**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

# *EN BANC*

**HARTE-HANKS PHILIPPINES, INC.,**
*Petitioner,*

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA EB CASE NO. 932**
(CTA Case Nos. 7894 & 7941)

Present:

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

**Promulgated**:

NOV 05 2013 ___ CM Apolinario 9:00 a.m.

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# DECISION

**COTANGCO-MANALASTAS, J.:**

On appeal before the Court *En Banc* by way of a *Petition for Review*[1] filed on September 24, 2012, pursuant to Section 18 of Republic Act No. 1125, as amended by Section 11 Republic Act No. 9282 and Republic Act No. 9503[2], are the March 29, 2012 *Decision*[3] and August 13, 2012 *Resolution*[4]

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[1] *Rollo*, pp. 1-40.
[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. 47 71.
[4] *Rollo*, pp. 72 77.

promulgated by the former First Division of the Court of Tax Appeals (CTA) in CTA Case Nos. 7894 & 7941, entitled "*Harte-Hanks Philippines, Inc., vs. Commissioner of Internal Revenue*", which denied petitioner's claim for refund or issuance of tax credit certificate (TCC) of its alleged excess and unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to its zero-rated sales of services for the first and second quarters of calendar year (CY) 2007 in the aggregate amount of P4,159,034.86.

Petitioner prays of this Court to reverse the assailed *Decision* and *Resolution*, and to render a judgment ordering the respondent to refund or issue a TCC in favor of petitioner in the amounts of P2,230,470.78 and P1,928,564.08, allegedly representing petitioner's excess and unutilized input VAT attributable to zero-rated sales for the first and second quarters of CY 2007, respectively, or an aggregate amount of P4,159,034.86.

## FACTS OF THE CASE

The facts, as succinctly narrated by the Court *a quo*, are quoted below:

> "Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 4/F, Market! Market! Building, Bonifacio Global City, Taguig City, and is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, with Taxpayer's Identification Number No. (TIN) 241-927-728-000-VAT. It was incorporated on November 3, 2005 with the primary purpose of providing outsourcing customer relationship management solutions by rendering inbound or outbound call services to its customers.
>
> Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of said office, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Petitioner filed its original and amended Quarterly VAT Returns for the period covering January to June 2007 on the following dates:

| QUARTERLY VAT RETURN | DATE OF FILING |
|---|---|
| For the First Quarter of 2007 (original) | April 25, 2007 |
| For the First Quarter of 2007 (amended) | February 25, 2009 |
| For the Second Quarter of 2007 (original) | July 16, 2007 |
| For the Second Quarter of 2007 (amended) | February 25, 2009 |

As already stated, on March 30, 2009 and June 24, 2009, petitioner filed its administrative claims with Revenue District Office No. 44 of the BIR a written application for the refund or issuance of TCC for its excess and unutilized input VAT covering the first and second quarters of calendar year 2007 in the amounts of P2,230,470.78 and P1,928,564.08, respectively.

Alleging inaction on the part of respondent on the said administrative claims, petitioner separately filed two (2) Petitions for Review on March 31, 2009 and June 30, 2009 docketed as CTA Case Nos. 7894 and 7941, respectively. At the instance of petitioner, these two cases were consolidated per this Court's Resolution dated August 27, 2009.

In her separate Answers respectively filed in CTA Case Nos. 7894 and 7941, respondent interposes similar Special and Affirmative Defenses, to wit:

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

— Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected in violation of the tax laws relied upon by petitioner;

— Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable or creditable;

— It is incumbent upon the petitioner to prove by substantial and credible evidence that it has complied with the provisions of Sections 108, 112 and 204(C) in relation to Section 229 of the 1997 Tax Code, as amended upon which its claimed for refund is premised;

— In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge 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);

— 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, these are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

Additionally, in CTA Case No. 7941, respondent further avers that:

— Well-settled is the rule that the interpretation placed upon a statute by executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, the courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R. No. 112024, 302 SCRA 241, January 28, 1999).

— 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)."

Subsequently in her <u>CONSOLIDATED ANSWER</u> filed on October 14, 2009, respondent raises these additional defenses:

"1. In addition to the special and affirmative defences raised by the respondent in his answer filed on June 8, 2009 and July 24, 2009, respondent respectfully submits that the filing of the instant petitions is premature.

2. In as much as the respondent Bureau of Internal Revenue was not given sufficient time to finish the processing of the petitioner's refund as provided in paragraph (C) of Section 112 of the NIRC the petition must be dismissed for failure to exhaust administrative remedies. Paragraph C Section 112 of 1997 NIRC provides that:

> (c) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a tax credit/refund 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 subparagraphs (a) and (b) above.
>
> In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of the denial; otherwise, the decision will become final. However, if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty day (120) period from the date of submission of the application but before the lapse of the two (2) years period from the date of filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals.' (Emphasis Ours)

From the provision above the respondent is given 120 days from the filing of the claim for refund within which to process and decide the same and after the last day of the 120 days the taxpayer is given thirty days within which to elevate the case to the CTA. The petitioner filed its administrative claim for the refund of its unutilized input vat for the 1st quarter of 2007 on March 30, 2009 so the respondent has until July 18, 2009 to decide on the claim for refund and from that date the petitioner has until August 18, 2009 to file the same on the CTA. For the 2nd quarter of 2007 the petitioner filed its administrative claim for refund of its unutilized input vat on June 24, 2009 so the respondent has until October 24, 2009 to decide on the claim for refund and from that date the petitioner has until November 24, 2009 to file a claim at the CTA. Obviously the two petitions for review filed by the petitioner on March 31, 2009 and June 30, 2009 respectively in this Honorable Court were filed before the lapse of the 120-day period. In view of the fact that petitioner elevated its claim before the 120-day period has ended, there was therefore violation of the doctrine of exhaustion of administrative remedy (STEAG STATE POWER, INC. vs. CIR, CTA Case Nos. 7458 and 7554 August 27, 2009)".

Parenthetically, the said Consolidated Answer was simultaneously filed with a Motion for Leave of Court to File Consolidated Answer.

> On October 26, 2009, petitioner filed its Reply (To Respondent's Consolidated Answer dated October 12, 2009) assailing respondent's Motion for Leave of Court to File Consolidated Answer on procedural grounds pursuant to Section 3, Rule 10 of the Revised Rules of Court and asserting that the doctrine of exhaustion of administrative remedies is not applicable to petitioner's case.
>
> Respondent's Motion for Leave of Court to File Consolidated Answer was granted and the Consolidated Answer was admitted by the Court during the hearing held on February 16, 2010."

The Court *a quo*, in the challenged *Decision*[5] dated March 29, 2012, dismissed petitioner's claim for refund or issuance of TCC for lack of jurisdiction. The Court *a quo* held that, applying Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, when petitioner respectively filed its appeal via Petitions for Review on March 31, 2009 and June 30, 2009, the specified period of 120 days' inaction on the part of the Commissioner of Internal Revenue over the administrative claims of petitioner have not fully lapsed, as to clothe the Court *a quo* with jurisdiction to entertain the petitions for review within the bounds of law.

On August 13, 2012, the assailed *Resolution*[6] was issued denying petitioner's Motion for Reconsideration for lack of merit.

Undaunted, petitioner filed the subject *Petition for Review*[7].

On October 8, 2012, the Court *En Banc* ordered the respondent to comment on the subject *Petition* within ten (10) days from notice.[8] Record shows that respondent failed to file comment within the prescribed period; thus, considering the issues raised in the subject *Petition for Review*[9], the Court *a quo* resolved to give due course to the instant *Petition for*

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] *Supra*, Note 1.
[8] *Rollo*, pp. 79 80.
[9] *Supra*, Note 1.

*Review sans* respondent's comment thereto and ordered the parties to submit their respective memorandum[10].

On February 14, 2013, this Court received a *Manifestation*[11] from petitioner stating that its *Petition for Review* shall serve as its memorandum. Respondent failed to file her memorandum within the period allowed. In view of the foregoing, the present *Petition for Review* was submitted for decision on April 17, 2013.

## ISSUE

Whether the Court *a quo* erred when it dismissed the consolidated Petitions for Review, docketed as CTA Case Nos. 7894 and 7941, based on the finding that petitioner's judicial claim was prematurely filed, resulting to lack of jurisdiction.

### *Arguments of Petitioner*

The instant *Petition* is hinged on the following main arguments: [i] that the failure to comply with the 120-day period under Section 112 (C) of the 1997 NIRC is not jurisdictional; [ii] respondent waived her right to raise the defense of failure to state a cause of action; [iii] the courts must adhere to the doctrine in the *Atlas*[12] case, where it was held that Section 229 of the 1997 NIRC applies to claims for refunds of VAT, as the doctrine in the *Aichi*[13] case cannot be applied without violating Section 4(3), Article VIII of the 1987 Constitution regarding modification or reversal of a doctrine or principle of law laid down in a decision rendered *en banc* or in division; and [iv] *Atlas* was the prevailing doctrine when petitioner filed its Petitions for Review; and assuming *arguendo* that *Aichi* is applicable, the same should be applied prospectively.

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[10] *Rollo*, pp. 50-51.
[11] *Rollo*, pp. 85 87.
[12] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007.
[13] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia*, G.R. No. 184823, October 6, 2010.

## RULING OF THE COURT *EN BANC*

A re-examination of the assailed *Decision* and *Resolution* is in order in light of the recent pronouncements of the Supreme Court addressing the controversies on the matter of timeliness in claiming refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales.

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 sitting *En Banc* 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.*

In the said *San Roque*[14] case, the Supreme Court categorically stated that 'compliance with the 120-day waiting period is mandatory and jurisdictional'[15]; 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'[16]. Significantly, however, in the same case the Supreme Court instituted the exception to this general rule, *i.e., the period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to October 6, 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.* 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**

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[14] *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.
[15] *Supra.*
[16] *Supra.*

**seek judicial relief with the CTA by way of Petition for Review"**[17], *to wit*:

> When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from 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," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.
>
> The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period**. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.
>
> 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, <u>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</u>, which again reinstated the 120+30 day periods as mandatory and jurisdictional. (Underscoring supplied)

In *San Roque* case, the Supreme Court gave due course to petitioner Taganito Mining Corporation's judicial claim

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[17] *Supra.*

despite the non-observance of the 120-day period for two reasons: [1] the judicial claim was filed after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 which allows the claimant-taxpayer to file its judicial claim without waiting for the lapse of the 120-day period; and [2] the said BIR Ruling is a general interpretative rule.[18]

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**
>
> 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 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

[18] *Procter & Gamble Asia, Pte Ltd., vs. Commissioner of Internal Revenue*, CTA EB Case No. 765, March 27, 2013.

> question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.
>
> xxx xxx xxx
>
> 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. <u>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.</u> (Underscoring supplied)
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> xxx xxx xxx"

Furthermore, in the consolidated cases of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*, G.R. Nos. 193301 and 194637, March 11, 2013 ("*Mindanao Geothermal*"), the Supreme Court, applying the *San Roque* case, provided a Summary of Rules on Prescriptive Periods Involving VAT, to wit:

> "We summarize the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, as follows:
>
> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has 120 days from the date of submission of complete documents in support of the

administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on October 6, 2010, as an exception to the mandatory and jurisdictional 120+30 day periods."

As can be gleaned from the aforesaid pronouncements, throughout the period of effectivity of BIR Ruling No. DA-489-03, from December 10, 2003 until its abandonment in the case of Aichi on October 6, 2010, a taxpayer seeking judicial relief with the Court of Tax Appeals on its claim for tax refund or the issuance of a tax credit certificate can rely on BIR Ruling No. DA-489-03, which states that *"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."*, and consequently, claim the benefit of having its judicial claim shielded from the vice of prematurity.

Turning now to the case at bar, petitioner filed its administrative claim for refund or tax credit of its excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales of services for the first and second quarters of CY 2007 on **March 30, 2009** and **June 24, 2009**, respectively, within the two-year prescriptive period as mandated under Section 112 (A) of the NIRC of 1997, as amended. Notably, however, without waiting for the lapse of the 120-day period given to the respondent to decide on the refund claim on the administrative level, petitioner immediately sought judicial relief before the Court of Tax Appeals on **March 31, 2009** and **June 30, 2009**, respectively.

Visibly, petitioner violated the mandatory and jurisdictional 120+30 day periods.

Nevertheless, in view of BIR Ruling No. DA-489-03, thoroughly considered in the jurisprudential pronouncements in the cases of *San Roque* and *Mindanao Geothermal*, petitioner's judicial claim may be exempt from the strict application of the 120+30 day periods considering that petitioner's judicial claims were filed during the exception period (*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*). Correspondingly, petitioner's judicial claims in CTA Case Nos. 7894 & 7941 are deemed timely filed.

Accordingly, petitioner's judicial claims must, perforce, be given due course on the basis of BIR Ruling No. DA-489-03, which according to the High Court, is a general interpretative rule and is regarded as applicable to all taxpayers.[19]

**WHEREFORE**, premises considered, the instant *Petition for Review* is hereby **GRANTED**. The March 29, 2012 *Decision*[20] and August 13, 2012 *Resolution*[21] promulgated by the former First Division of this Court, which dismissed the consolidated Petitions for Review docketed as CTA Case Nos. 7894 & 7941, are **REVERSED AND SET ASIDE**.

Accordingly, CTA Case Nos. 7894 & 7941 are 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

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[19] *Supra*, Note 18.
[20] *Supra*, Note 3.
[21] *Supra*, Note 4.

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

**LOVELL R. BAUTISTA**
Associate Justice

**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

Ma. Belen R. L.
**MA. BELEN RINGPIS-LIBAN**
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