption of the *Atlas* doctrine on 8 June 2007. Taganito is similarly situated as San Roque — both cannot claim being misled, misguided, or confused by the *Atlas* doctrine.

However, Taganito can invoke BIR Ruling No. DA-489-03[57] dated 10 December 2003, which expressly 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**." Taganito filed its judicial claim *after* the issuance of BIR Ruling No. DA-489-03 but before the adoption of the *Aichi* doctrine. Thus, as will be explained later, Taganito is deemed to have filed its judicial claim with the CTA on time.

c. ***G.R. No. 197156 — Philex Mining Corporation v. CIR***

Philex (1) filed on 21 October 2005 its original VAT Return for the third quarter of taxable year 2005; (2) filed on 20 March 2006 its administrative claim for refund or credit; (3) filed on 17 October 2007 its Petition for Review with the CTA. The close of the third taxable quarter in 2005 is 30 September 2005, which is the reckoning date in computing the two-year prescriptive period under Section 112(A).

Philex timely filed its administrative claim on 20 March 2006, within the two-year prescriptive period. Even if the two-year

[57] Issued by then BIR Commissioner Jose Mario C. Bunag.

Supreme Court E-Library

prescriptive period is computed from the date of payment of the output VAT under Section 229, Philex still filed its administrative claim on time. **Thus, the *Atlas* doctrine is immaterial in this case**. The Commissioner had until 17 July 2006, the last day of the 120-day period, to decide Philex's claim. Since the Commissioner did not act on Philex's claim on or before 17 July 2006, Philex had until 17 August 2006, the last day of the 30-day period, to file its judicial claim. **The CTA EB held that 17 August 2006 was indeed the last day for Philex to file its judicial claim**. However, Philex filed its Petition for Review with the CTA only on 17 October 2007, or four hundred twenty- six (426) days after the last day of filing. **In short, Philex was late by one year and 61 days in filing its judicial claim**. As the CTA EB correctly found:

> **Evidently, the Petition for Review in C.T.A. Case No. 7687 was filed 426 days late**. Thus, the Petition for Review in C.T.A. Case No. 7687 should have been dismissed on the ground that the Petition for Review was filed way beyond the 30-day prescribed period; thus, no jurisdiction was acquired by the CTA Division; x x x[58] (Emphasis supplied)

Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.

---

[58] *Rollo* (G.R. No. 197156), p. 65.

Supreme Court E-Library

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.[59] Philex failed to comply with the statutory conditions and must thus bear the consequences.

II. **Prescriptive Periods under Section 112(A) and (C)**

There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.

First, Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer "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 the creditable input tax due or paid to such sales." In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit "**within two (2) years**," **which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two- year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.

Second, Section 112(C) provides that the Commissioner shall decide the application for refund or credit "within one hundred

---

[59] *Yao v. Court of Appeals*, 398 Phil. 86 (2000).

Supreme Court E-Library

twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A)." The reference in Section 112(C) of the submission of documents "in support of the application filed in accordance with Subsection A" means that the application in Section 112(A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two- year prescriptive period in Section 112(A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. **Stated otherwise, the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner**. As held in *Aichi*, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund' **refers to applications for refund/credit with the CIR and not to appeals made to the CTA**."

Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days),[60] then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period**. Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.

---

[60] Article 13 of the Civil Code provides: "When the law speaks of years, x x x it shall be understood that years are three hundred sixty five days each; x x x"

Supreme Court E-Library

The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain, and unequivocal language.

Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).

III. **"Excess" Input VAT and "Excessively" Collected Tax**

The 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**. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller[61] of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT.[62] If the input VAT is in fact "excessively"

---

[61] Section 105, 1997 Tax Code.

[62] Section 4.110-2 of Revenue Regulations 16-05, also known as the Consolidated Value-Added Tax Regulations of 2005, provides:

> **Persons Who Can Avail of the Input Tax Credit.** — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

Supreme Court E-Library

collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit **outside** of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.

In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.

Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, x x x illegally, x x x excessively or in any manner wrongfully collected." The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. **Only the person legally liable**

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) **To the purchaser of the domestic goods or properties upon consummation of the sale;** or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee. (Emphasis supplied)

Supreme Court E-Library

to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229.[63]

Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for "excess" input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the ***output*** VAT. This prescriptive period has no relation to the date of payment of the "excess" ***input*** VAT. The "excess" input VAT may have been paid for more than two years but this does not bar the filing of a judicial claim for "excess" VAT under Section 112(A), which has a different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the input VAT was "excessively" collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

As its name implies, the Value-Added Tax system is a tax on the value added by the taxpayer in the chain of transactions. For simplicity and efficiency in tax collection, the VAT is imposed not just on the value added by the taxpayer, but on the entire selling price of his goods, properties or services. However, the taxpayer is allowed a refund or credit on the VAT previously paid by those who sold him the inputs for his goods, properties, or services. The net effect is that the taxpayer pays the VAT only on the value that he adds to the goods, properties, or services that he actually sells.

Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under

---

[63] In *Commissioner of Internal Revenue v. Smart Communications, Inc.*, G.R. Nos. 179045-06, 25 August 2010, 629 SCRA 342, 353, the Court held that "the person entitled to claim tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim."

Supreme Court E-Library

the law, like companies generating power through renewable sources of energy.[64] Thus, a **non** zero- rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. **He can only carry-over and apply his "excess" input VAT against his future output VAT**. If such "excess" input VAT is an "excessively" collected tax, the taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer. If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.

Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, x x x illegally,

---

[64] Section 108 (B), 1997 Tax Code. Also, Section 110 (B) provides in part that "any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

Supreme Court E-Library

x x x excessively or **in any manner wrongfully** collected." In short, there must be a **wrongful payment** because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should "**apply only to instances of erroneous payment or illegal collection of internal revenue taxes**." Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due**. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.

IV. **Effectivity and Scope of the *Atlas*, *Mirant* and *Aichi* Doctrines**

The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant*.** The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the *Atlas* doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule. The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.

The *Atlas* doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in *Atlas*. The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are

Supreme Court E-Library

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 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.[65] 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[66] 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

---

[65] See note 1.

[66] *Gibbs v. Collector of Internal Revenue*, 107 Phil. 232 (1960).

Supreme Court E-Library

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.

V. **Revenue Memorandum Circular No. 49-03 (RMC 49-03) dated 15 April 2003**

There is nothing in RMC 49-03 that states, expressly or impliedly, that the taxpayer need not wait for the 120-day period to expire before filing a judicial claim with the CTA. RMC 49-03 merely authorizes the BIR to continue processing the administrative claim even after the taxpayer has filed its judicial claim, without saying that the taxpayer can file its judicial claim before the expiration of the 120-day period. RMC 49-03 states: "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (either the Bureau of Internal Revenue or the One- Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance), the administrative agency and the court may act on the case separately." Thus, if the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period.

On the other hand, if the taxpayer files its judicial claim after the 120-day period, the Commissioner can still continue

Supreme Court E-Library

to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must ***necessarily*** continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings.

What is important, as far as the present cases are concerned, is that the mere filing by a taxpayer of a judicial claim with the CTA before the expiration of the 120-day period cannot operate to divest the Commissioner of his jurisdiction to decide an administrative claim within the 120-day mandatory period, *unless* the Commissioner has clearly given cause for equitable estoppel to apply as expressly recognized in Section 246 of the Tax Code.[67]

VI. **BIR Ruling No. DA-489-03 dated 10 December 2003**

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**

---

[67] Section 246 of the 1997 Tax Code 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:

(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)

Supreme Court E-Library

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,[68] 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.

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:

> 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.

---

[68] *Commissioner of Internal Revenue v. Hitachi Computer Products (Asia) Corporation*, CA-G.R. SP No. 63340, 7 February 2002.

Supreme Court E-Library

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:

> 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:
>
> (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 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 under Section 246.

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant*

Supreme Court E-Library

and *Aichi*[69] is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. As held by this Court in *CIR v. Philippine Health Care Providers, Inc.*:[70]

> In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
>
> This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp*. in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd.*, *Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp.*, *Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc., and Commissioner of Internal Revenue v. Court of Appeals.* **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case**.
>
> More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying

---

[69] *Supra* note 30.

[70] G.R. No. 168129, 24 April 2007, 522 SCRA 131, 142-143.

Supreme Court E-Library

its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer. (Emphasis supplied)

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 was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.

However, BIR Ruling No. DA-489-03 cannot be given retroactive effect for four reasons: *first*, it is admittedly an erroneous interpretation of the law; *second*, prior to its issuance, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law; *third*, prior to its issuance, no taxpayer can claim that it was misled by the BIR into filing a judicial claim prematurely; and *fourth*, a claim for tax refund or credit, like a claim for tax exemption, is strictly construed against the taxpayer.

San Roque, therefore, cannot benefit from BIR Ruling No. DA-489-03 because it filed its judicial claim prematurely on 10 April 2003, ***before*** the issuance of BIR Ruling No. DA-

Supreme Court E-Library

489-03 on 10 December 2003. To repeat, San Roque cannot claim that it was misled by the BIR into filing its judicial claim prematurely because BIR Ruling No. DA-489-03 was issued only after San Roque filed its judicial claim. At the time San Roque filed its judicial claim, the law as applied and administered by the BIR was that the Commissioner had 120 days to act on administrative claims. This was in fact the position of the BIR prior to the issuance of BIR Ruling No. DA-489-03. **Indeed, San Roque never claimed the benefit of BIR Ruling No. DA-489-03 or RMC 49-03, whether in this Court, the CTA, or before the Commissioner.**

Taganito, however, filed its judicial claim with the CTA on 14 February 2007, ***after*** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. Truly, Taganito can claim that in filing its judicial claim prematurely without waiting for the 120-day period to expire, it was misled by BIR Ruling No. DA-489-03. Thus, Taganito can claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity.

Philex's situation is not a case of premature filing of its judicial claim but of late filing, indeed *very* late filing. BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim. Philex cannot claim the benefit of BIR Ruling No. DA-489-03 because Philex did not file its judicial claim prematurely but filed it long after the lapse of the 30-day period **following the expiration of the 120-day period**. In fact, Philex filed its judicial claim 426 days after the lapse of the 30-day period.

VII. **Existing Jurisprudence**

There is no basis whatsoever to the claim that in five cases this Court had already made a ruling that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. The effect of the claim of the dissenting opinions is that San Roque's failure to wait for the 120-day mandatory period to lapse is inconsequential, thus allowing San Roque to claim the tax refund

Supreme Court E-Library

or credit. However, the five cases cited by the dissenting opinions do not support even remotely the claim that this Court had already made such a ruling. **None of these five cases mention, cite, discuss, rule or even hint that compliance with the 120-day mandatory period is inconsequential as long as the administrative and judicial claims are filed within the two-year prescriptive period.**

In *CIR v. Toshiba Information Equipment (Phils.), Inc.*,[71] the issue was whether any output VAT was actually passed on to Toshiba that it could claim as input VAT subject to tax credit or refund. The Commissioner argued that "although Toshiba may be a VAT-registered taxpayer, it is not engaged in a VAT-taxable business." The Commissioner cited Section 4.106- 1 of Revenue Regulations No. 75 that "refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT-taxable business." In the words of the Court, "Ultimately, however, the issue still to be resolved herein shall be whether respondent Toshiba is entitled to the tax credit/refund of its input VAT on its purchases of capital goods and services, to which this Court answers in the affirmative." Nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

In *Intel Technology Philippines, Inc. v. CIR*,[72] the Court stated: "The issues to be resolved in the instant case are (1) whether the absence of the BIR authority to print or the absence of the TIN-V in petitioner's export sales invoices operates to forfeit its entitlement to a tax refund/credit of its unutilized input VAT attributable to its zero-rated sales; and (2) whether petitioner's failure to indicate "TIN-V" in its sales invoices automatically invalidates its claim for a tax credit certification." Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

---

[71] 503 Phil. 823 (2005).

[72] G.R. No. 166732, 27 April 2007, 522 SCRA 657.

Supreme Court E-Library

In *AT&T Communications Services Philippines, Inc. v. CIR*,[73] the Court stated: "x x x the CTA First Division, conceding that petitioner's transactions fall under the classification of zero-rated sales, nevertheless denied petitioner's claim '**for lack of substantiation**,' x x x." The Court quoted the ruling of the First Division that "**valid VAT official receipts, and not mere sale invoices, should have been submitted**" by petitioner to substantiate its claim. The Court further stated: "x x x the CTA *En Banc*, x x x affirmed x x x the CTA First Division," and "petitioner's motion for reconsideration having been denied x x x, the present petition for review was filed." Clearly, the sole issue in this case is whether petitioner complied with the substantiation requirements in claiming for tax refund or credit. Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

In *CIR v. Ironcon Builders and Development Corporation*,[74] the Court put the issue in this manner: "Simply put, the sole issue the petition raises is whether or not the CTA erred in granting respondent Ironcon's application for refund of its **excess** creditable VAT withheld." The Commissioner argued that "since the NIRC does not specifically grant taxpayers the option to refund **excess** creditable VAT withheld, it follows that such refund cannot be allowed." Thus, this case is solely about whether the taxpayer has the right under the NIRC to ask for a cash refund of **excess** creditable VAT withheld. Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

In *CIR v. Cebu Toyo Corporation*,[75] the issue was whether Cebu Toyo was exempt or subject to VAT. Compliance with

---

[73] G.R. No. 182364, 3 August 2010, 626 SCRA 567.

[74] G.R. No. 180042, 8 February 2010, 612 SCRA 39.

[75] 491 Phil. 625, 637-638 (2005).

Supreme Court E-Library

the 120-day period was never an issue in *Cebu Toyo*. As the Court explained:

> Both the Commissioner of Internal Revenue and the Office of the Solicitor General argue that respondent Cebu Toyo Corporation, as a PEZA-registered enterprise, **is exempt from national and local taxes, including VAT**, under Section 24 of Rep. Act No. 7916 and Section 109 of the NIRC. Thus, they contend that respondent Cebu Toyo Corporation is not entitled to any refund or credit on input taxes it previously paid as provided under Section 4.103-1 of Revenue Regulations No. 7-95, notwithstanding its registration as a VAT taxpayer. For petitioner claims that said registration was erroneous and did not confer upon the respondent any right to claim recognition of the input tax credit.
>
> The respondent counters that it availed of the income tax holiday under E.O. No. 226 for four years from August 7, 1995 making it exempt from income tax but not from other taxes such as VAT. **Hence, according to respondent, its export sales are not exempt from VAT, contrary to petitioner's claim, but its export sales is subject to 0% VAT**. Moreover, it argues that it was able to establish through a report certified by an independent Certified Public Accountant that the input taxes it incurred from April 1, 1996 to December 31, 1997 were directly attributable to its export sales. Since it did not have any output tax against which said input taxes may be offset, it had the option to file a claim for refund/tax credit of its unutilized input taxes.
>
> Considering the submission of the parties and the evidence on record, we find the petition bereft of merit.
>
> **Petitioner's contention that respondent is not entitled to refund for being exempt from VAT is untenable**. This argument turns a blind eye to the fiscal incentives granted to PEZA-registered enterprises under Section 23 of Rep. Act No. 7916. Note that under said statute, the respondent had two options with respect to its tax burden. It could avail of an income tax holiday pursuant to provisions of E.O. No. 226, thus exempt it from income taxes for a number of years but not from other internal revenue taxes such as VAT; or it could avail of the tax exemptions on all taxes, including VAT under P.D. No. 66 and pay only the preferential tax rate of 5% under Rep. Act No. 7916. Both the Court of Appeals and the Court of Tax Appeals found that respondent availed of the income tax holiday for four (4) years starting from August 7, 1995, as clearly

Supreme Court E-Library

reflected in its 1996 and 1997 Annual Corporate Income Tax Returns, where respondent specified that it was availing of the tax relief under E.O. No. 226. **Hence, respondent is not exempt from VAT and it correctly registered itself as a VAT taxpayer. In fine, it is engaged in taxable rather than exempt transactions**. (Emphasis supplied)

Clearly, the issue in *Cebu Toyo* was whether the taxpayer was exempt from VAT or subject to VAT at 0% tax rate. If subject to 0% VAT rate, the taxpayer could claim a refund or credit of its input VAT. Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

While this Court stated in the narration of facts in *Cebu Toyo* that the taxpayer "did not bother to wait for the Resolution of its (administrative) claim by the CIR" before filing its judicial claim with the CTA, this issue was not raised before the Court. Certainly, this statement of the Court is not a binding precedent that the taxpayer need not wait for the 120-day period to lapse.

Any issue, whether raised or not by the parties, *but not passed upon by the Court*, does not have any value as precedent. As this Court has explained as early as 1926:

> It is contended, however, that the question before us was answered and resolved against the contention of the appellant in the case of *Bautista vs. Fajardo* (38 Phil. 624). In that case no question was raised nor was it even suggested that said section 216 did not apply to a public officer. That question was not discussed nor referred to by any of the parties interested in that case. It has been frequently decided that the fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity, where that question is squarely and properly raised and presented. **Where a question passes the Court *sub silentio*, the case in which the question was so passed is not binding on the Court *(McGirr vs. Hamilton and Abreu*, 30 Phil. 563), nor should it be considered as a precedent**. (*U.S. vs. Noriega and Tobias*, 31 Phil. 310; *Chicote vs. Acasio*, 31 Phil. 401; *U.S. vs. More*, 3 Cranch [U.S.] 159, 172; *U.S. vs. Sanges*, 144 U.S. 310,

Supreme Court E-Library

319; *Cross vs. Burke*, 146 U.S. 82.) For the reasons given in the case of *McGirr vs. Hamilton and Abreu*, *supra*, the decision in the case of *Bautista vs. Fajardo*, *supra*, can have no binding force in the interpretation of the question presented here.[76] (Emphasis supplied)

In *Cebu Toyo*, the nature of the 120-day period, whether it is mandatory or optional, was not even raised as an issue by any of the parties. **The Court never passed upon this issue**. Thus, *Cebu Toyo* does not constitute binding precedent on the nature of the 120-day period.

There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two- year prescriptive period. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.[77] As held by this Court in *The Philippine Veterans Affairs Office v. Segundo*:[78]

x x x Let it be admonished that decisions of the Supreme Court "applying or interpreting the laws or the Constitution . . . form part of the legal system of the Philippines," and, as it were, "laws" by their own right because they interpret what the laws say or mean. **Unlike rulings of the lower courts, which bind the parties to specific cases alone, our judgments are universal in their scope and application, and equally mandatory in character**. Let it be warned that to defy our decisions is to court contempt. (Emphasis supplied)

---

[76] *Agcaoili v. Suguitan*, 48 Phil. 676, 697 (1926).

[77] Article 8, Civil Code of the Philippines. *De Mesa v. Pepsi Cola Products Phils., Inc.*, 504 Phil. 685 (2005); *The Philippine Veterans Affairs Office v. Segundo*, 247 Phil. 330 (1988); *Ang Ping v. RTC, Manila, Branch 40*, 238 Phil. 77 (1987); *Floresca v. Philex Mining Corporation*, 220 Phil. 533 (1985).

[78] 247 Phil. 330, 336 (1988).

Supreme Court E-Library

The same basic doctrine was reiterated by this Court in *De Mesa v. Pepsi Cola Products Phils., Inc.*:[79]

> The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:
>
> > ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
>
> It enjoins adherence to judicial precedents. **It requires our courts to follow a rule already established in a final decision of the Supreme Court**. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. (Emphasis supplied)

VIII. **Revenue Regulations No. 7-95 Effective 1 January 1996**

Section 4.106-2(c) of Revenue Regulations No. 7-95, by its own express terms, applies only if the taxpayer files the judicial claim "***after***" the lapse of the 60-day period, a period with which San Roque failed to comply. **Under Section 4.106-2(c), the 60-day period is still mandatory and jurisdictional**.

Moreover, it is a hornbook principle that a prior administrative regulation can ***never*** prevail over a later contrary law, more so in this case where the later law was enacted precisely to amend the prior administrative regulation and the law it implements.

The laws and regulation involved are as follows:

1977 Tax Code, as amended by Republic Act No. 7716 (1994)

> Sec. 106. *Refunds or tax credits of creditable input tax.* —
>
> (a) x x x x x x x x x
>
> (d) Period within which refund or tax credit of input tax shall be made — In proper cases, the Commissioner shall grant a

---

[79] 504 Phil. 685, 691 (2005).

Supreme Court E-Library

refund or issue the tax credit for creditable input taxes **within sixty (60) days** from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof. **In case of** full or partial denial of the claim for tax refund or tax credit, or **the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**.

Revenue Regulations No. 7-95 (1996)

Section 4.106-2. Procedures for claiming refunds or tax credits of input tax — (a) x x x

x x 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 tax credit/refund for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with subparagraphs (a) and (b) above.

In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise the decision will become final. However, **if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue *after the sixty (60) day period* from the date of submission of the application but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals**.

x x x x x x x x x

1997 Tax Code

Section 112. *Refunds or Tax Credits of Input Tax* —

(A) x x x x x x x x x

x x x x x x x x x

Supreme Court E-Library

(D) *Period within which Refund or Tax Credit of Input Taxes shall be made.* — In proper cases, the Commissioner shall grant the 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.

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 hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

There can be no dispute that under Section 106(d) of the 1977 Tax Code, as amended by RA 7716, the Commissioner has a 60-day period to act on the administrative claim. **This 60-day period is mandatory and jurisdictional**.

Did Section 4.106-2(c) of Revenue Regulations No. 7-95 change this, so that the 60-day period is no longer mandatory and jurisdictional? The obvious answer is no.

Section 4.106-2(c) itself expressly states that if, ***"after the sixty (60) day period,"*** the Commissioner fails to act on the administrative claim, the taxpayer may file the judicial claim even "before the lapse of the two (2) year period." **Thus, under Section 4.106-2(c) the 60-day period is still mandatory and jurisdictional**.

Section 4.106-2(c) did not change Section 106(d) as amended by RA 7716, but merely implemented it, for two reasons. *First*, **Section 4.106-2(c) still expressly requires compliance with the 60-day period**. This cannot be disputed.

Second, under the novel amendment introduced by RA 7716, mere **inaction** by the Commissioner during the 60-day period is **deemed a denial** of the claim. Thus, Section 4.106-2(c) states that "if no action on the claim for tax refund/credit has been taken by the Commissioner ***after the sixty (60) day period,***" the taxpayer "**may**" already file the judicial claim *even long*

Supreme Court E-Library

before the lapse of the two-year prescriptive period. Prior to the amendment by RA 7716, the taxpayer had to wait until the two-year prescriptive period was **about to expire** if the Commissioner did not act on the claim.[80] With the amendment by RA 7716, the taxpayer need not wait until the two-year prescriptive period is about to expire before filing the judicial claim because mere inaction by the Commissioner during the 60-day period is deemed a denial of the claim. **This is the meaning of the phrase "but before the lapse of the two (2) year period" in Section 4.106-2(c)**. As Section 4.106- 2(c) reiterates that the judicial claim can be filed only "***after the sixty (60) day period***," this period remains mandatory and jurisdictional. Clearly, Section 4.106-2(c) did not amend Section 106(d) but merely faithfully implemented it.

Even assuming, for the sake of argument, that Section 4.106-2(c) of Revenue Regulations No. 7-95, an administrative issuance, amended Section 106(d) of the Tax Code to make the period given to the Commissioner non-mandatory, still the 1997 Tax Code, a much later law, reinstated the original intent and provision of Section 106(d) by extending the 60-day period to 120 days and **re-adopting the original wordings of Section 106(d)**. Thus, Section 4.106-2(c), a mere administrative issuance, becomes inconsistent with Section 112(D), a later law. Obviously, the later law prevails over a prior inconsistent administrative issuance.

Section 112(D) of the 1997 Tax Code is clear, unequivocal, and categorical that the Commissioner has 120 days to act on an administrative claim. The taxpayer can file the judicial claim

---

[80] The rule before the amendment by RA 7716 was succinctly stated in *Insular Lumber Co. v. Court of Tax Appeals* (192 Phil. 221, 232-233 [1981]):

> We agree with the respondent court. This Court has consistently adhered to the rule that the claim for refund should first be filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must be instituted, within the said two-year period. **If, however, the Commissioner takes time in deciding the claim, and *the period of two years is about to end,* the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Commissioner.** x x x. (Emphasis supplied)

Supreme Court E-Library

(1) ***only within thirty days after the Commissioner partially or fully denies the claim*** within the 120- day period, or (2) ***only within thirty days from the expiration of the 120- day period*** if the Commissioner does not act within the 120-day period.

