REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA EB CASE NO. 815
(CTA Case No. 7940)

Present:
Castañeda, Jr., Acting P.J.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

JAN 31 2013 cwApolinario 2:08 p.m.

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Deutsche Knowledge Services Pte., Ltd. appealing the Resolutions of the First Division of this Court ("CTA Division") dated April 26, 2011,[1] and August 2, 2011,[2] which granted the Motion to Dismiss filed by respondent, and accordingly, dismissed its claim for value-added tax ("VAT") refund for being prematurely filed.

The Facts[3]

Petitioner, Deutsche Knowledge Services Pte Ltd., is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore. Petitioner is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines. Specifically, petitioner acts as a shared services center, which handles regional, as well as global and accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and

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[1] *Rollo*, C.T.A. EB Case No. 815, pp. 80-93.
[2] *Rollo*, pp. 94-117.
[3] *Rollo*, pp. 8-13, with citations omitted.

operating inter-company clearing house, accounting and head office reporting for non-regulation entities and product control.

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law.

On July 25, 2007, petitioner filed its original Quarterly VAT Return for the 2nd quarter of CY 2007 with the BIR.

On June 18, 2009, petitioner filed with the BIR-Revenue District Office No. 47 an Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the 2nd quarter of CY 2007 in the amount of P8,767,719.30. Subsequently, on June 30, 2009, petitioner filed a Petition for Review with the CTA Division.

Trial commenced and petitioner filed its Formal Offer of Evidence on September 22, 2010, which was admitted by the CTA Division in a resolution dated December 1, 2010.

On February 21, 2011, respondent filed through registered mail a Motion to Dismiss, stating that the CTA Division lacked jurisdiction, as the Petition for Review was prematurely filed.

The CTA Division issued its April 26, 2011 Resolution stating:

> "WHEREFORE, premises considered, the Motion to Dismiss dated February 21, 2011, filed by respondent, is hereby GRANTED. Consequently, the Petition for Review dated June 30, 2009, filed by petitioner Deutsche Knowledge Services Pte Ltd. is hereby DISMISSED."[4]

Petitioner's motion for reconsideration was also denied for lack of merit through the CTA Division's Resolution dated August 2, 2011.

Thus, petitioner filed the current Petition for Review on September 7, 2011, which was deemed submitted for resolution on February 8, 2012.

Issues

Petitioner's arguments are as follows: L

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[4] *Rollo*, p. 93.

A. The CTA-Division validly acquired jurisdiction of petitioner's judicial claim for refund.

B. Aichi should not be applied indiscriminately to all claims for VAT refund.

C. The prospective application of the Aichi interpretation on the observance of the 120-day rule is legally and equitably imperative.

D. Petitioner is entitled to the refund of its claimed input VAT for the 2^{nd} quarter of CY 2007.

The Court En Banc's Ruling

The petition has no merit.

In the assailed Resolutions, the CTA Division denied petitioner's claim for refund or issuance of a Tax Credit Certificate (TCC) representing its unutilized excess input tax attributable to zero-rated sales for the 2^{nd} quarter of calendar year 2007 in the amount of Eight Million Seven Hundred Sixty Seven Thousand Seven Hundred Nineteen and 30/100 Pesos (P8,767,719.30). The CTA Division reasoned that petitioner's judicial claim, filed on June 30, 2009, was filed prematurely the same having been filed a mere twelve (12) days after its administrative claim. It was further ruled that petitioner did not exhaust its administrative remedies justifying the dismissal of the petition for review.

After a careful review of petitioner's arguments, this Court finds no compelling reason to reverse or modify the findings of the CTA Division. These arguments are mere repetitions and restatements of the arguments presented before and which have been sufficiently resolved and passed upon in the assailed Resolutions.

We reiterate below the pertinent portions of the CTA Division's Resolutions. On the issue that the Aichi ruling should not have been applied to the instant case, the CTA Division aptly stated:

> "It has been ruled that judicial interpretation of a statute constitutes a part of the law as of the date it was original passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. As the Supreme Court is merely interpreting a provision of the NIRC, as amended, which is already in effect, and not

> modifying or reversing any existing jurisprudence, the ruling in the Aichi case must be applied immediately.
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> The same ratiocination applies to petitioner's claim that the Aichi case is not applicable herein since it was promulgated on October 06, 2010 or after the instant Petition was filed. It must be pointed out that in the Aichi case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Both the administrative and the judicial claims in the Aichi case were filed almost five (5) years ahead of the instant case, and yet, for prematurely filing its claim before the CTA, the petition for review in the Aichi case was dismissed immediately upon the promulgation of the decision of the Supreme Court. This Court can do no less.
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> The Mirant case, on the other hand, clarified the non-applicability of the two-year prescriptive period provided under Section 229 of the NIRC in claims for refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales. The Supreme Court added that Sections 204(C) and 229 of the NIRC are inapplicable in cases of the same nature. Subsequently, in Aichi case, the Supreme Court declared that it is erroneous to apply Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT.
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> As to the applicability of the Atlas case, let it be stated that the factual milieu of the instant case is different from that of Atlas case hence, not applicable. Note that the Supreme Court resolved that case using the Tax Code of 1977, the law enforced at that time. The Supreme Court construed and applied with specificity Sections 106, 110, and 230 (now Section 229), of the 1977 Tax Code as the said case involved claim for refund/tax credit of input VAT on therein petitioner's purchases of capital goods on its zero-rated sales for the taxable quarters of the years 1990 and 1992."[5] (*Citations omitted*)

Finding that the Aichi case was properly applied to the instant case, We agree that petitioner's judicial claim, filed a mere twelve days after the filing of its administrative claim, was premature. As such, petitioner's petition for review was susceptible to dismissal, as explained by the CTA Division, quoted below:

> "Thus, any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit certificate or refund of creditable input tax within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT. Undoubtedly,

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[5] *Rollo*, pp. 89-91.

> petitioner has seasonably filed its administrative claim for refund for the 2nd quarter of year 2007 on June 18, 2009.
>
> Pursuant to the foregoing provision, respondent had 120 days thereafter or until October 16, 2009, within which to act on the administrative claim, i.e. grant or deny the same. From receipt of the adverse decision or from the expiration of the 120-day period, petitioner had within 30 days or until November 15, 2009 the option to turn to this Court for relief.
>
> Clearly the filing of the instant Petition for Review on June 30, 2009, or barely twelve (12) days after the administrative claim for refund was filed on June 18, 2009, was premature in violation of the clear mandate of Section 112 of the NIRC, as amended, justifying its dismissal."[6]

Furthermore, We agree with the CTA Division's findings that respondent has not waived the defense of prematurity, *to wit*:

> "First, it is incorrect to state that respondent belatedly invoked the defense of premature filing of the instant Petition. As early as August 04, 2009, when respondent filed her Amended Answer dated July 27, 2009 or before the commencement of the pre-trial conference, respondent already invoked as defense the premature filing of the instant Petition for Review due to petitioner's failure to exhaust administrative remedies, in accordance with Section 4 Rule 6 of the Rules of Court. This is clearly indicated in Paragraph 8 of her Amended Answer, which is reproduced below:
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>> '8. 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. Paragraph C Section 112 of the 1997 NIRC provides that: x x x
>>
>> 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. The petitioner filed its claim for refund on June 18, 2009 so the respondent has until October 18, 2009 to decide on the claim for refund. Obviously the **petition filed by the petitioner in this Honorable Court was filed pre-maturely and therefore should be dismissed.**'"[7] (*Boldfacing in the original*)

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[6] *Rollo*, p. 87.
[7] *Rollo*, pp.99-100.

The remaining issues will no longer be discussed, the same having already been discussed by the CTA Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby DISMISSED for lack of merit. The assailed resolutions of the First Division dated April 26, 2011 and August 2, 2011 are hereby AFFIRMED.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

(with Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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 this Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

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DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD., *Petitioner,*	**CTA EB CASE NO. 815** (CTA Case No. 7940)
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-*versus*-	*Castañeda, Jr., Acting P.J.* *Bautista,* *Uy,* *Casanova,* *Fabon-Victorino,* *Mindaro-Grulla, and* *Cotangco-Manalastas, JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	JAN 3 1 2013

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DISSENTING OPINION

BAUTISTA, J.:

Before the Court *En Banc* is a "Petition for Review" filed by petitioner **Deutsche Knowledge Services Pte Ltd.** appealing the Resolutions of the First Division of this Court ("Court in Division") dated April 26, 2011[1] and August 2, 2011,[2] which granted the Motion to Dismiss filed by respondent, finding that its claim for VAT refund was prematurely filed.

Petitioner Deutsche Knowledge Services Pte Ltd. is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore. On July 25, 2007, petitioner filed its original Quarterly VAT Return for the 2nd quarter of calendar 2007 with the Bureau of Internal Revenue. Petitioner claims that it accumulated excess input VAT in the total amount of Php8,767,719.30 attributable to zero-rated sales which, to date, has

[1] *Rollo*, pp. 80-93.
[2] *Id.*, pp. 94-117.

remained unutilized and/or unapplied against its output VAT liability. Thus on June 18, 2009, petitioner filed an Application for Tax Credits/Refunds in the amount of PHP8,767,719.30. In order to toll the two-year prescriptive period provided under the law, petitioner filed on June 30, 2009 a Petition for Review with the Court in Division.

On February 21, 2011, respondent filed through registered mail a Motion to Dismiss, stating that the Court in Division lacked jurisdiction, as the Petition for Review was prematurely filed,[3] which was granted in the Resolutions by the Court in Division dated April 26, 2011,[4] and August 2, 2011.[5]

Both Resolutions found the Petition for Review dated June 30, 2009 to have been prematurely filed. Thus, the Court in Division found that petitioner did not exhaust all its administrative remedies, therefore depriving the Court of its jurisdiction to entertain such a suit.[6]

With all due respect to my esteemed colleagues, I must dissent on the Decision of the Court *En Banc*.

Pertinent to this discussion is Section 112(C) of the 1997 NIRC, as amended, which states:

> **SEC. 112.** *Refunds or Tax Credits of Input Tax.* -
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> xxx xxx xxx
>
> (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

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[3] *Records*, pp. 295-301.
[4] Note 1.
[5] Note 2.
[6] *Id.*

> 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. *(Emphasis supplied)*

The word "may," indicates that it is merely permissive and operates to confer discretion.[7] Thus, this provision gives the taxpayer-claimant an option to pursue the claim with this Court, provided that the claim is filed within the prescriptive period.

Section 112 of the 1997 NIRC, as amended, must be read in accordance with Section 229 of the same Code. The judicial recourse to this Court allowed by Section 112(C) of the 1997 NIRC, as amended, is therefore, merely directory and permissive, and not mandatory nor jurisdictional, for so long as it is made within the settled two (2)-year prescriptive period.[8]

In the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[9] the Court *En Banc* states:

> "It bears stressing that the use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Section 229 of the NIRC. It is a well-settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.
>
> Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year prescriptive period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to

[7] *Bersabal vs. Salvador*, G.R. No. L-35910, July 21, 1978, 84 SCRA 176, citing *Dizon vs. Encarnacion*, G.R. No. L-18615, December 24, 1963, 9 SCRA 714.
[8] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, CTA EB Case No. 416, February 4, 2009.
[9] CTA EB Case No. 408 (CTA Case No. 6647), March 25, 2009.

the Court of Tax Appeals. The Court of Appeals ratiocinated in this wise:

> "It appears therefore, that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
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> <u>Incidentally, the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal.</u> The law fixed the same period – two years – for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court. Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*emphasis supplied*)"

Thus, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or even his inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court,[10] for claims for refund or tax credit, both in the administrative and judicial fora must be filed within the 2-year period,[11] and beyond that period, the taxpayer can no longer appeal to this Court.[12]

With regard to the filing of the instant Petition for Review, the prevailing ruling of the Supreme Court at the time petitioner lodged its appeal to this Court is the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)* (*"Mirant case"*),[13] which states that excess unutilized input VAT must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless whether said tax was paid or not.

In the case at hand, the application for refund of or the issuance of the TCC covers 2nd quarter of the year 2007. Thus, the two (2)-year period started to run on June 30, 2007. Petitioner's administrative claim for refund was filed on June 18, 2009,[14] while the judicial claims for the 2nd Quarter were filed on June 30, 2009.[15] While, respondent does have until October 16, 2009 to resolve the administrative claims, given the above discussion of Section 112(C) of the 1997 NIRC, petitioner need not wait for a denial by the respondent in order for a judicial claim to be proper.

Petitioner needs to file a Petition for Review with the Court of Tax Appeals within the said two (2)-year period from the close of the taxable quarter; in the event that petitioner waits for the respondent, allowing the period to run out and respondent resolves the administrative case against the petitioner, petitioner effectively loses the opportunity to bring his claim to this Court.

Furthermore, the Court *En Banc* does not agree with the retroactive application of the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. ("Aichi case")*.[16] The basic legal maxim *lex prospicit, non respicit*, states that law looks forward not backward. The principle of prospectivity applies not only to original or amendatory statutes, administrative rulings, and circulars, but also,

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[10] *Commissioner of Internal Revenue vs. CE Cebu Geothermal Power Company, Inc.*, CTA EB Case No. 426, May 29, 2009.
[11] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc.*, No. L-24108, January 3, 1968, 22 SCRA 12.
[12] *Commissioner of Internal Revenue vs. Accenture, Inc.*, CTA EB Case No. 410 (CTA Case No. 7387), March 18, 2009.
[13] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[14] *Records*, pp. 34-43.
[15] *Id.*, pp. 1-7 with annexes.
[16] G.R. No. 184823, October 6, 2010, 632 SCRA 442.

to judicial decisions.[17] Thus, petitioner's reliance on the prevailing jurisprudence at the time of filing its judicial claims is valid.

Thus, the Court *En Banc* finds that both the administrative and judicial claim was filed within the prescriptive period allowed by law. In effect, the Court *En Banc* effectively states that the Court of Tax Appeals has the jurisdiction to resolve the present case, contrary to the earlier findings of the Court in Division.

Accordingly, I vote that the Petition for Review filed by **DEUTSCHE KNOWLEDGE SERVICES PTE LTD.** be hereby **GRANTED**, subject to the verification of its input VAT for the second quarter of the calendar year 2007.

LOVELL R. BAUTISTA
Associate Justice

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[17] *Columbia Pictures, Inc., Orion Pictures Corporation, Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, United Artists Corporation, Universal City Studios, Inc., The Walk Disney Company, and Warner Brothers, Inc. vs. Court of Appeals, Sunshine Home Video, Inc. and Danilo Pekindario,* G.R.No. 110318, August 28, 1996, 252 SCRA 259, citing *Co vs. Court of Appeals, et al.*, G.R. No. 100716, October 28, 1993, 227 SCRA 444.