REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILEX MINING CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 778
(CTA Case No. 7720)

Present:

Acosta, *P.J.,*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated: JUN 2 6 2012

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* is the Amended Decision [1] and Resolution[2] promulgated by the Special 1st Division on December 1, 2010 and April 15, 2011, respectively, denying petitioner's claim for VAT refund on the ground of prescription, and also denying petitioner's motion for reconsideration.

The Facts[3]

Petitioner is a domestic corporation organized under Philippine law with principal office at Brixton Street, Pasig City. It is principally engaged in the mining business, which includes the exploration, development, and operation of mining

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[1] *Rollo*, C.T.A. EB Case No. 778, pp. 26-34.
[2] *Rollo*, pp. 21-24.
[3] As culled from the records, *Rollo*, pp. 2-4.

properties for commercial production and the marketing of mineral products. It is a VAT-registered taxpayer.

Respondent is the duly appointed government official charged with the administration and enforcement of national internal revenue laws, including the duty to act on claims for tax refund or tax credit as provided by law, with office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 24, 2006, petitioner filed its original VAT return for the 4th quarter of 2005. On June 20, 2007, petitioner filed its administrative claim for refund or tax credit with the One Stop Shop Center of the Department of Finance for the excess input tax of P10,591,686.55 for the 4th quarter of 2005.

On January 17, 2008, petitioner filed the corresponding Petition for Review in view of the failure of the respondent to act on the administrative claim.

In its original decision dated July 12, 2010, the Special First Division ruled that the administrative and judicial claims were timely filed. However, upon the Motion for Partial Reconsideration by respondent, the Special First Division promulgated its assailed Amended Decision ruling that petitioner's claim for VAT refund has prescribed. Petitioner's motion for reconsideration was likewise denied.

Issues[4]

As grounds for its appeal, petitioner raises the following:

I. The Special First Division erred in dismissing the petition due to prescription. The fact is that the petition was filed within the period set by prevailing court rulings when it was filed; hence, it was filed on time.

II. The Special First Division erred in retroactively applying the Aichi Ruling in deciding this instant case.

[4] *Rollo*, p. 5.

Ruling of the Court

Petitioner's main argument is based on the alleged error of retroactively applying the *Aichi Ruling* to the instant case.

The Court is not persuaded.

It should be noted that the *Atlas Case*[5] was decided under the 1977 Tax Code whereas the *Mirant Case*[6] and *Aichi Ruling*[7] were decided under the 1997 Tax Code. Furthermore, the *Atlas Case* and *Mirant Case* resolved the issue on the reckoning point of the prescriptive periods in filing the administrative claim for refund, which was resolved in the *Mirant Case* to be from the close of the taxable quarter. On the other hand, the *Aichi Case* ruled squarely on the applicability of Section 112(A) and (D) of the 1997 Tax Code.

Section 112(A) and (D) [now Section 112(A) and (C)] of the National Internal Revenue Code of 1997 (NIRC), as amended, are very clear and categorical in stating the periods for the administrative and judicial claims for refund. Thus, there is no need for a judicial interpretation of the law considering that a clear and "to the letter" application of the law is possible. In other words, where a provision of law speaks categorically, the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms.[8]

We find no reason to reverse the conclusions made by the Special First Division, as follows:

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[5] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 and 148763, June 8, 2007.

[6] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008.

[7] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

[8] *Luzon Stevedoring Corporation vs. Court of Tax Appeals*, G.R. No. 30232, July 29, 1988, citing *Allied Brokerage Corporation vs. Commissioner of Customs*, G.R. No. L-27641, August 31, 1971.

"Section 112(D) [now, Section 112(C)] of the National Internal Revenue Code (NIRC) of 1997, as amended, explicitly provides:

> Sec. 112. Refunds or Tax Credits of Input Tax. –
>
> x x x x
>
> (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, <u>within thirty (30) days</u> from the receipt of the decision denying the claim or <u>after the expiration of the one hundred twenty day-period</u>, appeal the decision or the unacted claim with the Court of Tax Appeals**." [*Emphasis and underscoring supplied*]

The law cannot be any clearer. After the expiration of the 120-day period, the taxpayer may appeal, within 30 days, the inaction of the Commissioner of Internal Revenue (CIR) to the Court. It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation.

Petitioner argues that the use of the word "may" in Section 112(D) [now, Section 112(C)] of the NIRC of 1997, as amended, means a judicial claim is not mandatorily required to be filed within 30 days after the lapse of the 120-day period. It bears stressing that the use of the word "may" in the said section simply means that the taxpayer has the option to appeal the CIR's decision or the CIR's inaction to the Court. It merely gives the taxpayer the option to appeal or not to appeal the adverse ruling or inaction of the respondent within the 30-day reglementary period. Again, the phrase "may appeal" does not mean that the judicial recourse within thirty days from the receipt of the decision/ruling or from the lapse of the 120-day period is directory and permissive.

Section 112(A) and 112(D), of the NIRC of 1997, as amended, prescribe the periods within which certain acts must be done, particularly, when the administrative claim and judicial appeal may be filed. Therefore, compliance with the periods provided therein is imperative and mandatory."[9] (*citations omitted*)

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[9] *Rollo*, pp. 22-23.

Clearly then, even without the rulings in the Mirant and Aichi cases, a straightforward application of Section 112(A) and (D) will produce the same result. Administrative claims for refund of unutilized input VAT must be filed within two years from the close of the taxable quarter when the sales were made. Judicial claims must be filed within thirty (30) days from receipt of the CIR's decision denying the claim or after the expiration of the one hundred twenty-day period.

Counting from the date of petitioner's administrative claim for refund filed on June 20, 2007, the 120-day period expired on October 18, 2007. Petitioner should have filed its judicial claim on or before November 17, 2007. Thus, petitioner's judicial claim filed on January 17, 2008, was clearly beyond the 30-day period from the expiration of the 120-day period within which respondent should have acted on the claim, and therefore, prescribed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my Dissenting Opinion as promulgated in the Amended Decision dated December 1, 2010.)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, 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 the Court.

ERNESTO D. ACOSTA
Presiding Justice