REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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DEUTSCHE KNOWLEDGE SERVICES, PTE LTD., Petitioner,	**CTA EB NO. 918** (CTA Case No. 8065)
	Present :
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **COTANGCO-MANALASTAS, RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 30 2013 MAApolinario 9:00 a.m.

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DECISION

UY, *J*.:

The instant Petition for Review[1] filed on July 30, 2012, seeks the reversal of the Resolutions dated March 26, 2012[2] and June 25, 2012[3] issued by the Second Division of this Court[4] in the case entitled *"Deutsche Knowledge Services, Pte Ltd., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, docketed as CTA Case No. 8065 which granted respondent's Motion to Dismiss for lack of jurisdiction, and denied petitioner's motion for reconsideration for lack of merit, respectively.

[1] Docket, pp. 12 to 47.
[2] Docket, pp. 64 to 71.
[3] Docket, pp. 56 to 62.
[4] Rendered by the members of the former Second Division of the Court of Tax Appeals, namely: Associate Justice Juanito C. Castañeda, Jr., Chairperson, Associate Justice Caesar A. Casanova, Senior Member, and Associate Justice Cielito N. Mindaro-Grulla Junior Member.

THE FACTS

Based on the records, the facts of this case are as follows:

Petitioner Deutsche Knowledge Services, Pte Ltd. is licensed to do business as a regional operating headquarters in the Philippines by the Securities and Exchange Commission on April 25, 2005, pursuant to the Omnibus Investments Code of 1987, as amended by Republic Act No. (RA) 8756[5] and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[6] It was registered with the Bureau of Internal Revenue (BIR) on June 16, 2005 as value-added tax (VAT) registered taxpayer with Taxpayer Identification No. 238-763-115-000.[7]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[8]

On March 29, 2010, petitioner filed with the BIR the letter dated March 26, 2010,[9] requesting for the refund or issuance of a tax credit certificate in the amount of ₱ 34,310,264.27, allegedly representing unutilized input value-added tax (VAT) attributable to zero-rated sales for the 1st quarter of 2008.

Subsequently, petitioner was allegedly constrained to file a Petition for Review with the Court in Division on March 31, 2010, within the two-year statute of limitations prescribed under Sections 112 and 229 of the National Internal Revenue Code (NIRC) of 1997,

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[5] AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENT CODE OF 1987.

[6] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket (CTA Case No. 8065), pp. 96 to 97; and Exhibit "A".

[7] Par. 3, Admitted Facts, JSFI, Division Docket (CTA Case No. 8065), p. 97.

[8] Par. 2, Admitted Facts, JSFI, Division Docket (CTA Case No. 8065), p. 97; and Exhibit "B".

[9] Exhibit "E", CTA Case No. 8065.

as amended by RA 9337, allegedly *"to preserve its right to judicially claim a refund of its excess and unutilized input VAT for the 1st quarter of CY 2008."*[10] The case was docketed as CTA Case No. 8065.

On June 10, 2010, respondent filed her Answer,[11] arguing, *inter alia*, that the Petition for Review was prematurely filed.

Subsequently, the parties filed their respective Pre-Trial Briefs,[12] as well as their Joint Stipulation of Facts and Issues,[13] which was approved by the Court in Division in the Resolution dated August 16, 2010.[14]

During trial before the Court in Division, petitioner presented two (2) witnesses, namely George Francisco and Court commissioned, Independent Certified Public Accountant Romeo A. De Jesus. On the other hand, respondent presented one (1) witness, Gerard Yap who completed his testimony during the hearing held on January 25, 2012, and respondent's counsel was directed by the Court in Division to file respondent's Formal Offer of Evidence within ten (10) days from said date.[15]

However, instead of filing the same, respondent filed a "Motion to Dismiss" on January 26, 2012,[16] on the ground of lack of jurisdiction of the Court in Division due to petitioner's premature filing of its judicial claim for refund, pursuant to Section 112 of the NIRC of 1997.

