REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR SIBULAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 987
(CTA Case No. 8014)

Present:

Del Rosario, *PJ*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, *JJ*.

Promulgated:

OCT 07 2013 Apolinario 9:00 a.m.

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DECISION

DEL ROSARIO, *PJ*:

STATEMENT OF THE CASE

The Petition for Review under consideration is filed pursuant to Rule 43 of the Rules of Court and Rule 8, Section 4(b) in relation to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals seeking the reversal of the Decision[1] dated September 18, 2012 of the former Third Division of the Court of Tax Appeals (CTA-Third Division) in the case entitled *"Hedcor Sibulan, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8014"* which dismissed the petition for lack of jurisdiction as it was prematurely filed, as well as, the Resolution[2] dated February 13, 2013 which denied petitioner's motion for reconsideration of the assailed decision for lack of merit.

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[1] Penned by Associate Justice *(ret.)* Olga Palanca-Enriquez, with Dissenting Opinion of Associate Justice Lovell R. Bautista and Separate Concurring Opinion of Associate Justice Amelia R. Cotangco-Manalastas.
[2] Penned by Associate Justice Amelia R. Cotangco-Manalastas, concurred by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justice Lovell R. Bautista maintaining his Dissenting Opinion.

THE PARTIES

As established by the CTA-Third Division, petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, the primary purpose of which is to engage in the business of owning, developing, constructing, operating, repairing, and maintaining hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations, with principal office at Sta. Cruz, Davao Del Sur.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

THE FACTS

The records of the case disclosed that on January 18, 2008, petitioner filed with Revenue District Office No. 115 ("RDO 115") its original quarterly VAT Return for the fourth quarter of calendar year 2007. Subsequently, on May 20, 2008, petitioner filed an amended quarterly VAT Return for the same period with RDO 115, reflecting an aggregate input tax of P15,301,194.87 from its purchases during the period.[5]

On December 18, 2009, petitioner filed its administrative claim for refund/tax credit with RDO 115 for its alleged unutilized input VAT for the fourth quarter of calendar year 2007 in the amount of P15,301,194.87.[6] Alleging inaction,[7] petitioner filed on December 29, 2009 a petition for review,[8] docketed as CTA Case No. 8014, which case was raffled to the CTA-Third Division.

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[3] Assailed Decision, p. 2; Rollo, p. 43; CTA Case No. 8014 Docket, p. 401.
[4] Assailed Decision, p. 2-3; Rollo, pp. 43-44.
[5] Assailed Decision, p.3; Rollo, p. 44; Exhibits "E" and "F"; CTA Case No. 8014 Docket, pp. 680-681.
[6] Assailed Decision, p. 3; Rollo, p. 44.
[7] CTA Case No. 8014 Docket, p. 6.
[8] CTA Case No. 8014 Docket, pp. 1-12.

After trial, the CTA-Third Division rendered the assailed Decision on September 18, 2012,[9] the dispositive part of which reads:

> "WHEREFORE, premises considered, the present Petition for Review is hereby DISMISSED for lack of jurisdiction as the Petition for Review was prematurely filed.
>
> SO ORDERED."

The CTA-Third Division ruled that notwithstanding the timely filing of its administrative claim, petitioner filed the petition on December 29, 2009, or barely 11 days after it filed its administrative claim for refund, together with the supporting documents in support of its claim. The CTA-Third Division concluded that the petition was prematurely filed, as petitioner did not wait for the lapse of the 120 days before filing its appeal with the CTA in violation of Section 112(C) of the NIRC of 1997, as amended; and that pursuant to *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. ("Aichi* case*")*, such premature filing warrants a dismissal inasmuch as no jurisdiction was acquired by the Court.

Petitioner filed its Motion for Reconsideration through registered mail on October 8, 2012, which was received by the CTA-Third Division on October 17, 2012. It also filed a Supplemental Motion for Reconsideration on October 23, 2012.[10] In the Resolution dated February 13, 2013,[11] the CTA-Third Division denied petitioner's Motion for Reconsideration, the dispositive portion of which states:

> "WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED."

Aggrieved, petitioner filed the instant Petition for Review[12] on March 18, 2013, which is within the extended period allowed by the Court *En Banc*,[13] praying that the aforesaid Decision and Resolution of the CTA-Third Division be reversed and set aside, and that its claim for refund or issuance of tax credit certificate of its alleged excess and unutilized input VAT for the fourth quarter of calendar year 2007 in the amount of P15,301,194.87 be

on

[9] CTA Case No. 8014 Docket, pp. 803-822; Rollo, pp. 42-61.
[10] CTA Case No. 8014 Docket, pp. 854-881, 889-893.
[11] CTA Case No. 8014 Docket, pp. 926-929; Rollo, pp. 63-66.
[12] Rollo, pp. 7-36.
[13] The Court granted Petitioner's Motion for Extension of Time to File Petition for Review filed on February 28, 2013. Petitioner was allowed until March 17, 2013 within which to file its petition for review (Rollo, p. 6). Considering that March 17, 2013 is Sunday, petitioner had until the next working day, or on March 18, 2013, to file the petition.

granted. Petitioner ascribed the following errors allegedly committed by the CTA-Third Division, *viz.*:

1. The CTA-Third Division erred in holding that it did not acquire jurisdiction over the case because the judicial claim was prematurely filed;

2. The CTA-Third Division erred in holding that the Commissioner could not have waived the defense of prematurity of the judicial claim because the same was raised in the Commissioner's Answer; and

3. The CTA-Third Division erred in holding that *Aichi* governed this case.

On April 15, 2013, the Court *En Banc* ordered respondent to comment on the petition for review.[14] On May 3, 2013, respondent filed her Motion for Extension of Time to File Comment,[15] which was granted by the Court *En Banc* in a Minute Resolution dated May 7, 2013.[16] Within the allowed period, respondent filed her Comment on May 20, 2013,[17] praying for the denial of the petition for review for lack of merit.

In the Resolution dated May 27, 2013, the Court *En Banc* gave due course to the petition for review and required the parties to submit their respective memoranda.[18]

On July 11, 2013, respondent filed a Manifestation[19] stating that she is adopting the arguments raised in her Comment filed on May 20, 2013 as her Memorandum, as she already fully discussed her arguments thereon. The said manifestation was noted in this Court's Minute Resolution[20] dated July 15, 2013.

On the other hand, petitioner filed its Memorandum[21] through registered mail on July 15, 2013, which was received by this Court on July 19, 2013.

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[14] Rollo, p. 68.
[15] Rollo, p. 70.
[16] Rollo, p. 74.
[17] Rollo, pp. 75-80.
[18] Rollo, p. 83.
[19] Rollo, p. 85.
[20] Rollo, p. 88.
[21] Rollo, p. 135-179.

The case was submitted for decision on August 14, 2013.[22]

Hence, the Court *En Banc's* instant Decision.

PARTIES' ARGUMENTS

Petitioner argues that the CTA-Third Division validly acquired jurisdiction over this case. The 120-day period is not a jurisdictional requirement, but simply a claim-processing rule that is only relevant in the determination of whether petitioner has a cause of action against respondent. It is Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA 9282, and not Section 112 of the Tax Code that clothed the CTA with exclusive original jurisdiction to review by appeal inactions of respondent on matters involving refunds of internal revenue taxes. It is unfair for the CTA-Third Division to require petitioner to wait for the lapse of the 120-day period when the Revised Rules of the Court of Tax Appeals (RRCTA) itself mandates that petitioner should bring its judicial claim to the CTA within the two-year period under Section 229 of the Tax Code.

Petitioner asserts that "inaction" of the respondent does not occur only upon the lapse of the 120-day period since there is a continuing inaction when the Commissioner does not act on the claim for refund after it is filed. Neither Section 112 nor the RRCTA provide that the lapse of the 120-day period shall be deemed a denial of the claim for refund. Petitioner emphasizes that there is nothing in Section 112 which suggests that the taxpayer can only go to the CTA after the lapse of the 120-day period but not any time prior thereto.

Petitioner states that respondent is estopped from questioning the CTA-Third Division's jurisdiction. Allegedly, non-compliance with the periods prescribed under Section 112(C) of the Tax Code is only a case of "lack of cause of action" which must not be confused with "lack of jurisdiction". If there is only "lack of cause of action", equitable principles of law may accordingly be invoked, including the principle of waiver. In this case, respondent's acts, like in actively participating in the proceedings of the case and in asking affirmative reliefs from the CTA-Third Division, and her pronouncements, *i.e.,* Revenue Regulations No. 7-95, BIR Ruling No. DA-489-03 allegedly confirming the mandatory character of the two-year prescriptive period *vis-à-vis* the permissive nature of the 120-30 day period, can be interpreted as waiver of her right to question the jurisdiction

[22] Rollo, p. 182.

of this Court. Considering that petitioner filed its judicial claim for refund in accordance with the issuances of respondent, respondent should not be allowed to take advantage of her errors at the expense of petitioner, who simply complied therewith.

Petitioner also mentions that the Supreme Court in its Resolution dated November 16, 2009 in the case of *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. GST Philippines, Inc.,*[23] held that the CTA properly acted on the petition for review filed by GST even though it was filed before the lapse of the 120-day period since therein petitioner CIR was deemed to have waived the defense of exhaustion of administrative remedies when she actively participated in the proceedings before the CTA-Third Division. Petitioner argues that the *GST* case supports its unwavering contention that Section 112 is not jurisdictional and respondent is deemed to have waived the defense of exhaustion of administrative remedies when she actively participated in the proceedings before the Court.

Petitioner avers that *Aichi* should be applied prospectively not only because it was not the controlling doctrine at the time of filing of its petition but also because laws have prospective applications. Court decisions involving changes in legal interpretations should not be given retroactive application if it will result in the impairment of vested rights acquired under the old legal regime. The foregoing supports the position 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, and Philex Mining Corporation vs. Commissioner of Internal Revenue* (*San Roque)*, which clarified that compliance with the 120-day period may be dispensed with if the judicial claim for refund was filed after the issuance of BIR Ruling No. DA-489-03 dated December 10, 2003 but before the promulgation of *Aichi* on October 6, 2010. Petitioner's right to recover excess input taxes on the strength of the rule enunciated in BIR Ruling No. DA-489-03 cannot be defeated by the subsequent promulgation of *Aichi*.

Petitioner has established compliance with all the requisites to entitle it to the recovery of excess and unutilized input VAT attributable to its zero-rated sales of energy, while respondent has failed to present any evidence showing otherwise. Thus, based on preponderance of evidence, petitioner asserts that it is entitled to the refund of its claimed amount of unutilized input VAT.

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[23] G.R. No. 189126.

Respondent, on the other hand, counter-argues that the Court correctly held that it did not acquire jurisdiction over the instant case because the judicial claim was prematurely filed pursuant to Section 112 of the National Internal Revenue Code of 1997, as amended. Respondent asserts that petitioner should not benefit from the recent pronouncements of the Supreme Court in the cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, Commissioner of Internal Revenue vs. Philex Mining Corporation*, relative to the issue of the 120-day period because it never relied on BIR Ruling No. DA-489-03. Allegedly, petitioner's pleadings were merely confined to the alleged applicability of RA No. 9361, and a bulk of its subsequent arguments hinges on the supposed correct application of Section 7 of RA No. 1125, as amended, and the non-applicability of the *Aichi* case. Finally, respondent states that the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority.

THE ISSUES

Petitioner raised the following issues for the resolution of the Court *En Banc*, to wit:

1. Whether or not the CTA-Third Division acquired jurisdiction over this case;

2. Whether or not the petition for review was filed within the prescriptive period pursuant to existing rules and jurisprudence prevailing at the time of filing thereof;

3. Whether or not the Commissioner of Internal Revenue is deemed to have waived her right to raise the issue of non-exhaustion of administrative remedies;

4. Whether or not *Aichi* should be applied prospectively; and,

5. Whether or not petitioner has established compliance with all the requisites to entitle it to the refund of excess and unutilized input VAT attributable to its zero-rated sales of renewable energy.

THE COURT EN BANC'S RULING

Claims for refund or issuance of tax credit certificate of input tax attributable to zero-rated sales is governed by Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337, which provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* - **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
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> (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.
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> **In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**." *(Emphasis supplied)*

From the foregoing provisions, an application (administrative claim) for refund must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. The

Commissioner of Internal Revenue (CIR) shall act on the administrative claim within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the CIR to act on the application within the 120-day period, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA.

In 2010, the Supreme Court, in the case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***[24] *(Aichi case)*, had the occasion to discuss the importance of the 120-day waiting period, and the 30-day appeal period provided under Section 112(D) *[now 112(c)]* of the NIRC, as amended, *viz.*:

> "**Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days**.
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> **In this case, the administrative and the judicial claims were simultaneously filed** on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, **we find the filing of the judicial claim with the CTA premature**.
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> 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.
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> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the

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

> application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.
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> In fact, **applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC**, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**
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> With regard to Commissioner of Internal Revenue v. Victorias Milling, Co., Inc. relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, **Section 229 does not apply to refunds/credits of input VAT**, such as the instant case.
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> In fine, **the premature filing of respondent's claim for refund/credit of input VAT before the CTA <u>warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA</u>**." (Emphasis supplied)

The afore-cited jurisprudence mandates that appeal to the CTA, in claims for input VAT refund, can only be made within 30 days reckoned from the receipt of the adverse decision of the CIR, or from "inaction" of the CIR after the lapse of the 120-day period. The two (2)-year prescriptive period does not apply in ascertaining the timeliness of the judicial claims for refund of input VAT.

In this case, the CTA-Third Division found that notwithstanding the timely filing of petitioner's administrative claim for refund on December 18, 2009 pursuant to Section 112(A) of the NIRC of 1997, as amended, petitioner filed its judicial claim on December 29, 2009, or barely 11 days after filing of the administrative claim together with supporting documents in support thereof. Following the ruling in *Aichi*, the CTA-Third Division dismissed the petition for review as petitioner did not wait for the lapse of the 120-day period before filing its appeal in violation of Section 112(C) of the NIRC, as amended.

The Supreme Court *En Banc*, however, came up with a decision in the consolidated cases of ***Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue***[25] *(San Roque case)*, a day before the assailed Resolution

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

of the CTA Division was issued. In the said *San Roque* case, while the Supreme Court recognized that the 120-day waiting period is mandatory and jurisdictional and that the 30-day period to appeal to the CTA the decision or inaction of the CIR under Section 112(C) should be applied exactly as worded since the law is clear, plain, and unequivocal, the Supreme Court, allows a window period, *i.e., from December 10, 2003 up to October 6, 2010,* wherein the taxpayer-claimant's non-exhaustion of the 120-day period will not constitute as a fatal infirmity to its case by virtue of BIR Ruling No. DA-489-03. Pertinent portion of *San Roque* ruling provides:

> "**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.
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> **There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule**. The **first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA**. Such specific ruling is applicable only to such particular taxpayer. The **second exception is where the Commissioner, through a general interpretative rule** issued under Section 4 of the Tax Code, **misleads all taxpayers into filing prematurely judicial claims with the CTA**. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.
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> Section 4 of the Tax Code, a new provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:
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> > Sec. 4. Power of the Commissioner To Interpret Tax Laws and To Decide Tax Cases. – **The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner**, subject to review by the Secretary of Finance.
> >
> > The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the

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Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal.

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Thus, a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, 'Any revocation, modification or reversal' without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the Atlas doctrine did not result in Atlas, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. xxx

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Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

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 Commisioner 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." *(Emphasis supplied)*

The aforediscussed rule was subsequently applied by the Supreme Court in the cases of ***Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue***[26] and ***Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue.***[27]

The Court *En Banc* is duty-bound to adhere and apply the foregoing pronouncements of the Supreme Court. It is a well-recognized rule that the Supreme Court, by tradition and in our system of judicial administration has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[28] All rulings of the Supreme Court on questions of law are conclusive and binding on all courts,[29] including this Court.

The Court *En Banc* is therefore constrained to modify the conclusion reached by the CTA-Third Division. Although the CTA-Third Division correctly noted that petitioner failed to wait for the lapse of the 120-day period before it lodged its judicial claim on **December 29, 2009**, as the petition for review was filed barely 11 days after petitioner's application for refund on **December 18, 2009**, nonetheless, in light of the *San Roque* case, petitioner's judicial claim, which was made after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 but before the promulgation of *Aichi* on October 6, 2010, must perforce be given due course on the basis of BIR Ruling No. DA-489-03, subject to the condition that the other requirements for refund entitlement are established by petitioner.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, CTA Case No. 8014 is **REMANDED** to the CTA-Third Division which shall make a proper and immediate determination of the propriety of the claim for refund or tax credit

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[26] G.R. Nos. 193301 & 194637, March 11, 2013.
[27] G.R. No. 196907, March 13, 2013.
[28] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003 citing the case of GSIS v. Court of Appeals, 334 Phil. 163, 175.
[29] Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, Resolution dated September 21, 2007.

certificate, and consequently, make a declaration of the specific amount of refund or tax credit certificate to which petitioner is entitled to, if any.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice