Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

AIR LIQUIDE PHILIPPINES, INC., Petitioner,	CTA EB No. 943 (CTA Case No. 8017)
	Members:
-versus-	**DEL ROSARIO, *PJ*** **CASTAÑEDA, JR.** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **MANALASTAS,** **RINGPIS-LIBAN, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	JUL 29 2013 8:10 a.m.

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DECISION

***DEL ROSARIO, PJ.*:**

This is a petition for review[1] filed by Air Liquide Philippines, Inc. assailing the Decision[2] promulgated on July 3, 2012 as well as the Resolution[3] promulgated on September 24, 2012 by the Second Division of the Court of Tax Appeals ("CTA-Second Division"). The CTA-Second Division denied petitioner's claim for refund or tax credit of unutilized input

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[1] Under Rule 43 of the 1997 Rules of Civil Procedure, as provided for under Rule 8, Section 4, paragraph b of the 2005 Revised Rules of the Court of Tax Appeals, as amended.

[2] *Rollo,* CTA EB No. 943, pp. 45-71. Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova, concurring.

[3] *Id,* at 90-98. Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova, concurring.

VAT in the total amount of Twenty Three Million Two Hundred Fifty Four Thousand Four Hundred Sixty Five and Sixty Four Centavos (P23,254,465.64) attributable to petitioner's zero-rated sales of goods and services to its clients registered with the Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA) and Board of Investments (BOI) for the fourth quarter of taxable year 2007 for being prematurely filed, thus, divesting the Court of jurisdiction over the case. The pertinent portion of the assailed decision and the impugned resolution state:

> Decision dated July 3, 2013
>
> "Petitioner prematurely filed its case before this Court. Upon the filing of its administrative claim for refund before the Bureau of Internal Revenue on December 23, 2009, petitioner, after merely six (6) days or on December 29, 2009, filed the instant case before this Court. Petitioner obviously did not wait for the lapse of the 120-day period or for the decision of respondent before elevating its case with this Court.
>
> **WHEREFORE,** premises considered, the present Petition for Review is hereby **DISMISSED** for lack of jurisdiction."
>
> Resolution dated September 24, 2013
>
> "**WHEREFORE,** premises considered, petitioner's **MOTION FOR RECONSIDERATION** is hereby **DENIED** for lack of merit."

The Facts[4]

The antecedent facts, as found by the CTA-Second Division, are as follows:

> "Petitioner Air Liquide Philippines, Inc. is a domestic corporation, with principal place of business at Lot 37, DBP Avenue, FTI Complex, Taguig Metro Manila. Petitioner is authorized to engage in the manufacture, production, purchase, wholsesale, importations, marketing and generally deal in all kinds of industrial, medical and specialty liquide gases, other chemicals and their residual components, under Securities and Exchanged Commission Certificate of Registration No. AS094-00011713 and its Article of Incorporation. It is likewise registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) entity under Certificate of Registration Number OCN 9RC000057089. It sells products and renders certain related services to Philippine Economic Zone Authority (PEZA)-registered entities.

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[4] *Id* at 11-16.

Respondent is the duly appointed Commissioner of Internal Revenue, with authority to act as such, including the power to decide, approve grant claims for issuance of tax credit certificate or refund of overpaid internal revenue taxes as provided by law. She holds office at the 5th floor, Bureau of Internal Revenue National Office Bulding, Diliman, Quezon City.

On January 22, 2008, petitioner filed with the BIR its Quarterly VAT Return for the fourth quarter of 2007.

On December 23, 2009, petitioner filed with respondent, through the BIR Revenue District Office (RDO) No. 121, an application for the issuance of a tax credit certificate for its unutilized input VAT in the amount of P23,254,465.64 attributable to its transactions with PEZA-registered enterprises for the 4th quarter of 2007.

On December 9, 2009, petitioner filed the instant Petition for Review before this Court.

Respondent, in her Answer filed on March 12, 2010, interposed the following defenses:

> '4. He reiterates and re-pleads the preceding paragraphs of his Answer as part of his Special and Affirmative Defenses.
>
> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 6. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected.
>
> 7. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112 (A) of the Tax Code if 1997, as amended.
>
> 8. Petitioner must prove compliance with the following in order to be entitled to a claim for refund:
>
> a) Registration requirements of a value-added taxpayer under the pertinent provisions of the Tax Code of 1997, as amended by its implementing regulations;
>
> b) Invoicing and accounting requirements of VAT-registered persons as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended;

Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003);

c) Submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (c) of the Tax Code of 1997, as amended, otherwise, there will be no sufficent compliance with regard to the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of judicial claim in accordance with Section 229 of the Tax Code of 1997, as amended;

d) That the input taxes in the amount of Twenty Three Million Two Hundred Fifty Four Thousand Four Hundred Sixty Five and 64/100 (P23, 254, 465.64) allegedly representing unutilized input VAT for the 4th Quarter of 2007 were:

    1. attributable to its zero-rated or effectively zero-rated sales;

    2. incurred or paid by petitioner; and

    3. not applied against any output VAT liability.

e) That the claim for refund in the amount of Twenty Three Million Two Hundred Fifty Four Thousand Four Hundred Sixty Five and 64/100 (P23,254,465.64) representing unutilized input tax was filed within two (2) years after the close of the taxable quarter when sales are made in accordance with Section 112 (a) of the Tax Code of 1997, as amended;

f) Petitioner must likewise prove that it has complied with the governing rules and regulations with regard to recovery of taxes erroneously or illegally received as provided in Sections 112 (a) and 229 of the Tax Code of 1997, as amended.

9. For the judicial claim for refund to prosper, petitioner must not only prove that it is a VAT-registered entity, it must substantiate the input VAT paid by purchase invoices or official receipts (*Commissioner of Internal Revenue v. Manila Mining Corporation, 468 SCRA 571*). Such that failure to comply with the requirements for a valid request for refund including the requirements for a valid sales invoice is fatal to the claim for refund. (*EG & G Omni , Inc. v. CIR, CTA Case No. 5987, March 26, 2004*).

10. Corollary thereto, Section 112 of the National Internal Revenue Code provides:

> 'Section 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
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> (b) Capital Goods.
>
> A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchases was made.'
>
> xxx
>
> (d) 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 Subsections (A) and (B) 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. (Emphasis supplied).'

As provided by law, petitioner has to file its judicial claim with the Honorable Court within (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty (120) day period from the date of submission of complete documents in support of the application for tax refund. This requirement is jurisdictional, failure to do so would deprive this Honorable Court of jurisdiction to decide on the case.

In the case at hand, petitioner filed its administrative claim for refund with the Large Taxpayers Audit and Investigation Division (LTAID) II (Excise) on December 23, 2009 in the amount of Twenty Three Million Two Hundred Fifty Four Thousand Four Hundred Sixty Five Pesos and 64/100 (P23 ,254,465 .64) representing the alleged unutilized and unapplied input VAT for the 4th quarter of 2007.

Ergo, respondent humbly manifests that it should be given an opportunity to act on the administrative claim filed within a period of 120 days from December 23, 2009 or until April 22, 2010 as expressly provided for by law under Section 112(d) of the NIRC of 1997, on the assumption that the complete documents were attached therein in support of the application filed for, otherwise, it would be fatal to its claim for refund.

In addition, it is only in case of full or partial denial of the claim for tax refund or tax credit or in case of failure on the part of respondent to act on the application within the period prescribed by law that petitioner may elevate the case with the Court of Tax Appeals via petition for review within thirty (30) days from April 22, 2010 or until May 22, 2010. Hence, in the light of the foregoing circumstances and on the basis of the aforequoted provision of law, respondent humbly submits that the petition for review which petitioner filed before this Honorable Court on December 29, 2009 or six (6) days after the filing of the administrative claim for refund with respondent on December 23, 2009 was *premature*. Hence, this Honorable

Court is bereft of jurisdiction to try and hear the case at hand.

[10.] Lastly, it bears stressing that the administrative claim for refund was allegedly filed with respondent only on December 23, 2009 or when the two (2) year prescriptive period provided under Section 112 of the NIRC of 1997, as amended, was about to expire while the Petition for Review was filed before the Honorable Court of Tax Appeals (CTA) on December 29, 2009 or barely six (6) days after the filing of the administrative claim. Undoubtedly, respondent was not given ample time to appropriately act on the refund being claimed before the case was elevated by petitioner to the Honorable CTA.

It is without doubt that petitioner was very much aware of the aforesaid existing provision of law as the pertinent provision of Section 112 was cited in its petition for review which led respondent to challenge the intention of petitioner in filing the administrative claim when the two - (2) year prescriptive period is about to expire. If petitioner was cognizant of the prescriptive periods provided by law why then did petitioner have to wait for the lapse of 23 months and 23 days to finally come to senses that it has to file the administrative claim for refund with respondent. If petitioner claims that it was entitled to lay claim on the refund filed then it could have filed the same at a much earlier date to give respondent the opportunity to act on the refund claim it filed. How can it expect respondent to act on the refund claim barely eight (8) days prior to the 2 year prescriptive period? Suffice it to say that it would be difficult and definitely impossible to issue a letter of authority relative to the case at hand, to review the pertinent documents subject of the instant case and for respondent to subsequently grant the administrative claim for refund all to be accomplished within the period of eight (8) days. Whatever motive or intentions petitioner had in filing the administrative claim for refund 12 days prior to the prescriptive period has certainly an appalling effect on the delay or inaction of respondent to act on the administrative claim. Ergo, respondent cannot be faulted for not being able to act on the matter at hand timely because petitioner must equally be held answerable for contributing to the delay of respondent in acting on the claim for refund.

[11.] In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

[12.] Taxes collected are presumed to be in accordance with laws and regulations.

> [13.] Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.
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> [14.] Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption (*Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005). The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Sea-Land Service Vs. Court of Appeals, 357 SCRA 444)."[5] (*Citations omitted*)

After trial on the merits, the CTA-Second Division promulgated its Decision[6] on July 3, 2012, dismissing the case for lack of jurisdiction. Petitioner's motion for reconsideration was likewise denied in the Resolution[7] dated September 24, 2012.

The Case

On October 10, 2012, petitioner filed a motion for extension of time (to file petition for review).[8] On October 11, 2012, the Court *En Banc* resolved to grant petitioner a final and non-extendible period of fifteen (15) days from October 12, 2012 or until October 27, 2012, within which to file its petition for review.[9] On October 25, 2012, petitioner filed the instant petition for review.[10]

On December 13, 2012, the Court *En Banc* issued a resolution noting the instant petition for review and ordering respondent to file her comment within ten (10) days from receipt thereof.[11] On January 16, 2013, respondent filed a motion for extension of time to file comment.[12] On January 18, 2013, the Court *En Banc* granted respondent a final and non-extendible period of ten (10) days from January 17, 2013 or until January 27, 2013, within which

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[5] *Id* at 47-52.
[6] *Supra* note 2.
[7] *Supra* note 3.
[8] *Supra* note 2 at 1.
[9] *Id* at 8.
[10] *Id* at 9.
[11] *Id* at 226.
[12] *Id* at 228.

to file her comment.[13] On January 28, 2013, respondent filed her comment (re: Petition for Review dated October 22, 2012).[14]

On March 1, 2013, the Court *En Banc* resolved to give due course to the instant petition for review and required the parties to submit their respective memoranda within thirty (30) days from receipt of the resolution.[15]

On April 17, 2013, respondent filed her memorandum.[16] On April 15, 2013, petitioner filed through registered mail a motion for extension of time to file memorandum.[17] On April 26, 2013, the Court *En Banc* granted petitioner a final and non-extendible period of five (5) days from April 14, 2013 or until April 19, 2013, within to file its memorandum.[18] On April 26, 2013, petitioner filed its memorandum.[19]

On May 15, 2013, the Court *En Banc* resolved to submit the instant case for decision.[20]

Issues

As grounds for its petition, petitioner raised the following issues:

> "21. Petitioner most respectfully assigns as reversible error the dismissals made by the Honorable CTA-Second Division in both the Decision and the Resolution, on the following legal and factual grounds:
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> **I. Questions of Law**
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> A.
> THE *AICHI* DECISION SHOULD NOT BE USED AS BLANKET AUTHORITY TO DISMISS PENDING PETITIONS WHICH RELIED ON JURISPRUDENCE PREVAILING AT THE TIME THEY WERE INSTITUTED.
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> B.
> THE HONORABLE COURT OF TAX APPEALS HAS JURISDICTION OVER THE PETITIONER'S PETITION FOR REVIEW FILED ON 29 DECEMBER 2009.

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[13] *Id* at 233.
[14] *Id* at 235.
[15] *Id* at 245.
[16] *Id* at 247.
[17] *Id* at 275.
[18] *Id* at 279.
[19] *Id* at 280.
[20] *Id* at 309.

1. Republic Act No. 1125, as amended by Republic Act Nos. 9282 and 9503, and further defined by the Revised CTA Rules, fixes the Honorable CTA's jurisdiction over cases involving claims for the issuance of tax credit certificates for excess/unutilized input VAT.

2. The Petition for Review was seasonably filed in accordance with Section 112 in relation to Section 229 of the 1997 NIRC, as interpreted by jurisprudence then prevailing.

3. Technicalities should give way to substantial justice so as not to deprive Petitioner of its entitlement to input VAT clearly granted to it under the law.

II. Question of Fact

C.

UNDER THE 1997 NIRC, APPLICABLE REGULATIONS, AND PREVAILING JURISPRUDENCE, PETITIONER IS ENTITLED TO THE ISSUANCE OF TAX CREDIT CERTIFICATE AS PRAYED FOR AND AS DULY SUBTANTIATED BY EVIDENCE SUBMITTED AND PROFFERED BY PETITIONER BEFORE THE HONORABLE COURT IN DIVISION."[21]

Ruling of the Court *En Banc*

Petitioner's judicial claim was denied and dismissed by the CTA-Second Division on the ground of lack of jurisdiction. The Court applied the Supreme Court's ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc,*[22] pertinent potions of which said:

> "Based on the foregoing, upon the submission of complete documents in support of its claims, the Commissioner of Bureau of Internal Revenue is given a period of one hundred twenty (120) days within which to either grant or deny the taxpayer's claim for refund. Should the Commisioner deny or fail to act upon the taxpayer's claim, the taxpayer is given a period of thrity (30) days from the denial or inaction to appeal its case before this Court. Failure on the part of the taxpayer to comply with the 120-day period warrants the dismissal of the judicial claim for lack of jurisdiction as held by the Supreme Court in the *Aichi case*, to wit:
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> In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a

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[21] *Rollo*, pp 16-17.
[22] G.R. No. 184823, October 6, 2010.

> dismissal inasmuch as no jurisdiction was acquired by the CTA."[23] (Citation omitted)

Petitioner in the instant case undisputably filed its administrative claim on December 23, 2009. Six (6) days later or on December 29, 2009, petitioner filed its judicial claim. The CTA-Second Division was thus correct in dismissing the case for having been prematurely filed based on existing jurisprudence at that time.

However, recent pronouncements from the Supreme Court *En Banc*, specifically in the cases of *San Roque, Taganito, and Philex*[24], declared:

> "**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-claminant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.**" Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
>
> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.
>
> xxx
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> 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

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[23] *Rollo,* p 69.

[24] Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue, G.R. Nos. 187484, 196113, and 197156, February 12, 2013.

> 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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> 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, xxx
>
> 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.**" (*Emphases added and citations omitted*)

In the case of *Nippon*[25], the Supreme Court clarified *San Roque, Taganito and Philex* in saying that:

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

As guide, the consolidated cases of *Mindanao I and II*[26] are enlightening, wherein the Supreme Court stated:

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[25] Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 196907, March 13, 2013.

> "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**." (*Emphases added*)

Based on the foregoing, the Supreme Court reiterated that the observance of the 120+30-day period is mandatory and jurisdictional. Taxpayers who file their judicial claims for tax refund or issuance of tax credit certificate without observing the 120+30-day period are deemed to have prematurely filed their judicial claims, thus depriving the Court of Tax Appeals of jurisdiction over their claims. By way of exception, taxpayers who from December 10, 2003 up to October 6, 2010 filed their judicial claims for tax refund or issuance of tax credit certificate without regard to the 120+30-day period are exempted from the strict application of the same. As was discussed in *San Roque, Taganito and Philex*, **premature filing during the excepted period does not constitute an infirmity on the jurisdiction of the Court of Tax Appeals to act on the claim**.

As can be seen from the records of this case, petitioner filed its administrative claim for its unutilized input VAT for the fourth quarter of taxable year 2007 on December 23, 2009 and its judicial claim on December 29, 2009. Clearly, the administrative claim was filed with the CIR within two years after the close of the taxable quarter when the zero-rated sales

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[26] Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue, G.R. No. 193301, *and* Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue, G.R. No. 194637, *both* March 11, 2013.

were made, as provided in Section 112 (A) of the 1997 Tax Code.[27] Petitioner can also rely on BIR Ruling No. DA-489-03 since the instant judicial claim was filed within the excepted period.

WHEREFORE, premises considered, the instant Petition for Review filed on October 25, 2012 is hereby **GRANTED**. The assailed Decision dated July 3, 2012 and the assailed Resolution dated September 24, 2012 promulgated by the CTA- Second Division, which dismissed the Petition for Review docketed as CTA Case No. 8017, are hereby **REVERSED** and **SET ASIDE.**

Accordingly, CTA Case No. 8017 is hereby **REMANDED** to the CTA-Second Division for the proper and immediate determination of the propriety of the claim for refund or tax credit certificate. Thereafter, the CTA-Second Division shall 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.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

with dissenting Opinion
CAESAR A. CASANOVA
Associate Justice

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[27] 1997 Tax Code, Section 112. **Refunds or Tax Credit 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, xxx (*Emphasis added*)

	(On Leave)
ESPERANZA R. FABON-VICTORINO Associate Justice	**CIELITO N. MINDARO-GRULLA** Associate Justice
AMELIA R. COTANGCO-MANALASTAS Associate Justice	**MA. BELEN M. RINGPIS-LIBAN** Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

AIR LIQUIDE PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Promulgated:

JUL 2 9 2013

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DISSENTING OPINION

CASANOVA, *J.*:

With due respect to my esteemed colleagues, I dissent with the majority opinion granting petitioner's Petition for Review filed on October 25, 2012.

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

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

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

In the present case, petitioner filed its Petition for Review on December 29, 2009, six (6) days after it filed its administrative claim on December 23, 2009, thus violating the 120-30 rule. However, as it filed its judicial claim within the period after the issuance of BIR Ruling No. DA-489-03 and before the promulgation of the Aichi case, petitioner is said to have filed its judicial claim on time, hence the decision of the majority to reverse and set aside the Assailed Decision dated July 3, 2012 and the Assailed Resolution dated September 24, 2012.

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

In view of the foregoing, the undersigned votes that the instant Petition for Review should be denied considering that the premature filing of judicial claim warrants a dismissal inasmuch as no jurisdiction was acquired by this Court.

CAESAR A. CASANOVA
Associate Justice

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