In compliance with the order of the Court in Division to comment on the said Motion,[17] petitioner filed its "Comment and Opposition (Re: Respondent's Motion to Dismiss)" on February 24, 2012.[18]

Finding merit in respondent's Motion to Dismiss, the Court in Division rendered the first assailed Resolution dated March 26,

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[10] Division Docket (CTA Case No. 8065), p. 4.
[11] Division Docket (CTA Case No. 8065), pp. 45 to 55.
[12] Division Docket (CTA Case No. 8065), pp. 57 to 65, and 67 to 72.
[13] Division Docket (CTA Case No. 8065), pp. 96 to 99.
[14] Division Docket (CTA Case No. 8065), p. 100.
[15] Minutes of Hearing on January 25, 2012, Division Docket (CTA Case No. 8065), p. 304
[16] Division Docket (CTA Case No. 8065), pp. 305 to 312.
[17] Resolution dated February 3, 2012, Division Docket (CTA Case No. 8065), p. 315.
[18] Division Docket (CTA Case No. 8065), pp. 322 to 338.

2012,[19] the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, respondent's *Motion to Dismiss* is hereby **GRANTED.** Accordingly, the Petition for Review docketed as CTA Case No. 8065 is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

Undaunted, petitioner filed its "Motion for Reconsideration (Re: Resolution dated March 26, 2012)" on April 16, 2012,[20] to which respondent filed her "Comment (Petitioner's Motion for Reconsideration Re: Resolution dated March 26, 2012)" on May 17, 2012.[21]

Thereafter, the Court in Division promulgated the second assailed Resolution dated June 25, 2012,[22] the dispositive portion of which reads:

> "**WHEREFORE,** petitioner's **"Motion for Reconsideration (Re: Resolution dated March 26, 2012)"** filed on April 16, 2012 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

On July 13, 2012, petitioner filed, before the Court *En Banc*, a "Motion for Extension of Time To File Petition for Review",[23] praying for an additional period of fifteen (15) days from July 13, 2012, or until July 28, 2012, within which to file its Petition for Review. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from July 13, 2012 or until July 28, 2012, within which to file said Petition for Review.[24]

Petitioner timely filed the instant Petition for Review[25] before the Court *En Banc* on July 30, 2012,[26] praying for the reversal of the Resolutions dated March 26, 2012 and June 25, 2012, and the issuance of an order granting petitioner's claim for excess and

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[19] Division Docket (CTA Case No. 8065), pp. 342 to 349.
[20] Division Docket (CTA Case No. 8065), pp. 355 to 383.
[21] Division Docket (CTA Case No. 8065), pp. 393 to 417.
[22] Division Docket (CTA Case No. 8065), pp. 420 to 426.
[23] Docket, pp. 1 to 4.
[24] Resolution dated July 17, 2012, Docket, p. 6.
[25] Docket, pp. 12 to 47.
[26] July 28, 2012 was a Saturday and the next working day was July 30, 2012, a Monday.

unutilized input VAT for the 1st quarter of calendar year (CY) 2008 in the amount of ₱ 34,310,264.27.

Without necessarily giving due course to the instant Petition for Review, respondent was directed by the Court *En Banc* to file comment thereon.[27] Accordingly, respondent filed her "Comment (Re: Petition for Review)" on September 19, 2012.[28]

On October 02, 2012, both parties were directed to file their respective memorandum.[29] For her part, respondent manifested that she is adopting the arguments raised in her Comment filed on September 19, 2012 before the Court *En Banc* as her Memorandum[30],while petitioner filed its "Memorandum" on November 29, 2012.[31] Thereafter, the case was submitted for decision on December 3, 2012.[32]

Notably, petitioner filed a "Supplemental Memorandum (With Motion for Leave)" on April 17, 2013[33], which shall be considered by the Court *En Banc* in the resolution of the instant Petition for Review, in the interest of allowing both parties to fully ventilate their respective claims and defenses.

Hence, this Decision.

THE ISSUES

In the instant Petition for Review, petitioner raises the following assignment of errors, to wit:

> "11.1. **THE CTA DIVISION ERRED IN DISMISSING PETITIONER'S JUDICIAL CLAIM FOR REFUND, CONSIDERING THAT PETITIONER FILED ITS PETITION WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD PROVIDED UNDER THE LAW. THE CTA DIVISION FAILED TO CONSIDER THAT THE LEGISLATIVE INTENT WAS NOT TO MAKE THE 120-DAY PERIOD UNDER SECTION 112(C), TAX CODE A**

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[27] Resolution dated August 28, 2012, Docket, pp. 86 to 87.
[28] Docket, pp. 88 to 110.
[29] Resolution dated October 2, 2012, Docket, pp. 113 to 114.
[30] Docket, pp. 115 to 117.
[31] Docket, pp. 125 to 163.
[32] Resolution dated December 3, 2012, Docket, pp. 166 to 167.
[33] Docket, pp. 172 to 178.

