REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SUMISETSU PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 804
(C.T.A. CASE NO. 7925)

Members:
ACOSTA, *PJ*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
DEC 18 2012

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DECISION

***Fabon-Victorino, J.*:**

Before the Court is the Petition for Review filed by petitioner Sumisetsu Philippines, Inc. on July 22, 2011, assailing the Resolution dated April 5, 2011, which dismissed its claim for refund of input value-added tax (VAT) for having been filed out of time; and the Resolution dated June 28, 2011, which denied its Motion for Reconsideration, both rendered by the Court in Division.

On April 24, 2009, petitioner filed a Petition for Review before the Court in Division praying for the refund or issuance of tax credit certificate (TCC) of its unutilized input VAT of P44,220,926.06 paid and attributable/allocated to its effectively zero-rated sales to PEZA-registered entities for the year 2007.

Petitioner alleged that it is a duly organized domestic corporation engaged in the business of providing electrical and mechanical services for electrical transmission and distribution systems, air conditioning and ventilation systems, telephone and communication systems, and other allied services.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) holding office at the BIR National Office, Diliman, Quezon City.[1]

During taxable year 2007, petitioner was a VAT registered taxpayer of RDO 50 with Certificate of Registration No. 9RC0000239535.[2]

In the course of its operation during the calendar year 2007, petitioner entered into numerous transactions, which

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[1] Joint Stipulation of Facts and Statement of Issues, par. 1, Division docket p. 94.
[2] Joint Stipulation of Facts and Statement of Issues, par. 2, Division docket p. 94.

included, among others, the rendition of electrical and mechanical services to a range of clients, majority of which were registered with the Philippine Economic Zone Authority (PEZA) pursuant to R.A. No. 7916.

According to petitioner, it filed its Quarterly VAT Returns for the year 2007 as follows:

Quarter of 2007	Date of filing
1st	April 24, 2007[3]
2nd	July 24, 2007[4]
3rd	October 11, 2007[5]
4th	January 24, 2008[6]

On **July 30, 2008**, petitioner filed with respondent a claim for tax refund or issuance of TCC of its 2007 creditable input VAT attributable and/or allocated to its services to PEZA-registered entities.[7] The same however remained pending prompting it to seek judicial intervention via a Petition for Review filed before the Court in Division on **April 24, 2009**.

In compliance with the Court's directive, respondent filed her Answer interposing the following Special and Affirmative Defenses before the Court in Division:

[3] Annex A of Petition for Review dated April 22, 2009, Division docket pp. 20-21.
[4] Annex B of Petition for Review dated April 22, 2009, Division docket pp. 23-24.
[5] Annex C of Petition for Review dated April 22, 2009, Division docket pp. 26-27.
[6] Annex D of Petition for Review dated April 22, 2009, Division docket pp. 29-30.
[7] Joint Stipulation of Facts and Statement of Issues, par. 3, Division docket p. 94.

5. Assuming but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;

6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;

8. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 112(A) and 204(C) in relation to Sections 229 of the 1997 Tax Code, as amended;

9. Further, Petitioner has the burden of proving that it complied with the requirements of effectively zero-rated transactions under Revenue Regulations 16-2005 dated 1 September 2005;

10. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)*;

11. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor. (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*).

After the Pre-trial Conference was conducted, the parties filed a Joint Stipulation Of Facts And Statement Of Issues which the Court in Division approved on October 23, 2009.

Trial ensued with petitioner presenting its testimonial and documentary evidence capped by the filing of its Formal Offer of Documentary Evidence on October 18, 2010.

While the incident was pending resolution, respondent, on November 11, 2010, filed a Motion to Dismiss dated November 8, 2010 alleging lack of jurisdiction on the part of the Court in Division.

On April 5, 2011, the Court in Division issued the assailed Resolution granting respondent's Motion to Dismiss the Petition for Review on the ground that it was filed beyond the 30-day prescriptive period to appeal to the Court pursuant to Section 112 of the National Internal Revenue Code (NIRC), as amended, and as ruled by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[8] The dispositive portion of the assailed resolution states as follows:

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[8] G.R. No. 184823, October 06, 2010.

> WHEREFORE, premises considered, respondent's "Motion to Dismiss" is hereby GRANTED. Accordingly, the instant *Petition for Review* is hereby DIMSISSED for being filed out of time.
>
> SO ORDERED.

In a Resolution dated June 28, 2011, the Court in Division denied petitioner's Motion for Reconsideration dated April 26, 2011, the dispositive portion of which reads as follows:

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

Hence, the instant Petition for Review before the Court *En Banc* filed on July 22, 2011.

Petitioner argues that contrary to the ruling of the Court in Division, the Petition was timely filed based on the prevailing jurisprudence at the time it was filed as laid down in the cases of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Reveneu (Atlas)*, [9] and the *Commissioner of Internal Revenue vs. Mirant Pagbilao*

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[9] G.R. No. 141104 & 148763, June 08, 2007.

Corporation (Mirant),[10] which should be adhered to and not disturbed based on the *stare decisis* doctrine. In both cases, the Supreme Court held that the administrative and judicial claims for refund are deemed timely filed when both are filed within the two (2) year prescriptive period provided under Section 112 of the NIRC, as amended. As further authority, petitioner cites the cases of *San Roque Power Corporation vs. Commissioner of Internal Revenue (San Roque)*[11] and *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue (Toshiba).*[12] Since the instant case involves input VAT for the year 2007, the administrative claim filed on July 30, 2008 and the judicial claim filed on April 24, 2009 are deemed instituted within the prescribed 2-year period from the year 2007.

Petitioner also finds flaw in the application of the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi),*[13] in its Petition for Review resulting in the order of dismissal for want of jurisdiction due to its alleged failure to seek judicial recourse within 30 days from the lapse of the 120-day period provided under Section 112 of the NIRC, as amended.

[10] G.R. No. 172129, September 12, 2008.
[11] G.R. No. 180345, November 25, 2009.
[12] G.R. No. 157594, March 09, 2010.
[13] G.R. No. 184823, October 06, 2010.

Petitioner avers that the *Aichi* case was promulgated by the First Division of the Supreme Court and hence cannot overturn the ruling in the *Atlas, Mirant, San Roque, and Toshiba* cases which were promulgated by the Supreme Court *En Banc.* Under the Constitution, no doctrine or principle of law laid down by the Supreme Court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc.*

Further, the pronouncement in the *Aichi* case regarding the strict implementation of the 120-30-day period under Section 112 of the NIRC, is not a binding precedent being a mere *obiter dictum* since the main issue therein is whether the administrative and the judicial claims in the said case were filed within the 2-year prescriptive period as provided under Section 229 of the NIRC. Thus, the issue of filing a judicial claim within 30 days from the lapse of the 120-day period was not at issue in the said case, hence, the ruling pertaining to the 30-day period to appeal is a mere *obiter dictum* and not a binding precedent.

Petitioner likewise opines that the factual circumstances of the *Aichi* case are different from the instant case. The *Aichi* case involves the validity of the simultaneous filing of the administrative and judicial claims while the instant case involves the filing of the judicial claim beyond the 30-day period after the lapse of the 120-day period but before the expiration of the 2-year prescriptive period mandated under Section 229 of the NIRC, as amended.

And since the *Aichi* case laid down a new doctrine, it should be prospectively applied so as not to adversely affect those who relied on the old doctrine in good faith. Since the judicial claim in the instant case was filed on April 24, 2009, the *Aichi* case which was promulgated only on October 6, 2010 should not apply.

Moreover, the 30-day period to appeal in Section 112 of the same Tax Code is directory and permissive, and not mandatory and jurisdictional. This is especially true since Section 112 (C) gives the taxpayer two options in case of the inaction of respondent on the administrative claim, viz., to wait for the decision of respondent and appeal it within 30 days provided that it is within the 2-year prescriptive period, or to appeal within 30 days from the lapse of the 120-day period. In this case, petitioner chose the first option. It waited for the decision of respondent, and then appealed the same within 30 days. Thus pursuant to Section 112 (C), its judicial claim for refund/TCC should still be deemed timely filed.

Finally, in the interest of justice, petitioner prays to set aside technicalities as the application of the *Aichi* case will result in injustice considering that its claim for refund/TCC is meritorious.

Despite the opportunity granted, respondent failed to file any comment/opposition and memorandum, required under the Resolution dated August 18, 2011 and Resolution dated October 13, 2011, respectively.

In the Resolution dated January 18, 2012, the instant case was submitted for decision.

The interchange of disquisitions may be neatly summed up to one issue, viz., did the Court in Division err when it granted respondent's Motion to Dismiss on the ground that it lacks competence to hear and determine the case?

The answer is in the negative.

The pertinent provision is Section 112 of the NIRC, as amended, which provides as follows:

> Section 112. Refunds or Tax Credits of Input Tax.
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> (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 x x
>
> (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.
>
> 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. x x x

The law explicitly states a VAT-registered person, such as petitioner, has two (2) years after the close of the taxable quarter when the relevant sales were made to apply with respondent for refund or issuance of a tax credit certificate of creditable input tax due or paid attributable to such sales. The 2-year period refers to the administrative claim only and not to the judicial claim. The law is clear, there is no room for interpretation, only application.[14] It is also worth to note that a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim for refund.[15]

This legal concern had been clarified by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[16] *(Aichi case)*, in this wise:

> 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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[14] Joselito R. Mendoza vs. Commission on Elections and Roberto M. Pagdanganan, G.R. No. 191084, March 25, 2010.
[15] Atlas Consolidated Mining vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007.
[16] G.R. No. 184823, October 06, 2010.

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 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 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.

The instant case pertains to a claim for refund of input value-added tax (VAT) for the four taxable quarters of year 2007, and hence, the administrative claim filed on July 30, 2008 was clearly filed within 2 years after the close of the pertinent taxable quarter and hence deemed timely filed.

Section 112 further provides that an aggrieved taxpayer 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 inaction of respondent with the Court of Tax Appeals. Thus, from July 30, 2008 when petitioner filed its administrative claim for refund/TCC, respondent had 120 days or until November 27, 2008 to grant or deny the same. Thereafter, petitioner had 30 days or until December 27, 2008, to appeal the inaction of respondent to the Court in Division. For unknown reason, petitioner filed its appeal or judicial claim only on April 24, 2009, which was clearly beyond the 30-day period to appeal mandated under Section 112 of the NIRC, as amended, justifying the dismissal of the case for lack of jurisdiction.

It has been ruled that the Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[17] For a decision rendered without jurisdiction is not a decision in contemplation of law and can never become executory.[18] Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before the Supreme Court.[19] A void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bonds anyone, and under which all acts performed and all claims flowing therefrom are void.[20]

Further, tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same.[21] The taxpayer claiming the tax credit or refund has the burden of proving entitlement to the remedy being sought, by submitting evidence of compliance with the requirements laid down in the Tax Code and the BIR's revenue

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[17] Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 05, 2010.
[18] Heirs of Honrales vs. Honrales, G.R. No. 182651, August 25, 2010.
[19] Bungcayao, Sr. vs. Fort Ilocandia Property Holdings, G.R. No. 170483, April 19, 2010.
[20] Tanenglian, vs. Silvestre, et al., G.R. No. 173415, March 28, 2008.
[21] Philippine Geothermal vs. Commissioner of Internal Revenue, G.R. No. 154028, July 29, 2005.

regulations,[22] one of which is the timeliness of the filing of the necessary action before the proper forum. In this case, petitioner admitted, repeatedly, the significant dates determinative of the jurisdiction of the Court.

On the alleged prospective application of the *Aichi* Case, the ruling of the Supreme Court in the case of *Cemco Holdings Inc. v. National Live Insurance Company* is instructive, thus:

> "In *Serrano v. National Labor Relations Commission*, an argument was raised similar to the case under consideration. Private respondent therein argued that the new doctrine pronounced by the Court should only be applied prospectively. Said postulation was ignored by the Court when it ruled:
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>> While a judicial interpretation becomes a part of the law as of the date that law was originally passed, this is subject to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.
>>
>> It is apparent that private respondent misconceived the import of the ruling. The decision in Columbia Pictures does not mean that if a new rule is laid down in a case, it should not be applied in that case but that said rule should apply prospectively to cases arising afterwards. Private respondent's view of the principle of

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[22] Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 180173, April 06, 2011.

> prospective application of new judicial doctrines would turn the judicial function into a mere academic exercise with the result that the doctrine laid down would be no more than a dictum and would deprive the holding in the case of any force.
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> Indeed, when the Court formulated the Wenphil doctrine, which we reversed in this case, the Court did not defer application of the rule laid down imposing a fine on the employer for failure to give notice in a case of dismissal for cause. To the contrary, the new rule was applied right then and there. x x x.[23]

Anent petitioner's claim that the *Aichi* case should not apply in its case since the *Aichi* case was promulgated on October 6, 2010 or after the Petition was lodged before the Court in Division on August 24, 2009, it must be pointed out that in the *Aichi* case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, the judicial claim in the *Aichi* case was filed almost five (5) years ahead of the instant case, and yet, the petition for review in the *Aichi* case was dismissed immediately upon the promulgation of the decision of the Supreme Court.

Finally, as to the allegation that the 30-day period to appeal to this Court as provided under Section 112 is merely permissive and not mandatory, this too had been settled in the *Aichi* case. It has been held that the Supreme Court is the undisputed final arbiter of

[23] Cemco Holdings, Inc. vs. National Life Insurance Company, G.R. No. 171815, August 7, 2007.

all questions of law,[24] and hence this Court is obliged to follow the ruling of the Supreme Court in the said *Aichi* case. Further, the mandatory nature of the 30-day period to appeal to this Court as provided in Section 112 is also in accord with Republic Act (R.A.) No. 1125, as amended. Section 11 of R.A. No. 1125, as amended, pertinently provides, as follows:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action** as referred to in Section 7(a)(2) herein.
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> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. A Division of the CTA shall hear the appeal: *Provided, however*, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules

[24] Sps. Chua vs. Ang, et al., G.R. NO. 156164, September 04, 2009.

> of Civil Procedure with the CTA, which shall hear the case *en banc*.
> x x x x x x x x x (emphasis supplied)

With the discussion on the main thesis, the other issues raised by petitioner become of no moment.

WHEREFORE, the Petition for Review filed by petitioner Sumisetsu Philippines, Inc. on July 22, 2011, is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my *Concurring and Dissenting Opinion* on the Resolution dated April 5, 2011)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla

OLGA PALANCA-ENRIQUEZ
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 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.

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice