REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR SIBULAN, INC., Petitioner,	CTA EB Case No. 890 (CTA Case No. 8051)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 30 2013 1:20 p.m.

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AMENDED DECISION

Fabon-Victorino, J.:

Petitioner's Motion for Reconsideration[1] filed on January 2, 2013, seeks the reconsideration of the Court's Decision[2] promulgated on December 6, 2012, which dismissed the Petition for Review, dated April 10, 2012, for lack of merit. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the January 5, 2012 Decision and March 28,

[1] *En Banc* docket, pp. 164-181.
[2] *En Banc* docket, pp. 150-161.

2012 Resolution of the CTA Third Division are hereby **AFFIRMED**.

SO ORDERED.

In support of its *motion*, petitioner raises the following arguments:

I. Jurisprudence showed that the Supreme Court did not intend the 120-30 day period under Section112(C), Tax Code, to be mandatory and jurisdictional;

II. Prospective application of Aichi is in order not only because it was not the controlling doctrine at the time of filing the Petition, but also, and more importantly, because laws, generally, have prospective applications precisely to avoid injustice; and

III. The active participation of the Commissioner has been regarded by the Supreme Court as a waiver to raise the issue of jurisdiction and the doctrine of exhaustion of administrative remedies.

Anent the first argument, petitioner enumerated the following cases in which the Supreme Court allegedly did not intend the 120-30 day period under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, to be mandatory and jurisdictional:

1. *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*;[3]

2. *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*;[4]

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[3] G.R. No. 179632, October 19, 2011.
[4] G.R. No. 180173, April 6, 2011.

3. *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*;[5]

4. *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*;[6]

5. *Eastern Telecommunications Philippines, Inc. vs. The Commissioner of Internal Revenue*;[7]

6. *Accenture, Inc. vs. Commissioner of Internal Revenue*;[8]

7. *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*.[9]

As regards the second argument, petitioner submits that laws as well as court decisions involving changes in legal interpretations, should not be given retroactive application if it will result in the impairment of vested rights acquired under the old legal regime.

Lastly, since respondent actively participated in the instant case, she is already estopped from questioning the jurisdiction of the Court.

Despite notice, respondent failed to file her Comment/Opposition on petitioner's *motion*.

Ruling of the Court En Banc

We grant petitioner's *motion*.

Relevant to the disposition of the instant *motion* is the disquisition of the Supreme Court in the recent consolidated cases of *Commissioner of Internal Revenue vs. San Roque*

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[5] G.R. No. 172378, January 17, 2011.
[6] G.R. No. 179961, January 31, 2011.
[7] G.R. No. 168856, august 29, 2012
[8] G.R. No. 190102, July 11, 2012.
[9] G.R. No. 181136, June 13, 2012.

Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Reveneu, G.R. Nos. 187485, 196113, and 197156, February 12, 2013 ("*San Roque case*"), where the Highest Court sitting *En Banc* has put to rest the issue on the application of the 120+30 day prescriptive periods under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

More particularly, in *Taganito Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 196113), the Supreme Court granted petitioner's claim for refund of unutilized input VAT despite its non-observance of the 120-day period [the judicial claim was filed barely ninety two (92) days after the administrative claim was filed] for two (2) 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) BIR Ruling No. DA-489-03 is a general interpretative rule. The Supreme Court ratiocinated that *Taganito* can invoke BIR Ruling No. DA-489-03 dated December 10, 2003, which expressly held 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 a Petition for Review." The pertinent discussions are quoted hereunder for ready reference:

> xxx 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.
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> 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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Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively.

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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**. (*Emphases supplied*)

On the basis of the foregoing, 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*. However, the Supreme Court, in the above cited case, speaks of an exception, that is, 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 a taxpayer seeking judicial relief with the CTA on its claim for refund need not wait for the lapse of the 120-day period for filing its judicial claim **provided that the petition was filed after December 10, 2003, when BIR Ruling No. DA-489-03 took effect until its abandonment in the *Aichi case* on October 6, 2010**.

The foregoing rule on the prescriptive period in filing a claim for refund or tax credit of excess unutilized input VAT enunciated in *San Roque case* was reiterated in the very recent 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, where the Supreme Court further 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.
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> (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 claim 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.
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> (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 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods**.

Following the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner.[10]

The record shows that petitioner filed its administrative claim for refund for the first quarter of 2008 on March 29, 2010, which was well within the prescribed two (2) year period from the close of the taxable quarter when the sales were made or from March 31, 2008. The following day, or on March 30, 2010, petitioner, without waiting for the lapse of the 120-day period given to the respondent to decide on the claim for refund, sought recourse before the CTA.

Evidence show that petitioner's judicial claim was filed after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 and before the promulgation of the *Aichi case* on October 6, 2010. Applying the *San Roque case,* the instant case is therefore shielded from the vice of prematurity by virtue of BIR Ruling No. DA-489-03. In other words, petitioner's judicial claim is covered by BIR Ruling No. DA-489-03 hence, there was no need for petitioner to wait for the expiration of the 120-day period before it could seek judicial intervention.

As clarified by the Supreme Court in the *San Roque case*, the taxpayer's judicial claim is shielded from the vice of prematurity from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 until its reversal in *Aichi case* on October 6, 2010. More importantly, the Supreme Court emphasized that **BIR Ruling No. DA-489-03 is considered as a general interpretative rule applicable to all taxpayers** for which It expressly stated that a

[10] *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R No. 149834, May 2, 2006, 488 SCRA 538, 545.

"*taxpayer-claimant need not wait for the lapse of the 120-dayperiod before it could seek judicial relief with the CTA by way of a Petition for Review*."

In view of the foregoing, petitioner's judicial claim must be given due course on the basis of BIR Ruling No. DA-489-03 duly recognized by the Supreme Court as exception to the 120+30 day periods. However, it is imperative that the CTA Case No. 8051 be remanded to the court in Division for determination of petitioner's entitlement to the refund sought.

WHEREFORE, the instant Motion for Reconsideration is hereby **GRANTED**. The assailed Decision of December 6, 2012 is hereby **REVERSED** and **SET ASIDE**.

Accordingly, CTA Case No. 8051 is **REMANDED** to the Court in Division for complete determination of petitioner's full compliance with the other legal requirements relative to its claim for refund or tax credit of its alleged unutilized input VAT paid on domestic purchases of goods and services for the first quarter of calendar year 2008.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

No Part
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(with Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
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 Amended 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.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

HEDCOR SIBULAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 890
(CTA Case No. 8051)

Members:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA
UY
CASANOVA,
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAY 3 0 2013 Cwapaliaarios 1:20 p.m.

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DISSENTING OPINION

CASANOVA, *J.*:

With due respect to my esteemed colleagues, I dissent with the majority opinion granting petitioner's Motion for Reconsideration filed on January 2, 2013.

I am aware of the recent pronouncement of the Supreme Court in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue*[1] which clarifies the issue on the application of the

[1] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

120-30 day prescriptive period for refund under Section 112 of the 1997 NIRC. In the said consolidated cases, particularly in the San Roque case, the Supreme Court ruled that from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court in the Aichi case on October 6, 2010, the taxpayer-claimant need not wait for the lapse of the 120-day period before it could file its judicial claim before the CTA.

In the present case, petitioner filed its Petition for Review on March 30, 2010, one (1) day after it filed its administrative claim, thus violating the 120-30 rule. However, as it filed its judicial claim within the period after the issuance of BIR Ruling No. DA-489-03 and before the promulgation of the Aichi case, petitioner is said to have filed its judicial claim on time, hence the decision of the majority to reverse and set aside aside its Decision dated December 6, 2012 and grant the present Motion.

Notwithstanding the foregoing, it is possible that a Motion for Reconsideration of the said decision may have been filed, thus, until the said Supreme Court case has attained finality and the corresponding entry of judgment has been made[2], prudence dictates that this Court's position on the matter be maintained and application of the new doctrine be, in the meantime, deferred.

In view of the foregoing, the undersigned votes that the Motion for Reconsideration should be denied.

CAESAR A. CASANOVA
Associate Justice

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2 RULE 36
JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF
Sec. 2. *Entry of judgments and final orders.*
If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.