Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TAGANITO MINING CORPORATION,
Respondent.

CTA EB CASE NO. 559
(CTA Case No. 6867)

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:
APR 18 2011 [signature] 2:00 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc*.- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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amended, of the Decision[2] dated July 31, 2009, rendered by the former Second Division[3] of this Court in CTA Case No. 6867, and its Resolution[4] dated October 27, 2009.

Petitioner Commissioner of Internal Revenue (CIR) assails both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated July 31, 2009:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of THREE **MILLION SIX HUNDRED THIRTY SIX THOUSAND EIGHT HUNDRED FIFTY FOUR PESOS AND 7/100 CENTAVOS (P3,636,854.07)**, representing its unutilized input taxes attributable to zero-rated sales from January 1, 2002 to December 31, 2002.
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> **SO ORDERED.**"

Sec. 4. *Where to appeal; mode of appeal.-*
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc Docket, pp. 26-43.

[3] Penned by Associate Justice Erlinda P. Uy, concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Olga Palanca-Enriquez.

[4] En banc Docket, pp. 44-51.

Resolution dated October 27, 2009:

"WHEREFORE, respondent's Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED."

The following facts are undisputed:

1. Taganito Mining Corporation or "Taganito" is a corporation duly organized and existing under the laws of the Philippines which is primarily engaged in the business of exploring, producing, and exporting beneficiated nickel silicate ores and chromite ores.[5] Taganito is a duly registered VAT entity and likewise registered with the Board of Investments (BOI) as an exporter of the beneficiated nickel silicate ores and chromite ores.[6]

2. Taganito filed all its monthly and quarterly VAT returns from January 1, 2002 to December 31, 2002[7] as follows:

Exhibits	Period Covered	Date filed
G to G-4	1st Quarter 2002	April 13, 2002
P to P-3	2nd Quarter 2002	July 11, 2002
V toV-2	3rd Quarter 2002	October 21, 2002
Z to Z-2	4th Quarter 2002	January 17, 2003

c

[5] Joint Stipulation of Facts, Division Docket, pp. 92-94.
[6] Ibid.
[7] ibid.

3. On December 30, 2003, Taganito filed with the CIR, through the Excise Taxpayers' Assistance Division under the Large Taxpayers Division, an application for refund of its excess input VAT paid on its domestic purchases of taxable goods and services and importation of goods amounting to four million four hundred forty seven thousand six hundred fifty one and 32/100 (P4, 447, 651.32) for the period January 1, 2002 to December 31, 2002. [8]

4. On February 19, 2004, 51 days after its filing of application with the CIR, Taganito filed with this Court a Petition for Review which was raffled to the former Second Division of this Court. At the time of the filing of the said petition, the CIR has not yet finally acted upon Taganito's application for refund.[9]

5. The CIR In her Answer, avers that the claim for refund is still subject to investigation/examination.

Thereafter, the parties filed their respective pleadings and the issues were simplified. After trial, this Court's former Second Division

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[8] Ibid.
[9] Ibid.

rendered a Decision[10] partially granting Taganito's petition and ordering the CIR to refund the amount of P3,636,854.07. The CIR filed a Motion for Reconsideration but it was denied in a Resolution[11] dated October 27, 2009.

Thus, the CIR filed a Petition for Review[12] before this Court En Banc and raised the following arguments:

1. Respondent failed to exhaust administrative remedies under Section 112(d) of the 1997 National Internal Revenue Code (NIRC of 1997) before resorting to judicial appeal.

2. Respondent failed to present concrete and convincing proof that petitioner did not have enough reason to deny its administrative claim for refund.

Pursuant to Section 112 of the 1997 NIRC, as amended, the CIR maintains that a VAT registered person has two (2) years from the close of the taxable quarter when the importation or purchases of capital goods to claim for refund of unutilized input VAT. Thereafter, the CIR has 120 days from the submission of documents within which to decide and in turn the taxpayer has 30 days to appeal to this Court from the expiration of the 120-day period should the CIR fail to decide within the 120-day period. *c*

[10] Supra Note 2
[11] Supra Note 3
[12] Ibid. pp. 7-51

Taganito's application for refund was filed on December 30, 2003 while the Petition for Review was filed on February 19. 2004. Hence, the CIR asserts that Taganito's Petition for Review was prematurely filed and should have been dismissed for failure to state a cause of action. Likewise, the CIR argues that the requirement under Section 112 of the 1997 NIRC is jurisdictional and considering that Taganito failed to comply with the requirement, this Court cannot acquire jurisdiction over the case. Further, the CIR argues that Taganito failed to submit all the necessary documentary evidence in its application for refund depriving the CIR the opportunity to determine the veracity of Taganito's claim for refund and rendering the Petition for Review before this Court's Division pro-forma.

Taganito filed its Comment [13] and Memorandum [14]. In sum, Taganito claims that the 120-day period is non-jurisdictional in nature and that the CIR's second issue was never raised as an issue in any pleadings filed before this Court's former Second Division.

We resolve in favor of the CIR. *L*

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[13] Ibid. pp. 61-66.
[14] Ibid. pp. 76-89

In the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.[15] (herein referred to as the Aichi case), the Supreme Court concluded that the premature filing of a Petition for Review before this Court in a claim for refund/credit of input VAT warrants a dismissal inasmuch as no jurisdiction was acquired by this Court. The pertinent portion of which reads as follows:

> "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) 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."xxx.
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> xxx xxx xxx.
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> In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.
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> xxx xxx xxx
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> Section 112(D) 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.

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

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 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.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) 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) 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.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

> 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."

Following the Aichi case ruling, it is very clear that in claiming a tax refund or tax credit under Section 112 of the NIRC of 1997, as amended, the taxpayer should apply for refund/credit of unutilized input VAT within two (2) years after the close of the taxable quarter when the sales were made. Thereafter, the CIR has 120 days, from the date of the submission of the complete documents within which to grant or deny the claim. If the CIR during the 120-day period decides or after the 120-day period fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the decision or inaction of the CIR to this Court within 30 days. Therefore, a violation of Section 112(D) of the NIRC [Now Section 112 (C) of the 1997 NIRC, as amended] would lead to the dismissal of petitioner's appeal or petition, notwithstanding the timely filing of the application for refund or tax credit under Section 112 of the 1997 NIRC, as amended. Indeed, the 120-30 day period is crucial in filing an appeal.

An examination of the record reveals that the petition docketed as CTA Case No. 6867 and raffled before this Court's former Second Division did not comply with the 120-30 day period. For the four (4) taxable quarters of 2002[16], petitioner's application for tax refund or tax credit of its unutilized input VAT on December 30, 2003, is within the two (2) year prescriptive period. However, petitioner's appeal or Petition for Review before this Court on February 19, 2004 is a clear contravention of Section 112 (D) of the 1997 NIRC, as amended and of the doctrine laid down in the Aichi case.

This Court is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[17] In claiming a tax refund, pursuant to Section 7 and 11 of Republic Act (R. A.) No. 1125, otherwise known as the *Law Creating the Court of Tax Appeals*[18], *as amended by* R. A. No. 9282[19], *and* Section 3, Rule

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[16] Taganito filed all its VAT returns for the taxable year 2002 for the 1st quarter on April 13, 2002, 2nd quarter on July 11, 2002, 3rd Quarter on October 21, 2002 and for the 4th quarter on January 17, 2003

[17] Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007, 522 SCRA 144; Commissioner of Internal vs. Josefina Leal, G.R. No. 113459, November 18, 2002.

[18] Sec. 7. *Jurisdiction.* — The CTA shall exercise:

> **(a) Exclusive appellate jurisdiction to review by appeal**, as herein provided:
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> > **(1) Decisions of the Commissioner of Internal Revenue in cases** involving disputed assessments, **refunds** of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
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> > **(2) Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds** of internal revenue taxes, fees or other charges,

4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals [20], decisions/rulings or inaction of the CIR are indispensable in

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> penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

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SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
"Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc.

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[19] An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (Cta), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes

[20]

RULE 4
Jurisdiction of the Court

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SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:

(a) **Exclusive original or appellate jurisdiction to review by appeal the following:**

(1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments,

order to vest this Court of jurisdiction to entertain the appeal[21]. In relation to Section 112 of the 1997 NIRC, this is precisely why this Court has the exclusive appellate jurisdiction thereon. *C*

> **refunds** of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds** of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;
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[21] Lucas G. Adamson, Therese June D. Adamson, and Sara S. De los Reyes, in their capacities as President, Treasurer and Secretary of Adamson Management Corporation vs. Court of Appeals and Liwayway Vinzons-Chato, in her capacity as Commissioner of the Bureau of Internal Revenue, G.R. No. 120935 &G.R. No. 124557. May 21, 2009.

Jurisdiction is defined as the power and authority of a court to hear, try and decide a case. [22] Concomitantly, decisions, rulings or inaction of the Commissioner of Internal Revenue in relation to Section 112 of the 1997 NIRC are non sine qua non requirement before this Court's Division can acquire jurisdiction to entertain an appeal[23].

Being a Court of limited jurisdiction, our jurisdiction to take cognizance of a case (jurisdictions over the subject matter, among others decisions, rulings or inaction of the Commissioner of Internal Revenue in cases involving refunds) are conferred by law, cannot be waived by the CIR, and may also be raised at any stage of the proceedings[24]. Otherwise, the mandatory 120-30 day period under Section 112 of the NIRC and this Court's appellate jurisdictions thereon would be ceremoniously set aside by the parties.

In fine, the petition docketed as CTA Case No. 6867 and raffled before this Court's former Second Division is dismissible on the ground

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[22] Veneracion v. Mancilla, G.R. No. 158238, July 20, 2006, 495 SCRA 712, 726; Platinum Tours and Travel, Inc. v. Panlilio, G.R. No. 133365, September 16, 2003, 411 SCRA 142, 146; United BF Homeowner's Association v. BF Homes, Inc., G.R. No. 124873, July 14, 1999, 310 SCRA 304, 317; Zamora v. CA, G.R. No. 78206, March 19, 1990, 183 SCRA 279, 283.

[23] Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007, 522 SCRA 144.

[24] Dy v. NLRC, G.R. No. L-68544, October 27, 1986, 145 SCRA 211, 220 citing Calimlim v. Ramirez, G.R. No. L-34362, November 19, 1982, 118 SCRA 399.

that this Court's former Second Division failed to acquire jurisdiction to entertain the case pursuant to the ruling of the Supreme Court in the Aichi Case. Having discussed the lack of jurisdiction of this Court's former Second Division, we deemed it unnecessary to discuss the other issue raised by petitioner for being moot.

WHEREFORE premises considered, the instant Petition for Review is hereby **GRANTED.** The Decision of the former Second Division of this Court in CTA Case No. 6867, dated July 31, 2009 and Resolution, dated October 27, 2009, are **REVERSED** and **SET ASIDE.** Accordingly, CTA Case No. 6867 is hereby **DISMISSED** for having been prematurely filed. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

(concurs with the dissenting opinion of AJ Victorino)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(with dissenting opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(with dissenting opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(concurs with the dissenting opinion of AJ Victorino)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ERNESTO D ACOSTA
Presiding Justice