REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
****

CRESCENT PARK 6-3 PROPERTY HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8058

Members:

UY, *Chairperson, and*
FABON-VICTORINO, *JJ.*

Promulgated:

JUL 15 2013 , 3:00 p.m.

x- x

AMENDED DECISION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on January 31, 2013, without respondent's comment despite notice.

In the said Motion, petitioner assails the Decision dated January 4, 2013 of this Court, the dispositive portion of which states:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED.**"

Petitioner prays that the above assailed Decision be set aside and that this Court issue a new resolution finding that petitioner is entitled to its claim for refund or issuance of a tax credit certificate in the total amount of Twenty-One Million Eight Hundred Seventy-Three Thousand Two Hundred Eighty

Pesos (₱21,873,280.00). It support of the instant Motion, petitioner argues as follows:

1. The ruling laid down in the *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[1] (hereinafter referred to as the "*Aichi* case") as to the mandatory nature of the 120-30 day rule does not apply to the instant case since there are more recent decisions providing for a more relaxed application of the 120-30 day rule under Section 112(D) of the National Internal Revenue Code (NIRC), issued by the Supreme Court after the said case;

2. The decision in the *Aichi* case is not an *En Banc* decision of the Supreme Court; hence, it did not overturn existing decisions prior to it;

3. The *Aichi* case should be applied prospectively; and

4. Dismissal of the instant case without considering the substantial issues raised is too harsh a penalty and run counter to the doctrine or principle of fair play and equity.

This Court once again made a judicious scrutiny of the records of the case vis-a-vis applicable jurisprudence, and finds merit in the instant Motion.

For easy reference, We quote again Section 112(C) of the NIRC of 1997, as amended by Republic Act No. (RA) 9337,[2] to wit:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> 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.

---

[1] G.R. No. 184823, October 6, 2010.

[2] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

As We have held in the assailed Decision, it is without doubt that the 120+30 day periods under the above-quoted Section 112(C) is mandatory and jurisdictional. This is in accordance with the ruling of the Supreme Court in the *Aichi* case, to wit:

> Section 112(D)[3] of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales.' The phrase 'within two (2) years x x x apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is

---

[3] Now Section 112(C), as amended by Republic Act No. 9337.

apparent in the first paragraph of subsection (D)[4] of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D)[5] of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D)[6] of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA."

However, in the recent case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*[7] (hereinafter referred to as the "*San Roque* case"), while the Supreme Court reinforced the ruling in the *Aichi* case, it recognized a period of exception to the rule that the 120+30 periods under Section 112(C) of the NIRC of 1997, as amended by RA 9337, are mandatory and jurisdiction, thus:

> "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 the 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

[4] Id.
[5] Id.
[6] Id.
[7] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

> 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 not 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, 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,[8] 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."

xxx xxx xxx

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.

xxx xxx xxx

---

8 Referring to *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (G.R. Nos. 141104 and 148763, June 8, 2007), wherein it was held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229 of the NIRC of 1997.

> 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." *(Underscoring supplied)*

Applying the aforesaid ruling in the instant case, and considering that petitioner filed its judicial claim for refund on March 29, 2010, prior to the promulgation of the *Aichi* case, petitioner can rely on the BIR Ruling No. DA-489-03 and need not wait for the lapse of the 120-day period before it can file its claim before this Court. Correspondingly, petitioner's judicial claim for refund may be considered as timely filed, pursuant to the *San Roque* case.

The Court shall then continue to address the substantive issues of this case.

Petitioner anchors its claim for refund/issuance of a tax credit certificate under Section 112(A) of the NIRC of 1997, as amended by RA 9337, which provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.*- Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional

> input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Based on the abovementioned legal provision, the requisites for the refund or issuance of tax credits of unutilized/excess input valued-added tax (VAT) are the following:

1. The taxpayer must be VAT-registered;
2. The taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;
3. The claim must be filed within two years after the close of the taxable quarter when such sales were made; and
4. The creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.[9]

Considering that the *first* and *third* requisites were already fulfilled by petitioner as found by this Court in the assailed Decision, We shall proceed to determine petitioner's compliance with the *second* and *fourth* requisites.

Anent the *second* requisite, Section 108 of the NIRC of 1997, as amended by RA 9337, provides as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*—
>
> (A) *Rate and Base of Tax.*—xxx

[9] *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.

xxx xxx xxx

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by...**lessors of property**...

xxx xxx xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.*— **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:**

xxx xxx xxx

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;" *(Emphases supplied)*

In relation thereto, Sections 23 and 24 of RA 7916,[10] as amended by RA 8748, provides:

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

Furthermore, tax credits for exporters using local materials as inputs shall enjoy the same benefits provided for in the Export Development Act of 1994.

"SEC. 24. *Exemption from National and Local Taxes.* – **Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all**

[10] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

business enterprises within the ECOZONE shall be paid and remitted as follows:

(a) Three percent (3%) to the National Government;

(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located." *(Emphasis supplied)*

Zero-rated transactions generally refer to the export sale of goods and services.[11] As a corollary, sales made by a VAT-registered person in the customs territory to a PEZA[12]-registered entity are considered exports to a foreign country.[13] Furthermore, Section 3 of Revenue Memorandum Circular No. (RMC) 74-99[14] provides as follows:

"SECTION 3. *Tax Treatment Of Sales Made by a VAT Registered Supplier From the Customs Territory, To A PEZA Registered Enterprise.* –

(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:

xxx xxx xxx

(b) *Sale of service.* – **This shall be treated subject to zero percent (0%) VAT under the 'cross border doctrine' of the VAT System**, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

xxx xxx xxx

NM

---

[11] *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010

[12] Philippine Economic Zone Authority.

[13] *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005.

[14] SUBJECT: Tax Treatment of Sales of Goods, Property and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise; and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE.

> (b) *Sale of Service.* – **This shall be treated subject to zero percent (0%) VAT under the 'cross border doctrine' of the VAT System**, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.
>
> (3) **In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT.** Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, **while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. No. 7916 and the 'Cross Border Doctrine' of the VAT system.** xxx" *(Emphases supplied)*

Clearly, sales of goods and services by VAT-registered taxpayers from the customs territory to a PEZA registered entity are entitled to the zero percent (0%) VAT rate.

In this case, in addition to being a VAT-registered taxpayer, petitioner has established that it is engaged in zero-rated sales in the amount of ₱3,757,419.35,[15] particularly its sales of services (as lessor of a property located in the Philippines) to 6-3 Property Holdings, Inc., a PEZA-registered enterprise.[16]

With respect to the *fourth* requisite, the input VAT claim may be considered as attributable to the said VAT zero-rated sales of ₱3,757,419.35 because it arose from the purchase by petitioner of the land[17]—the subject of the lease, which in turn gave rise to the said VAT zero-rated sales.

However, only the input VAT claim in the amount of ₱21,473,280.00 should be considered as attributable to the entire zero-rated sales of ₱3,757,419.35. It must be emphasized that except for the amount stated in instant Petition for Review (*i.e.*, ₱21,873,280.00), all other documentary

---

[15] Line 17, Exhibit "J-1", Docket, p. 356.

[16] Exhibits "T", "EE", "NN", "NN-1", and "OO", Docket, pp. 381 to 386, 414, 423 to 429, 430, and 432 to 437, respectively.

[17] Exhibits "C", "SS", "LL", and "MM", Docket, pp. 334, 483, 421, and 422, respectively.

evidence, namely, the administrative claim,[18] petitioner's amended Quarterly VAT Return for the first quarter of 2008,[19] Deed of Absolute Sale of Land on Installment together with the supporting sales invoice and official receipts,[20] are to the effect that petitioner actually incurred input VAT only in the amount of ₱21,473,280.00.

Furthermore, it was established that petitioner's claimed input VAT was not applied against any output VAT liability during the period of claim and in the succeeding quarters, since there was no output VAT for the period from January 2008 to December 2010,[21] from which the input taxes may be credited or applied. To emphasize, although petitioner carried over the said input VAT to the succeeding second quarter of 2008, until the fourth quarter of 2010, the same remained unutilized until it was fully deducted as "VAT Refund/TCC Claimed"[22] in the fourth quarter of 2010. Thus, petitioner could not have possibly utilized the input VAT of ₱21,473,280.00 in the succeeding year 2011.

WHEREFORE, premises considered, petitioner's **"MOTION FOR RECONSIDERATION"** is hereby **PARTIALLY GRANTED.** Accordingly, the dispositive portion of the Decision of this Court dated January 4, 2013 is hereby **MODIFIED** to read as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to refund to petitioner, or issue a tax credit certificate in its favor in, the amount of **TWENTY ONE MILLION FOUR HUNDRED SEVENTY THREE THOUSAND TWO HUNDRED EIGHTY PESOS (₱ 21,473,280.00)**, representing the unutilized input VAT incurred by petitioner for calendar year 2008.
>
> **SO ORDERED.**"

SO ORDERED.

ERLINDA P. UY
Associate Justice

---

[18] Exhibits "E" and "E-2", Docket, pp. 339 to 344 and 346.
[19] Line 21D, Exhibit "F-1", Docket, p. 348.
[20] Exhibits "C", "SS", "LL" and "MM", Docket, pp. 334, 483, 421, and 422, respectively.
[21] Exhibits "F-1", "G-1", "H-1", "I-1", "J-1", "K-1", "L-1", "M-1", "V", "W", "X", and "Z", Docket, pp. 347 to 362, 401 to 403, and 407.
[22] Line 23D, Exhibit "Z", Docket, p. 407.

I CONCUR :

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Special First Division.

ERLINDA P. UY
Chairperson
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Special First Division.

ROMAN G. DEL ROSARIO
Presiding Justice