Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 816
(CTA Case No. 8123)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:
MAY 09 2013 1:00 p.m.

x---x

AMENDED DECISION

MINDARO-GRULLA, J.:

This resolves petitioner's Motion for Reconsideration of the Decision[1] dated December 13, 2012 of this Court en banc, the dispositive portion of which states:

> "***WHEREFORE***, *premises considered, the Petition for Review docketed as CTA EB No. 816 is* ***DISMISSED***. *The Resolutions dated March 30, 2011 and August 8, 2011 of the Third Division of this Court in CTA Case No. 8123, are hereby* ***AFFIRMED***. *No pronouncement as to costs.*
>
> ***SO ORDERED.***"

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[1] Associate Justice Lovell R. Bautista, maintains his dissenting opinion in CTA Case No. 8123, while Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Amelia R. Cotangco-Manalastas join the concurring and dissenting opinion of Presiding Justice Acosta.

Thus, in assailing this Court's decision, petitioner raised the following:

> "A.
> THE REVISED RULES OF THE COURT OF TAX APPEALS (RRCTA) RECOGNIZES THE PARAMOUNT LEGAL IMPORTANCE OF THE TWO-YEAR PRESCIPTIVE PERIOD UNDER SECTION 229, TAX CODE. SECTION 229 IS CLEAR THAT IT APPLIES TO THE REFUND OF TAXES EXCESSIVELY COLLECTED, SUCH AS EXCESS INPUT VAT UNDER SECTION 110 (B), TAX CODE.
>
> B.
> AICHI CANNOT SERVE AS LEGAL BASIS TO HOLD THAT THE CTA-DIVISION DID NOT ACQUIRE JURISDICTION OVER THE CASE. MERE AMENDMENTS TO OTHER PROVISIONS DO NOT WARRANT A VARIANCE IN THE INTERPRETATION OF SECTION 229, TAX CODE IN ATLAS VIS-À-VIS AICHI.
>
> C.
> ANY NOVEL INTERPRETATION OF SECTION 112(C), TAX CODE SHOULD BE APPLIED PROSPECTIVELY IN LIGHT OF THE RELIANCE BY PETITIONER ON JUDICIAL AND ADMINISTRATIVE DECLARATIONS THAT THE 120-DAY PERIOD IS NOT JURISDICTIONAL, AS WELL AS TAKING INTO ACCOUNT THE PRECEPTS OF EQUITY, FAIRPLAY AND NON-IMPAIRMENT OF SUBSTANTIAL RIGHTS."

Petitioner maintains that the Revised Rules of the Court of Tax Appeals (RRCTA) recognizes the importance of the two-year prescriptive period under Section 229, Tax Code. Section 229 is clear that it should apply to refund of excessively collected taxes, such as input VAT as defined in Section 110 (B), Tax Code. Thus, Petitioner asserts that "unutilized input taxes" are in the nature of excessively paid taxes, which are the subject of the two-year prescriptive period under Section 229, Tax Code and Rule 4, Section 3(a), RRCTA, and that the Supreme Court categorically declared in Atlas[2] that Section 229, Tax Code applies as well to claims for refunds of excess and unutilized input VAT. Likewise, c

[2] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 1487636, June 8, 2007.

petitioner insists that the Aichi Case[3] is not sufficient legal basis for holding that Section 229, Tax Code is not applicable to claims of VAT refund or tax credit. Lastly, petitioner asserts the prospective application of the Aichi Case. In main, petitioner faults this Court in affirming the Third Division of this Court in applying the Aichi Case.

This Court affirmed the Resolutions[4] dated March 30, 2011 and August 8, 2011 of the Third Division of this Court in CTA Case No. 8123 which dismissed petitioner's petition before the division based on the Supreme Court's Decision in the Aichi Case, to wit:

> *"In the Aichi Case, the Supreme Court categorically ruled that:*
>
> 1. *Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT;*
>
> 2. *Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes;*
>
> 3. *Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT;*
>
> 4. *Applying the two-year period to judicial claims (pertaining to Section 229 of the NIRC) 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;*
>
> 5. *Section 229 does not apply to refunds/credits of input VAT;*
>
> 6. *The 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;*

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[3] Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.

[4] The ponente was Associate Justice Olaga Palanca Enriquez. Associate Justice Lovell R. Bautista, dissented and voted that the Petition be given due course while Associate Justice Amelia R. Cotangco-Manalastas concurred with the dismissal of the petition but voted that it be dismissed on the ground of lack of cause of action.

7. *The 120-day period is crucial in filing an appeal with the CTA;*

8. *The premature filing of claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.*

Apparently, petitioner's arguments are contrary to the pronouncement declared by the Supreme Court in the Aichi Case. Petitioner, must bear that all rulings of the Supreme Court on questions of law are conclusive and binding on all courts including this Court and, under the doctrine of stare decisis et non quieta movere, a point of law already established will, generally, be followed by all courts of lower rank in subsequent cases where the same legal issue is raised. Consequently, this Court adheres to the precedents laid down by the Supreme Court in the Aichi Case. Thus, we rule that this Court's division correctly held that:

> *'As to the argument that the Aichi case should not be applied to this case following the principle of prospectivity of statutes, it must be emphasized that in the Aichi Case, the Supreme Court merely interpreted the provisions of Section 112 of the NIRC of 1997, as amended. Considering that Section 112 of the NIRC of 1997, as amended, is the law in force and applicable to petitioner's claim for the period covering the second quarter of 2008, it cannot claim that it is legally impossible to comply with the same, and that the Aichi case was still non-existent at the time petitioner filed its Petition for Review. Hence, we cannot disregard the letter of the law on the pretext of pursuing its spirit.(Tanada and Macapagal vs. Cuenco, 103 Phil.1051,1086).*
>
> *Basic is the rule that judicial interpretation of the law retroacts to the date when the said law become effective. Thus, the ruling in the Aichi case, being a mere interpretation of Section 112 of the NIRC of 1997, as amended, retroacts to the date when Section 112 took effect.'"*

After a careful examination of petitioner's "Motion for Reconsideration", the Court finds that no novel issue was raised and that the main issue (prospective application of Aichi Case) raised in said motion had already been sufficiently passed upon and fully discussed not only in the Resolution of this Court's Division but also in our En Banc Decision.

However, the Supreme Court En Banc in the case of Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485; Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113; and Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156 promulgated on February 12, 2013, clarifies the application of the 120+30 day periods and of the application of Atlas, Mirant and Aichi doctrine, to wit:

> "*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. xxx.*
>
> *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. xxx.*
>
> *xxx xxx xxx.*
>
> *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 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) 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.*

xxx xxx xxx.

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 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 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****.xxx.*

xxx xxx xxx.

IV. ***<u>Effectivity and Scope of the Atlas , Mirant and Aichi Doctrines</u>***

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 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.*

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.***

xxx xxx xxx.

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 before it could seek judicial relief with the CTA by way of Petition for Review****." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.*

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

> *claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.*
>
> *xxx xxx xxx.*
>
> *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.*
>
> *xxx xxx xxx."*

Clearly, compliance with the mandatory and jurisdictional 120+30 day period is necessary whether before, during, or after the effectivity of the Atlas and Mirant doctrine. However, there is an exception, the period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to December 6, 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

Applying the foregoing, petitioner filed a claim for refund of its excess and unutilized input VAT for the second quarter of 2008 on June 24, 2010, within the two year period. On June 29, 2010 or after five days from the filing of its administrative claim, petitioner filed a petition which was raffled to the Third Division of this Court, a clear violation of the mandatory and jurisdictional 120+30 period. However, petitioner can invoke BIR Ruling No. DA-489-issued on December 10, 2003. Petitioner filed its judicial claim after the issuance of BIR Ruling No. DA-489-03 but before October 6, 2010 when the Aichi doctrine was promulgated. Thus, petitioner is deemed to have filed its judicial claim on time.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **GRANTED**. The Court En Banc's Decision which dismissed the instant Petition for Review is hereby **REVERSED AND SET ASIDE**. Accordingly, CTA Case No. 8123 is hereby **REMANDED** to the Court of origin for further proceedings.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(No part)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

(with Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
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EN BANC

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MINDARO-GRULLA
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAY 09 2013

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DISSENTING OPINION

CASANOVA, *J.*:

With due respect to my esteemed colleagues, I dissent with the majority opinion granting petitioner's Motion for Reconsideration (*Re: Decision dated December 13, 2012)* filed on January 24, 2013.

I am aware of the recent pronouncement of the Supreme Court in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue*[1] which clarifies the issue on the application of the

[1] G.R. Nos. 1874865, 196113 & 197156, February 12, 2013.

120-30 day prescriptive period for refund under Section 112 of the 1997 NIRC. In the said consolidated cases, particularly in the San Roque case, the Supreme Court ruled that from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court in the Aichi case on October 6, 2010, the taxpayer-claimant need not wait for the lapse of the 120-day period before it could file its judicial claim before the CTA.

In the present case, petitioner filed its Petition for Review on June 29, 2010, barely five days after it filed its administrative claim, thus violating the 120-30 rule. However, as it filed its judicial claim within the period after the issuance of BIR Ruling No. DA-489-03 and before the promulgation of the Aichi case, petitioner is said to have filed its judicial claim on time, hence the decision of the majority to reverse and set aside aside its Decision dated December 13, 2012 and grant the present Motion.

Notwithstanding the foregoing, it is possible that a Motion for Reconsideration of the said decision may have been filed, thus, until the said Supreme Court case has attained finality and the corresponding entry of judgment has been made[2], prudence dictates that this Court's position on the matter be maintained and application of the new doctrine be, in the meantime, deferred.

In view of the foregoing, the undersigned votes that the Motion for Reconsideration should be denied.

CAESAR A. CASANOVA
Associate Justice

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2 RULE 36
JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF
Sec. 2. *Entry of judgments and final orders.*
If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.