# REPUBLIC OF THE PHILIPPINES
# Court of Tax Appeal
# QUEZON CITY

## *EN BANC*

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| **COMMISSIONER OF INTERNAL REVENUE,**<br>Petitioner, | **CTA E.B. NO. 609**<br>**(CTA CASE NO. 7428)** |
| | Present: |
| - versus - | **ACOSTA,** *P.J.*<br>**CASTAÑEDA, JR.,**<br>**BAUTISTA,**<br>**UY,**<br>**CASANOVA,** |
| **TAGANITO MINING CORPORATION,**<br>Respondent. | **PALANCA-ENRIQUEZ,**<br>**FABON-VICTORINO,**<br>**MINDARO-GRULLA,** *and*<br>**COTANGCO-MANALASTAS,** *JJ.* |
| | **Promulgated:**<br>JAN 11 2011<br>3:30 pm |

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# DECISION

**UY, *J.*:**

In this Petition for Review filed on April 19, 2010, the Commissioner of Internal Revenue prays to set aside: (1) the portion of the Decision dated November 24, 2009[1] ordering the refund in favor of respondent Taganito Mining Corporation the amount of Five Hundred Thirty Seven Thousand Six Hundred Forty Five Pesos and Forty Three Centavos (₱ 537,645.43), representing respondent's unutilized input value-added tax (VAT) for the period covering

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[1] Penned by Associate Justice Lovell R. Bautista, and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova. Docket, pp. 40 to 52.

January 1, 2004 to March 9, 2004; and (2) the Resolution dated March 12, 2010[2], respectively rendered by the Court in Division of the Court of Tax Appeals in CTA Case No. 7428, entitled *"Taganito Mining Corporation, petitioner, vs. Commissioner of Internal Revenue, respondent"*, the dispositive portions of which read as follows:

**Decision dated November 24, 2009**

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **FIVE HUNDRED THIRTY SEVEN THOUSAND SIX HUNDRED FORTY FIVE PESOS AND 43/100 (P537,645.43)**, representing its unutilized input VAT for the period covering January 1, 2004 and March 9, 2004.
>
> **SO ORDERED**."

**Resolution dated March 12, 2010**

> "**WHEREFORE**, premises considered, respondent's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

**THE FACTS**

Petitioner is the duly appointed Commissioner of Internal Revenue (hereafter to be referred to as Commissioner), who holds office at the BIR National Office Building, Diliman, Quezon City. She is vested with authority to exercise the functions of the said office, including *inter alia,* the power to decide claims for refund of internal revenue taxes, fees, and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal

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[2] Docket, pp. 29 to 39. In this Resolution, Presiding Justice Ernesto D. Acosta entered a Concurring and Dissenting Opinion.

Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue (BIR).

On the other hand, respondent, Taganito Mining Corporation (hereafter referred to as Taganito), is a corporation duly registered corporation, existing under and by virtue of the laws of the Philippines, with principal office at 4th Floor, Solid Mills Building, Dela Rosa Street, Legazpi Village, Makati City. It is primarily engaged in the business of exploring, extracting, mining, selling, and exporting precious metals, such as nickel, chromite, cobalt, gold, silver, iron, and all kinds of ores and metals and their by-products. It is also a VAT-registered entity.

On the following dates, Taganito filed its Quarterly VAT Returns, to wit:

| **Period Covered 2004** | **Date Filed** |
|---|---|
| First Quarter | April 20, 2004 |
| Second Quarter | July 20, 2004 |
| Third Quarter | October 20, 2004 |
| Fourth Quarter | January 18, 2005 |

Subsequently, Taganito filed Amended Quarterly VAT Returns on July 20, 2005 for the fourth quarter of 2004 and on December 28, 2005 for the first, second, and third quarters of 2004.

On December 28, 2005, Taganito filed with the Excise Taxpayer's Assistance Division under the Large Taxpayers Division of the Bureau of Internal Revenue, its administrative claim for the refund of VAT input taxes paid on its domestic purchases of taxable goods and services and importation of goods in the amount of ₱ 1,885,140.22 for the period covering January 1, 2004 to December 31, 2004, in accordance with Section 112(A) and (B) of the NIRC of 1997.

On the belief that the statutory period within which to file a judicial claim for the refund for said VAT input taxes was about to lapse, and there being no action by the Commissioner on its administrative claim for refund, Taganito filed on March 31, 2009 a Petition for Review before the Court in Division of this Court docketed as CTA Case No. 7428.[3] The said petition was filed praying for the refund of VAT input taxes paid by Taganito on its domestic purchases of taxable goods and services, and importation of goods amounting to ₱ 1,885,140.22 for the period covering January 1, 2004 to December 31, 2004, in accordance with Section 112(A) and (B) of the NIRC of 1997.

An Answer to the said petition was filed by the Commissioner on May 8, 2006 alleging, among others, that the claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR). After pre-trial held on August 18, 2006, the parties submitted their Joint Stipulation of Facts and Simplification of Issues on September 6, 2006. The Court in Division approved the same in its Resolution dated September 11, 2006.

Taganito presented testimonial and documentary evidence to prove its case. On the other hand, during the hearing held on August 5, 2008, counsel for the Commissioner manifested that as there was still no report of investigation as of that time, the Commissioner is waiving the right to present evidence.

In view thereof, the parties were given a period of thirty (30) days from August 5, 2008 within which to file their respective memorandum. Within the extension periods granted to both parties, Taganito filed its Memorandum filed on October 3, 2008 while the Commissioner filed her Memorandum on November 3,

[3] Docket, CTA Case No. 7428, p. 2.

2008. Thereafter, On November 28, 2008 the case was submitted for decision on November 28, 2008.

In the assailed Decision rendered on November 24, 2009, the Court in Division partially granted the Petition for Review in CTA Case No. 7428, and ordered petitioner to refund the amount of ₱ 537,645.43, representing respondent's unutilized input VAT for the period covering January 1, 2004 to March 9, 2004. A Motion for Partial Reconsideration of said decision was filed on December 11, 2009 by the Commissioner, arguing that the Court in Division erred in rendering the same as the Petition for Review was prematurely filed.

After the filing of "Comment/ Opposition to (Petitioner's) Motion for Partial Reconsideration" by Taganito on February 8, 2010, the Court in Division denied said motion in the assailed Resolution dated March 12, 2010, for lack of merit.

Hence, this recourse before the Court *En Banc* by the Commissioner praying that the portion of the assailed Decision dated November 24, 2009 ordering the refund in favor of Taganito Mining Corporation in the amount of Five Hundred Thirty Seven Thousand Six Hundred Forty Five Pesos and Forty Three Centavos (₱ 537,645.43), representing respondent's unutilized input value-added tax (VAT) for the period covering January 1, 2004 to March 9, 2004, and, the Resolution dated March 12, 2010 affirming the assailed Decision be set aside and another one be entered denying the claim for refund in its entirety.

As directed by this Court in the Resolution dated June 16, 2010,[4] Taganito filed its Comment[5] to the instant Petition for Review on July 2, 2010, praying for the dismissal of this case; and for the modification of the assailed Decision by

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[4] Docket, p. 69.
[5] Docket, pp. 72 to 81.

declaring respondent to be entitled to refund in the amount of ₱ 1,337,231.42 in addition to the amount of ₱ 537,645.43 already granted by the Court in Division.

Thereafter, the Court *En Banc* directed the parties to submit their respective Memorandum.[6] Upon the filing thereof by Taganito on August 12, 2010[7] and on August 24, 2010 by the Commissioner,[8] this case was deemed submitted for decision in the Resolution dated September 15, 2010.[9]

Hence, this Decision.

## THE ISSUE

The issue presented for the resolution of the Court *En Banc* is as follows:

> "WHETHER OR NOT RESPONDENT IS ENTITLED TO ITS P537,645.43 AS CLAIM FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE REPRESENTING ITS UNUTILIZED INPUT VAT FOR THE PERIOD JANUARY 1, 2004 TO MARCH 9, 2004."

***Petitioner's Arguments***

Petitioner argues that the judicial claim for refund was prematurely filed, in violation of the doctrine of exhaustion of administrative remedies, and that respondent's claim for refund was not properly documented in the administrative proceedings and thus, respondent is not entitled to the relief it sought.

According to petitioner, respondent Taganito Mining Corporation filed its original petition for review prematurely because the administrative claim for refund for the first to fourth quarters of 2004 was filed on December 28, 2005. Allegedly, the Commissioner had 120 days from date of submission of complete documents to act on the said administrative claim. However, respondent

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[6] Resolution dated July 7, 2010, Docket, pp. 83 to 84.
[7] Docket, p. 85.
[8] Docket, pp. 94 to 111.
[9] Docket, p. 113.

allegedly failed to prove that it submitted documents to the Commissioner after filing the administrative claim, thus the 120 days shall be reckoned from the date the administrative claim was filed on December 28, 2005. The 120-day period will allegedly end on April 27, 2006.

The law provides that respondent had 30 days or until 27 May 2006, within which to elevate its claim before this Court. However, on March 31, 2006, respondent filed its Petition for Review before this Court thus depriving the Commissioner a period of 27 days to render a decision on its refund claim. This requirement is allegedly jurisdictional, failing thus, this Court did not acquire jurisdiction over the case.

***Respondent's Counter-Arguments***

Respondent counter-argues that the ruling of the Court in Division granting the refund of ₱ 537,645.43 is clearly based on evidence presented showing that respondent is entitled to the refund claimed, and that the same ruling of the Court in Division is also based on the applicable provisions of law which clearly establishes respondent's entitlement to the refund being claimed.

Respondent likewise points out that the instant Petition for Review does not raise any new issues and arguments but rather dwells on issues of law that have long been settled by this Court.

Finally, according to respondent, the ruling of the Court in Division should be modified to grant respondent not only the amount of ₱ 537,645.43 but also the amount of ₱ 1,337,231.42 which are clearly supported by evidence presented.

**THE COURT EN BANC'S RULING**

The petition is meritorious.

Section 112 of the NIRC of 1997 provides as follows:

"**SEC. 112.** ***Refund 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 of 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.

**"(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 purchase was made.

xxx xxx 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**." *(Emphases supplied)*

Based on the foregoing legal provisions, any VAT-registered person, may apply for the refund or issuance of tax credit certificate of excess input VAT in two instances, namely: (a) when the excess input VAT is attributable to zero-rated or effectively zero-rated sales[10]; or, (b) when the excess input VAT refer to payment for capital goods imported or locally purchased[11], to the extent that both input taxes, incurred or paid, have not been applied against output taxes.

Further, it is also provided that the claim for refund/tax credit must be filed within two (2) years from the close of the taxable quarter: (a) when the sales were made, or (b) when the importation or purchases were made.

In the assailed decision, the Court in Division found that the export sales of Taganito for the period of January 1, 2004 to December 31, 2004, qualified as VAT zero-rated sales under Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended, and that input taxes were incurred attributable thereto.

However, due to insufficiency of evidence to support its entire claim of One Million Eight Hundred Eighty Five Thousand One Hundred Forty Pesos and Twenty Two Centavos (₱ 1,885,140.22) for its supposed input VAT, the Court *a quo* held that Taganito may only claim input tax credits on its domestic purchases of goods/services for the period covering January 1, 2004 to March 9, 2004 in the reduced amount of Five Hundred Thirty Seven Thousand Six Hundred Forty Five Pesos and Forty Three Centavos (₱ 537,645.43).

In assailing the foregoing reduced award of the Court *a quo* before the Court *En Banc,* the Commissioner correctly pointed out that the Petition for Review filed by Taganito Mining Corporation in CTA Case No. 7428 was

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[10] Section 112 (A) of the NIRC of 1997.
[11] Section 112 (B) of the NIRC of 1997.

prematurely filed because the 120 day period mentioned under Section 112 (D) of the NIRC of 1997.

Observance of the procedural process provided under Section 112 (D) was clearly explained in the very recent case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***,[12] wherein the Supreme Court held thus:

> "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.
>
> **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.**
>
> 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

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

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 application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides 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.**

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.

**In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch no jurisdiction was acquired by the CTA.**

xxx xxx xxx." *(Emphases supplied)*

In the instant case, it is undisputed that petitioner timely filed on December 28, 2005, its administrative claim for refund in the total amount of ₱ 1,885,140.22, supposedly representing the input VAT incurred by respondent for the four (4) quarters of taxable year 2004, paid on its domestic purchase of taxable goods and importation of goods.[13]

However, in the light of the pronouncement of the Supreme Court in the ***Aichi*** case, Taganito's judicial recourse before the Court in Division on March 31, 2006 in CTA Case No. 7428 was **premature** as it failed to await either of the

[13] Exhibit "AA".

following circumstances to transpire: (1) that a decision be rendered by the Commissioner of Internal Revenue denying, fully or partially, the refund/tax credit claim, before the lapse of the 120-day period from the date of submission of the documents in support of the claim; or (2) that no decision be rendered by the Commissioner of the Internal Revenue after the 120-day period.

In this case, no decision was issued by the Commissioner regarding Taganito's administrative claim, and the 120-day period had not lapsed when the same Petition for Review was filed in CTA Case No. 7428.

For clarity, a summary of the pertinent dates involved in this case is presented as follows:

| *Taxable year 2004* | *Filing date of administrative claim* | *Last day of the 120-day period under Section 112(D) from the filing of the administrative claims* | *Last day of the 30-day period within which to file a petition for review under Section 112(D), NIRC of 1997 and Section 11, RA 1125, as amended by RA 9282* | *Filing date of the instant petition for review* |
|---|---|---|---|---|
| *1st Quarter* | *December 28, 2005* | *April 27, 2006* | *May 27, 2006* | *March 31, 2006* |
| *2nd Quarter* | | | | |
| *3rd Quarter* | | | | |
| *4th Quarter* | | | | |

Although it would seem, from the wordings employed by the above-quoted Section 112, that the date of filing of the administrative claim is separate and distinct, albeit subsequent, from the date of submission of the complete documents in support thereof, it is apparent that petitioner, upon filing the said administrative claim, simultaneously submitted the complete documents in support thereof. This is manifested in petitioner's administrative claim[14], wherein the following statements were indicated, *viz*:

[14] Id.

"**Attached as part of this letter application for refund are the following documents**:

1) Duly accomplished BIR Form No. 1914;
2) Original and amended quarterly VAT Returns for the four (4) quarters of 2004 with supporting schedules or Summary Lists of Sales and Purchases for the year 2004;
3) Original and amended Monthly VAT Declarations for 2004 with supporting schedules or Summary Lists of Sales and Purchases for the year 2004;
4) Photocopy of Certificate of Registration No. OCN 8RC0000017494 and corresponding BIR Form 1905 filed on December 19, 2005;
5) Annual Income Tax Return for CY 2004 duly filed with the BIR and with attached Report of Independent Auditors.

We hope that our claim will be given due course and will be favorable granted **with the submission of the foregoing**. xxx." *(Emphases supplied)*

Such being the case, We conclude that the reckoning date of the 120-day period under Section 112(D) of the NIRC of 1997 commenced simultaneously with the filing of petitioner's administrative claim on December 28, 2005. Thus, when respondent filed its appeal by way of a Petition for Review in CTA Case No. 7428 on March 31, 2006, no appellate jurisdiction has been acquired as yet by the Court in Division.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[15] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[16] If the court has no jurisdiction over the nature of an action, its

[15] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[16] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.

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only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[17]

It should be recalled that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[18] Relative thereto, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[19]

In fine, respondent's claim for tax refund should be denied for having been filed in violation of Section 112(D) of the NIRC of 1997.

**WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **GRANTED**. The assailed Decision dated November 24, 2009 and Resolution dated March 12, 2010 rendered by the Court in Division, are hereby **REVERSED** and **SET ASIDE**. Accordingly, CTA Case No. 7428 is hereby **DISMISSED** for having been prematurely filed.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

*(With Dissenting Opinion)*
**LOVELL R. BAUTISTA**
Associate Justice

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[17] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.
[18] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[19] Section 1, Rule 9, Rules of Court.

**CAESAR A. CASANOVA**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
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*.

**ERNESTO D. ACOSTA**
Presiding Justice