There can be no dispute that upon effectivity of the 1997 Tax Code on 1 January 1998, or **more than five years *before* San Roque filed its administrative claim on 28 March 2003**, the law has been clear: the 120- day period is mandatory and jurisdictional. San Roque's claim, having been filed administratively on 28 March 2003, is governed by the 1997 Tax Code, not the 1977 Tax Code. Since San Roque filed its judicial claim before the expiration of the 120-day mandatory and jurisdictional period, San Roque's claim cannot prosper.

San Roque cannot also invoke Section 4.106-2(c), which expressly provides that the taxpayer can only file the judicial claim "***after***" the lapse of the 60-day period from the filing of the administrative claim. **San Roque filed its judicial claim just 13 days after filing its administrative claim**. To recall, San Roque filed its judicial claim on 10 April 2003, a mere 13 days after it filed its administrative claim.

Even if, *contrary to all principles of statutory construction as well as plain common sense*, we gratuitously apply now Section 4.106-2(c) of Revenue Regulations No. 7-95, still **San Roque cannot recover any refund or credit because San Roque did not wait for the 60-day period to lapse, contrary to the express requirement in Section 4.106-2(c)**. In short, San Roque does not even comply with Section 4.106-2(c). A claim for tax refund or credit is strictly construed against the taxpayer, who must prove that his claim clearly complies with all the conditions for granting the tax refund or credit. San Roque did not comply with the express condition for such statutory grant.

A final word. Taxes are the lifeblood of the nation. The Philippines has been struggling to improve its tax efficiency collection for the longest time with minimal success. Consequently, the Philippines has suffered the economic adversities arising from poor tax collections, forcing the government to continue borrowing to fund the budget deficits.

Supreme Court E-Library

This Court cannot turn a blind eye to this economic malaise by being unduly liberal to taxpayers who do not comply with statutory requirements for tax refunds or credits. The tax refund claims in the present cases are not a pittance. Many other companies stand to gain if this Court were to rule otherwise. The dissenting opinions will turn on its head the well-settled doctrine that tax refunds are strictly construed against the taxpayer.

WHEREFORE, the Court hereby (1) **GRANTS** the petition of the Commissioner of Internal Revenue in G.R. No. 187485 to **DENY** the ₱483,797,599.65 tax refund or credit claim of San Roque Power Corporation; (2) **GRANTS** the petition of Taganito Mining Corporation in G.R. No. 196113 for a tax refund or credit of ₱8,365,664.38; and (3) **DENIES** the petition of Philex Mining Corporation in G.R. No. 197156 for a tax refund or credit of ₱23,956,732.44.

SO ORDERED.

Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, and *Reyes, JJ.,* concur.

Del Castillo, J., joins *J.* Leonen in his separate opinion.

Leonen, J., see separate opinion.

Sereno, C.J., joins the dissent of *J.* Velasco; but partly digress (see separate dissenting opinion).

Velasco, Jr., J., dissents (see dissenting opinion).

Mendoza and *Perlas-Bernabe, JJ.,* join the dissent of *J.* Velasco.

SEPARATE OPINION

LEONEN, *J.*:

I agree with the *ponencia* to the effect that:

1. A VAT-registered person whose sales are zero-rated, or effectively zero-rated, may apply for a refund or credit of creditable input tax within 2 years after the close of

Supreme Court E-Library

the taxable quarter when the zero-rated or effectively zero-rated sales were made. An administrative claim that is filed beyond the 2-year period is barred by prescription.

2. CIR has 120 days from the date of submission of complete documents in support of an application, within which to act on the claim. The taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from the receipt of the decision or after the expiration of the 120-day period within which the claim has not been acted upon.

3. The 120 + 30-day period is mandatory and jurisdictional and the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. On the other hand, failure of the taxpayer to elevate its claim within 30 days from the lapse of the 120-day period, counted from the filing of its administrative claim for refund, or from the date of receipt of the decision of the CIR, will bar any subsequent judicial claim for refund.

4. Excess input tax is not an excessively, erroneously, or illegally collected tax. A claim for refund of this tax is in the nature of a tax exemption, which is based on a specific provision of law, *i.e.*, Section 110 of NIRC, which allows VAT-registered persons to recover the excess input taxes they have paid in relation to their sales. Hence, claims for refund/tax credit of excess input tax are governed not by Section 229 but only by Section 112 of the NIRC.

These interpret the following provisions of the NIRC *viz*:

Section 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

Supreme Court E-Library

> 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 x x x x x
>
> (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.
>
> ***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.*** (emphasis mine)
>
> Section 110. *Tax Credits*. —
>
> (A) Creditable Input Tax. — x x x
>
> (B) Excess Output or Input Tax. — If at the end of any taxable quarter the ouput tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

I am however unable to agree with the conclusion that the interpretation we have just put on these provisions take effect only when we pronounce them. Thus, in the view of the *ponencia*, that it is to be applied "prospectively".

My disagreement stems from the idea that we do not make law. Ours is a duty to construe: *i.e.*, declare authoritatively the meaning of existing text. I can grant that words are naturally open textured and do have their own degrees of ambiguity. This can be based on their intrinsic text, language structure, context, and the interpreter's standpoint.

Supreme Court E-Library

However, the provisions that we have just reviewed already put the private parties within a reasonable range of interpretation that would serve them notice as to the remedies that are available to them. That is, that resort to judicial action can only be done after a denial by the commissioner or after the lapse of 120 days from the date of submission of complete documents in support of the administrative claim for refund.

Furthermore, settled is the principle that an "erroneous application and enforcement of the law by public officers do not preclude a subsequent correct application of the statute, and the Government is never estopped by mistake or error on the part of its agents."[1]

Accordingly, while the BIR Commissioner is given the power and authority to interpret tax laws pursuant to Section 4 of the NIRC, it cannot legislate guidelines contrary to the law it is tasked to implement. Hence, its interpretation is not conclusive and will be ignored if judicially found to be erroneous.

Concededly, under Section 246 of the NIRC, "[a]ny revocation, modification or reversal of any BIR ruling or circular shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers." However, if it is patently clear that the ruling is contrary to the text of the law, there can be no reliance in good faith by the practitioners.

BIR Ruling DA-489-03 which 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," constitutes a clear disregard of the express and categorical provision of Section 112(D) of the NIRC. Thus, the Commissioner's erroneous application of the law is not binding and conclusive upon this Court in any way.

As aptly held by this Court in *Philippine Bank of Communications v. CIR*:[2]

---

[1] *Philippine Basketball Association v. Court of Appeals*, 392 Phil. 133, 144 (2000).

[2] *Philippine Bank of Communications v. CIR, CTA & CA*, 361 Phil. 916 (1999).

Supreme Court E-Library

Article 8 of the Civil Code recognizes judicial decisions, applying or interpreting statutes as part of the legal system of the country. But administrative decisions do not enjoy that level of recognition. A memorandum-circular of a bureau head could not operate to vest a taxpayer with a shield against judicial action. For there are no vested rights to speak of respecting a wrong construction of the law by the administrative officials and such wrong interpretation could not place the Government in estoppel to correct or overrule the same.[3]

In many instances, we have not given "prospective" application to our interpretation of tax laws. For instance:

A) In the case of *The Commissioner of Internal Revenue v. Ilagan Electric & Ice Plant, Inc. and Court of Tax Appeals*,[4] we were guided by our ruling in *Guagua Electric Light Co., Inc. v. Collector of Internal Revenue*[5] which was **promulgated on 24 April 1967 (while the Ilagan case was pending)** where we held that a demand on the part of the Collector (now Commissioner) of Internal Revenue for payment of an erroneously refunded franchise tax is in effect an assessment for deficiency franchise tax. Applying the five-year prescriptive period for assessment specified under Section 331 of the Tax Code (and not Article 1145 of the Civil Code), we held that CIR's assessment made on 27 July 1961 against Ilagan Electric for erroneously refunded franchise tax for the 4th quarter of 1952 to the 4th quarter of 1954 is barred by prescription.

B) In the case of *Collector of Internal Revenue v. Batangas Transportation Company and Laguna-Tayabas Bus Company*,[6] we reversed the Court of Tax Appeals and

---

[3] *Id*. at 931.

[4] *The Commissioner of Internal Revenue v. Ilagan Electric & Ice Plant, Inc. and Court of Tax Appeals*, 140 Phil. 62 (1969).

[5] *Guagua Electric Light Co., Inc. v. Collector of Internal Revenue*, 126 Phil. 85 (1967).

[6] *Collector of Internal Revenue v. Batangas Transportation Company and Laguna-Tayabas Bus Company*, 102 Phil. 822 (1958).

Supreme Court E-Library

held that in light of our ruling in the case of *Eufemia Evangelista v. Collector of Internal Revenue*[7] **promulgated on October 15, 1957,** the "Joint Emergency Operation" operated by Batangas Transportation Company and Laguna-Tayabas Bus Company is a "corporation" within the meaning of Section 84(b) of the Internal Revenue Code, and consequently, is subject to income tax.

C) The non-prospective effect of our decision can also be gleaned from what transpired in the case of *Carmen Planas v. Collector of Internal Revenue*.[8] That case involved a resolution of the CTA directing the execution of a judgment of the defunct Board of Tax Appeals, which affirmed the war profit tax assessment made by the Collector (now Commissioner) against Carmen Planas. We took note of our 30 March 1954 Resolution dismissing Carmen Planas' appeal from the Board of Tax Appeals decision on the basis of our declaration in *University of Sto. Tomas v. Board of Tax Appeals*,[9] that the provisions of E.O. No. 401-A conferring upon the Board of Tax Appeals exclusive jurisdiction over all appeals from decisions of the CIR in disputed assessments and other matters arising under the NIRC are null and void; hence, said Board has no jurisdiction over said internal revenue cases. Therefore, we concluded that the decision of the Board of Tax Appeals was neither valid, final or executory.

As a matter of fact, in the fairly recent case of *Accenture, Inc. v. Commissioner of Internal Revenue*,[10] we upheld the Court of Tax Appeal's application of our pronouncements in

---

[7] *Eufemia Evangelista v. Collector of Internal Revenue*, 102 Phil. 140 (1957).

[8] *Carmen Planas v. Collector of Internal Revenue*, 113 Phil. 377 (1961).

[9] *University of Sto. Tomas v. Board of Tax Appeals, 93 Phil*. 376 (1953).

[10] *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

Supreme Court E-Library

Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.[11] (*Burmeister*) as basis in ruling that *Accenture's* services would qualify for zero-rating under Section 108(b) of the 1997 NIRC [formerly Section 102(b) of the 1977 Tax Code], only if the recipient of the services was doing business outside of the Philippines. We held:

> Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one. When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[12]

It is the duty of the lawyers of private parties to best discern the acceptable interpretation of legal text based upon methodologies familiar to lawyers. In doing so, they take the risk that the Supreme Court will rule otherwise, especially if the text of the law — as in this case — is very clear.

This Court should not be a guarantor of lawyer's mistakes. Nor should it remove all risks taken by the taxpayers through the advice and actions of their counsels. The capacity to bear the costs of these mistakes in interpretation is generally better internalized by the private taxpayers rather than carried by the public as a whole. Government has had no agency in the decision of the private parties—in this case San Roque and Taganito Mining—to prematurely raise their claims with the Court of Tax Appeals. They could have taken the other route and erred on the side of caution, especially since Section 112 (D) of the NIRC is very clear.

---

[11] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 541 Phil. 119 (2007).

[12] *Accenture, Inc. v. Commissioner of Internal Revenue, supra.*

Supreme Court E-Library

In view of the foregoing, I concur with the statement of doctrines in the *ponencia* but vote for the following result:

1. Grant the petition of the Commission of Internal Revenue in G.R. No. 187485 to deny the claim for tax refund or credit of San Roque Power Corporation in the amount of ₱560,200,283.14;
2. Deny the petition of Taganito Mining Corporation in G.R. No. 196113 for a tax credit in the amount of ₱8,365,664.38; and
3. Deny the petition of Philex Mining Corporation in G.R. No. 197156 for a tax refund or credit of ₱23,956,732.44.

SEPARATE DISSENTING OPINION

SERENO, *C.J.*:

The crux of the disparity in opinion among my esteemed colleagues is the proper application of the mandatory and jurisdictional nature of the 120+≤30 period provided under Section 112 (D) of the 1997 NIRC, whether prospective or retroactive.

I concur with the dissent of Justice Velasco that Revenue Regulation No. (RR) 7-95 was not superseded and did not become obsolete upon the approval of RA 8424 or the 1997 NIRC. It bears to stress that Section 106 (d) of the 1977 NIRC from which RR 7-95 was construed was not repealed by Section 112 (D) of the 1997 NIRC, thus, the same regulation which implements the same framework of the law may still be given effect for the proper execution of the terms set therein. It is wrong to assume that RR 7-95 was automatically revoked upon the enactment of a new law which conveys the same meaning as the old law. Needless to say, RR 7-95 was created in view of Section 106 (d) of the 1977 NIRC which has the same context and was actually replicated in Section 112 (D) of the 1997 NIRC. Thus, to conclude that RR 7-95 became inconsistent with Section 112 (D) of the 1997 NIRC is misplaced.

Moreover, to disregard RR 7-95 upon the enactment of the 1997 NIRC would likewise create a complicated scenario of

Supreme Court E-Library

determining which administrative issuance would govern claims under the said tax code during the intervening period pending the revision on its implementing rules. It would be nearly impossible for the Bureau of Internal Revenue to operate in an administrative vacuum.

Although we express the same position that the CTA Decisions constitute an operative fact on the manner in which the BIR, CA, CTA and even this court regarded the 120+≤30 period leading the taxpayers to believe that they were observing the proper period in their claims for refund, I do not agree with Justice Velasco's stand as to the application of RR 16-2005 which construed the nature of the 120+≤30 period as mandatory and jurisdictional only from the date it took effect on 1 November 2005. I believe that in line with numerous jurisprudence, the mandatory and jurisdictional application of the 120+≤30 period must be applied prospectively, or at the earliest only upon the finality of *Aichi* where this Court categorically ruled on the nature of the 120+≤30 period pursuant to Section 112 (D) of the 1997 NIRC. Prior to *Aichi*, the CTA continuously ruled that the 120+≤30 period is not mandatory and jurisdictional.

In *Miranda, et al. v. Imperial, et al.*,[1] (*Miranda* case) while the Court had ruled: "only decisions of this Honorable Court establish jurisprudence or doctrines in this jurisdiction," decisions of the Court of Appeals (CA) which cover points of law still undecided in the Philippines may still serve as judicial guides or precedents to lower courts.[2] Indeed, decisions of the CA have a persuasive juridical effect.[3] And they may attain the status of

---

[1] 77 Phil. 1073 (1947).

[2] *GSIS v. Cadiz*, 453 Phil. 384, 391 (2003).

[3] A Comparative Study of the Juridical Role and its Effect on the Theory on Juridical Precedents in the Philippine Hybrid Legal System, Cesar Villanueva, <http://law.upd.edu.ph/plj/images/files/PLJ%20volume%2065/PLJ%20 volume%2065%20first%20&% 20second%2 0quarter%20-04-%20Cesar%20Lapuz%20Villanueva%20 %20Comparative%20Study%20of%20the%20Judicial%20Role.pdf> (visited 14 January 2013).

Supreme Court E-Library

doctrines if after having been subjected to test in the crucible of analysis and revision, the Supreme Court should find the same to have merits and qualities sufficient for their consecration as rules of jurisprudence.[4] If unreversed decisions of the CA are given weight in applying and interpreting the law, Court of Tax Appeals (CTA) decisions must also be accorded the same treatment considering they are both appellate courts, apart from the fact that the CTA is a highly specialized body specifically created for the purpose of reviewing tax cases.[5] This is especially the case when the doctrine and practice in the CTA has to do only with a procedural step.

Applying the foregoing to the issue at hand, the CTA's disposition of the issue of the prescriptive period for claims for refund of input VAT, which had never been controverted by this Court until the *Aichi* case, had served as a guide not only to inferior courts but also to taxpayers. Hence, following the pronouncement in *Miranda* case, we must give weight to the dispositions made during the interim period when the issue of mandatory compliance with Section 112 had not yet been resolved, much less raised in this jurisdiction.

Although I recognize the well-settled rule in taxation that tax refunds or credit, just like tax exemptions, are strictly construed against taxpayers, reason dictates that such strict construction properly applies only when what is being construed is the substantive right to refund of taxpayers. When courts themselves have allowed for procedural liberality, then they should not be so strict regarding procedural lapses that do not really impair the proper administration of justice.[6] After all, the higher objective of procedural rule is to insure that the

---

[4] Persons, Dean Ernesto L. Pineda, 33 (2004), citing *Miranda v. Imperial*, *id.* at 1, and *Gaw Sin Gee v. Market Master of the Divisoria Market, et.al.* [C.A.], 46 O.G. 2617.

[5] *Commissioner of Internal Revenue, v. Solidbank Corporation*, 462 Phil. 96 (2003).

[6] *Fabrigar v. People*, 466 Phil. 1036, 1044 (2004) citing *Ligon v. Court of Appeals*, 314 Phil. 689, 699 (1995).

Supreme Court E-Library

substantive rights of the parties are protected.[7] In *Balindong v. Court of Appeals*[8] we stated:

> x x x. Hence, **rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.** Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism or whimsicality in the settlement of disputes. **The enforcement of procedural rules is not antithetical to the substantive rights of the litigants. The policy of the courts is to give effect to both procedural and substantive laws, as complementing each other, in the just and speedy resolution of the dispute between the parties.**[9] (Emphasis supplied)

In the light of the foregoing, I find that previous regard to the 120+≤30 day period is an exceptional circumstance which warrant this Court to suspend the rules of procedure and accord liberality to the taxpayers who relied on such interpretations.

We find it violative of the right to procedural due process of taxpayers when the Court itself allowed the taxpayers to believe that they were observing the proper procedural periods and, in a sudden jurisprudential turn, deprived them of the relief provided for and earlier relied on by the taxpayers. It is with this reason and in the interest of substantial justice that the strict application of the 120+≤30 day period should be applied prospectively to claims for refund or credit of excess input VAT.

To apply these rules retroactively would be tantamount to punishing the public for merely following interpretations of the law that have the imprimatur of this Court. To do so creates a tear in the public order and sow more distrust in public institutions.

---

[7] *Id.*

[8] 488 Phil. 203 (2004).

[9] *Id.* at 215-216.

Supreme Court E-Library

We would be fostering uncertainty in the minds of the public, especially in the business community, if we cannot guarantee our own obedience to these rules.

In a dissenting opinion in a case involving VAT law, Justice Tinga well said: "**Taxes may be inherently punitive, but when the fine line between damage and destruction is crossed, the courts must step forth and cut the hangman's noose. Justice Holmes once confidently asserted that 'the power to tax is not the power to destroy while this Court sits' and we should very well live up to this expectation not only of the revered Holmes, but of the Filipino people who rely on this Court as the guardian of their rights. At stake is the right to exist and subsist despite taxes, which is encompassed in the due process clause**."[10] (Emphasis supplied)

The Court should not allow procedural rules that it has tolerated, then suddenly distolerated, to unjustly result in the denial of the legitimate claims of taxpayers, *viz*:

> **Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.**[11] (Emphasis supplied)

Further, in *Land Bank of the Philippines v. De Leon*,[12] this Court had said that "[a] prospective application of our Decision is not only grounded on equity and fair play, but also based on the constitutional tenet that rules of procedure shall not impair substantive rights."[13]

---

[10] *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 251 (2005).

[11] *BPI-Family Savings Bank, Inc. v. Court of Appeals*, 386 Phil. 719, 729 (2000).

[12] 447 Phil. 495 (2003).

[13] *Id.* at 503.

Supreme Court E-Library

It is my view that the mandatory nature of 120+≤30day period must be completely applied prospectively in order to create stability and consistency in our tax laws.

In this case, at the time Taganito filed its administrative and judicial claims for refund, the two-year prescriptive period remained the unreversed interpretation of the court. Thus, we cannot fault Taganito for heavily relying on court interpretations even with the existence of RR 16-2005. Taxpayers or the public in general, cannot be blamed for preferring to abide court interpretations over mere administrative issuances as the latter's validity is still subject to judicial determination.

Accordingly, I concur with the opinion as to the outcome of the Dissent of Justice Velasco with regard to G.R. Nos. 187485 and 197156. However, for consistency of my position as discussed above and in the further interest of substantial justice, I vote to GRANT the Petition of Taganito in G.R. No. 196113.

DISSENTING OPINION

VELASCO, JR., *J.*:

I register my dissent to the majority opinion in G.R. No. 187485, entitled *Commissioner of Internal Revenue v. San Roque Power Corporation*, and G.R. No. 196113, entitled *Taganito Mining Corporation v. Commissioner of Internal Revenue*. However, I concur with the disposition of the case in G.R. No. 197156, entitled *Philex Mining Corporation v. Commissioner of Internal Revenue*.

The primary issue in these three (3) consolidated cases revolves around the proper period for filing the **judicial claim** for a tax refund of input tax or the issuance of a tax credit certificate (TCC).

Commissioner of Internal Revenue v. San Roque Power Corp. (G.R. No. 187485)

In G.R. No. 187485, respondent-taxpayer San Roque Power Corporation (San Roque) filed on **March 28, 2003** an amended administrative claim for refund of input value-added tax (VAT)

Supreme Court E-Library

amounting to PhP 560,200,283.14 with the Bureau of Internal Revenue (BIR). Thirteen (13) days thereafter, or on **April 10, 2003**, San Roque filed a Petition for Review regarding the same amount with the Court of Tax Appeals (CTA).

The CTA Second Division initially denied San Roque's claim for insufficiency of supporting documents and evidence. However, on San Roque's motion, the CTA Second Division reconsidered and granted San Roque's claim, albeit at a reduced amount of PhP 483,797,599.65.

The reconsideration prompted the Commissioner of Internal Revenue (CIR) to file a Petition for Review before the CTA *En Banc* claiming that San Roque prematurely filed its judicial claim with the CTA and failed to meet the requisites for claiming a refund/credit of input VAT. The CTA *En Banc* dismissed the CIR's petition sustaining the timeliness of San Roque's administrative and judicial claims.

The CTA *En Banc* held that the word "may" in Section 112(D) of the 1997 National Internal Revenue Code (NIRC) signifies the intent to allow a directory and permissive construction of the 120-day period for the filing of a judicial claim for refund/credit of input VAT. Hence, the filing of judicial claims for refund/credit of VAT within the said 120-day period is allowed, as long as it is made within the two-year prescriptive period prescribed under Section 229 of the 1997 NIRC.

Undaunted, the CIR elevated the controversy before this Court asserting, in the main, that San Roque's failure to wait for the lapse of the 120-day period after filing its claim with the BIR is fatal to San Roque's right to a refund/credit of input VAT. Moreover, so the CIR claimed, the refund should be spread across the 40-year life span of the capital goods and equipment of the taxpayer.

In a Resolution dated January 12, 2011, this Court affirmed the CTA Second Division's Decision, as sustained by the CTA *En Banc*, with the modification that the tax credit should be spread over the 40-year lifespan of San Roque's capital goods and equipment.

Supreme Court E-Library

On February 11, 2011, the CIR filed a Motion for Reconsideration citing this Court's October 6, 2010 Decision in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* (*Aichi*).[1]

Taganito Mining Corp. v. CIR
(G.R. No. 196113)

In the meantime, in G.R. No. 196113, petitioner Taganito Mining Corporation (Taganito) filed with the CIR on **November 14, 2006** a claim for refund/credit of input VAT for the period January 1, 2004 to December 31, 2004 in the total amount of PhP 8,365,664.38. On November 29, 2006, Taganito informed the CIR that the correct period covered by its claim actually spans from to January 1, 2005 to December 31, 2005.

Ninety-two (92) days after it first filed its claim for refund/credit, or on **February 14, 2007**, Taganito filed a Petition for Review with the CTA claiming that the CIR failed to act on its claim. The CTA Second Division partially granted Taganito's claim and ordered the CIR to refund the taxpayer in the amount of PhP 8,249,883.33.

When its motion for reconsideration was denied by the CTA Second Division, the CIR filed a Petition for Review with the CTA *En Banc* asserting that the 120-day period prescribed in Sec. 112(D) of the 1997 NIRC is jurisdictional so that Taganito's non-compliance thereof is fatal to its claim for refund/credit of input VAT.

Citing our Decision in *Aichi*, the *CTA En Banc* ruled that Taganito's failure to wait for the lapse of the 120-day period prescribed in Sec. 112(D) of the 1997 NIRC amounted to a premature filing of its judicial claim that violates the doctrine of exhaustion of administrative remedies.

The CTA *En Banc* denied Taganito's Motion for Reconsideration. Hence, Taganito filed the present petition.

---

[1] G.R. No. 184823, 632 SCRA 422.

Supreme Court E-Library

Philex Mining Corp. v. CIR
(G.R. No. 197156)

In G.R. No. 197156, petitioner Philex Mining Corporation (Philex) filed on October 21, 2005 its Original VAT Return for the third quarter of taxable year 2005, and on December 1, 2005, its Amended VAT Return for the same quarter.

On **March 20, 2006**, Philex then filed a claim for refund/ credit of input VAT in the total amount of PhP 23,956,732.44 with the One Stop Shop Center of the Department of Finance.

Almost a year and seven (7) months thereafter, or on October 17, 2007, Philex elevated its claim for refund/credit with the CTA. Ruling on the petition, the CTA Second Division denied the claim holding that while Philex's administrative claim was timely filed, its judicial claim was filed out of time. Hence, Philex's claim for refund/credit is barred by prescription.

Philex's Motion for Reconsideration was denied by the CTA Second Division. Hence, on December 2, 2009, Philex filed with the CTA *En Banc* a Petition for Review.

The CTA *En Banc* denied the motion.

Applying our pronouncements in *Aichi*, the CTA *En Banc* held that Philex only had until August 17, 2006, or thirty (30) days after the lapse of the 120-day period from the filing of its administrative claim on March 20, 2006, to file its judicial claim with the CTA. Hence, the CTA Second Division no longer had jurisdiction to entertain the petition filed by Philex 426-day late.

The denial of its claim impelled Philex to file its petition before this Court.

To resolve the primary issue common to the foregoing cases, it has been advanced that the following three (3) cases are determinative: (1) *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, June 8, 2007* (*Atlas*);[2] (2) *Commissioner of Internal Revenue v. Mirant*

[2] G.R. Nos. 141104 & 148763, 524 SCRA 73.

Supreme Court E-Library

Pagbilao Corporation, September 12, 2008 (*Mirant*);[3] and (3) *Aichi*,[4] which has been cited by both the CIR and the CTA. It is then suggested that the doctrine applicable to a claim for refund or issuance of a TCC depends on the case operative at the time of filing the claim.

It is, however, submitted that in resolving the issue on the proper period for filing a **judicial claim**, only *Aichi* is relevant, and a review of the relevant legislations and regulations is necessary for a more comprehensive appreciation of the present controversy.

In *Atlas*, the period to file a judicial claim was never the issue. Instead, *Atlas* sought to define the start of the two-year period within which to file the claim and pegged it at "the date of filing of the return and payment of the tax due, which, according to the law then existing, should be made within 20 days from the end of quarter."[5] Moreover, *Atlas* involved claims for refund of unutilized input VAT covering taxable years 1990 and 1992. It, therefore, construed the relevant provisions of the Tax Code of 1977,[6] as amended by Executive Order No. (EO) 273,[7] which read:

> Sec. 106. Refunds or tax credits of input tax. — x x x
>
> (b) *Zero-rated or effectively zero-rated sales.* — Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
>
> x x x x x x x x x

---

[3] G.R. No. 172129, 565 SCRA 154.

[4] *Supra* note 1.

[5] *Supra* note 2, at 96.

[6] Otherwise known as Presidential Decree No. 1158.

[7] Took effect on January 1, 1988.

Supreme Court E-Library

(e) *Period within which refund or input taxes may be made by the Commissioner.* — T**he Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative.** No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be. (Emphasis supplied.)

It is clear from the foregoing provisions that the Tax Code of 1977 applied in *Atlas* did not provide a period within which the judicial claim must be filed by the taxpayer after he has filed his administrative claim for refund. The correlation made by this Court of the prescriptive period in Sec. 106 with Sec. 230[8] (now Sec. 229), which states that no suit or proceeding to claim a tax refund is allowed after the expiration of the two (2) years from the date of the payment of the tax, was, therefore, necessary and justified under the circumstances present in *Atlas*. The same correlation is not applicable to the present cases.

The period within which to file a judicial claim for the refund of VAT or the issuance of a TCC was first introduced in 1994 through Republic Act No. (RA) 7716,[9] Sec. 6 of which provided:

---

[8] Sec. 230. 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, or of any sum alleged to have been excessive 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 begun after the expiration of two 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." (Emphasis supplied.)

[9] An Act Restructuring the Value Added Tax (VAT) System, Widening Its Tax Base and Enhancing Its Administration and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as Amended, and for Other Purposes. Approved May 5, 1994.

Supreme Court E-Library

Section 6. Section 106 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 106. Refunds or tax credits of creditable input tax. — (a) 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 x x x.

x x x x x x x x x

"(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 for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof.** In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**." (Emphasis supplied.)

Then Secretary of Finance Roberto F. De Ocampo, however, issued **Revenue Regulation No. (RR) 7-95**, otherwise known as the "Consolidated Value-Added Tax Regulations" pursuant to his rule-making authority under Sec. 245 (now Sec. 244) of the NIRC in relation to Sec. 4, which provides:

Section 245. **Authority of Secretary of Finance to promulgate rules and regulations**. — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needed rules and regulations for the effective enforcement of the provisions of this Code.

The mentioned RR 7-95 became effective on January 1, 1996 and still applied the 2-year prescriptive period to judicial claims, viz:

SEC. 4.106-2. Procedures for claiming refunds or tax credits of input tax — (a) Where to file the claim for refund or tax credit. — Claims for refund or tax credit shall be filed with the appropriate

Supreme Court E-Library

Revenue District Office (RDO) having jurisdiction over the principal place of business of the taxpayer. However, direct exporters may also file their claim for tax credit with the One-Stop-Shop Center of the Department of Finance.

x x 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 tax credit/refund for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance subparagraphs (a) and (b) above.

In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise the decision will become final. However, **if no action on the claim for tax credit-refund has been taken by the Commissioner of Internal Revenue after the sixty (60) day period from the date of submission of the application *but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter*, the taxpayer may appeal to the Court of Tax Appeals.** (Emphasis supplied.)

Tax revenue regulations are "issuances signed by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, that specify, **prescribe or define rules and regulations for the effective enforcement of the provisions of the [NIRC]** and related statutes."[10] As these issuances are mandated by the Tax Code itself, they are in the nature of a subordinate legislation that is as compelling as the provisions of the NIRC it implements.[11] RR 7-95, therefore, provides a binding set of rules in the filing of claims for the refund/credit of input VAT and prevails over all other rulings and issuances of the BIR in all matters concerning the interpretation and proper application of the VAT provisions of the NIRC.

---

[10] <http://www.bir.gov.ph/iss_rul/issuances.htm> (visited February 5, 2013); emphasis supplied.

[11] See *BPI Leasing Corporation v. Court of Appeals*, G.R. No. 127624, November 18, 2003.

Supreme Court E-Library

The period given to the CIR to decide a claim for input VAT refund/credit was extended from 60 days under EO 273 and RR 7-95 to 120 days under RA 8424, otherwise known as the 1997 NIRC, which became effective on January 1, 1998. Sec. 112 of RA 8424 on the refund of tax credits stated, thus:

> Section 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 x x x x x
>
> *(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.
>
> 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**.[12] (Emphasis supplied.)

Mirant was decided under the aegis of the 1997 NIRC and resolved a claim for refund/credit of input VAT for the period April 1993 to September 1996. However, it likewise did not set forth the period prescribed in **Sec. 112(D)** of the 1997 NIRC

---

[12] The subheading "Period within which refund or Tax Credit of Input Taxes shall be Made" was previously under Sec. 112(D) until the effectivity of RA 9337, which deleted the subheading on "Capital Goods" in what was previously Sec. 112(B) of the NIRC.

Supreme Court E-Library

in filing the judicial claim after the administrative claim has been filed. Like in *Atlas*, the issue resolved in *Mirant* is the date from which the 2-year prescriptive period to file the claim should be counted. Applying **Sec. 112(A)** of the 1997 NIRC, this Court, in *Mirant,* modified the *Atlas* doctrine and set the commencement of the 2-year prescriptive period from the date of the close of the relevant taxable quarter. In so ruling, this Court declared in *Mirant* that the provisions of Sec. 229 of the 1997 NIRC do not apply to claims for refund/credit of input taxes because these taxes are not erroneously or illegally collected taxes:

> To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:
>
> x x x x x x x x x
>
> Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.[13]

Ergo, the 2-year period set forth in Sec. 229 does not apply to judicial claims for the refund/credit of input VAT.

Sec. 4.106-2 of RR 7-95, which provided that such judicial claims for refund/credit of input VAT must be filed "before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter" **was not, however, repealed by the 1997 NIRC**. **There was no provision in RA 8424 explicitly repealing RR 7-95**.[14] Instead, Sec. 4.106-2 of RR

---

[13] *Supra* note 3.

[14] RA 8424, Sec. 7, Repealing Clauses. — (A) The provision of Section 17 of Republic Act No. 7906, otherwise known as the "Thrift Banks Act of 1995" shall continue to be in force and effect only until December 31, 1999.

Effective January 1, 2000, all thrift banks, whether in operation as of that date or thereafter, shall no longer enjoy tax exemption as provided under

Supreme Court E-Library

7-95 remained effective as the implementing rule of Sec. 112(D) that was lifted almost verbatim from Sec. 106(d) of the 1977 NIRC, as amended. At the risk of being repetitive, I quote again the pertinent provisions of Sec. 106(d) of the 1977 NIRC, as amended by RA 7716 which was approved on May 5, 1994 prior to the issuance of RR 7-95, and Sec. 112(D) of the 1997 NIRC for comparison:

Sec. 106(d), 1977 NIRC	**Sec. 112(D), 1997 NIRC**
Sec. 106. *Refunds or tax credits of creditable input tax.* — x x x	Section 112. *Refunds or Tax Credits of Input Tax.* — x x x
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 for creditable input taxes within sixty (60) days from the date of submission of complete documents** in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof**.**	*(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.
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**	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**

Section 17 of R.A. No. 7906, thereby subjecting all thrift banks to taxes, fees and charges in the same manner and at the same rate as banks and other financial intermediaries.

(B) The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or -controlled corporations, decrees, orders or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly.

Supreme Court E-Library

thirty (30) days from the receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.	**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**.

It is apparent that Sec. 106(d) of the 1977 NIRC, as amended, was substantially adopted and re-enacted by Sec. 112(D) of the 1997 NIRC. In other words, Sec. 106(d) of the 1977 NIRC, as amended, was **not repealed** by Sec. 112(D) of the 1997 NIRC. Thus, **RR 7-95 construing and implementing Sec. 106(d) of the 1977 NIRC, as amended by RA 7716, continued in effect under Sec. 112(D) of the 1997 NIRC.**

In *Commissioner of Internal Revenue v. American Express*,[15] We ruled that when the legislature reenacts a law that has been construed by an executive agency using substantially the same language, it is an indication of the adoption by the legislature of the prior construction by the agency:

> [U]pon the enactment of RA 8424, which substantially carries over the particular provisions on zero rating of services under Section 102(b) of the Tax Code, the principle of legislative approval of administrative interpretation by reenactment clearly obtains. This principle means that "the reenactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction."
>
> The legislature is presumed to have reenacted the law with full knowledge of the contents of the revenue regulations then in force regarding the VAT, and to have approved or confirmed them because they would carry out the legislative purpose. The particular provisions of the regulations we have mentioned earlier are, therefore, re-enforced. "When a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the [l]egislature thereafter [reenacts] the provisions [without] substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose."

[15] G.R. No. 152609, June 29, 2005, 462 SCRA 197, 229-230.

Supreme Court E-Library

In fact, in this Court's January 17, 2011 Decision in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,[16] where the Court resolved a judicial claim filed on December 27, 2000 for creditable input taxes for the period October to December 1998 (after the effectivity of RA 8424 or the 1997 NIRC), this Court cited and relied on the provisions of RR 7-95, *viz*:

> To claim a refund of input VAT on capital goods, Section 112 (B) of the NIRC requires that:
>
> x x x x x x x x x
>
> Corollarily, **Section 4.106-1 (b) of RR No. 7-95** defines capital goods as follows: x x x Based on the foregoing definition, we find no reason to deviate from the findings of the CTA that training materials, office supplies, posters, banners, T-shirts, books, and the other similar items reflected in petitioner's Summary of Importation of Goods are not capital goods. A reduction in the refundable input VAT on capital goods from ₱15,170,082.00 to ₱9,898,867.00 is therefore in order. (Emphasis supplied.)

Thus, this Court, I submit, cannot now assert that RR 7-95 was superseded and became obsolete upon the approval of RA 8424 or the 1997 NIRC.

Furthermore, the CIR issued Revenue Memorandum Circular No. (RMC) 49-03[17] pursuant to his rule-making power under Sec. 4 the 1997 NIRC, which states:

> Section 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.

---

[16] G.R. No. 172378, January 17, 2011, 639 SCRA 521. See also *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012; *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010, 612 SCRA 28.

[17] Prescribes amendments to RMC 42-2003 relative to the processing of claims for VAT credit/refund.

Supreme Court E-Library

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.

RMC 49-03, like all other RMCs, is an issuance that publishes pertinent and applicable portions, as well as amplifications, of laws, rules, regulations and precedents issued by the BIR and other agencies/offices.[18] RMC 49-03, in particular, recognized and laid out the rules concerning the concurrent jurisdiction of the CIR and the CTA in cases of claims for VAT refunds or issuances of TCCs.

The significance and impact of RMC 49-03, dated August 15, 2003, can best be appreciated by a close reading:

In response to request of selected taxpayers for adoption of procedures in handling refund cases that are aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law, certain provisions of RMC No. 42-2003 are hereby amended and new provisions are added thereto.

In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:

1) A-17 of Revenue Memorandum Circular No. 42-3003 is hereby revised to read as follows:

"In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), **the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency**, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/ processing office for the docket containing certified true copies of all the documents pertinent to the claim.

---

[18] <http://www.bir.gov.ph/iss_rul/issuances.htm> (visited February 5, 2013).

Supreme Court E-Library

The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. **In the meantime, the investigating/ processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency**.

If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate / tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/ processing office." (Emphasis supplied.)

RMC 49-03 explicitly allowed a taxpayer to file his judicial claim with the CTA while his administrative claim for refund of the same input taxes was still pending before the BIR, *i.e.*, without waiting for the administrative claim to be first resolved, and that both claims, judicial and administrative, could proceed simultaneously; in brief, the administrative agency and the tax court may take cognizance of and act on the claims separately.

RMC 49-03 permitted refund-seeking taxpayers to have recourse to the CTA without having to wait for the lapse of the 120-day period granted to the CIR by Section 112(D). At the same time, the BIR was to continue to exercise jurisdiction over the administrative claim for refund, even after the CTA acquired jurisdiction over the judicial claim for refund of the exact same

Supreme Court E-Library

input VAT. This RMC even provided the mechanics for dealing with situations where one claim was resolved ahead of the other, in order to prevent conflicting outcomes or double refunds. Obviously, this RMC provided much needed and reliable guidance to taxpayers in dealing with their claims that were in peril of being time-barred.

At bottom, RMC 49-03 conclusively proves that the CIR and the CTA regarded the 120-day and 30-day periods in Sec. 112(D) as being **non-jurisdictional in nature**. It must be reiterated for emphasis that RMC 49-03 was issued and implemented under the aegis of the 1997 NIRC.

In addition, it is unarguable that **RMC 49-03 was premised on the belief of the CIR and the CTA that the two-year prescriptive period under Sec. 229 continued to be applicable to judicial claims for refund of input VAT, because otherwise, there would have been no need for, and no point in, allowing both the judicial and administrative claims to proceed simultaneously**.

Moreover, RMC 49-03 obviously demanded and necessitated the agreement and cooperation of the CTA. In other words, RMC 49-03 was meaningful, relevant, viable and enforceable only because the CTA concurred in the CIR's belief, and abided by, embraced and implemented the scheme under RMC 49-03 involving the twin-and-simultaneous jurisdiction by the CTA and the BIR over the claims for refund of one and the same input VAT.

At bottom, the only plausible explanation why the CIR issued and the BIR and CTA jointly implemented the RMC 49-03 system of handling claims, notwithstanding the existence of Sec. 112(D) of the 1997 NIRC, was that they believed that it would not conflict with Sec. 112(D), **precisely because of the continued effectivity of RR 7-95**. The CIR and the CTA were of the belief that the said two-year prescriptive period was applicable to the filing of judicial claims for refund of input VAT, and, therefore, in order to save such claims from being denied on account of late filing, they devised a system (consistent with and permissible under RR 7-95), allowing the judicial claim to be filed without awaiting the outcome of the administrative claim (or the lapse

Supreme Court E-Library

of the 120-day period), and allowing both claims to proceed simultaneously.

Needless to say, RMC 49-03 did not spring forth from sheer nothingness; it was preceded by RMC 42-03. In fact, the title of RMC 49-03 reads: "Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters."

On the other hand, RMC 42-03, dated as of July 15, 2003, has the subject title "Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/ Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters."

Obviously intended to address various concerns/difficulties **already pre-existing** at the time of its issuance, RMC 42-03 presented, in Q & A format, information needed by taxpayers in dealing with specific problematic situations involving VAT usage and VAT refund claims. Question No. 17, at the very end of RMC 42-03, reads as follows:

> Q-17: If a claim submitted to the Court of Tax Appeals for judicial determination is denied by the CTA due to lack of documentary support, should the corresponding claim pending at the BIR offices be also denied?

The question speaks of a situation where the administrative claim is still pending with, and has not been resolved by, the BIR, but the judicial claim for refund of the same taxes has already been filed with and taken cognizance of by the CTA, and has been denied on account of lack of documentary support and not on account of prematurity.

Beyond doubt, this particular scenario was not uncommon back in 2003, **and in prior years as well**, as shown by the fact that it earned a distinguished spot in the BIR's FAQ, and

Supreme Court E-Library

eventually had an entire Revenue Memorandum Circular devoted to it (*i.e.*, RMC 49-03). This oft-repeated scenario was the result of the widespread practice among taxpayers of filing judicial claims with an eye to beating the two-year deadline under Sec. 229 of the Tax Code, coupled with the BIR and the CTA's assiduous disregard of the 120-day and 30-day periods under Sec. 112(D).

The phrasing of that question indicates that neither the BIR nor the CTA considered such judicial claims to be premature for non-compliance with the 120-day and 30-day periods; those periods were by no means deemed jurisdictional in nature. That was the official position taken by the BIR and the CTA, as reflected in their handling of the claims, and **the taxpayers and the general public cannot be faulted if they relied on the actuations and declarations of the Commissioner of Internal Revenue and the CTA**.[19]

The answer to Question No. 17 confirms the foregoing disquisition. It reads as follows:

> A-17: Generally, the BIR loses jurisdiction over the claim when it is filed with the CTA. Thus, when the claim is denied by the CTA, the BIR cannot grant any tax credit or refund for the same claim. However, cases involving tax credit/ refund claims, which are archived in the CTA and have not been acted upon by the said court, may be processed

[19] *See*, for instance, CTA Case Nos. 7230 & 7299, *Team Sual Corporation v. Commissioner of Internal Revenue*, November 26, 2009, where the CTA's First Division intoned: "The Court *En Banc* has consistently ruled that judicial course within thirty (30) days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Sections 112 and 229 of the 1997 NIRC, as amended. It has likewise held that if the 2-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court." (citing *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, C.T.A. EB No. 416, February 4, 2009; *Commissioner of Internal Revenue v. San Roque Power Corporation*, C.T.A. EB No. 408, March 25, 2009; *Commissioner of Internal Revenue v. CE Cebu Geothermal Power Company, Inc.*, C.T.A. EB No. 426, May 29, 2009).

Supreme Court E-Library

> by the concerned BIR office upon approval of the CTA to archive or suspend the proceeding of the case pending in its bench.

The foregoing answer would have turned out very different if prematurity had been an issue or a concern at that time. At the very least, the answer would have to be qualified, *e.g.*, in case of non-compliance with the 120-day and 30-day periods, the CTA is bereft of jurisdiction, *etc*. In any event, in A-17 we can already see the nascency of the simultaneous jurisdictions of the BIR and the CTA.

As will already be obvious from just a cursory glance, the various questions and answers/solutions contained in RMC 42-03 did not simply materialize out of thin air and come into full bloom instantaneously. It was most definitely the end product of thoughtful interaction between official policy and practice on the part of the BIR and the CTA, and taxpayers' experiences gathered over time. **In other words, to acknowledge RMC 42-03 as an operative fact is to acknowledge the long history and process of policy formulation and implementation underpinning RMC 42-03, and the accumulation over time of the empirical basis thereof**.

Put another way, RMC 42-03 merely presented in clear-cut, written form the official solutions and answers to various, frequently encountered problems involving VAT usage and refund claims; these solutions and answers—crafted and refined over a period of time, being the product of what we may refer to as collective wisdom generated by the interaction of the tax agency, the tax court and taxpayers—actually antedated RMC 42-03 by many years.

It is just the same way with Q-17 and A-17—they only put in black and white what had already been the prevailing practice and understanding of the tax agency, the tax court and taxpayers in respect of judicial claims.

Now, going back to the beginning of this discussion, taxpayers ought not be prejudiced if they filed their judicial claims relying in good faith on RMC 49-03. But just as this Court cannot

Supreme Court E-Library

afford to ignore RMC 49-03, in the same way and for the very same reasons the Court likewise cannot ignore RMC 42-03 and the official policies, practices and experience that preceded and gave birth to RMC 42-03 and eventually to RMC 49-03. And, therefore, judicial claims filed in accordance with the thrust, intendment and direction of RMC 42-03 and the solutions/answers, policies and practices that predated RMC 42-03 and formed its underlying basis, must likewise be spared. And with more reason, considering the following discussion.

On December 10, 2003, the BIR issued Ruling No. DA-489-03, addressed to the Department of Finance, holding that a taxpayer need not wait for the lapse of the 120-day period before it could seek judicial relief:

> x x x With the actions taken by herein taxpayer [Lazi Bay Resources Development, Inc.], it is your contention that the "*claimant is not yet on the right forum in violation of the provision of Section 112(D) of the NIRC*," to wit:
>
> x x x x x x x x x
>
> In reply, please be informed that **a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe. **The Tax Code fixed the period of two (2) years for filing a claim for refund with the Commissioner [Sec. 112(A) in relation to Sec. 204(c)] and for filing a case in court [Section 229].** Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law. (Emphasis supplied.)

The *ponencia* claims that the permissive treatment of the 120 and 30-day periods in Sec. 112 should be reckoned from the date of the issuance of the above BIR ruling—December 10, 2003.

On this I beg to differ.

BIR Ruling No. DA-489-03 was a mere application of the still effective rule set by RR 7-95, which, as discussed, was an issuance made by the Secretary of Finance pursuant to the

Supreme Court E-Library

authority granted to him by the Tax Code. On the other hand, BIR Ruling No. DA-489-03 was issued not by the CIR, but by then **Deputy Commissioner** Jose Mario C. Buñag of the Legal & Inspection Group of BIR. It was, therefore, not an issuance authorized under Sec. 4 of the NIRC, which clearly provides that the "power to interpret the provisions of [the NIRC] and other tax laws shall be under the **exclusive** and **original** jurisdiction of the Commissioner, subject to the review by the Secretary." Neither can BIR Ruling No. DA-489-03 be considered an issuance within the delegated authority of the deputy commissioner considering that Sec. 7 of the 1997 NIRC expressly prohibits the delegation of the following powers:

(A) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(B) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau.

If this Court is set in sustaining the binding effect of BIR Ruling No. DA-489-03, it must be viewed as simply applying an already established and still effective rule provided by RR 7-95, not an issuance that established a new rule that departed from the 1997 NIRC.

For that matter, a reading of the rulings of this Court on claims for refund/credit of input VAT initiated from 1996 to 2005 made the impression that this Court was simply applying a well and long established rule that the period provided in Sec. 112(D) of the 1997 NIRC is merely discretionary and dispensable. As long as the judicial claim is filed within the 2-year period provided in Sec. 112(A), it was considered irrelevant whether the claim with the CTA is filed a day or a year after the administrative claim was filed with the CIR. The pertinent case laws on the issue are as follows:

(1) In *CIR v. Cebu Toyo Corporation*,[20] the Court gave due course to the petition of taxpayer Cebu Toyo and recognized its right to tax refund despite the fact that Cebu Toyo "did not

[20] G.R. No. 149073, February 16, 2005, 451 SCRA 447.

Supreme Court E-Library

bother to wait for the resolution of its claim by the CIR"[21] and instead filed its judicial claim on June 26, 1998, or only 88 days after filing its administrative claim on March 30, 1998.

(2) In *Philippine Geothermal, Inc v. CIR*,[22] this Court allowed a refund even if the judicial claim was filed by petitioner, "to toll the running of the two-year prescriptive period before the Court of Tax Appeals,"[23] on July 2, 1997, or **almost a year** after it filed its administrative claim on July 10, 1996.

(3) In *CIR v. Toshiba Information Equipment (Phils.), Inc.*,[24] this Court affirmed the right of respondent-taxpayer to a refund or the issuance of a TCC, "to toll the running of the two-year prescriptive period for judicially claiming a tax credit/refund,"[25] even if Toshiba filed its judicial claim on March 31, 1998, only **four days** after its administrative claim filed on March 27, 1998.

(4) In *Toshiba Information Equipment (Phils.), Inc. v. CIR*,[26] this Court ordered the refund or the issuance of a TCC in favor of petitioner Toshiba in spite of the fact that its judicial claim was on March 31, 1999, just **one day** after it filed its administrative claim on March 30, 1999, "to toll the running of the two-year prescriptive period under Section 230 of the Tax Code of 1977, as amended."[27]

(5) In *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*,[28] this Court held that "petitioner is legally entitled to a refund or issuance of a tax credit certificate of its unutilized input VAT input taxes" despite the fact that its judicial claim was filed **more than a year** after its administrative claim

---

[21] *Id.*

[22] G.R. No. 154028, July 29, 2005, 465 SCRA 308.

[23] *Id.*

[24] G.R. No. 150154, August 9, 2005, 466 SCRA 211.

[25] *Id.*

[26] G.R. No. 157594, March 9, 2010, 614 SCRA 526.

[27] *Id.*

[28] G.R. No. 166732, April 27, 2007, 522 SCRA 657.

Supreme Court E-Library

on May 19, 1999, or on June 30, 2000 "when the two-year prescriptive period to file a refund was about to lapse without any action by the Commission of Internal Revenue on its claim."[29]

(6) Similarly, in *Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation*,[30] the Court affirmed respondent-taxpayer's right to refund/credit of input VAT even if its judicial claim was filed on July 1, 2002, or **more than a year** after its administrative claim was filed on May 10, 2001.

The common thread that runs through these cases is the cavalier treatment of the 120 and 30-day periods prescribed by Sec. 112 of the 1997 NIRC. If it is the Court's position that the prescribed periods of 120 days for administrative claim and 30 days for judicial claims are jurisdictional at the time the judicial claims were filed in these cases, then the cases should have been decided adversely against the taxpayers for filing the claim in breach of Sec. 112 of the 1997 NIRC. When these cases were entertained by the Court despite the clear departure from Sec. 112, the Court, wittingly or unwittingly, led the taxpayers to believe that the 120 and 30-day periods are dispensable as long as both the administrative and judicial claims for refund/credit of input VAT were filed within 2 years from the close of the relevant taxable quarter. Simply put, **the taxpayers relied in good faith on RR 7-95** and honestly believed and regarded the 120 and 30-day periods as merely discretionary and dispensable. Hence, noted tax experts and commentators, Victor A. Deoferio, Jr. and Victorino Mamalateo, recommended that for safe measure and to avert the forfeiture of the right to avail of the judicial remedies, taxpayers should "file an appeal with the Court of Tax Appeals, without waiting for the expiration of the 120-day period, if the two-year period is about to lapse."[31]

Unfortunately, the aforecited decisions of the Court were of no help to taxpayers in the years between 1996 and 2005—

---

[29] *Id.*

[30] G.R. No. 180042, February 8, 2010, 612 SCRA 39.

[31] V.A. Deoferio, Jr. and V. Mamalateo, *The Value Added Tax in the Philippines,* 261 (2000).

Supreme Court E-Library

said decisions were promulgated only in 2005, 2007 and 2010. Prior to 2005, there were no decisions in point rendered by this Court, and taxpayers had for guidance only the BIR issuances then in force and effect: RR No. 7-95, later followed by RMC 42-03 on July 15, 2003, RMC 49-03 on August 15, 2003, and BIR Ruling No. DA-489-03. And of course, the prevailing practices of the BIR and the CTA.

In fact, decisions of the CTA *En Banc* in some 128 cases involving judicial claims for refund or credit of unutilized VAT, which claims were filed in the years prior to the issuance of RMC 42-03 on July 15, 2003, and RMC 49-03 on August 15, 2003, paint a revealing picture of how the BIR and the CTA themselves actually regarded the 120 and 30-day periods.

At this point, I hasten to state that, while CTA Decisions are not binding on the Court, **the actual manner in which the BIR and the CTA themselves regarded the 120 and 30-day periods—**in the course of handling administrative and judicial claims for refund/tax credit during the period in question, **as evidenced by the factual recitals in the CTA Decisions—constitutes an operative fact that cannot simply be ignored.** The truth of the matter is that, **whatever may have been the law and the regulation in force at the time, taxpayers took guidance from and relied heavily upon the manner in which the BIR and the CTA viewed the 120- and 30-day periods, as reflected in their treatment of claims for input VAT refund/credit, and these taxpayers acted accordingly by filing their claims in the manner permitted and encouraged by the BIR and the CTA.** This is a reality that even this Court cannot afford to turn a blind eye to.

Numerous decisions of the CTA in Division and *En Banc* reveal that the **BIR and CTA by their very actuations in the period between 1996 and 2005, did, in fact, permit, tolerate and encourage taxpayers to file their refund/tax credit claims without regard to the 120 and 30-day periods provided in Sec. 112(D)**. For instance, in CTA EB Case No. 43, *Overseas Ohsaki Construction Corp. v. Comm. of Internal Revenue*, petitioner therein filed on **October 23, 2001** an administrative

Supreme Court E-Library

claim for PhP 5.8 million in input VAT. The very next day, **October 24, 2001**, petitioner instituted its judicial claim. However, neither respondent CIR nor the CTA questioned petitioner's non-compliance with the 120 and 30-day periods. Trial on the merits ensued, and the CTA[32] denied the claim, but not on the ground of any jurisdictional issue, or prematurity of the judicial claim, but for failure to comply with invoicing requirements under RR 7-95.[33]

There is a host of other CTA cases that illustrate the same point, *i.e.*, that despite non-compliance with the 120 and 30-day periods, the judicial claim was not opposed by the BIR nor rejected by the CTA on the ground of prematurity of the judicial claim, or lack of jurisdiction to take cognizance thereof.[34]

---

[32] The Decision has the file name CTA_EB_CV_00043_D_2005 MAY10_ REF.pdf, and may be found in the CTA's official website.

[33] The Presiding Justice, Hon. Ernesto D. Acosta, submitted a concurring and dissenting opinion but likewise did not raise therein the issue of prematurity of the judicial claim or the CTA's lack of jurisdiction over the same.

[34] (1) CTA EB Case No. 53, *Jideco Mfg. Phils. Inc. v. Comm. of Internal Revenue*. — Admin. claim filed on Oct. 23, 2002; judicial claim filed on Oct. 24, 2002 (1 day after filing of admin claim); (2) CTA EB Case No. 85, *Applied Food Ingredients Co., Inc. v. CIR*. — Admin. claim filed on July 5, 2000; judicial claim filed on Sept. 29, 2000 (86 days after filing of admin claim); (3) CTA EB Case No. 186, *Kepco Philippines Corporation v. CIR* — Admin. claim filed on January 29, 2001; judicial claim filed on April 24, 2001 (85 days after filing of admin claim); (4) CTA EB Case No. 197, *American Express Int'l., Inc.- Phil. Branch v. CIR*. — Admin. claim filed on April 25, 2002; judicial claim filed on April 25, 2002 (*i.e.*, on the same day as filing of admin claim); (5) CTA EB Case No. 226, *Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc.) v. CIR*. — Admin. claim filed on March 18, 2003; judicial claims filed on: March 31, 2003 (for P0.21million) and on July 22, 2003 (for P0.64 million) — 13 days and 126 days, respectively, after filing of admin claim; (6) CTA EB Case No. 231, *Marubeni Philippines Corporation v. CIR* — Admin. claim filed on March 30, 2001; amended admin claim filed on April 2, 2001; judicial claim filed on April 25, 2001 (26 days after filing of original admin claim); (7) CTA EB Case No. 14, *ECW Joint Venture, Inc. v. Comm. of Internal Revenue,* the petitioner therein filed on June 19, 2002 an administrative claim for refund of VAT. A month later, petitioner filed on July 19, 2002 its judicial claim. Neither the CIR nor

Supreme Court E-Library

On the other hand, there are also CTA *En Banc* decisions treating of the exact opposite of prematurity. There is CTA EB Case No. 24, *Intel Technology Phils., Inc. v. Comm. of Internal Revenue*, where the petitioner filed on May 6, 1999 its application for tax credit/refund of input VAT in the amount of PhP 25.5 million. On September 29, 2000, some 512 days after the filing of the administrative claim, and long "after the expiration of the one hundred twenty (120) days allowed under Section 112(D) of the Tax Code," petitioner filed its judicial claim. However, without citing the non-observance of the 120 and 30-day periods, the CTA granted a portion of the amount claimed.[35] Again, there is a litany of cases which serves to bolster the discussion and drive home the point.[36]

---

the CTA raised prematurity as an issue; (8) CTA EB Case No. 47, *BASF Phils., Inc. v. Comm. of Internal Revenue*. Petitioner BASF filed on April 19, 2001 its judicial claim seeking tax credits, after having filed on March 27, 2001, or just 23 days earlier, its administrative claim.

[35] This Decision bears the file name CTA_EB_CV_00024_D_2006 JAN27_REF.pdf, and may be viewed at and downloaded from the CTA's official website.

[36] (1) CTA EB Case No. 54, *Hitachi Global Storage Technologies Phils. Corp. v. CIR.* — Admin. claim filed on August 4, 2000; judicial claim filed on July 2, 2001 (332 days after filing of admin claim). CTA EB Case No. 107, *Kepco Philippines Corporation v. CIR.* — Admin. claims filed on Jan. 29, 2001 and Mar. 21, 2001; judicial claim filed on Mar. 31, 2002. (1 yr & 61 days, and 1 yr & 10 days, respectively, from filing of admin claims); (2) CTA EB Case No. 154, *Silicon Phils., Inc. v. CIR.* — Admin. claim filed on Oct. 25, 1999; judicial claim filed on Oct. 1, 2001 (707 days after the filing of the admin claim); (3) CTA EB Case No. 174, *Kepco Philippines Corporation v. CIR.* — Admin. claims filed on Oct. 1, 2001 and June 24, 2002; judicial claim filed on April 22, 2003 (569 days and 302 days, respectively, after the filing of the two admin. claims).; (4) CTA EB Case No. 181, *Intel Technology Phils., Inc. v. CIR.* — Admin. claim filed on Aug. 26, 1999; judicial claim filed on June 29, 2001 (673 days after filing of admin claim). *Nota bene*: While the case was pending trial, petitioner received on Jan. 24, 2002 from the BIR a Tax Credit Certificate dated Jan. 21, 2002 in the amount of P4.379 million, representing part of the VAT subject of the refund claim. This proves that, during this period prior to the issuance of RMC 42-03, the BIR continued to exercise jurisdiction over the admin claim even though the CTA had already taken cognizance of the judicial claim for the same refund — in exactly the same manner

Supreme Court E-Library

Thus, it is exceedingly clear that, historically speaking, in order to enable refund-seeking taxpayers to file their judicial claims within the two-year prescriptive period, the BIR and the CTA did in actual practice treat the 120-day and 30-day periods provided in Sec. 112(D) as merely discretionary and dispensable; and this served as guidance for the taxpayers. **The taxpaying public took heed of the prevailing practices of the BIR and CTA and acted accordingly. This is a matter which this Court must acknowledge and accept**.

In addition, there is no doubt in our mind that the guidance provided to taxpayers by actual BIR and CTA practices, as portrayed in the foregoing discussion, carried as much, if not more, weight and persuasive force as compared to the formal

---

as was later prescribed in RMC 49-03; (5) CTA EB Case No. 209, *Intel Phils. Manufacturing, Inc. v. CIR.* — Admin. claim filed on August 6, 1999; judicial claim filed on March 30, 2001 (602 days after the filing of the admin claim). *Nota Bene*: During pendency of the trial, petitioner manifested on Aug. 26, 2002 that it had been granted by the Department of Finance a tax credit certificate in the sum of ₱9.948 million, equivalent to 50% of its total claimed input VAT on local purchases, and forming part of its refund claim. This proves that during this period before the issuance of RMC 42-03, the BIR continued to exercise jurisdiction over the admin. claim even though the CTA had already taken cognizance of the judicial claim for the same refund – in exactly the same manner as was later prescribed in RMC 49-03; (6) CTA EB Case No. 219, *Silicon Philippines, Inc. (formerly Intel Phils. Mfg., Inc.) v. CIR.* — Admin. claim filed on August 10, 2000; judicial claim filed on June 28, 2002 (687 days after the filing of the admin claim); (7) CTA EB Case No. 233, *Panasonic Communications Imaging Corp. of the Phils. (formerly Matsushita Business Machine Corp. of the Phils.) v. CIR.* — Admin. claims filed on Feb. 8, 2000 (2nd & 3rd Qs 1999, P5.2 million) and Aug. 25, 2000 (4th Q 1999 & 1st Q 2000, ₱6.7 million); judicial claim filed on March 6, 2001 (392 days and 193 days, respectively, after the filing of the admin. claims); (8) CTA EB Case No. 239, *Panasonic Communications Imaging Corporation of the Phils. (formerly Matsushita Business Machine Corporation of the Phils.) v. CIR.* — Admin. claims filed on March 12, 1999 and July 20, 1999; judicial claim filed on Dec. 16, 1999 (279 days and 149 days, respectively, from and after filing of admin claims); (9) CTA EB Case No. 28, *Intel Technology Phils., Inc. v. Comm. of Internal Revenue*, the petitioner filed on May 18, 1999 its administrative claim for refund/tax credit of VAT; this was followed, some 317 days later, by the judicial claim filed on March 31, 2000.

Supreme Court E-Library

issuances of the BIR such as revenue regulations, RMCs and the like. Thus, adherence to the then prevailing practices of the BIR and CTA, even in the absence of formal issuances like RR 7-95, would be sufficient to clothe the taxpayer with good faith.

On May 24, 2005, RA 9337[37] was approved. It amended the VAT provisions of the 1997 NIRC. Specifically, it deleted the subsection on "Capital Goods" in Sec. 112 and so renumbered the subsection entitled "*Period within which Refund or Tax Credit of Input Taxes shall be made*" as Sec. 112(C). RA 9337 also mandated the Secretary of Finance to issue rules and regulations implementing the amended VAT provisions:

SEC. 23. Implementing Rules and Regulations. — The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary Rules and Regulations for the effective implementation of this Act. Upon issuance of the said Rules and Regulations, all former rules and regulations pertaining to value-added tax shall be deemed revoked.

Pursuant to the foregoing mandate, then Secretary of Finance Cesar Purisima issued **RR 14-2005** on June 23, 2005. However, like its predecessor RR 7-95, Sec. 4.112-1(d) of RR 14-2005 likewise provided that the judicial claims for refund/credit of input VAT must be made within two (2) years from the close of the taxable quarter when the relevant sales were made:

SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. — x x x

x x x x x x x x x

(d) **Period within which refund or tax credit certificate/refund of input taxes shall be made**

---

[37] 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." Its effectivity clause provides that it shall take effect July 1, 2005 but suspended due to a TRO filed by some taxpayers. The law finally took effect November 1, 2005 when the TRO was finally lifted by the Supreme Court. See *Abakada Guro Party List v. Ermita*, G.R. Nos. 168056, *etc*., September 1, 2005, 469 SCRA 1.

Supreme Court E-Library

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/ refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, **if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application** ***but before the lapse of the two (2) year period from the close of the taxable quarter when the sales were made***, the taxpayer may appeal to the CTA. (Emphasis supplied.)

This was remedied by **RR 16-2005**, otherwise known as the "Consolidated Value-Added Regulations of 2005," which superseded RR 14-2005 and became effective on **November 1, 2005**. The prefatory statement of RR 16-2005 provides:

Pursuant to the provisions of Secs. 244 and 245 of the National Internal Revenue Code of 1997, as last amended by Republic Act No. 9337 (Tax Code), in relation to Sec. 23 of the said Republic Act, these Regulations are hereby promulgated to implement Title IV of the Tax Code, as well as other provisions pertaining to Value-Added Tax (VAT). **These Regulations supersedes Revenue Regulations No. 14-2005 dated June 22, 2005**. (Emphasis supplied.)

Sec. 4.112-1 of RR 16-2005 more faithfully reflected Sec. 112 of the 1997 NIRC, as amended by RA 9337, and deleted the reference to the 2-year period in conjunction with the filing of a judicial claim for refund/credit of input VAT, viz:

SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. — x x x

x x x x x x x x x

(d) Period within which refund or tax credit certificate/refund of input taxes shall be made

Supreme Court E-Library

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/ refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, **if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.** (Emphasis supplied.)

All doubts on whether or not the 120 and 30-day periods are merely discretionary and dispensable were erased when the Court promulgated *Aichi* on October 6, 2010. There, the Court is definite and categorical that the prescriptive period of 120 and 30 days under Sec. 112 of the 1997 NIRC is mandatory and jurisdictional. *Aichi* explained that the 2-year period provided in **Sec. 112(A)** of the 1997 NIRC refers **only** to the prescription period for the filing of an **administrative claim** with the CIR. Meanwhile, the **judicial claim** contemplated under said **Sec. 112(C)** must be filed within a **mandatory and jurisdictional period** of thirty (30) days after the taxpayer's receipt of the CIR's decision denying the claim, or within thirty (30) days after the CIR's inaction for a period of 120 days from the submission of the complete documents supporting the claim. Hence, the period for filing the judicial claim under Sec. 112(C) may stretch out beyond the 2-year threshold provided in Sec. 112(A) as long as the administrative claim is filed within the said 2-year period. *Aichi* explained, thus:

Section 112 (D) [now Section 112 (C)] 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

Supreme Court E-Library

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 CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

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 (2) 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.

x x x x x x x x x

Supreme Court E-Library

In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.[38] (Emphasis supplied.)

The Court should not turn a blind eye to the subordinate legislations issued by the Secretary of Finance (and RMCs issued by the CIR) and the various decisions of this Court as well as the then prevailing practices of the BIR and the CTA suggesting that the taxpayers can dispense with the 120 and 30 day-periods in filing their judicial claim for refund/credit of input VAT so long as both the administrative and judicial claims are filed within two (2) years from the close of the relevant taxable quarter. I humbly submit that in deciding claims for refund/credit of input VAT, the following guideposts should be observed:

(1) For judicial claims for refund/credit of input VAT filed from January 1, 1996 (effectivity of RR 7-95) up to October 31, 2005 (prior to effectivity of RR 16-2005), the Court may treat the filing of the judicial claim within the 120 day (or 60-day, for judicial claims filed before January 1, 1998), or beyond the 120+30 day-period (or 60+30 day-period) as permissible provided that both the administrative and judicial claims are filed within two (2) years from the close of the relevant taxable quarter. Thus, the 120 and 30-day periods under Sec. 112 may be considered merely discretionary and may be dispensed with.

(2) For judicial claims filed from November 1, 2005 (date of effectivity of RR 16-2005*)*, the prescriptive period under Sec. 112(C) is mandatory and jurisdictional. Hence, judicial claims for refund/credit of input VAT must be filed within a mandatory and jurisdictional period of thirty (30) days after the taxpayer's receipt of the CIR's decision denying the claim, or within thirty (30) days after the CIR's inaction for a period of 120 days from the submission of the complete documents supporting the claim. The judicial claim may be filed even beyond the 2-year threshold in Sec. 112(A) as long as the administrative claim is filed within said 2-year period.

---

[38] *Supra* note 1.

Supreme Court E-Library

(3) RR 16-2005, as fortified by our ruling in *Aichi*, must be applied PROSPECTIVELY in the same way that the ruling in *Atlas* and *Mirant* must be applied prospectively.[39]

Sec. 246 of the 1997 NIRC expressly forbids the retroactive application of rules and regulations issued by the Secretary of Finance, *viz*:

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 x x x. (Emphasis supplied.)

Hence, **this Court, I maintain, is duty-bound to sustain and give due credit to the taxpayers' bona fide reliance on RR Nos. 7-95 and 14-2005, RMC Nos. 42-03 and 49-03**, along with guidance provided by the then prevailing practices of the BIR and the CTA, prior to their modification by RR 16-2005.

Such prospective application of the latter revenue regulation comports with the simplest notions of what is fair and just—the precepts of due process. The Court has previously held that "in declaring a law or executive action null and void, or, by extension, no longer without force and effect, **undue harshness and resulting unfairness must be avoided**."[40] Such pronouncement can be applied to a change in the implementing rules of the law. The reliance on the previous rules, in particular RR Nos. 7-95 and 14-2005, along with RMC Nos. 42-03 and 49-03, and the guidance provided by the then prevailing practices of the BIR and the CTA, most certainly have had irreversible consequences that cannot just be ignored; the past cannot always be erased by a new judicial declaration.[41]

---

[39] See also *Co v. Court of Appeals*, G.R. No. 100776, October 28, 1993, 227 SCRA 444, 448-455; citing *Ilagan v. People*, January 29, 1974, 55 SCRA 361.

[40] *Hacienda Luisita, Incorporated v. Luisita Industrial Park Corporation*, G.R. No. 171101, July 5, 2011, 653 SCRA 154. Emphasis supplied.

[41] *Id.*

Supreme Court E-Library

It can also be said that the government is estopped from asserting the strict and mandatory compliance with Sec. 112(C) and RR 16-2005 against taxpayers who had relied on RR 7-95 and RR 14-2005, as well as RMC Nos. 42-03 and 49-03, and the guidance of the then prevailing practices of the BIR and the CTA. While the exception to the rule on non-estoppel of the government is rarely applied, the Court has emphasized in *Republic of the Philippines v. Court of Appeals*[42] that this rule cannot be used to perpetrate injustice:

> The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, like all general rules, this is also subject to exceptions, *viz.*:
>
> > "Estoppel against the public are little favored. They should not be invoked except in rare and unusual circumstances and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, **the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations x x x, the doctrine of equitable estoppel may be invoked against public authorities** as well as against private individuals."

Indeed, denying claims for the issuance of TCCs or refund of unutilized input VAT amounting to millions, if not billions, of hard-earned money that rightfully belongs to these taxpayers on the facile ground that the judicial claim was not timely filed in accordance with a **later** rule, virtually sanctions the perpetration of injustice.

And since RR 16-2005, as clarified by our ruling in *Aichi*, is to be applied prospectively, based on and reckoned from the aforestated cut-off date of November 1, 2005, I accordingly vote as follows:

---

[42] G.R. No. 116111, January 21, 1999, 301 SCRA 366.

Supreme Court E-Library

1. In *CIR v. San Roque Power Corporation*, the motion for reconsideration and the petition of the CIR is **DENIED**.

San Roque filed its administrative claim for refund of VAT for taxable year 2001 on April 10, 2003 and, barely two weeks after, it filed its judicial claim with the CTA; this was clearly within the 120-day waiting period for administrative claims. However, since both administrative and judicial claims were filed during the effectivity of RR 7-95, San Roque can claim in good faith that it was led by RR 7-95, as well as the guidance of the then prevailing practices of the BIR and the CTA, to believe that the 120 and 30-day periods are dispensable considering that in San Roque's case, its administrative and judicial claims were both filed within 2 years from the close of the relevant taxable quarter.

2. In *Taganito Mining Corporation v. CIR*, the petition is **DENIED**.

Taganito filed its judicial claim on February 14, 2007, 92 days after it filed its administrative claim with the CIR and within the 120-day waiting period. Since its judicial claim was filed after November 1, 2005 when RR 16-2005 took effect and superseded RR 14-2005 and RR 7-95, Taganito cannot validly claim reliance in good faith on the revenue regulations that considered the 120 and 30-day periods in Sec. 112(C) dispensable so long as the claims are filed within the 2-year period.

3. In *Philex Mining Corp v. CIR*, the petition is likewise **DENIED**.

The administrative claim for VAT for the third quarter of 2005 was filed on March 20, 2006 while the judicial claim was filed on October 17, 2007, one year and three months after the lapse of the 120-day period under Sec. 112(C), and 17 days after the lapse of the 2-year prescriptive period in Section 112(A). The judicial claim is, therefore, belatedly filed under both the superseded RR Nos. 7-95 and 14-2005, and the effective RR 16-2005.