Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB CASE NO. 1071** (CTA Case No. 8059)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA,
-versus-	UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,
SONY ERICSSON MOBILE COMMUNICATIONS INT'L. AB, *Respondent.*	COTANGCO-MANALASTAS, RINGPIS-LIBAN, JJ. Promulgated: APR 06 2015 1:33 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution is petitioner's "Motion for Reconsideration (of the Decision dated 14 October 2014) filed on November 4, 2014 with respondent's Comment thereto filed on January 8, 2015. The dispositive portion of the assailed Decision[1] reads:

> "**WHEREFORE** premises considered, the petition is **DENIED**. The Decision of the Special Third Division of this Court in CTA Case No. 8059 dated June 11, 2013 and its Resolution dated September 17, 2013 are hereby **AFFIRMED**. No pronouncement as to costs.
>
> **SO ORDERED.**"[2]

In her motion, petitioner restates the following arguments before the Court *En Banc*, to wit: [3]

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[1] *En Banc* Docket, pp. 91-102.
[2] *Id.*, at 101.
[3] *Id.*, at 111.

I. THE HONORABLE COURT *EN BANC* ERRED IN HOLDING THAT RESPONDENT SEASONABLY FILED ITS ADMINISTRATVE AND JUDICIAL CLAIMS FOR REFUND;

II. THE HONORABLE COURT *EN BANC* ERRED IN HOLDING THAT THE GOVERNMENT IS BOUND BY THE ERRORS COMMITTED BY ITS AGENTS;

III. THE HONORABLE COURT *EN BANC* ERRED IN HOLDING THAT RESPONDENT PROVED BY SUFFICIENT EVIDENCE THAT IT IS ENTITLED TO THE CLAIM FOR TAX CREDIT/REFUND;

IV. THE HONORABLE COURT *EN BANC* ERRED IN HOLDING THAT RESPONDENT IS ENTITLED TO A TAX CREDIT/REFUND FOR ITS UNUTILIZED INPUT VAT FOR THE FOUR QUARTERS OF TAXABLE YEAR 2008 IN THE TOTAL AMOUNT OF P5,340,366.72."

On the other hand, respondent argues that it seasonably filed its administrative and judicial claims for tax refund pursuant to the decision of the Supreme Court *En Banc* in the *San Roque Case*.[4] It further opines that the doctrine that Government cannot be estopped by the mistakes or errors of its agents is not without exception as the Supreme Court in *San Roque Case* clearly states that the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals. Respondent reiterates its stance that it has established by sufficient evidence that it is entitled to the claim for refund; and that it submitted complete documents in support of its claim for refund/tax credit.

Petitioner's motion is bereft of merit.

A careful perusal of the instant Motion for Reconsideration readily reveals that the issues and arguments proffered by petitioner are but a mere rehash or reiteration of the arguments raised in her Petition for Review, which had already been sufficiently passed upon and

[4] 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.

adequately discussed in the assailed Decision dated October 14, 2014.

Petitioner anchors her arguments on this Court's reliance and application of the doctrine laid down by the Supreme Court *En Banc* in the consolidated case 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*** (the "*San Roque Case*"),[5] promulgated on February 12, 2013, in denying the instant Petition for Review. Petitioner still insists that respondent prematurely filed its judicial appeal before this Court following the pronouncement of the Supreme Court in an earlier case of ***Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.***[6]

Contrary to petitioner's stance, the *San Roque Case* was decided with finality by the Supreme Court *En Banc* in a Resolution dated October 8, 2013. In fact, the Supreme Court in the said resolution adeptly discussed the basis of BIR Ruling No. DA-489-03 dated December 10, 2003 which 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", in this wise:

> "Before the issuance of BIR Ruling No. DA-489-03 on 10 December 2003, there was no administrative practice by the BIR that supported simultaneous filing of claims. Prior to BIR Ruling No. DA-489-03, the BIR considered the 120+30 day periods mandatory and jurisdictional. **Thus, prior to BIR Ruling No. DA-489-03, the BIR's actual administrative practice was to contest simultaneous filing of claims at the administrative and judicial levels, until the CA declared in Hitachi that the BIR's position was wrong. The CA's Hitachi decision is the basis of BIR Ruling No. DA-489-03 dated 10 December 2003 allowing simultaneous filing. From then on taxpayers could rely in good faith on BIR Ruling No. DA-489-03 even though it was erroneous**

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[5] In a Resolution dated October 8, 2013, the Supreme Court *En Banc* denied with finality the motions for reconsiderations filed by the parties.
[6] G.R. No. 184823, October 6, 2010.

> **as this Court subsequently decided in Aichi that the 120+30 day periods were mandatory and jurisdictional.**"

Consequently, the Supreme Court reiterated the doctrine laid down in *San Roque Case* in ***Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue, G.R. No. 193301; Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue, G.R. No. 194637*** *(the "Mindanao II Geothermal Case")*, promulgated on March 11, 2013. We quote:

> "In the consolidated cases of *San Roque*, the Court *En Banc* examined and ruled on the different claims for tax refund or credit of three different companies. In *San Roque*, we reiterated that "[f]ollowing the *verba legis* doctrine, [Section 112(C)] must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no 'decision' or 'deemed a denial decision' of the Commissioner for the CTA to review."
>
> Notwithstanding a strict construction of any claim for tax exemption or refund, the Court in *San Roque* recognized that BIR Ruling No. DA-489-03 constitutes equitable estoppel in favor of taxpayers. **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."** xxx"

Similarly, in the aforesaid *Mindanao II Geothermal Case,* the Supreme Court expressly laid down the summary of rules on prescriptive periods for filing a tax refund or credit of unutilized input VAT under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, 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 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.

(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.**" [Emphasis supplied.]

As the issue has been settled, it is the Court's duty to apply the ruling of the Supreme Court in the *San Roque Mindanao II Geothermal Cases* based on the well-established principle of *stare decisis.* Notably, the "principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument."[7]

In the instant case, pursuant to the Supreme Court's recognition of BIR Ruling No. DA-489-03 dated December 10, 2003 in *San Roque and Mindanao II Geothermal Cases*, this Court reiterates that respondent's judicial claim qualifies under the exception to the strict application of the 120+30 day periods.

As to petitioner's contention that respondent failed to prove by sufficient evidence that it is entitled to the claim for tax refund/credit, this Court is likewise not persuaded.

We reaffirm our findings that respondent presented sufficient evidence in the instant case to prove its claim for

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[7] Ting vs. Velez-Ting, G.R. No. 166562, March 31, 2009.

tax refund/credit in the reduced amount of ₱5,340,366.72, in compliance with the requisites provided under Section 112(A) of the NIRC of 1997, as amended.

In view of the foregoing, we see no cogent reason to compel a modification or reversal of the said Decision.

WHEREFORE premises considered, the motion is **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice