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FIRST DIVISION

[G.R. No. 201326. February 8, 2017]

SITEL PHILIPPINES CORPORATION (FORMERLY CLIENTLOGIC PHILS., INC.), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC): REFUND OR TAX CREDIT OF UNUTILIZED CREDITABLE INPUT VALUE-ADDED TAX (VAT); THE JUDICIAL CLAIM FOR REFUND MAY BE FILED WITH THE COURT OF TAX APPEALS WITHIN THIRTY (30) DAYS FROM THE RECEIPT OF THE DECISION OF THE COMMISSIONER OF INTERNAL REVENUE (CIR) OR THE EXPIRATION OF THE 120-DAY PERIOD OF THE CIR TO ACT ON THE CLAIM. HOWEVER, JUDICIAL CLAIM NEED NOT AWAIT THE EXPIRATION OF THE 120-DAY PERIOD, IF SUCH WAS FILED DURING THE PERIOD FROM THE ISSUANCE OF BIR RULING NO. DA-489-03, ON DECEMBER 10, 2003, UNTIL OCTOBER 6, 2010, WHEN *AICHI* WAS PROMULGATED.— Based on the plain language of [Section 112 (c) of the NIRC] the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA. In *Aichi*, the Court ruled that the 120-day period granted to the CIR was mandatory and jurisdictional, the non-observance of which was fatal to the filing of a judicial claim with the CTA. The Court further explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertained only to the filing of the administrative claim with the BIR; while the judicial claim may be filed with the CTA within thirty (30) days from the receipt of the decision of the CIR or the expiration of the 120-day period of the CIR to act on the claim. x x x. However, in *San Roque*, the Court clarified that the 120-day period does **not** apply to claims for refund that were prematurely

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filed during the period from the issuance of BIR Ruling No. DA-489-03, on December 10, 2003, until October 6, 2010, when *Aichi* was promulgated. The Court explained that BIR Ruling No. DA-489-03, which expressly allowed the filing of judicial claims with the CTA even before the lapse of the 120-day period, provided for a valid claim of equitable estoppel because the CIR had misled taxpayers into prematurely filing their judicial claims before the CTA x x x. In this case, records show that Sitel filed its administrative and judicial claim for refund on March 28, 2006 and March 30, 2006, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though Sitel filed its judicial claim prematurely, *i.e.*, without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque*. In other words, Sitel's judicial claim was deemed timely filed and should have not been dismissed by the CTA *En Banc*. Consequently, the October 21, 2009 Decision of the CTA Division partially granting Sitel's judicial claim for refund in the reduced amount of ₱11,155,276.59, which is not subject of the instant appeal, should be reinstated. In this regard, since the CIR did not appeal said decision to the CTA *En Banc*, the same is now considered final and beyond this Court's review.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IT IS NOT THE COURT'S FUNCTION TO ANALYZE OR WEIGH ALL OVER AGAIN THE EVIDENCE ALREADY CONSIDERED IN THE PROCEEDINGS BELOW, THE COURT'S JURISDICTION BEING LIMITED TO REVIEWING ONLY ERRORS OF LAW THAT MAY HAVE BEEN COMMITTED BY THE LOWER COURT.— Sitel wants the Court to review factual findings of the CTA Division, reexamine the evidence and determine on the basis thereof whether it should be refunded the additional amount of ₱9,839,128.57. This, however, cannot be done in the instant case for settled is the rule that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial. It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court.

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3. ID.; ID.; ID.; THE DECISIONS OF THE COURT OF TAX APPEALS ARE PRESUMED VALID IN EVERY ASPECT AND WILL NOT BE OVERTURNED ON APPEAL, UNLESS THE COURT FINDS THAT THE QUESTIONED DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE OR THERE HAS BEEN AN ABUSE OR IMPROVIDENT EXERCISE OF AUTHORITY ON THE PART OF THE TAX COURT.— [T]he Court accords findings and conclusions of the CTA with the highest respect. As a specialized court dedicated exclusively to the resolution of tax problems, the CTA has accordingly developed an expertise on the subject of taxation. Thus, its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the part of the tax court. Upon careful review of the instant case, and directly addressing the issues raised by Sitel, the Court finds no cogent reason to reverse or modify the findings of the CTA Division.

4. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); REFUND OR TAX CREDIT OF UNUTILIZED CREDITABLE INPUT VALUE-ADDED TAX (VAT); A TAXPAYER CLAIMING FOR A VAT REFUND OR CREDIT ATTRIBUTABLE TO ZERO-RATED OR EFFECTIVELY ZERO-RATED SALE OF SERVICES HAS THE BURDEN TO PROVE NOT ONLY THAT THE RECIPIENT OF THE SERVICE IS A FOREIGN CORPORATION, BUT ALSO THAT SAID CORPORATION IS DOING BUSINESS OUTSIDE THE PHILIPPINES OR HAVE A CONTINUITY OF COMMERCIAL DEALINGS OUTSIDE THE PHILIPPINES.— Sitel's claim for refund is anchored on Section 112(A) of the NIRC, which allows the refund or credit of input VAT attributable to zero-rated or effectively zero-rated sales. In relation thereto, Sitel points to Section 108(B)(2) of the NIRC *[formerly Section 102(b)(2) of the NIRC of 1977, as amended]* as legal basis for treating its sale of services as zero-rated or effectively zero-rated. x x x. In *Burmeister*, the Court clarified that an essential condition to qualify for zero-rating under the aforequoted provision is that the service-recipient must be doing business outside the Philippines x x x. Following Burmeister, the Court, in *Accenture, Inc. v. Commissioner of Internal*

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Revenue, (*Accenture*), emphasized that a taxpayer claiming for a VAT refund or credit under Section 108(B) has the burden to prove not only that the recipient of the service is a foreign corporation, but also that said corporation is doing business outside the Philippines. For failure to discharge this burden, the Court denied *Accenture*'s claim for refund. x x x. In the same vein, Sitel fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines. As correctly pointed out by the CTA Division, while Sitel's documentary evidence, which includes Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines. Thus, the Court finds no reason to reverse the ruling of the CTA Division denying the refund of ₱7,170,276.02, allegedly representing Sitel's input VAT attributable to zero-rated sales.

5. ID.; ID.; ID.; IN A CLAIM FOR TAX REFUND OR TAX CREDIT, THE APPLICANT MUST PROVE NOT ONLY ENTITLEMENT TO THE GRANT OF THE CLAIM UNDER SUBSTANTIVE LAW, BUT HE MUST ALSO SHOW SATISFACTION OF ALL THE DOCUMENTARY AND EVIDENTIARY REQUIREMENTS FOR AN ADMINISTRATIVE CLAIM FOR A REFUND OR TAX CREDIT AND COMPLIANCE WITH THE INVOICING AND ACCOUNTING REQUIREMENTS MANDATED BY THE NIRC, AS WELL AS BY REVENUE REGULATIONS IMPLEMENTING THEM.— The CTA Division also did not err when it denied the amount of ₱2,668,852.55, allegedly representing input taxes claimed on Sitel's domestic purchases of goods and services which are supported by invoices/receipts with pre-printed TIN-V. In *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*, the Court ruled that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law, he must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit and compliance with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue

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regulations implementing them. The NIRC requires that the creditable input VAT should be evidenced by a VAT invoice or official receipt, which may only be considered as such when the TIN-VAT is printed thereon, as required by Section 4.108-1 of RR 7-95. x x x. [C]onsidering that the subject invoice/official receipts are not imprinted with the taxpayer's TIN followed by the word VAT, these would not be considered as VAT invoices/official receipts and would not give rise to any creditable input VAT in favor of Sitel. At this juncture, it bears to emphasize that "[t]ax refunds or tax credits just like tax exemptions are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."

APPEARANCES OF COUNSEL

Baniqued & Baniqued for petitioner.
BIR Legal Division for respondent.

D E C I S I O N

CAGUIOA, *J.:*

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Sitel Philippines Corporation (Sitel) against the Commissioner of Internal Revenue (CIR) seeks to reverse and set aside the Decision dated November 11, 2011[2] and Resolution dated March 28, 2012[3] of the Court

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[1] *Rollo,* pp. 50-83.

[2] *Id*. at 88-105. Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez and Cielito N. Mindaro-Grulla concurring and Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas dissenting.

[3] *Id*. at 118-127. Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla concurring and Associate Justices Lovell R. Bautista and Amelia R. Cotangco-Manalastas dissenting. Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova were on wellness leave.

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of Tax Appeals (CTA) *En Banc* in CTA EB No. 644, which denied Sitel's claim for refund of unutilized input value-added tax (VAT) for the first to fourth quarters of taxable year 2004 for being prematurely filed.

Facts

Sitel, a corporation organized and existing under the laws of the Philippines, is engaged in the business of providing call center services from the Philippines to domestic and offshore businesses. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, as well as with the Board of Investments on pioneer status as a new information technology service firm in the field of call center.[4]

For the period from January 1, 2004 to December 31, 2004, Sitel filed with the BIR its Quarterly VAT Returns as follows:

Period Covered	***Date Filed***
1st Quarter 2004	26 April 2004
2nd Quarter 2004	26 July 2004
3rd Quarter 2004	25 October 2004
4th Quarter 2004	25 January 2005[5]

Sitel's Amended Quarterly VAT Returns for the first to fourth quarters of 2004 declared as follows:

Taxable Sales (A)	Zero-Rated Sales (B)	Total Sales (C=A+B)	Input Tax for the [Quarter] (D)	Input Tax from Capital Goods (E)	Input Tax from Regular Transactions (F+D-E)	Input Tax Allocated to Taxable Sales [G=(A/C) x (F)]	Input Tax Allocated to Zero-Rated Sales [H=(B/C) x (F)]
509,799.74	180,450,030.29	180,957,830.03	3,842,714.21	2,422,090.40	1,400,623.81	3,930.40	1,396,693.41
0	142,664,271.00	142,664,271.00	3,554,922.94	2,846,225.66	708,696.58	-	708,696.58
517,736.36	205,021,590.46	205,539,326.82	9,568,047.25	7,629,734.40	1,938,312.85	4,882.45	1,933,430.40
0	334,384,766.48	334,384,766.48	6,137,028.74	3,005,573.11	3,313,455.63	-	3,313,455.63
1,025,536.10	**862,520,658.23**	**863,546,194.33**	**23,102,712.44**	**15,923,623.57**	**7,179,088.87**	**8,812.85**	**7,170,276.02**[6]

[4] *Id.* at 56, 221.

[5] *Id.* at 56, 221-222.

[6] *Id.* at 56, 222.

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On March 28, 2006, Sitel filed separate formal claims for refund or issuance of tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its unutilized input VAT arising from domestic purchases of goods and services attributed to zero-rated transactions and purchases/importations of capital goods for the 1st, 2nd, 3rd and 4th quarters of 2004 in the aggregate amount of ₱23,093,899.59.[7]

On March 30, 2006, Sitel filed a judicial claim for refund or tax credit via a petition for review before the CTA, docketed as CTA Case No. 7423.

Ruling of the CTA Division

On October 21, 2009, the CTA Division rendered a Decision[8] partially granting Sitel's claim for VAT refund or tax credit, the dispositive portion of which reads as follows:

In view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Petitioner is entitled to the instant claim in the reduced amount of ₱11,155,276.59 computed as follows:

Amount of Input VAT Claim		₱ 23,093,899.59
Less:	Input VAT Claim on Zero-Rated Sales	7,170,276.02
Input VAT Claim on Capital Goods Purchases		₱ 15,923,623.57
Less:	Not Properly Substantiated Input VAT Claim on Capital Goods Purchases	
	Per ICPA Report (*₱15,923,623.57 less ₱13,824,129.14)*	2,099,494.43
	Per this Court's further verification	2,668,852.55
Refundable Input VAT on Capital Goods Purchases		**₱ 11,155,276.59**

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[7] *Id*. at 57, 220 & 222.

[8] *Id*. at 220-232. Penned by Associate Justice Caesar A. Casanova, with Associate Justice Lovell R. Bautista concurring and Presiding Justice Ernesto D. Acosta dissenting.

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Accordingly, respondent is **ORDERED to REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **₱11,155,276.59** representing unutilized input VAT arising from petitioner's domestic purchases of goods and services which are attributable to zero-rated transactions and purchases/importations of capital goods for the taxable year 2004.

SO ORDERED.[9]

The CTA Division denied Sitel's ₱7,170,276.02 claim for unutilized input VAT attributable to its zero-rated sales for the four quarters of 2004. Relying upon the rulings of this Court in *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[10] (*Burmeister*), the CTA Division found that Sitel failed to prove that the recipients of its services are doing business outside the Philippines, as required under Section 108(B)(2) of the National Internal Revenue Code of 1997 (NIRC), as amended.[11]

The CTA Division also disallowed the amount of ₱2,668,852.55 representing input VAT paid on capital goods purchased for taxable year 2004 for failure to comply with the invoicing requirements under Sections 113, 237, and 238 of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95 (RR 7-95).[12]

Aggrieved, Sitel filed a motion for partial reconsideration[13] and Supplement (To Motion for Reconsideration [of Decision dated October 21, 2009]),[14] on November 11, 2009 and March 26, 2010, respectively.

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[9] *Id*. at 231-232.

[10] 541 Phil. 119 (2007).

[11] *Rollo*, pp. 226-227.

[12] See *id*. at 228-229.

[13] *Id*. at 238-261.

[14] *Id*. at 270-277.

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Prior thereto, or on January 8, 2010, Sitel filed a Motion for Partial Execution of Judgment[15] seeking the execution pending appeal of the portion of the Decision dated October 21, 2009 granting refund in the amount of ₱11,155,276.59, which portion was not made part of its motion for partial reconsideration.

On May 31, 2010, the CTA Division denied Sitel's Motion for Reconsideration and Supplement (To Motion for Reconsideration [of Decision dated October 21, 2009]) for lack of merit.[16]

Undaunted, Sitel filed a Petition for Review[17] with the CTA *En Banc* claiming that it is entitled to the amount denied by the CTA Division.

Ruling of the CTA *En Banc*

In the assailed Decision, the CTA *En Banc* reversed and set aside the ruling of the CTA Division. Citing the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[18] (*Aichi)*, the CTA *En Banc* ruled that the 120-day period for the CIR to act on the administrative claim for refund or tax credit, under Section 112(D) of the NIRC of 1997, as amended, is mandatory and jurisdictional. Considering that Sitel filed its judicial claim for VAT refund or credit without waiting for the lapse of the 120-day period for the CIR to act on its administrative claim, the CTA did not acquire jurisdiction as there was no decision or inaction to speak of.[19] Thus, the CTA *En Banc* denied Sitel's entire refund claim on the ground of prematurity. The dispositive portion of the CTA *En Banc*'s Decision reads as follows:

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED**. Accordingly, the

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[15] *Id.* at 278-286.

[16] *Id.* at 289-295.

[17] *Id.* at 326-371.

[18] 646 Phil. 710 (2010).

[19] See *rollo*, pp. 95-102.

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Decision of the CTA First Division dated October 21, 2009 and the Resolution issued by the Special First Division dated May 31, 2010, are hereby reversed and set aside. Petitioner's refund claim of ₱19,702,880.80 is **DENIED** on the ground that the judicial claim for the first to fourth quarters of taxable year 2004 was prematurely filed.

SO ORDERED.[20]

Aggrieved, Sitel moved for reconsideration,[21] but the same was denied by the Court *En Banc* for lack of merit.[22]

Hence, the instant petition raising the following issues:

x x x WHETHER OR NOT THE *AICHI RULING* PROMULGATED ON OCTOBER 6, 2010 MAY BE APPLIED RETROACTIVELY TO THE INSTANT CLAIM FOR REFUND OF INPUT VAT INCURRED IN 2004.

x x x WHETHER OR NOT THE CTA *EN BANC* CAN VALIDLY WITHDRAW AND REVOKE THE PORTION OF THE REFUND CLAIM ALREADY GRANTED TO PETITIONER IN THE AMOUNT OF ₱11,155,276.59 AFTER TRIAL ON THE MERITS, NOTWITHSTANDING THAT SUCH PORTION OF THE DECISION HAD NOT BEEN APPEALED.

x x x WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OR TAX CREDIT OF ITS UNUTILIZED INPUT VAT ARISING FROM PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES AND PURCHASES/ IMPORTATIONS OF CAPITAL GOODS FOR THE 1ST, 2ND, 3RD, [AND] 4TH QUARTERS OF TAXABLE YEAR 2004 IN THE AGGREGATE AMOUNT OF ₱20,994,405.16.[23]

In the Resolution[24] dated July 4, 2012, the CIR was required to comment on the instant petition. In compliance thereto, the CIR filed its Comment[25] on November 14, 2012.

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[20] *Id*. at 104.

[21] *Id*. at 419-477.

[22] *Id*. at 118-127.

[23] *Id*. at 63.

[24] *Id*. at 479.

[25] *Id*. at 484-508.

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On January 16, 2013, the Court issued a Resolution[26] denying Sitel's petition for failure to sufficiently show that the CTA *En Banc* committed reversible error in denying its refund claim on the ground of prematurity based on prevailing jurisprudence.

Soon thereafter, however, or on February 12, 2013, the Court *En Banc* decided the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*, *Taganito Mining Corporation v. Commissioner of Internal Revenue*, and *Philex Mining Corporation v. Commissioner of Internal Revenue*[27] (*San Roque*). In that case, the Court recognized BIR Ruling No. DA-489-03 as an exception to the mandatory and jurisdictional nature of the 120-day waiting period.

Invoking *San Roque,* Sitel filed a Motion for Reconsideration.[28]

In the Resolution[29] dated June 17, 2013, the Court granted Sitel's motion and reinstated the instant petition.

In the instant petition, Sitel claims that its judicial claim for refund was timely filed following the Court's pronouncements in *San Roque*; thus, it was erroneous for the CTA *En Banc* to reverse the ruling of the CTA Division and to dismiss its petition on the ground of prematurity. Sitel further argues that the previously granted amount for refund of ₱11,155,276.59 should be reinstated and declared final and executory, the same not being the subject of Sitel's partial appeal before the CTA *En Banc,* nor of any appeal from the CIR.

Finally, Sitel contends that insofar as the denied portion of the claim is concerned, which the CTA *En Banc* failed to pass upon with the dismissal of its appeal, speedy justice demands that the Court resolved the same on the merits and Sitel be declared entitled to an additional refund in the amount of ₱9,839,128.57.

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[26] *Id*. at 511.

[27] 703 Phil. 310 (2013).

[28] *Rollo,* pp. 512-525.

[29] *Id*. at 527.

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The Court's Ruling

The Court finds the petition partly meritorious.

Sitel's Judicial Claim for VAT Refund was deemed timely filed pursuant to the Court's pronouncement in San Roque.

Section 112(C) of the NIRC, as amended, provides:

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

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 refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.**

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within 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)

Based on the plain language of the foregoing provision, the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA.

In *Aichi,* the Court ruled that the 120-day period granted to the CIR was mandatory and jurisdictional, the non-observance of which was fatal to the filing of a judicial claim with the CTA. The Court further explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertained only to the filing of the administrative claim with the BIR; while the judicial claim may be filed with the CTA within thirty (30) days from the receipt of the decision of the CIR or the

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expiration of the 120-day period of the CIR to act on the claim. Thus:

Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to 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

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.[30]

However, in *San Roque,* the Court clarified that the 120-day period does **not** apply to claims for refund that were prematurely filed during the period from the issuance of BIR Ruling No. DA-489-03, on December 10, 2003, until October 6, 2010, when *Aichi* was promulgated. The Court explained that BIR Ruling No. DA-489-03, which expressly allowed the filing of judicial claims with the CTA even before the lapse of the 120-day period, provided for a valid claim of equitable estoppel because the CIR had misled taxpayers into prematurely filing their judicial claims before the CTA:

> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. **The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code**.
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> x x x x x x x x x

[30] *Supra* note 18, at 731-732.

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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.[31] (Emphasis supplied).

In *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*,[32] the Court came up with an outline summarizing the pronouncements in *San Roque,* to wit:

For clarity and guidance, the Court deems it proper to outline the rules laid down in *San Roque* with regard to claims for refund or tax credit of unutilized creditable input VAT. They are as follows:

1. When to file an administrative claim with the CIR:

   a. General rule – Section 112(A) and *Mirant*

      Within 2 years from the close of the taxable quarter when the sales were made.

   b. Exception – *Atlas*

      Within 2 years from the date of payment of the output VAT, if the administrative claim was filed from June 8, 2007 (promulgation of *Atlas*) to September 12, 2008 (promulgation of *Mirant*).

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[31] *Supra* note 27, at 373-376.

[32] 735 Phil. 321 (2014).

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2. When to file a judicial claim with the CTA:

a. General rule – Section 112(D); *not* Section 229

i. Within 30 days from the full or partial denial of the administrative claim by the CIR; or

ii. Within 30 days from the expiration of the 120-day period provided to the CIR to decide on the claim. This is mandatory and jurisdictional beginning January 1, 1998 (effectivity of 1997 NIRC).

b. Exception – BIR Ruling No. DA-489-03

The judicial claim need not await the expiration of the 120-day period, if such was filed from December 10, 2003 (issuance of BIR Ruling No. DA-489-03) to October 6, 2010 (promulgation of *Aichi*).[33] (Emphasis and underscoring supplied).

In this case, records show that Sitel filed its administrative and judicial claim for refund on March 28, 2006 and March 30, 2006, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though Sitel filed its judicial claim prematurely, *i.e.*, without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque.* In other words, Sitel's judicial claim was deemed timely filed and should have not been dismissed by the CTA *En Banc*. Consequently, the October 21, 2009 Decision[34] of the CTA Division partially granting Sitel's judicial claim for refund in the reduced amount of ₱11,155,276.59, which is not subject of the instant appeal, should be reinstated. In this regard, since the CIR did not appeal said decision to the CTA *En Banc*, the same is now considered final and beyond this Court's review.

Sitel now questions the following portions of its refund claim which the CTA Division denied: (1) ₱7,170,276.02, representing

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[33] *Id*. at 338-339.

[34] *Supra* note 8.

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unutilized input VAT on purchases of goods and services attributable to zero-rated sales, which was denied because Sitel failed to prove that the call services it rendered for the year 2004 were made to non-resident foreign clients doing business outside the Philippines; and (2) ₱2,668,852.55 representing input VAT on purchases of capital goods, because these are supported by invoices and official receipts with pre-printed TIN-V instead of TIN-VAT, as required under Section 4.108-1 of RR 7-95.

Sitel claims that testimonial and documentary evidence sufficiently established that its clients were non-resident foreign corporations not doing business in Philippines. It also asserts that the input VAT on its purchases of capital goods were duly substantiated because the supporting official receipts substantially complied with the invoicing requirements provided by the rules.

In other words, Sitel wants the Court to review factual findings of the CTA Division, reexamine the evidence and determine on the basis thereof whether it should be refunded the additional amount of ₱9,839,128.57. This, however, cannot be done in the instant case for settled is the rule that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial.[35] It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court.[36]

Furthermore, the Court accords findings and conclusions of the CTA with the highest respect.[37] As a specialized court dedicated exclusively to the resolution of tax problems, the CTA has accordingly developed an expertise on the subject of

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[35] *General Milling Corporation v. Viajar,* 702 Phil. 532, 540 (2013).

[36] *Fortune Tobacco Corp. v. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015, 761 SCRA 173, 181.

[37] See *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, 529 Phil. 785, 794 (2006).

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taxation.[38] Thus, its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the part of the tax court.[39]

Upon careful review of the instant case, and directly addressing the issues raised by Sitel, the Court finds no cogent reason to reverse or modify the findings of the CTA Division.

The Court expounds.

Sitel failed to prove that the recipients of its call services are foreign corporations doing business outside the Philippines.

Sitel's claim for refund is anchored on Section 112(A)[40] of the NIRC, which allows the refund or credit of input VAT

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[38] *Rizal Commercial Banking Corp. v. Commissioner of Internal Revenue*, 672 Phil. 514, 530 (2011), citing *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil. 239, 246 (1999), citation omitted.

[39] *Id*., citing *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue,* 628 Phil. 430, 467-468 (2010), citations omitted.

[40] 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 nonzero-rated sales.

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attributable to zero-rated or effectively zero-rated sales. In relation thereto, Sitel points to Section 108(B)(2) of the NIRC *[formerly Section 102(b)(2) of the NIRC of 1977, as amended]* as legal basis for treating its sale of services as zero-rated or effectively zero-rated. Section 108(B)(2) reads:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties*. –
>
> x x x x x x x x x
>
> (B) *Transactions Subject to Zero Percent (0%) Rate*. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> x x x x x x x x x
>
> (2) Services other than those mentioned in the preceding paragraph **rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed**, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); (Emphasis supplied)

In *Burmeister,* the Court clarified that an essential condition to qualify for zero-rating under the aforequoted provision is that the service-recipient must be doing business outside the Philippines, to wit:

> The Tax Code not only requires that the services be other than "processing, manufacturing or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the **recipient of such services is doing business *outside* the Philippines.** x x x
>
> This can only be the logical interpretation of Section 102(b)(2). If the provider and recipient of the "other services" are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply to a payer-recipient of services

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doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.

x x x x x x x x x

Thus, when Section 102(b)(2) speaks of "**[s]ervices other than those mentioned in the preceding subparagraph**," the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs.

Significantly, the amended Section 108(b) [previously Section 102 (b)] of the present Tax Code clarifies this legislative intent. Expressly included among the transactions subject to 0% VAT are "[s]ervices other than those mentioned in the [first] paragraph [of Section 108(b)] rendered to a **person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines** when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."[41]

Following *Burmeister,* the Court, in *Accenture, Inc. v. Commissioner of Internal Revenue,*[42] (*Accenture*), emphasized that a taxpayer claiming for a VAT refund or credit under Section 108(B) has the burden to prove not only that the recipient of the service is a foreign corporation, but also that said corporation is doing business outside the Philippines. For failure to discharge this burden, the Court denied *Accenture*'s claim for refund.

We rule that the recipient of the service must be doing business outside the Philippines for the transaction to qualify for zero-rating under Section 108(B) of the Tax Code.

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[41] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra* note 10, at 132-134.

[42] 690 Phil. 679 (2012).

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x x x x x x x x x

The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:

> SEC. 22. *Definitions.* — When used in this Title:
>
> x x x x x x x x x
>
> (H) The term "*resident foreign corporation*" applies to a foreign corporation engaged in trade or business within the Philippines.
>
> (I) The term '*nonresident foreign corporation*' applies to a foreign corporation not engaged in trade or business within the Philippines. (Emphasis in the original)

Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.

There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:

> x x x. There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. "**In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character**."

A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

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Accenture failed to discharge this burden. **It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc,* no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines**.

As ruled by the CTA *En Banc,* the Official Receipts, Intercompany Payment Requests, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements presented by Accenture merely substantiated the existence of sales, receipt of foreign currency payments, and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules, all of these were devoid of any evidence that the clients were doing business outside of the Philippines.[43] (Emphasis supplied; citations omitted)

In the same vein, Sitel fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines. As correctly pointed out by the CTA Division, while Sitel's documentary evidence, which includes Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines.

Thus, the Court finds no reason to reverse the ruling of the CTA Division denying the refund of ₱7,170,276.02, allegedly representing Sitel's input VAT attributable to zero-rated sales.

Sitel failed to strictly comply with invoicing requirements for VAT refund.

The CTA Division also did not err when it denied the amount of ₱2,668,852.55, allegedly representing input taxes claimed

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[43] *Id*. at 693, 698-700.

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on Sitel's domestic purchases of goods and services which are supported by invoices/receipts with pre-printed TIN-V. In *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*,[44] the Court ruled that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law, he must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit and compliance with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them. The NIRC requires that the creditable input VAT should be evidenced by a VAT invoice or official receipt,[45] which may only be considered as such when the TIN-VAT is printed thereon, as required by Section 4.108-1 of RR 7-95.

The Court's pronouncement in *Kepco Philippines Corp. v. Commissioner of Internal Revenue*[46] is instructive:

> Furthermore, Kepco insists that Section 4.108-1 of Revenue Regulation 07-95 does not require the word "TIN-VAT" to be imprinted on a VAT-registered person's supporting invoices and official receipts and so there is no reason for the denial of its ₱4,720,725.63 claim of input tax.
>
> In this regard, Internal Revenue Regulation 7-95 (Consolidated Value-Added Tax Regulations) is clear. Section 4.108-1 thereof reads:
>
> > Only VAT registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT" Invoice. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

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[44] 687 Phil. 328, 340 (2012), citations omitted.

[45] *Id*., citing Section 110. *Tax Credits.* —

A. *Creditable Input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

x x x x x x x x x

[46] 650 Phil. 525 (2010).

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Contrary to Kepco's allegation, the regulation specifically requires the VAT registered person to imprint TIN-VAT on its invoices or receipts. Thus, the Court agrees with the CTA when it wrote: "[T]o be considered a 'VAT invoice,' the TIN-VAT must be printed, and not merely stamped. Consequently, purchases supported by invoices or official receipts, wherein the TIN-VAT is not printed thereon, shall not give rise to any input VAT. Likewise, input VAT on purchases supported by invoices or official receipts which are NON-VAT are disallowed because these invoices or official receipts are not considered as 'VAT Invoices.'"[47]

In the same vein, considering that the subject invoice/official receipts are not imprinted with the taxpayer's TIN followed by the word VAT, these would not be considered as VAT invoices/official receipts and would not give rise to any creditable input VAT in favor of Sitel.

At this juncture, it bears to emphasize that "[t]ax refunds or tax credits – just like tax exemptions – are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."[48]

WHEREFORE, premises considered, the instant petition for review is **GRANTED IN PART.** The Decision dated November 11, 2011 and Resolution dated March 28, 2012 of the CTA *En Banc* in CTA EB No. 644 are hereby **REVERSED and SET ASIDE**. Accordingly, the October 21, 2009 Decision of the CTA First Division in CTA Case No. 7423 is hereby **REINSTATED**.

Respondent is hereby **ORDERED TO REFUND** or, in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE**, in favor of the petitioner in the amount of ₱11,155,276.59,

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[47] *Id*. at 540-541.

[48] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016, p. 9, citing *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, 720 Phil. 782, 789 (2013).

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representing unutilized input VAT arising from purchases/ importations of capital goods for taxable year 2004.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 202597. February 8, 2017]

SPOUSES SERGIO C. PASCUAL and EMMA SERVILLION PASCUAL, *petitioners, vs.* **FIRST CONSOLIDATED RURAL BANK (BOHOL), INC., ROBINSONS LAND CORPORATION and ATTY. ANTONIO P. ESPINOSA, Register of Deeds, Butuan City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; 2009 INTERNAL RULES OF THE COURT OF APPEALS; MOTIONS SENT THROUGH PRIVATE MESSENGERIAL SERVICES ARE DEEMED FILED ON THE DATE OF THE COURT OF APPEAL'S RECEIPT OF THE SAME.— The petitioners received the assailed resolution of November 16, 2011 on November 24, 2011. Under Section 1, Rule 52 of the *Rules of Court*, they had 15 days from receipt (or until December 9, 2011) within which to move for its reconsideration or to appeal to the Supreme Court. They dispatched the *Motion for Reconsideration (on the Resolution dated 16 November 2011)* on December 9, 2011 through private courier (LBC). The CA actually received the motion on December 12, 2011. Considering that Section 1(d) of Rule III of the *2009 Internal Rules of the Court of Appeals*