REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7775

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:

MAY 3 0 2011
1:05 p.m.

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DECISION

CASANOVA, *J.*:

Before this Court is a Petition for Review filed on April 24, 2008 by petitioner- Deutsche Knowledge Services PTE. LTD., seeking the refund of Two Million Eight Hundred Forty One Thousand Nine Hundred Thirty Five and 82/100 Pesos (P2,841,935.82), representing its alleged excess and unutilized input value-added tax (VAT), attributable to zero-rated sales for the first quarter of calendar year 2006.

The following pertinent facts spurred the present case:

Petitioner is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore.[1] It is

[1] Par. 2, *Id.*, Docket, p. 187.

licensed to do business as a regional operating headquarters in the Philippines[2] and registered with the BIR as a VAT-registered taxpayer with Taxpayer Identification No. (TIN) 238-763-115-000.[3]

Respondent, as the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), is 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. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On April 25, 2006, petitioner filed its original Quarterly VAT Return for the first quarter of 2006. [5]

For this period, petitioner claims to have incurred input VAT, in the total amount of P2,841,935.82, derived from its purchase of goods and services, attributable to zero-rated sales of services for the same period and which remained unutilized and/or unapplied against its output VAT liability.[6]

Believing to be entitled to a refund of the aforecited amount, petitioner filed on April 14, 2008, an application for tax credits/refunds with the BIR-Revenue District Office (RDO) No. 47.[7] Petitioner based its refund on Section 108(B), paragraph (2), in relation to Sections 110(B) and 112(A), of the National Internal Revenue Code (NIRC) of 1997, as amended.[8]

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[2] Exhibit "A".
[3] Exhibit "B".
[4] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, pp. 186-187.
[5] Exhibit "C".
[6] Par. 10, Petition for Review, Docket, p. 6.
[7] Exhibits "P" and "Q".
[8] Par. 9, Petition for Review, Docket, p. 4.

Petitioner filed the instant Petition for Review on April 24, 2008, to forestall the expiration of the two-year prescriptive period provided in Section 229 of the NIRC of 1997, as amended.[9]

For her part, respondent filed her Answer[10] on May 20, 2008, raising the following special and affirmative defenses:

> "4. Granting *arguendo* that [p]etitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
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> 5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been or erroneously or illegally collected in violation of the tax laws relied upon by the petitioner;
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> 6. 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);
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> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
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> 8. It is incumbent upon the [p]etitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended;
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> 9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the 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); and

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9 Par. 11, Petition for Review, Docket, p. 6.
10 Docket, pp. 51-54.

> 10. 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)."

During trial, petitioner presented testimonial and documentary evidence, which were admitted in the Resolutions dated August 13, 2010[11] and November 17, 2010[12].

During the January 26, 2011 hearing, respondent's counsel manifested that she is submitting the case for decision without presenting evidence.[13]

On April 1, 2011, the case was considered submitted for decision without respondent's evidence and memorandum.

The parties submitted the following issues[14] for this Court's disposition:

"1. Whether or not petitioner has timely and duly filed its administrative and judicial claims for the refund or issuance of a tax credit certificate for unutilized input taxes attributable to zero-rated sales.

2. Whether or not petitioner is entitled to the claim for refund or issuance of tax credit certificate of excess or unutilized input VAT in the amount of Php2,841,935.82.

3. Whether or not petitioner's unutilized input taxes in the amount of Php2,841,935.82 have not been carried over to succeeding quarters and have not been utilized against any output tax."

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[11] Docket, pp. 353-354.
[12] Docket, pp. 376-377.
[13] Resolution, Docket, p. 382.
[14] Stipulated Issues for Resolution, JSFI, Docket, p. 188.

For the first issue, petitioner advances the argument that it timely filed its administrative and judicial claim within two years from the date of filing of its Quarterly VAT Return for the first quarter of 2006. It argues that the filing thereof was in accordance with the principle laid down in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (Atlas)*[15], the jurisprudence in effect at the time it filed the instant Petition. Petitioner further argues that, in the *Atlas* case, the Supreme Court ruled that the two-year prescriptive period for the filing of claims for refund of excess and unutilized input VAT shall be reckoned from the date of filing of the quarterly VAT return.

Petitioner's argument has no merit.

In resolving the issue of whether or not a claim for refund of excess and/or unutilized input VAT is filed within the prescriptive period provided under the law, the relevant provision is Section 112, subsections (A) and (C) of the NIRC of 1997, as amended, which emphatically covers refund or tax credit of unutilized input VAT attributable to zero rated or effectively zero-rated sales, to wit:

> "**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

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[15] G.R. Nos. 141104 & 148763, June 8, 2007.

> 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.
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> (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.
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> 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."

Based on the foregoing, a claimant has two years from the close of taxable quarter within which to apply a claim for refund or issuance of tax credit certificate for its unutilized input VAT attributable to its zero-rated or effectively zero-rated sales. The Commissioner of Internal Revenue (CIR) has 120 days to study said claim. The taxpayer may seek judicial relief before this Court within 30 days from the CIR's denial of its claim or upon the expiration of the 120 days, in case of the CIR's inaction.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[16] *(Aichi)*, the Supreme Court made a thorough discussion on Section 112 of the NIRC. It ruled that the two-year period in Section 112(A) refers to "applications for refund/credit filed with the CIR" and the reckoning thereof is from the close of the taxable quarter.

Likewise, the Supreme Court ruled that failure to adhere to the "120 and 30" day prescriptive periods in Section 112, subsections (A) and (C) of the NIRC of 1997, as amended, is crucial to a taxpayer's claim. The filing of a judicial claim prior to the expiration of the 120-day period will render the appeal premature, hence dismissible by this Court. Relevant portions of the said decision are quoted as follows:

> Section 112(D)[17] 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.
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> xxx xxx xxx
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> 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.
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> 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

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[16] G.R. No. 184823, October 6, 2010.
[17] Now, Section 112(C).

> 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 .... 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 apparent in the first paragraph of subsection (D) 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.
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> xxx xxx xxx
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> **In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA**. (*Emphasis supplied.*)

Applying the aforequoted jurisprudence and provision of law, the two-year period to file an administrative claim for tax refund/credit for the first quarter of 2006 or January to March of 2006, subject of the instant Petition, expired on March 31, 2008. Hence, the filing of the administrative claim on April 14, 2008 was made beyond the two-year reglementary period.

Furthermore, with respect to petitioner's judicial claim, the same was filed on April 24, 2008 or ten days after the administrative claim was filed. Apparently, petitioner failed to wait for the CIR to decide on its claim or the expiration of the 120-day period, hence, the instant Petition was prematurely filed.

Petitioner argues that it is aware of the ruling of the Supreme Court in the case of *Aichi*[18] but the said ruling is inapplicable to this case because of the following reasons:

First: *Aichi* ignored the established legal significance of Section 229 of the NIRC of 1997, as amended. Section 229 remains to be the legal foundation for the rule that a taxpayer is given two years within which to file its administrative and judicial claim. This was ruled in the *Atlas* case. While the Supreme Court may reverse precedents, this may be done only after complying with the constitutional mandate that only the Supreme Court *En Banc* may reverse its own decision rendered *en banc* or in division. Thus, all cases prior or subsequent to *Atlas* holding could not have been validly overturned by Aichi unless such ruling is reached by, and only by, the Supreme Court *En Banc*.

Second, just as laws should only be applied prospectively, judicial decisions, such as Aichi, should also be similarly applied, pursuant to Article 4 of the Civil Code and in relation to Article 8 thereof;

Third, the ground of prematurity is premised on the principle of exhaustion of administrative remedies, which is not jurisdictional and if it is not raised as a defense, it is deemed waived. Considering so, respondent was deemed to have

[18] Supra, note 16.

waived such defense for her failure to raise the same in her Answer.

This Court disagrees.

Section 229 of the NIRC of 1997, as amended, covers the recovery of erroneously and illegally collected taxes. On the other hand, Section 112 specifically covers refund or tax credit of input tax. Between the two, it is apparent that Section 112 is the appropriate provision for refund cases.

Where there is a particular or special provision and a general provision in the same statute and the latter in its most comprehensive sense would overrule the former, the particular or special provision must be operative and the general provision must be taken to affect only the other parts of the statute to which it may properly apply. In other words, the particular or special provision is construed as an exception to the general provision. In this way, all the provisions are given effect.[19]

In *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*,[20] *(Mirant)* the Supreme Court clarified that Section 229 of the NIRC of 1997, as amended, applies only to instances of erroneously paid or illegally collected taxes and refund of unutilizied input VAT is not erroneously, illegally or unlawfully collected tax. The *Mirant* ruling was reiterated by the Supreme court in the *Aichi* case, *viz*:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, where we ruled that **Section 112(A)**

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[19] Agpalo, Statutory Construction, Fifth Edition (2003), p. 256.
[20] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

> **of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as 'both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.'** We explained that:
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> xxx xxx xxx
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> > Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, **both provisions** [21] **apply only to instances of erroneous payment or illegal collection of internal revenue taxes.**" (*Emphasis supplied.*)

Regarding petitioner's argument on the applicability of the *Atlas* ruling, the same is likewise untenable. Suffice it to say that in the *Atlas* case, the Supreme Court **applied the 1977 Tax Code** and notwithstanding that the said case involved a refund of input taxes, the Supreme Court applied therein the limitation in Section 230 (now, 229) of said Code that "<u>no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment</u>".

However, it is noteworthy that the application of the above limitation in the *Atlas* case was because of the absence in Section 106[22] (now, 112) of the 1977 Tax Code, of a similar limitation or a prescriptive period on the right of a claimant to file a judicial recourse. Thus, the ruling as follows:

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[21] Referring to Sections 204 and 229 of the National Internal Revenue Code of 1997, as amended.

[22] prior to its amendments by Republic Act (RA) No. 7716 otherwise known as "The Expanded Value Added Tax Law" which became effective on May 28, 1994, and later on by Republic Act (RA) No. 8424 otherwise known as "The Tax Reform Act of 1997" which took effect on January 1, 2008

> "It is already well-settled that the two-year prescriptive period for instituting a suit or proceeding for recovery of corporate income tax erroneously or illegally paid under Section 230 of the Tax Code of 1977, as amended, was to be counted from the filing of the final adjustment return. This Court already set out in ACCRA Investments Corporation v. Court of Appeals, the rationale for such rule, thus – xxx
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> **The very same reasons set forth in the afore-cited cases concerning the two-year prescriptive period for claims for refund of illegally or erroneously collected income tax may also apply to the Petitions at bar involving the same prescriptive period for claims for refund/credit of input VAT on zero-rated sales.**" (*Emphasis supplied.*)

Conversely, the instant case involves the **NIRC of 1997**, as amended and Section 112(C) now provides a limitation or a prescriptive period of 30 days within which a taxpayer may file the judicial remedy. Therefore, because of the notable differences of the two cases, there is no cogency on the application of the *Atlas* ruling to the instant case.

As regards petitioner's argument on the prospective application of the *Aichi* ruling, this Court finds the same without merit. A ruling of the Supreme Court as to the interpretation of a law should be followed in subsequent cases involving similar questions. In other words, once a case had been decided one way, then another case, involving exactly the same point at issue, should be decided in the same manner.[23]

Noteworthy that it is in the *Aichi* case that the Supreme Court settled the interpretation of Section 112 of the NIRC of 1997. Such interpretation, which has not been reversed as of date, constitutes a part of the NIRC of

[23] Agpalo, Statutory Construction, Fifth Edition (2003), p. 121-122.

1997 as of the date it was enacted on January 1, 1998. And, with the instant case being on all fours with the *Aichi* case both cases involving, among others, the premature filing of a judicial claim for refund or issuance of tax credit representing unutilized/excess input VAT, this Court is duty-bound to apply the *Aichi* ruling.

Anent petitioner's contention that respondent had already waived the defense of prematurity for her failure to raise the same in her Answer as affirmative defense, this Court wishes to emphasize again that in the *Aichi* case, the Supreme Court had already ruled that the prematurely filing of the judicial claim prevents this Court from acquiring jurisdiction. Simply stated, prematurity is jurisdictional.

Under Section 1, Rule 9 of the Revised Rules of Court, as amended:

> "SECTION 1. Defenses and objections not pleaded. --- Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter**, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, **the court shall dismiss the claim.**"(*Emphasis supplied.*)

Clearly, the Court may dismiss the claim if it appears on the pleading that it was filed prematurely. Thus, with the finding of premature filing in this case and consistent with the *Aichi* ruling that premature filing goes into the Court's jurisdiction, the denial of the instant case is proper.

In view of the above conclusion, it becomes unnecessary to pass upon the other issues raised by the parties.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for being prematurely filed.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice