REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1124
(CTA Case No. 8042)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:

MAR 09 2016 4:05 p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on September 1, 2015, without respondent's Comment despite due notice,[1] praying for the reconsideration of the Court *En Banc*'s Decision dated July 30, 2015, the dispositive portion of which read:

> "**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**.

[1] Records Verification dated November 12, 2015 issued by the Judicial Records Division of this Court, EB Docket, p. 186.

SO ORDERED."

In the Motion, 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 petitioner's judicial claim was filed. According to petitioner, BIR Ruling No. DA-489-03 is applicable to the case at bar.

In addition, petitioner is of the view that the decisions it cited are applicable to the case at bar.

Lastly, according to petitioner, its judicial claim for the 1st Quarter of calendar year 2008 was filed on time.

THE COURT *EN BANC*'S RULING

The instant Motion for Reconsideration lacks merit.

Petitioner presents no new argument to persuade Us that it has a meritorious case. It merely reiterates the arguments it raised in its Petition for Review and Memorandum which have been extensively addressed by this Court in the assailed Decision.

The 120+30 day period is mandatory and jurisdictional, even at the time petitioner filed its judicial claim. BIR Ruling No. DA-489-03 is not applicable to the case of petitioner.

We still find no legal basis for petitioner's argument that the 120+30-day period provided under Section 112(C) of the Tax Code was not mandatory or jurisdictional at the time petitioner's judicial claim was filed.

In fact, said argument runs counter to the cases cited by the Court *En Banc* in the assailed Decision. In addition to the said cases, the Supreme Court, in the case of *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[2] ruled as follows:

[2] G.R. No. 168950, January 14, 2015.

"As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. The only exception to the general rule is when BIR Ruling No. DA-489-03 was still in force, that is, between 10 December 2003 and 5 October 2010. **The BIR Ruling excused premature filing, declaring 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.** In *San Roque*, the High Court explained both the general rule and the exception:

> 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 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 days periods as mandatory and jurisdictional.** (Emphases supplied)

***San Roque* likewise ruled out the application of the BIR ruling to cases of late filing.** The Court held that the BIR ruling, as an exception to the mandatory and jurisdictional nature of the 120+30 day periods, is limited to premature filing and does not extend to the late filing of a judicial claim.

In sum, premature filing is allowed for cases falling during the time when BIR Ruling No. DA-489-03 was in force; nevertheless, late filing is absolutely prohibited even for cases falling within that period.

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A final note, the taxpayers are reminded that that when the 120-dy period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period." *(Emphases and underscoring supplied)*

Moreover, it is worthy to note that, in the interim, *i.e.*, from the time the promulgation of the assailed Decision and of this Resolution, the Supreme Court has come up with the interpretation of when the mandatory period of 120 days commences. In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[3] the High Court ruled:

> "To summarize, for the just disposition of the subject controversy, **the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR.** Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected." *(Emphasis supplied)*

Considering these pronouncements, We need to summarize anew the periods involved in this case, to wit:

<table>
<tr><th>Period</th><th>Filing date of administrative claim</th><th>30-day period from to submit documentary requirements sufficient to support the claim</th><th>Last day of the 120-day period under Section 112(C) of the NIRC of 1997</th><th>Last day of the 30-day period to judicially appeal said inaction before the Court of Tax Appeals</th><th>Filing date of Petition for Review</th></tr>
<tr><td>3rd Quarter 2007</td><td rowspan="2">December 19, 2008</td><td rowspan="2">January 18, 2009</td><td rowspan="2">May 18, 2009</td><td rowspan="2">June 17, 2009</td><td rowspan="6">March 26, 2010</td></tr>
<tr><td>4th Quarter 2007</td></tr>
<tr><td>1st Quarter 2008</td><td>February 9, 2009</td><td>March 11, 2009</td><td>July 9, 2009</td><td>August 8, 2009</td></tr>
<tr><td>2nd Quarter 2008</td><td rowspan="3">March 11, 2009</td><td rowspan="3">April 10, 2009</td><td rowspan="3">August 8, 2009</td><td rowspan="3">September 7, 2009</td></tr>
<tr><td>3rd Quarter 2008</td></tr>
<tr><td>4th Quarter 2008</td></tr>
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[3] G.R. No. 207112, December 8, 2015.

Thus, even on the basis of the said jurisprudence on the commencement of the 120-day period under Section 112(C) of the National Internal Revenue Code of 1997 vis-à-vis the foregoing summary, it is without question that petitioner's judicial claim in CTA Case No. 8042 was belatedly filed.

To reiterate, 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 claim on the ground of prescription, resulting in the Court in Division's lack of jurisdiction over the said judicial claim.

The decisions cited by petitioner are not applicable to the case at bar.

Petitioner again argues that the decisions it cited, which were promulgated before the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[4] both of this Court and the Supreme Court, are applicable to the instant case. It further stresses that the *Aichi* ruling should be given a prospective application.

We disagree.

In *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*,[5] the Supreme Court said:

> "Petitioner VGPC also argues that *Aichi* should 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 for 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

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[4] G.R. No. 184823, October 6, 2010.
[5] G.R. No. 197525, June 4, 2014.

> 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 prospectively as no old doctrine was overturned.**
>
> The petitioner cannot rely either on the alleged jurisprudence prevailing at the time it filed its judicial claim. The Court notes that the jurisprudence relied upon by the petitioner consists of CTA cases. **It is elementary that CTA decisions do not constitute binding precedents, forming part of the Philippine legal system.**
>
> As regards the cases which were later decided allegedly in contravention of *Aichi*, it is of note that all of them were decided by Divisions of this Court, and not by the Court En Banc. Any doctrine or principle of law laid down by the Court, either rendered *En Banc* or in Division, may be overturned or reversed only by the Court sitting *En Banc*. Thus, the cases cited by the petitioner could not have overturned the doctrine laid down in *Aichi*." *(Emphases supplied)*

Furthermore, in *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[6] the Supreme Court ruled:

> "With regard to petitioner's argument that *Aichi* should not be applied retroactively, we reiterate that **even without that ruling, the law is explicit on the mandatory and jurisdictional of the 120+30 day period.**"[7] *(Emphasis supplied)*

Based on the foregoing jurisprudence, petitioner's arguments are untenable.

[6] G.R. Nos. 198729-30, January 15, 2014.
[7] Refer also to *Commissioner of Internal Revenue vs. Toledo Power Company, etseq.*, G.R. Nos. 195175 and 199645, August 10, 2015.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

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

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

(On Official Business)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Official Business)

MA. BELEN M. RINGPIS-LIBAN
Associate Justice