JURISDICTIONAL REQUIREMENT IN CLAIMS FOR REFUND OF INPUT VAT; IT WAS NOT INTENDED TO SUPPLANT THE TWO-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 229, TAX CODE.

11.2. **THE CTA DIVISION ERRED IN DISMISSING PETITIONER'S JUDICIAL CLAIM FOR REFUND, CONSIDERING THAT RESPONDENT'S ACTIVE PARTICIPATION IN TRIAL AND BELATEDLY MOVING TO DISMISS THE CASE CONSTITUTES A WAIVER TO QUESTION THE CTA DIVISION'S JURISDICTION.**

11.3. **THE CTA DIVISION ERRED IN APPLYING AICHI TO PETITIONER'S CASE, CONSIDERING THAT ANY NOVEL INTERPRETATION OF SECTION 112(C), TAX CODE SHOULD BE APPLIED *PROSPECTIVELY* IN LIGHT OF THE RELIANCE BY PETITIONER ON CONSISTENT INTERPRETATION BY THE COURTS AND RESPONDENT THAT THE SAME IS NOT JURISDICTIONAL AND THAT TAXPAYERS NEED ONLY COMPLY WITH THE TWO-YEAR PRESCRIPTIVE PERIOD SET OUT IN SECTION 229, TAX CODE, TAKING INTO ACCOUNT THE PRECEPTS OF EQUITY AND FAIRPLAY.**"[34]

Gleaned from the foregoing assignments of errors raised by petitioner in the instant case, the issue submitted for the resolution of the Court *En Banc* is whether or not the Court in Division erred in granting respondent's Motion to Dismiss in CTA Case No. 8065.

Petitioner's Arguments:

Petitioner submits that the 120-day period under Section 112(C) of the NIRC of 1997 is not jurisdictional and was not intended to supplant the two-year prescriptive period under Section 229 of the Tax Code.

Petitioner also contends that respondent's active participation in trial and belatedly moving to dismiss the case constitutes a waiver to question the jurisdiction of the Court in Division.

[34] Docket, pp. 21 to 22.

Finally, petitioner argues that any novel interpretation of Section 112(C) of the Tax Code should be applied prospectively in light of the reliance by petitioner on consistent interpretation by the courts and the respondent that the same is not jurisdictional and that taxpayers need only comply with the two-year prescriptive period set out in Section 229 of the Tax Code, taking into account the precepts of equity and fair play.

Respondent's counter-arguments:

For her part, respondent argues that Section 112 of the NIRC of 1997 is the governing provision relative to petitioner's claim for refund. Moreover, according to respondent, Section 112 is both mandatory and jurisdictional, as accentuated in the case of *Commissioner of Internal Revenue vs. Aichi Forging* (hereinafter referred to as "*Aichi* case").[35]

Furthermore, respondent proffers the argument that the case of *Aichi* is controlling and that the case can be dismissed for lack of jurisdiction.

Finally, respondent points out that taxation is the rule; and exemption is the exception.

THE COURT EN BANC'S RULING

The instant Petition is partly meritorious.

Section 112(C) of the NIRC of 1997, as amended by RA 9337,[36] provides as follows:

> "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

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[35] G.R. No. 184823, October 6, 2010

[36] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx.

xxx xxx xxx

(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**.

xxx xxx xxx." *(Emphases supplied)*

Indeed, in the *Aichi* case, the Supreme Court decreed the mandatory and jurisdictional nature of the 120+30-day periods stated under the above-quoted Section 112, to wit:

"Section 112(D)[37] 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

[37] Now Section 112(C), as amended by Republic Act No. 9337.

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)[38] 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)[39] 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)[40] 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."

Notwithstanding the foregoing pronouncements, however, the same may not be applied in the instant case in view of the recent decision of the Supreme Court *En Banc* in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation;*

[38] Id.
[39] Id.
[40] Id.

Taganito Mining Corporation v. Commissioner of Internal Revenue; Philex Mining Corporation v. Commissioner of Internal Revenue [41] (hereinafter referred to as the "*San Roque* case"). In the said consolidated cases, the High Court ruled as follows:

> "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 the 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.
>
> 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,

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[41] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

during, or after the effectivity of the *Atlas* doctrine,[42] 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." *(Underscoring supplied)*

The foregoing pronouncements were reinforced in the subsequent consolidated cases of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, and Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*[43], wherein the Supreme Court held as follows:

"We summarize the rules on the determination of **the prescriptive period for filing a tax refund or credit of *unutilized input VAT* as provided in Section 112 of the 1997 Tax Code**, as follows:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, 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

[42] Referring to *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (G.R. Nos. 141104 and 148763, June 8, 2007), wherein it was held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229 of the NIRC of 1997.

[43] G.R. Nos. 193301 and 194637, March 11, 2013.

2010, as an exception to the mandatory and jurisdictional 120+30 day periods." *(Underscoring supplied)*

The ruling in the *San Roque* case is again reiterated in the more recent case of *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*,[44] where the Supreme Court ruled that:

> "Pursuant to the ruling of the Court in *San Roque*, the 120+30-day period is mandatory and jurisdictional from the time of the effectivity of Republic Act *(R.A.)* No. 8424 or the Tax Reform Act of 1997. The Court, however, took into consideration the issuance by the BIR of Ruling No. DA-489-03, which expressly stated that the taxpayer need not wait for the lapse of the 120-day period before seeking judicial relief. Because taxpayers cannot be faulted for relying on this declaration by the BIR, the Court deemed it reasonable to allow taxpayers to file its judicial claim even before the expiration of the 120-day period. This exception is to be observed from the issuance of the said ruling on December 10, 2003 up until its reversal by *Aichi* on October 6, 2010. In the landmark case of *Aichi*, this Court made a definitive statement that the failure of a taxpayer to wait for the decision of the CIR or the lapse of the 120-day period will render the filing of the judicial claim with the CTA premature. As a consequence, its promulgation once again made it clear to the taxpayers that the 120+30-day period must be observed.
>
> As laid down in *San Roque*, judicial claims filed from January 1, 1998 until the present should strictly adhere to the 120+30-day period referred to in Section 112 of the NIRC. The only exception is the period from December 10, 2003 until October 6, 2010, during which, judicial claims may be filed even before the expiration of the 120-day period granted to the CIR to decide on the claim for refund." *(Underscoring supplied)*

Admittedly in respondent's Motion to Dismiss filed in CTA Case No. 8065, petitioner's administrative claim for refund pertaining to its alleged input VAT for the 1st quarter of 2008 (*i.e.*, from January 1 to

[44] G.R. No. 196907, March 13, 2013.

March 31, 2008) was filed on March 29, 2010 and that its judicial claim was filed two (2) days thereafter or on March 31, 2010.[45]

Clearly, while petitioner timely filed its administrative claim, it never complied with the 120+30-day periods under the earlier quoted Section 112(C) of the NIRC of 1997, as amended by RA 9337.

Nevertheless, in view of BIR Ruling No. DA-489-03 vis-à-vis the above-quoted jurisprudential pronouncements, petitioner may be excused from complying with the 120+30-day periods as its refund claim was filed within the period from December 10, 2003 until October 6, 2010. Correspondingly, petitioner's Petition for Review in CTA Case No. 8065 is considered timely filed, pursuant to the *San Roque* case; and thus, the Court in Division has jurisdiction to entertain the same.

Be that as it may, there being as yet no determination of the merits of petitioner's claim for refund or issuance of a tax credit certificate, CTA Case No. 8065 should be remanded to the court of origin for further proceedings, as it was halted when the case was dismissed. As mentioned earlier, respondent has not filed her Formal Offer of Evidence in said case.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The Resolutions dated March 26, 2012 and June 25, 2012, issued by the Second Division of this Court are hereby **REVERSED** and **SET ASIDE**.

Accordingly, CTA Case No. 8065 is hereby **REMANDED** to the Court of origin for further proceedings to determine whether petitioner fully complied with other legal requirements in relation to its claim for refund or issuance of a tax credit certificate of alleged unutilized input VAT for the 1st quarter of CY 2008.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[45] Motion to Dismiss at p. 4, Division Docket (CTA Case No. 8065), p. 308

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Official Business)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Official Business)
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. R. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice