REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

CARMEN COPPER CORPORATION, Petitioner,	**CTA EB No. 1124** (CTA Case No.8042)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 30 2015 2:40 p.m.

x - x

D E C I S I O N

UY, *J.*:

This Petition for Review[1] filed on February 24, 2014, seeks to annul and set aside the Decision (should be Resolution) dated November 21, 2013,[2] and the Resolution dated February 5,

---

[1] Docket, pp. 1 to 18.
[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, Senior Member of the Third Division, concurred by Associate Justice Lovell R. Bautista, Chairperson, while Associate Justice Ma. Belen M. Ringpis-Liban, Junior Member, was on leave when this Resolution was promulgated, Docket, pp. 20 to 33 (Note that in the instant Petition for Review, petitioner erroneously refers to the assailed Resolution dated November 21, 2013 as the *"Decision dated 21 November 2013"* or the *"Assailed Decision"* issued by the Court in Division).

2014,[3] both promulgated by the Third Division of this Court (or Court in Division) in CTA Case No. 8042, entitled *"Carmen Copper Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

Resolution dated November 21, 2013:

"**WHEREFORE**, the Motion to Dismiss dated September 23, 2013, filed by respondent Commissioner of Internal Revenue, is hereby **GRANTED**.

Consequently, the instant Petition for Review filed by petitioner Carmen Copper Corporation on March 26, 2010, is hereby **DISMISSED**. In view of the foregoing, the Omnibus Motion [To Admit Exhibits and Reopen the Case] dated July 8, 2013 and Supplemental Offer of Evidence dated September 9, 2013 are now **MOOT**.

SO ORDERED".

Resolution dated February 5, 2014:

"**WHEREFORE**, the Motion for Reconsideration filed by petitioner on December 13, 2014 is hereby **DENIED,** for lack of merit.

SO ORDERED".

THE FACTS

Petitioner Carmen Copper Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines with Securities and Exchange Commission Registration No. CS200414509,[4] engaged in the business of mining ores and other mineral resources, as indicated in the

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino, Senior Member of the Third Division, concurred by Associate Justice Lovell R. Bautista, Chairperson, and Associate Justice Ma. Belen M. Ringpis-Liban, Junior Member, Docket, pp. 34 to 41.

[4] Par. 3, Joint Stipulation of Facts and Issues (JSFI), Division Docket (CTA Case No. 8042) – Vol. II, p. 925.

primary purpose clause of its Articles of Incorporation.[5] It is a duly registered value-added tax (VAT) enterprise, pursuant to Section 236 of the Tax Code, having been issued Certificate of Registration No. 3RC0000281745 dated April 21, 2005, with VAT being among its registered tax types.[6] It is likewise registered with the Board of Investments (BOI), pursuant to Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as a new producer of copper concentrate with non-pioneer status.[7]

On the other hand, respondent Commissioner of Internal Revenue is a public officer duly appointed by the President of the Republic of the Philippines, and is the head of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national and internal revenue taxes. She is vested with the power and authority to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected or of input VAT attributable to zero-rated sales.[8]

On the dates indicated below, petitioner filed with the BIR's Revenue District Office No. 41 (Mandaluyong) administrative claims for refund of its input VAT payments for the third and fourth quarters of 2007, and all four (4) quarters of 2008:[9]

Period	Date of filing of administrative claim for refund	Amount of accumulated input VAT credits covered by claim (Php) *[based on amended returns]*
2007		
3rd Qtr	19 December 2008	₱ 22,598,927.36
4th Qtr	19 December 2008	35,166,841.68
2008		
1st Qtr	9 February 2009	18,159,371.92
2nd Qtr	11 March 2009	17,043,298.46
3rd Qtr	11 March 2009	74,330,739.60
4th Qtr	11 March 2009	288,204,659.28
	Total	**₱ 455,503,838.30**

[5] Par. 4, JSFI, Division Docket (CTA Case No. 8042) – Vol. II, p. 925.
[6] Par. 5, JSFI, Division Docket (CTA Case No. 8042) – Vol. II, p. 925.
[7] Par. 6, JSFI, Division Docket (CTA Case No. 8042) – Vol. II, p. 925.
[8] Par. 1, JSFI, Division Docket (CTA Case No. 8042) – Vol. II, pp. 924 to 925.
[9] Par. 2, JSFI, Division Docket (CTA Case No. 8042) – Vol. II, p. 925.

Upon the belief that the two-year statutory period within which to file a claim for refund of the above-stated input VAT payments is about to lapse and considering that its claim for refund with the above-mentioned BIR office remains unresolved, petitioner filed its Petition for Review on March 26, 2010.[10] The case was docketed as CTA Case No. 8042 and was raffled to the First Division of this Court.

On May 21, 2010, respondent filed her Answer in CTA Case No. 8043,[11] raising, among others, the following special and affirmative defenses, to wit: petitioner's claim for tax refund is subject to administrative investigation/examination by respondent's Bureau. Moreover, in order to validly claim for tax refund, it is imperative for petitioner to prove its compliance with legal requirements, such as registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations; the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, as amended; the submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112 (C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax refund which is a condition *sine qua non* prior to the filing of such claim.

On July 23, 2010[12], the parties filed their Joint Stipulation of Facts and Issues (JSFI) in CTA Case No. 8042, as directed by the First Division of this Court during the Pre-Trial Conference held on July 9, 2010[13]. The JSFI was approved in the Resolution dated July 28, 2010.[14]

During trial, petitioner presented the following witnesses: Fernando Rimando; ICPA Emmanuel Mendoza; Jesus C. Caparida. On February 7, 2013, petitioner filed its Formal Offer of Evidence[15] and the same was resolved in the Resolution dated

---

[10] Par. 12, Petition for Review (CTA Case No. 8042), Division Docket (CTA Case No. 8042) – Vol. I, p. 10.
[11] Division Docket (CTA Case No. 8042) – Vol. I, pp. 884 to 888.
[12] Division Docket (CTA Case No. 8042) – Vol. II, pp. 924 to 927.
[13] July 9, 2010 Minutes of Hearing, Division Docket (CTA Case No. 8042) – Vol. II, p. 922.
[14] Division Docket (CTA Case No. 8042) – Vol. II, p. 929.
[15] Division Docket (CTA Case No. 8042) – Vol. IV, pp. 1746 to 1786.

March 22, 2013.[16]

Meanwhile, in the Order dated April 8, 2013[17], CTA Case No. 8042 was transferred to the Third Division of this Court pursuant to CTA Administrative Circular No. 01-2013 "Reorganizing the Three (3) Divisions of the Court of Tax Appeals" dated March 26, 2013.

On September 23, 2014, respondent filed a "Motion to Dismiss,[18] on the ground of lack of jurisdiction of the Court in Division due to petitioner's belated filing of its judicial claim for refund. Petitioner filed its Opposition (to the Motion to Dismiss dated September 18, 2013) on October 21, 2013.[19] In the assailed Resolution dated November 21, 2013,[20] the Court in Division granted respondent's Motion to Dismiss, and accordingly, dismissed the Petition for Review for CTA Case No. 8042.

Petitioner filed its Motion for Reconsideration (of the Resolution dated November 21, 2013) on December 13, 2013,[21] praying for the continuation of the trial. Pursuant to the Resolution dated January 14, 2014 of the Court in Division[22], respondent filed her Comment on January 20, 2014.[23]

In the assailed Resolution dated February 5, 2014, the Court in Division denied petitioner's Motion for Reconsideration

On February 24, 2014, petitioner filed the instant Petition for Review before the Court *En Banc*, seeking to annul and set aside the Court in Division's Assailed Decision (referring to the Resolution dated November 21, 2013) and Resolution dated February 5, 2014, and to proceed with the hearing of the case on the merits.

The Court *En Banc* directed respondent to file her Comment, not a motion to dismiss, in the Resolution dated

---

[16] Division Docket (CTA Case No. 8042) – Vol. IV, pp. 2376 to 2377.
[17] Division Docket (CTA Case No. 8042) – Vol. V, p. 2378.
[18] Division Docket (CTA Case No. 8042) – Vol. V, pp. 2564 to 2570.
[19] Division Docket (CTA Case No. 8042) – Vol. V, pp. 2575 to 2588.
[20] Division Docket (CTA Case No. 8042) – Vol. V, pp. 2597 to 2610.
[21] Division Docket (CTA Case No. 8042) – Vol. V, pp. 2611 to 2618.
[22] Division Docket (CTA Case No. 8042) – Vol. V, p. 2635.
[23] Division Docket (CTA Case No. 8042) – Vol. V, pp. 2636 to 2640.

March 20, 2014,[24] within ten (10) days from receipt thereof. On April 2, 2014, respondent filed her Comment[25]; while on April 14, 2014, petitioner filed its Reply (to the Comment dated April 2, 2014).

In the Resolution dated May 2, 2014, the Court *En Banc* gave due course to the instant Petition for Review, and ordered parties to submit their respective memorandum within thirty (30) days from receipt thereof.[26] Respondent filed her Memorandum on June 3, 2014.[27] On the other hand, petitioner filed its Memorandum within the extension period of thirty (30) days granted by the Court *En Banc* on July 14, 2014[28]. Thus, the instant case was deemed submitted for decision on August 7, 2014.[29]

Hence, this Decision.

THE ISSUE

Petitioner raises this lone issue, to wit: "whether the Petitioner timely filed its judicial claim for a refund or the issuance of a tax credit certificate for its unutilized input VAT for the 3rd and 4th quarters of 2007 and all four (4) quarters of 2008 in the total amount of **₱ 455,503,838.30.**"[30]

Petitioner's Arguments

Petitioner argues that the 120+30-day period provided under Section 112(C) of the Tax Code was not mandatory or jurisdictional at the time its judicial claim was filed. According to petitioner, Section 112(C) has been part of the Tax Code since its effectivity in January 1, 1998 and yet, this Court, both in Division and *En Banc*, has ruled that the 120+30 day period provided under the said Section 112(C) is neither mandatory nor jurisdictional in its various decisions on VAT claims for refund.

---

[24] Docket, pp. 43 to 44.
[25] Docket, pp. 45 to 49.
[26] Docket, pp. 51 to 52.
[27] Docket, pp. 72 to 80.
[28] Docket, pp. 89 to 112.
[29] Resolution dated August 7, 2014, Docket, p. 115.
[30] Petition for Review, Docket, p. 5. See also respondent's Memorandum and petitioner's Memorandum, Docket, pp. 74 and 93, respectively.

Petitioner adds that the rule that *"rulings of the Court of Appeals may serve as precedents for lower courts, they only apply to points of law not covered by any Supreme Court decision"*[31] should likewise be applicable to this Court, especially with respect to tax cases, since this Honorable Court is also an appellate court equal in rank to the Court of Appeals with special jurisdiction over tax cases.[32]

Petitioner further points out that the Supreme Court's consistent disregard of the 120+30-day period in its decisions on VAT refund cases which were prevailing at the time of the filing of the Petition for Review, further emphasizes that the then prevailing interpretation of Section 112(C), as amended, was that the 120+30-day period provided therein is neither mandatory nor jurisdictional. This interpretation should allegedly apply to this Petition for Review.

As regards the timeliness of its judicial claim for the four (4) quarters of taxable year 2008, petitioner contends that the same was timely filed pursuant to BIR Ruling DA-489-03 dated December 10, 2003. Petitioner further asserts that the cases of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (or "*Aichi* case")[33] and *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.* (or "*San Roque* case")[34] should not be made to apply to the instant case because these were all decided and became final almost three (3) years after the present judicial claim was filed. Furthermore, according to petitioner, the said cases are not applicable because they should be applied prospectively and not to parties who relied on the old doctrine in good faith.

Lastly, petitioner asserts that even assuming that the 120+30 day period rule applies, its judicial claims for the four (4) quarters of taxable year 2008 were timely filed in accordance with the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership* (or "*Mindanao II* case")[35] in relation to BIR Ruling DA-489-03 dated December 10, 2003. Relative thereto, petitioner alleges that respondent neither informed nor followed up with petitioner regarding its documents in support of its administrative claims for all quarters of taxable year 2008.

---

[31] *Government Service Insurance System vs. Cadiz*, G.R. No. 154093, July 8, 2003.
[32] Republic Act No. 9282.
[33] G.R. No. 184823, October 6, 2010.
[34] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[35] G.R. No. 191498, January 15, 2014.

Thus, considering that respondent did not clarify whether petitioner's documentary evidence for the administrative claim was sufficient and complete, petitioner could not reckon the proper beginning of the 120-day period within which respondent should have decided on its claim for refund.

Considering therefore that its judicial claims were allegedly "premature" for having been filed on March 26, 2010, well within the period between December 10, 2003 and October 5, 2010, when BIR Ruling No. DA-489-03 was still in force and before the *Aichi* case was promulgated, the said judicial claims were timely filed in accordance with the *Mindanao II* case and the *San Roque* case.

Respondent's Counter-arguments

Respondent counters that petitioner's judicial claim for tax credit/refund with this Court was filed out of time because based on Section 112(C) of National Internal Revenue Code (NIRC) of 1997, as amended, it is clear that compliance with the 120+30-day periods is not merely discretionary, but is rather mandatory and jurisdictional.

Respondent points out that in this case, it took petitioner several months to file its Petition for Review with this Court, way beyond the 30-day appeal period provided by Section 112(C) of the NIRC of 1997, as amended. Hence, this Court was already divested of any jurisdiction to decide petitioner's Petition for Review as it was belatedly filed on March 26, 2010.

THE COURT *EN BANC*'S RULING

The Court *a quo* correctly dismissed the Petition for Review filed in CTA Case No. 8042 for lack of jurisdiction as the same was filed beyond the thirty-day period under Section 112(C) of the NIRC of 1997, as amended by Republic Act No. (RA) 9337[36].

The governing law on the refund or issuance of tax credit of

---

[36] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

input VAT is Section 112 of the NIRC of 1997, as amended by RA 9337, the pertinent provisions of which read 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 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. *(Emphasis supplied)*

Based on the foregoing provisions, a VAT-registered person may file an administrative claim before the Commissioner of Internal Revenue for the issuance of a tax credit certificate or refund of creditable input tax attributable to zero-rated or effectively zero-rated sales within two (2) years after the close of taxable quarter when the sales were made.

Likewise, under paragraph (C) thereof, the Commissioner of Internal Revenue (CIR) is given a **120-day period, from submission of complete documents in support of an administrative claim for refund/application for issuance of the tax credit certificate** within which to act upon said claims. Upon denial of the claim or application, or **upon expiration of the 120-day period without any action on the claim, the taxpayer has a 30-day period only within which to appeal said adverse decision or unacted claim before the CTA**.

Clearly therefore, Section 112(C) of the NIRC of 1997, as amended, provides for a 120-day period for the CIR to act on administrative claims for refund/applications for issuance of tax credit certificates, from submission of complete supporting documents, as well as a 30-day period for the taxpayer to seek judicial recourse with the Court of Tax Appeals, on two (2) instances : (1) upon partial or full denial of its refund claim; or (2) upon the inaction of the CIR for a period of 120 days from the submission of complete documents in support of its refund claim.

The 120+30-day periods under Section 112(C) is mandatory and jurisdictional.

The proper interpretation of the above-quoted provision was finally settled by the Supreme Court sitting *En Banc* in the *San Roque* case cited by petitioner promulgated on February 12, 2013. The relevant portions of the discussion pertinent to the focal issue in the present case are quoted hereunder as follows:

> "To repeat, a claim for tax refund or credit, like a claim for tax refund exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim for 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 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.**"

(Emphasis supplied)[37]

In the subsequent case of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*,[38] the Second Division of the Supreme Court, applied the ruling in the *San Roque* case, and provided a Summary of Rules on Prescriptive Periods Involving VAT as a guide for all parties concerned, to wit:

> "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 2010, as an exception to the mandatory and jurisdictional 120+30 day periods."

---

[37] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

[38] *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*, G.R. Nos. 193301 and 194637, March 11, 2013.

Certainly, it is evident from the foregoing jurisprudential pronouncements that a taxpayer-claimant **only had a limited period of thirty (30) days from the expiration of the 120-day period of inaction of the Commissioner of Internal Revenue (CIR) to file its judicial claim with this Court,** with the exception of premature claims made during the effectivity of BIR Ruling No. DA-489-03[39] (from 10 December 2003 to 5 October 2010). **Failure to do so, the judicial claim shall prescribe as filed out of time.**[40]

At this juncture, it is worthy to note that while petitioner is well aware of the foregoing ruling in the *San Roque* case, it nevertheless basically argues against the inapplicability of the 120+30-day periods to its judicial claim because allegedly, the reckoning of the 120 day period was unclear, as respondent did not communicate with petitioner regarding its supporting documents for its administrative refund claims for all quarters of taxable year 2008. Hence, according to petitioner, it could not reckon the proper start of the 120-day period within which respondent should decide its claim for refund.

We do not agree with petitioner's line of argument.

When petitioner filed its administrative claim for refund with respondent CIR, it is presumed that it included in the said application its complete supporting documents, and therefore the 120 day period began to run on the date of the filing of its administrative refund claim.

Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary.[41]

---

[39] According to the *San Roque* case, "BIR Ruling No. DA-489-03 does provide a valid claim for valid 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.'**"

[40] *Miramar Fish Company, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185432, June 4, 2014.

[41] *CBK Power Company Limited vs. Commissioner of Internal Revenue* G.R. Nos. 198729-30, January 15, 2014.

In view of this presumption, respondent's 120-day period to decide petitioner's administrative claim commenced to run from the date of filing said administrative claims. We summarize the significant dates in the instant case, as follows:

PERIOD OF REFUND CLAIM	DATE OF FILING OF ADMINISTRATIVE CLAIM	LAPSE OF 120-DAY PERIOD	LAPSE OF 30-DAY PERIOD
3rd Quarter of 2007	December 19, 2008	April 18, 2009	May 18, 2009
4th Quarter of 2007	December 19, 2008	April 18, 2009	May 18, 2009
1st Quarter of 2008	February 9, 2009	June 9, 2009	July 9, 2009
2nd Quarter of 2008	March 11, 2009	July 9, 2009	August 8, 2009
3rd Quarter of 2008	March 11, 2009	July 9, 2009	August 8, 2009
4th Quarter of 2008	March 11, 2009	July 9, 2009	August 8, 2009

Notably, and as mentioned earlier, the Petition for Review in CTA Case No. 8042 was filed only on March 26, 2010 before the Court in Division, which is clearly beyond the 30-day periods indicated above. Hence, petitioner's judicial recourse before this Court was filed out of time and the dismissal was therefore proper on the ground of lack of jurisdiction.

The decisions of this Court do not constitute binding precedents.

Petitioner invokes certain previous rulings of this Court regarding the non-mandatory and non-jurisdictional nature of the 120+30-day period, to justify its non-compliance with the same.

Such stance must fail.

As held in the *San Roque* case, the Supreme Court said:

> "There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. **Suffice it to state**

MK

> **that CTA decisions do not constitute precedents, and do not bind this Court or the public.** That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. **Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.**"[42] *(Emphases supplied)*

The Supreme Court decisions invoked by petitioner are not applicable to the instant case.

Petitioner likewise presents the argument that at the time petitioner filed its Petition for Review (*i.e.*, on March 26, 2010), there was no categorical ruling by the Supreme Court on the nature of the 120+30-day period provided under Section 112(C) of the NIRC of 1997, as amended by RA 9337. According to petitioner, although there was no such categorical ruling, the Supreme Court consistently disregarded the said 120+30-day period, in deciding VAT refund cases, such as the following:

(1) *Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue* (or "*Philippine Geothermal* case")[43];
(2) *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[44]*;*
(3) *San Roque Power Corporation vs. Commissioner of Internal Revenue* (or the "2009 *San Roque* case")[45];
(4) *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*[46]*; and*
(5) *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue* (or "*Silicon* case")[47].

Petitioner thus contends that the consistent disregard of the 120+30-day period was because such period is neither mandatory nor jurisdictional.

---

[42] Refer also to *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013.
[43] G.R. No. 154028, July 29, 2005.
[44] G.R. No. 166732, April 27, 2007.
[45] G.R. No. 180345, November 25, 2009.
[46] G.R. No. 180042, February 8, 2010.
[47] G.R. No. 172378, January 17, 2011.

We find petitioner's reliance on the aforecited Supreme Court cases misplaced based on the following considerations:

1) In the ***Philippine Geothermal* case,** it is very clear that *"the only issue is the amount of refund to be granted based on the amount of tax erroneously paid."* Similar to the cases addressed in the *San Roque* case, nowhere in the *Philippine Geothermal* case did the Supreme Court discuss, state or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. While the Supreme Court stated in the narration of facts in the *Philippine Geothermal* case that "(s)*ince respondent failed to act on the claim, on July 2, 1997, petitioner filed a petition to toll the running of the two-year prescriptive period before the Court of Tax Appeals"*, this issue was not raised therein. In accordance with the *San Roque* case, said statement in the *Philippine Geothermal* case is not a binding precedent that the taxpayer need not observe the 120+30-day prescriptive period under the law.

2) In ***Intel Technology Philippines, Inc. v. CIR,*** the Supreme Court stated: "The issues to be resolved in the instant case are (1) whether the absence of the BIR authority to print or the absence of the TIN-V in petitioner's export sales invoices operates to forfeit its entitlement to a tax refund/credit of its unutilized input VAT attributable to its zero-rated sales; and (2) whether petitioner's failure to indicate 'TIN-V' in its sales invoices automatically invalidates its claim for a tax credit certification." Again, nowhere in this case did the Supreme Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.[48]

3) In the ***2009 San Roque* case**, it is likewise very clear that *"the main issue in this case is whether or not petitioner may claim a tax refund or credit in the amount of ₱ 249,397,620.17 for creditable input tax attributable to zero-rated or effectively zero-rated sales pursuant to Section 112(A) of the NIRC or for input taxes paid on capital goods as provided under Section 112(B) of the NIRC."* Again, nowhere in said case did the Supreme Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. And while it is found as a fact in the *2009 San Roque* case that "(r)*espondent failed to act on the*

---

[48] See *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013 (Decision, p. 41).

request for tax refund or credit of petitioner, which prompted the latter to file on 5 April 2004, with the CTA in Division, a Petition for Review, docketed as CTA Case No. 6916 before it could be barred by the two-year prescriptive period within which to file its claim", it was not raised as an issue therein whether the taxpayer need not wait for the 120+30-day period prescribed under Section 112(D) of the NIRC of 1997. Thus, the *2009 San Roque* case cannot be treated as a binding precedent insofar as the non-observance of the 120+30-day prescriptive period is concerned.

4) In ***CIR v. Ironcon Builders and Development Corporation,*** the Supreme Court puts the issue in this manner: "Simply put, the sole issue the petition raises is whether or not the CTA erred in granting respondent Ironcon's application for refund of its **excess** creditable VAT withheld." The Commissioner argued that "since the NIRC does not specifically grant taxpayers the option to refund excess creditable VAT withheld, it follows that such refund cannot be allowed." Thus, this case is solely about whether the taxpayer has the right under the NIRC to ask for a cash refund of excess creditable VAT withheld. <u>Again, nowhere in this case did the Supreme Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period</u>.[49]

5) In the ***Silicon* case**, the issues are clear-cut, to wit:

"(1) whether the CTA En Banc erred in denying petitioner's claim for credit/refund of input VAT attributable to its zero-rated sales in the amount of ₱ 16,732,425.00 due to its failure:

(a) to show that it secured an ATP from the BIR and to indicate the same in its export sales invoices; and

(b) to print the word 'zero-rated' in its export sales invoices.

(2) whether the CTA En Banc erred in ruling that only the amount of ₱ 9,898,867.00 can be classified as input VAT paid on capital goods."

Likewise, nowhere in this case did the Supreme Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. While We concede that

---

[49] See *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013 (Decision, p. 42).

the petitioner in the *Silicon* case glaringly did not observe the 120+30-day prescriptive period under the law, the same was not passed upon as an issue therein. Thus, the *Silicon* case does not constitute a binding precedent on the nature of the said 120+30-day prescriptive period.

Additionally, petitioner invokes the ruling of the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (or "*Atlas* case")[50] that the two-year prescriptive period for the filing of both the administrative and judicial claims for refund of excess and unutilized input VAT should be reckoned from the date of filing of the quarterly VAT return.

Petitioner is in error.

It must be emphasized that the doctrine laid down in the *Atlas* case only pertains to the reckoning point of the two (2)-year prescriptive period under Section 229 of the NIRC of 1997, which was held to be from the date of payment of the output VAT, but has no relevance to the 120+30 day period under Section 112 of the NIRC of 1997. As held in the *San Roque* case:

> "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

[50] G.R. Nos. 141104 and 148763, June 8, 2007.

> 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. *(Underscoring supplied)*[51]

In relation to the foregoing disquisition, the Supreme Court, in *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue* (hereinafter referred to as the "*Visayas Geothermal* case"),[52] said:

> "Thus, *Atlas* case is only relevant in determining when to file an administrative claim with the CIR for refund or credit of unutilized creditable input VAT, and not for determining when to file a judicial claim with the CTA. From June 8, 2007[53] to September 12, 2008[54], the 2-year prescriptive period to file administrative claims should be counted from the date of payment of the output VAT tax. Before and after said period, the 2-year prescriptive period is counted from the close of the taxable quarter when the sales were made, in accordance with Section 112(A). **In either case, the mandatory and jurisdictional 120+30 day period must be complied with for the filing of the judicial claim with the CTA, except for the period provided under BIR Ruling No. DA-489-03,** as previously discussed.
>
> The Court further noted that *Atlas* was decided in relation to the 1977 Tax Code which had not yet provided for the 30-day period for the taxpayer to appeal to the CTA from the decision or inaction of the CIR over claims for unutilized input VAT. **Clearly then, the Atlas doctrine cannot be invoked to disregard compliance with the 120+30 day mandatory and jurisdictional period.** xxx." *(Emphases supplied)*

Parenthetically, even granting that the *Atlas* case is

---

[51] See Note No. 38.
[52] G.R. No. 197525, June 4, 2014.
[53] The date of promulgation of the *Atlas* case.
[54] The date of promulgation of the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*, wherein the doctrine laid down in the *Atlas* case was abandoned.

relevant to the present case, it could not be applied since it was held to be effective only from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 when the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[55] was promulgated. In this connection, it must be noted that petitioner filed both its administrative and judicial claims after the said period of effectivity.

The application of the San Roque case (2013) in the instant case

Petitioner argues that the *San Roque* case (2013) should be applied prospectively. According to petitioner, since the *San Roque* case did not provide for a specific retroactive application of the current rules, its present judicial claim should not be prejudiced since the *San Roque* case was decided and became final almost three (3) years after this present claim.

We disagree with petitioner.

The said argument has already been addressed by the Supreme Court in the more recent case of *San Roque Power Corporation vs. Commissioner of Internal Revenue* (or the "2014 *San Roque* case")[56], wherein it was held:

> "The Court is not persuaded. The aforequoted paragraph should be understood in the context of the entire *San Roque (2013)*[57]. The statement of the Court applying *Mirant* and *Aichi* prospectively should be understood relative to, and never apart from, *Atlas* and BIR Ruling No. DA-489-03.
>
> The Court explained in San Roque (2013), under the heading 'Effectivity and Scope of the Atlas, Mirant and Aichi Doctrines,' that:
>
> > **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,**

[55] G.R. No. 172129, September 12, 2008.
[56] G.R. No. 205543, June 30, 2014.
[57] Referring to the *San Roque* case.

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. x x x.

x x x x

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 for 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. (Emphases supplied.)
x x x x

Based on the foregoing, 'prospective application' of *Aichi* and *Mirant*, in the context of *San Roque (2013)*, only meant that the rulings in said cases would not retroactively affect taxpayers who relied on *Atlas* and/or DA-489-03 when they filed their administrative and judicial claims for refund or tax credit of creditable input taxes during the period when *Atlas* and DA-489-03 were still in effect. *Aichi* and *Mirant* can still be applied to cases involving administrative and judicial claims filed prior to the promulgation of said cases and outside the period of effectivity of *Atlas* and DA-489-03, such as the instant case." *(Underscoring supplied)*

Furthermore, in the *Visayas Geothermal*[58] case, the Supreme Court ruled as follows:

"Petitioner VGPC also argues that *Aichi* should be applied prospectively and, therefore, should not be applied to the present case. **This position cannot be given consideration.**

Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.

Considering that the nature of the 120+30 day period was first settled in *Aichi*, the interpretation by the Court of its being mandatory and jurisdictional in nature retroacts to the date the NIRC was enacted. It cannot be applied

[58] See Note 52.

prospectively as no old doctrine was overturned." *(Emphases supplied)*

BIR Ruling No. DA-489-03 is not applicable to the case of petitioner.

Petitioner further argues that when it filed its judicial claims on March 26, 2010, BIR Ruling No. DA-489-03 was still in effect, the prevailing law by way of contemporary judicial interpretation. According to petitioner, at the time its Petition for Review was filed before the Court in Division, the prescriptive period to file a judicial claim was governed by Section 229 of the Tax Code, pursuant to BIR Ruling No. DA-489-03. Furthermore, petitioner alleges that Section 112 was interpreted by the same BIR Ruling No. DA-489-03 to govern only the filing of the administrative claim, and thus, the applicable and prevailing prescriptive period at the time of filing of the Petition for Review, as far as the judicial claim is concerned, is two years from the time of payment, pursuant to Section 229 of the Tax Code.

We disagree.

In the 2014 *San Roque* case, the Supreme Court clarified the significance of BIR Ruling No. DA-489-03 in this wise, *viz*:

> "It is still necessary for the Court to explain herein how BIR Ruling No. DA-489-03 is an exception to the strict observance of the 120+30 day periods for judicial claims. BIR Ruling No. DA-489-03 affected only the 120-day period as the BIR held therein that 'a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe.' Consequently, <u>BIR Ruling No. DA-489-03 may only be invoked by taxpayers who relied on the same and **prematurely filed** their judicial claims before the expiration of the 120-day period for the CIR to act on their administrative claims, provided that the taxpayers filed such judicial claims from December 10, 2003 to October 6, 2010. BIR Ruling No. DA-489-03 did not</u>

> touch upon the 30-day prescriptive period for filing an appeal with the CTA and cannot be cited by taxpayers, such as San Roque, who **belatedly filed** their judicial claims more than 30 days after receipt of the adverse decision of the CIR on their administrative claims or the lapse of 120 days without the CIR acting on their administrative claims. Pertaining to the similarly situated Philex, the Court ruled in *San Roque (2013)* that:
>
>> Philex's situation is not a case of premature filing of its judicial claim but of late filing, indeed *very* late filing. BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim. Philex cannot claim the benefit of BIR Ruling No. DA-489-03 because Philex did not file its judicial claim prematurely but filed it long after the lapse of the 30-day period **following the expiration of the 120-day period**. In fact, Philex filed its judicial claim 426 days after the lapse of the 30-day period." *(Underscoring supplied)*

A careful analysis of the foregoing dates would reveal that petitioner is similarly situated as Philex in the *San Roque* case.

While petitioner filed its administrative and judicial claims during the period of applicability of BIR Ruling No. DA-489-03, it cannot claim the benefit of the exception period as it did not file its judicial claim prematurely. Indubitably, it filed its judicial claim long after the lapse of the 30-day period following the expiration of the 120-day period. Again, BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim, but not its late filing.[59] Succinctly put, late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force.[60]

---

[59] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 198729-30, January 15, 2014.

[60] *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014.

Applying the foregoing discussions in the case at bench, although petitioner has complied with the required two-year period within which to file a refund/tax credit claim of its input VAT payments with the BIR by filing its administrative claim: (1) on December 19, 2008 for the 3rd and 4th quarters of 2007; (2) on February 9, 2009 for the 1st quarter of 2008; and (3) on March 11, 2009 for the 2nd, 3rd, and 4th quarters of 2008, it appears however, that petitioner's corresponding judicial claim filed with this Court on March 26, 2010 was filed beyond the 30-day period, as summarized below:

Period	*Filing date of administrative claim*	*Last day of the 120-day period under Section 112(C) from date of filing of administrative claim in case of inaction*	*Last day of the 30-day period to judicially appeal said inaction before the Court of Tax Appeals*	*Filing date of Petition for Review*
3rd Quarter 2007	December 19, 2008	April 18, 2009[61]	May 18, 2009	March 26, 2010
4th Quarter 2007				
1st Quarter 2008	February 9, 2009	June 9, 2009[62]	July 9, 2009	
2nd Quarter 2008	March 11, 2009	July 9, 2009[63]	August 8, 2009	
3rd Quarter 2008				
4th Quarter 2008				

Notably, Section 112(C) specifically states that in case of failure on the part of the CIR to act on the application within the 120-day period prescribed by law, petitioner only has thirty (30) days after the expiration of the 120-day period to appeal the unacted claim with this Court. Since petitioner's judicial claim for the aforementioned quarters was filed with the Court in Division only on March 26, 2010, which was way beyond the mandatory 120+30 days to seek judicial recourse, such non-compliance with the said mandatory period of thirty (30) days is fatal to its refund

---

[61] As there was no sufficient proof that petitioner submitted any supporting documents to the BIR, the 120-day period commenced to run from December 19, 2008, the date of filing of petitioner's administrative claim. (Refer to footnote no. 30 of *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014.)

[62] As there was no sufficient proof that petitioner submitted any supporting documents to the BIR, the 120-day period commenced to run from February 9, 2009, the date of filing of petitioner's administrative claim. (Refer to footnote no. 30 of *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.*, supra.)

[63] As there was no sufficient proof that petitioner submitted any supporting documents to the BIR, the 120-day period commenced to run from March 11, 2009, the date of filing of petitioner's administrative claim. (Refer to footnote no. 30 of *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.*, supra.)

claim on the ground of prescription.[64]

Hence, the failure of petitioner to observe the 30–day period under said Section 112 through its belated filing of the Petition for Review before the Court in Division warrants a dismissal with prejudice for lack of jurisdiction.[65]

WHEREFORE, in light of the foregoing considerations, the Petition for Review is hereby **DENIED** for lack of merit. The assailed Resolution dated November 21, 2013 and Resolution dated February 5, 2014 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[64] Refer to *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.*, supra.
[65] Refer to *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.*, supra.

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ON LEAVE
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