REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SUMISETSU PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 858
(CTA Case No. 8062)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

MAY 17 2013 Apolinario 1:10 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.*:

This *Petition for Review*[1] filed on January 17, 2012, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503[2], assails the *Resolution*[3] dated December 26, 2011 and the *Decision*[4] dated October 18, 2011 enunciated by the Second Division of this Court in CTA Case No. 8062.

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[1] *Rollo*, pp. 1-18.
[2] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes."
[3] *Rollo*, pp. 24 29.
[4] *Rollo*, pp. 31 44.

Reproduced hereunder are the dispositive portions of the assailed *Resolution* and *Decision*:

Resolution dated December 26, 2011:

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

Decision dated October 18, 2011:

> "**WHEREFORE**, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction."

Petitioner, Sumisetsu Philippines, Inc., ("Sumisetsu"), prays for the issuance of a judgment setting aside the assailed *Resolution* and *Decision*; ordering the respondent to continue the presentation of evidence; and ordering the Second Division to decide on petitioner's claim for refund or issuance of tax credit certificate (TCC) in the amount of P39,355,139.27, purportedly representing its unutilized input value-added tax (VAT) attributable to effectively zero-rated sale of services to Philippine Economic Zone Authority (PEZA)-registered entities for taxable year 2008, based on the merits.

FACTS OF THE CASE

The facts, as narrated by the Second Division of this Court, are quoted below:

> "Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at 4th Floor, Glass Tower Building, 115 C. Palanca St., Legaspi Village, Makati City. It is a VAT-registered taxpayer and is covered by Bureau of Internal Revenue (BIR) Certificate of Registration No. 8RC0000019261. Petitioner is engaged in the business of providing electrical and mechanical services for electrical transmission and distribution systems, air conditioning and ventilation systems, telephone and communications systems, and other allied services.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the duty to act upon and approve claims for refund or tax credits as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for taxable year 2008 on the following dates:

EXHIBITS	TAXABLE QUARTER	DATE FILED
"I"	First Quarter	April 24, 2008
"J"	Second Quarter	July 24, 2008
"K"	Third Quarter	October 23, 2008
"L"	Fourth Quarter	January 26, 2009

On February 22, 2010, petitioner filed with the BIR an administrative claim for refund and/or tax credit of excess input VAT in the total amount of P38,654,939.61, attributable to sale of services to Philippine Economic Zone Authority (PEZA)-registered entities for the period covering January 1, 2008 to December 31, 2008.

On March 24, 2010, petitioner filed an amended claim for refund with the BIR, increasing the amount covered by the original refund claim from P38,654,939.61 to P39,355,139.27.

Due to respondent's inaction on its administrative claim, petitioner filed the instant Petition for Review before this Court on March 31, 2010.

In her Answer, respondent interposed the following Special and Affirmative Defenses:

"11. The petition for review should be dismissed on the following grounds:

(a) Lack of cause of action on the part of the petitioner for non-exhaustion of administrative remedies.

Under Section 112(C) of the National Internal Revenue Code (NIRC), respondent has 120 days from the date of submission of complete documents, within which to rule on an application for tax refund or credit. And only after the lapse of this period without any action on his part or receipt of his adverse decision that the aggrieved party may, within 30 days elevate the case to the Honorable Court.

Petitioner filed its administrative claim for refund of its alleged unutilized input VAT for the four (4) quarters of 2008 in the amount of P39,355,139.27 on March 24, 2010. Thus, respondent had until July 22, 2010, within which to make a ruling. Thereafter, petitioner had 30 days or until August 21, 2010, to challenge his adverse ruling or inaction with the Honorable Court.

Petitioner sprinted to the Honorable Court and prematurely filed the instant Petition for Review on March 31, 2010, or before the 120-day period granted unto the respondent lapsed effectively depriving the respondent of the opportunity to rule on the claim for refund. The failure of the petitioner to exhaust all available administrative remedies, justifies the dismissal of the instant petition.

The taxpayer is given a period of two (2) years before appealing to the Court of Tax Appeals; and to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure (Bermejo vs. Collector, L-3028, July 29, 1950). The petition is pro-forma and was done merely to comply with the letter of the law and yet it disregarded the spirit or the very substance of the law. Section 112 indicates no exception justifying deviation from the required 120-day period granted unto respondent to resolve the claim for refund. The petitioner should have filed its claim for refund at the earliest possible time and should not have waited until the last moment because by then it would be too late for the respondent to act on petitioner's claim thereby destroying the essence of the doctrine of exhaustion of administrative remedies. Such delay on the part of the petitioner should not be rewarded with a grant of exception from the requirements of the law.

Petitioner's utter disregard to follow the provisions of Section 112(C) of the NIRC will undoubtedly lead to undesirable results and unimaginable chaos. A taxpayer desirous to resort directly to the Court can effectively bypass respondent by filing administrative claim for refund only days before the expiration of the 2-year prescriptive period then immediately thereafter, on the pretext of the 'inaction' of respondent and the prescriptive period will lapse, file a corresponding petition for review with the Honorable Court. Such course of action will render nugatory the authority granted by law upon respondent to act accordingly on the claims for refund. /

(b) Lack of jurisdiction for there was no decision or inaction which is tantamount to denial by the Commissioner that the Court of Tax Appeals could review simply because respondent was not given an opportunity to reach that decision.

Only upon denial or the expiration of the allowable period of 120 days without any action on the part of respondent that petitioner may, within the period of 30 days from notice, invoke this Honorable Court's competence to hear its petition for review. Prior to that, the Honorable Court has no jurisdiction to entertain petitioner's appeal. The Court of Tax Appeals is a court of special jurisdiction and as such, it can take cognizance only of such matters as are clearly within its province.

12. Petitioner's sales of services to PEZA-registered enterprises to qualify as effectively zero-rated sales, the latter should have availed of the 5% preferential tax; otherwise, they are subject to 12% VAT under Section 108 of the NIRC.

It bears stressing that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to an ecozone enterprise, to wit:

'SEC. 23. Fiscal Incentives. — Business establishments operating within the ECOZONE shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided for under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.'

Based on the aforequoted Section 23 of Republic Act (RA) No. 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, is that provided for under Presidential Decree No. 66, as amended, and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned which is in lieu of national and local taxes, and second, as those provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax.

It must be pointed out that an ecozone enterprise cannot avail of these two sets of fiscal incentives at the same time. This was explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99 (Read-Rite Philippines, Inc. (Formerly Sunward Technologies Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5659, September 29, 2000). Thus, if the petitioner's PEZA-registered enterprises clients have availed of the fiscal incentives under Executive Order No. 226, that is, an income tax holiday, they are [became] (sic) subject to value-added tax. Therefore, petitioner's sales of goods, property and services to them shall be subject to 12% VAT.

Under Sections 4.100-3 and 4.102-2 of Revenue Regulations No. 7-95, implementing Sections 100(a)(2)(C) and 100(b)(3) of the old National Internal Revenue Code (NIRC) [now Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended, the term 'effectively zero-rated sale of goods, property and services' shall only apply to sales made by a VAT-registered person to a person or entity who is exempt from indirect tax, pursuant to the provisions of a special law or international agreement in which the Philippines is a signatory.

The special law in this case is R.A. No. 7916, otherwise known as the Special Economic Zone Act of 1995. There is no existing provision under this law that a PEZA-registered enterprise is exempt from indirect tax. Hence, petitioner's PEZA-registered clients are only exempt from income taxes during their Income Tax Holiday. Even after the expiration of the Income Tax Holiday, petitioner's PEZA-registered clients shall only be exempt from all national and local taxes. However, all these taxes to which petitioner's PEZA-registered clients shall enjoy exemption refer to direct taxes. On the other hand, the 12% VAT imposed on its purchases of goods, property, or services are direct taxes in the hands of its supplier (petitioner in this case) but indirect taxes in the hands of petitioner's PEZA-registered clients since the same are passed-on as part of the cost of its purchases.

Accordingly, PEZA-registered enterprises' suppliers of services (petitioner in this case) cannot qualify for zero percent (0%) VAT, hence, shall be subject to 12% VAT on their sales to such PEZA-registered enterprises pursuant to Section 108 of the NIRC of 1997.

> 13. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
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> 14. In action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
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> 15. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 112(A)(C) of the 1997 Tax Code, as amended, including Revenue Regulations No. 5-87 as amended by Revenue Regulations Nos. 3-88 and 7-95.
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> 16. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

Based on the doctrine enunciated in *Commissioner of Internal Revenue vs. Aichi Forging Company*[5] (*"Aichi")*, the Court in Division dismissed petitioner's claim for refund or issuance of tax credit certificate (TCC) on the ground that its judicial claim was prematurely filed. The Court in Division explained that petitioner's failure to observe the 120-day period prescribed under Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, effectively deprived this Court of jurisdiction to take cognizance of its judicial claim.[6]

On December 26, 2011, the Court in Division resolved to deny petitioner's motion for reconsideration for lack of merit.[7]

Aggrieved, petitioner filed the subject *Petition for Review.*

Without necessarily giving due course to the instant *Petition*, respondent was directed to file comment within ten

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[5] G.R. No. 184823, October 6, 2010
[6] *Supra*, Note 4.
[7] *Supra*, Note 3.

(10) days from receipt of this resolution.[8] Record shows that respondent failed to file comment within the prescribed period, thus, after considering the issues raised in the subject *Petition for Review*[9], this Court resolved to give due course to the instant *Petition for Review* and ordered the parties to submit their respective memoranda[10].

Petitioner timely filed its *Memorandum*[11] on May 11, 2012, while respondent failed to file her memorandum within the period allowed. Hence, the present *Petition for Review* was submitted for decision on June 20, 2012.

ISSUES

The issues interposed by petitioner can be summarized as follows:

> Whether the Court in Division erred in dismissing the Petition for Review, docketed as CTA Case No. 8062, on the ground that Sumisetsu's judicial claim was prematurely filed before this Court, resulting to lack of jurisdiction.

Arguments of Petitioner[12]

Petitioner's discussion revolved around the following main arguments: [i] that the *Aichi* doctrine, not having been promulgated by the Supreme Court *En Banc*, cannot validly overturn the prevailing jurisprudence (*Atlas*[13] and *Mirant*[14] cases taken together) at the time of filing of Sumisetsu's judicial claim for refund; [ii] assuming the *Aichi* doctrine is correct, the same should be prospectively and not retroactively applied to Sumisetsu's judicial claim, following the principle of prospectivity of laws and judicial interpretation; [iii] Section 112 (C) is directory and permissive, and not mandatory or

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[8] *Rollo*, pp. 46-47.
[9] *Supra*, Note 1.
[10] *Rollo*, pp. 50-51.
[11] *Rollo*, pp. 52-68.
[12] *Rollo*, pp. 56 67.
[13] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007.
[14] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008.

jurisdictional; [iv] the application of the *Aichi* doctrine in this case is an injustice to Sumisetsu.

THE RULING OF THE COURT *EN BANC*

For the past months contentious issues beleaguered the matter of timeliness in claiming refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales -- *i.e., application of the 120+30 day periods, reckoning of the prescriptive periods under Section 112 (A) and (C), effectivity and scope of the Atlas, Mirant, and Aichi doctrines*, etc., -- which brought about differing views and opinions. In fact, the dismissal of petitioner Sumisetsu's refund claim or issuance of TCC revolved around the issue on timeliness, specifically the prematurity of its judicial claim.

However, in a very recent case, the Supreme Court cast light upon and finally put to rest the lingering controversies on the matter of timeliness in claiming refund or tax credit of unutilized input VAT. And, by tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[15] Hence, the Court must oblige.

In the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485; *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196113; *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 197156, promulgated on February 12, 2013, ("*San Roque*") the Supreme Court clarified, among others, the following matters dealing with the timeliness in claiming refund or tax credit of unutilized input VAT: [i] *application of the 120+30 day periods*, [ii] *prescriptive periods under Section 112 (A) and (C)*, [iii] *effectivity and scope of the Atlas, Mirant, and Aichi doctrines*; and [iv] *BIR Ruling No. DA-489-03 dated 10 December 2003.*

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[15] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003 citing GSIS v. Court of Appeals, 334 Phil. 163, 175 [1997], citing Ang Ping v. RTC of Manila, Br. 40, G.R. No. L-75860, 17 September 1987, 154 SCRA 77 and Tugade v. Court of Appeals, G.R. L-47772, 31 August 1978, 85 SCRA 226.

Relevant to the disposition of the issues in this case is the discussion in the *San Roque*[16] case regarding the application of the 120+30 day periods; the Supreme Court categorically stated that 'compliance with the 120-day waiting period is mandatory and jurisdictional'[17]; failure to comply with the 120-day waiting period 'violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition'[18], *viz:*

"I. **Application of the 120+30 Day Periods**

a. ***G.R. No. 187485 - CIR v. San Roque Power Corporation***

On 10 April 2003, a mere 13 days after it filed its amended administrative claim with the Commissioner on 28 March 2003, San Roque filed a Petition for Review with the CTA docketed as CTA Case No. 6647. xxx.

Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles. *L*

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[16] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485; *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196113; *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 197156, promulgated on February 12, 2013.
[17] *Supra.*
[18] *Supra.*

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Whether the *Atlas* doctrine or the *Mirant* doctrine is applied to San Roque is immaterial because what is at issue in the present case is San Roque's non-compliance with the 120-day mandatory and jurisdictional period, which is counted from the date it filed its administrative claim with the Commissioner. The 120-day period may extend beyond the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period. However, San Roque's fatal mistake is that it did not wait for the Commissioner to decide within the 120-day period, a mandatory period whether the *Atlas* or the *Mirant* doctrine is applied.

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Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

> x x x 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)

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

b. G.R. No. 196113 - Taganito Mining Corporation v. CIR

Like San Roque, Taganito also filed its petition for review with the CTA without waiting for the 120-day period to lapse. Also, like San Roque, Taganito filed its judicial claim **before** the promulgation of the *Atlas* doctrine. Taganito filed a Petition for Review on 14 February 2007 with the CTA. This is almost four months **before** the adoption of the *Atlas* doctrine on 8 June 2007. Taganito is similarly situated as San Roque - both cannot claim being misled, misguided, or confused by the *Atlas* doctrine.

> However, Taganito can invoke BIR Ruling No. DA-489-0357 dated 10 December 2003, which expressly ruled that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.**" Taganito filed its judicial claim *after* the issuance of BIR Ruling No. DA-489-03 but before the adoption of the *Aichi* doctrine. Thus, as will be explained later, Taganito is deemed to have filed its judicial claim with the CTA on time.
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> xxx xxx xxx"

Also, pertinent to the resolution of this case is the discussion in the *San Roque*[19] case concerning the effectivity and scope of the of the Atlas, Mirant, and Aichi doctrines. The Supreme Court declared that: the *Atlas* doctrine should be effective only from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 in *Mirant;* the *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT; and the *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112 (A) of the NIRC, as amended, in computing the two-year prescriptive period in claiming refund or credit of input VAT, *viz:*

> **"IV. Effectivity and Scope of the *Atlas* , *Mirant* and *Aichi* Doctrines**
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> The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant.*** The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the *Atlas* doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule. The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT. /

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[19] *Supra.*

> The *Atlas* doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in *Atlas*. The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112(C) is plain, clear, and unambiguous. xxx.
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> xxx xxx xxx
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> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional."

Equally important to the proper disposition of this case is the discussion in the case of *San Roque*[20] on why and when a taxpayer may rely on *BIR Ruling No. DA-489-03 dated 10 December 2003*. The Supreme Court explained that BIR Ruling No. DA-489-03 is a general interpretative rule. For this reason, 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*) and be exempt from the strict application of the rule on 120-day waiting period under Section 112 (C) of the NIRC of 1997, as amended, *viz*:

> **"VI. BIR Ruling No. DA-489-03 dated 10 December 2003**
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> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the **"taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with**

[20] *Supra*.

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.

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BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period. Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.

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From the above-disquisition it is indisputable that compliance with the 120+30 day periods is mandatory and jurisdictional; thus, strict compliance therewith is necessary for a judicial claim for refund or credit under the VAT system to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine. The *San Roque* case, however, speaks of an exception, *i.e.,* the period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional. This means that taxpayers who filed their judicial claim for refund or credit of unutilized input VAT within the aforesaid period, without waiting for the expiration of the 120-day period, can assert that it was misled by BIR Ruling No. DA-489-03, and thus, claim the benefit of having its judicial claim shielded from the vice of prematurity.

In this case, petitioner Sumisetsu filed its administrative claim for refund or tax credit of unutilized input VAT for taxable year 2008 on February 22, 2010 and its amended administrative claim on March 24, 2010, within the two-year prescriptive period as mandated under Section 112 (A) of the NIRC of 1997, as amended. On March 31, 2010, just one week after the filing of its amended administrative claim, petitioner filed its judicial claim. Visibly, petitioner violated the mandatory and jurisdictional 120+30 day periods. Nevertheless, petitioner's judicial claim was filed **after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003, but before its reversal in *Aichi* case on October 6, 2010**; therefore, petitioner Sumisetsu can rely on BIR Ruling No. DA-489-03 and claim the benefit of having its judicial claim shielded from the vice of prematurity.

Hence, in light of the foregoing pronouncements by the Supreme Court, this Court is compelled to differ from the Court in Division's *Decision*[21] dismissing Sumisetsu's Petition for Review docketed as CTA Case No. 8062 on the ground of prematurity resulting to lack of jurisdiction. The Court is convinced and so holds that petitioner Sumisetsu is deemed to have filed its judicial claim on time.

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **GRANTED**. The *Resolution*[22] dated December 26, 2011 and the *Decision*[23] dated October 18, 2011

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[21] *Supra,* Note 4.
[22] *Supra,* Note 3.
[23] *Supra,* Note 4.

enunciated by the Second Division of this Court, which dismissed the Petition for Review docketed as CTA Case No. 8062, are **REVERSED AND SET ASIDE**.

Accordingly, CTA Case No. 8062 is hereby **REMANDED** to the court of origin for further proceedings.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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 with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice