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. 827
(CTA Case No. 7775)

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

Promulgated:

MAY 03 2013 aristopolinario 2:00 p.m.

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DECISION

BAUTISTA, J.:

Before the Court *En Banc* is a "Petition for Review" filed by petitioner Deutsche Knowledge Services, Pte., Ltd. ("Deutsche") appealing the Decision of the Second Division of this Court ("Court in Division") dated May 30, 2011[1] and Resolution dated August 26, 2011,[2] which denied the Petition for Review for being prematurely filed.

[1] *Rollo*, (CTA EB CASE No. 827) pp. 62-76, Penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla, concurring.
[2] *Id.*, pp. 78-84.

The Parties

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 in the Philippines and registered with the BIR as a VAT-registered taxpayer with Tax-identification No. (TIN) 238-763-115-000.

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

Antecedent Facts

The relevant antecedents are stated by the Court in Division in its Decision dated May 30, 2011 as follows:

> "On April 25, 2006, petitioner filed its original Quarterly VAT Return for the first quarter of 2006.
>
> 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.
>
> 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. 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.

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.

For her part, respondent filed her Answer 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;
>
> 5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit had been erroneously or illegally collected in violation of the tax laws relied upon by the petitioner;
>
> 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);

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;

8. It is incumbent upon the [p]etitioner to show that it has complied with the provisions of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended;

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

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 and November 17, 2010.

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

On April 1, 2011, the case was considered submitted for decision without respondent's evidence and memorandum."[3]

The Ruling of the Court in Division

On May 30, 2011, the Court in Division promulgated the assailed Decision, the dispositive portion of which states:

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

SO ORDERED."[4]

The Court in Division denied the Petition for Review on the ground of prematurity, citing that the case is on all fours with the Supreme Court case entitled *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* ("Aichi")[5] Applying *Aichi*, the Court found that the two-year period to file an administrative claim for tax refund/credit for the first quarter of 2006, or January to March 2006 already expired on March 31, 2008 when petitioner filed its administrative claim on April 14, 2008. The Court found further that petitioner filed its judicial claim ten days after its administrative claim, or on April 24, 2008, failing to wait for the 120-day period given to the Commissioner of Internal Revenue to act on the administrative claim to expire.

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[3] *Id.*, pp. 63-65, *citing Records* (CTA Case No. 7775), "*Joint Stipulation of Facts and Issues*" pp. 187 - 188.
[4] *Id.*, pp. 75.
[5] G.R. No. 184823, October 6, 2010.

On June 16, 2011, petitioner filed a "Motion for Reconsideration (Re: Decision dated May 30, 2011)"[6] assailing the retroactive application of the Aichi decision.

On August 26, 2011, the Court denied petitioner's "Motion for Reconsideration (Re: Decision dated May 30, 2011)" for lack of merit,[7] affirming the Court in Division's May 30, 2011 Decision.

Issues Raised by Petitioner

On October 3, 2011, petitioner filed this Petition for Review[8] before the Court *En Banc*, assailing the above Decision and Resolution as follows:

> "14.1 THE CTA-DIVISION ERRED IN HOLDING THAT PETITIONER'S ADMINISTRATIVE CLAIM FOR REFUND WAS FILED BEYOND THE TWO-YEAR PRESCRIPTIVE PERIOD PROVIDED IN SECTION 112 (A), TAX CODE IN RELATION TO SECTION 229, TAX CODE;
>
> 14.2 THE CTA-DIVISION ERRED IN HOLDING THAT THE 120-DAY PERIOD GIVEN TO RESPONDENT TO ACT ON THE APPLICATION FOR TAX REFUND OR CREDIT IS JURISDICTIONAL;
>
> 14.3 THE CTA-DIVISION ERRED IN NOT FINDING THAT RESPONDENT WAS ESTOPPED FROM RAISING THE DEFENSE OF PREMATURITY FOR FAILURE TO ALLEGE SUCH DEFENSE IN HER ANSWER OR IN A MOTION TO DISMISS; and

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[6] *Records*, (CTA Case No. 7775), pp. 438 – 464.
[7] *Id.*, (CTA Case No. 7775), pp. 469 – 475.
[8] *Rollo*, (CTA EB CASE No. 827) pp. 9 -54.

14.4 THE CTA-DIVISION ERRED IN GIVING AICHI RETROACTIVE EFFECT TO JUDICIAL CLAIMS FOR REFUND FILED BEFORE ITS PROMULGATION."[9]

On January 19, 2012, the Court *En Banc*, noting that respondent failed to file a Comment to the Petition for Review despite notice,[10] ordered both parties to file their simultaneous memoranda within thirty (30) days from notice thereof.[11] On April 2, 2012, petitioner submitted its Memorandum,[12] while respondent failed to do so.[13]

On May 16, 2012, the Court *En Banc* resolved that the Petition for Review dated October 3, 2011 was deemed submitted for Resolution.[14]

The Ruling of the Court En Banc

The Court *En Banc* finds the petition bereft of merit.

On February 12, 2013, the Supreme Court promulgated it's decision in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue*[15] (*"San Roque case"*) clarifying the application of the doctrines in the cases of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,*[16] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,*[17] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*[18] as well as the application of

[9] *Id.*, pp. 15-16.
[10] *Id.*, p. 89.
[11] *Id.*, pp. 91-92.
[12] *Id.*, pp. 98-146.
[13] *Id.*, p. 147.
[14] *Id.*, p. 149.
[15] G.R. No. 187485; G.R. No. 196113; G.R. No. 197156, February 12, 2013.
[16] G.R. Nos. 141104 & 148763, 8 June 2007, 524 SCRA 73.
[17] G.R. No. 172129, 12 September 2008, 565 SCRA 154.
[18] G.R. No. 184823, 6 October 2010, 632 SCRA 422.

Revenue Memorandum Circular No. 49-03 (RMC 49-03) dated 15 April 2003 and BIR Ruling No. DA-489-03 dated 10 December 2003 to claims for refund, as follows:

> "The Atlas doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in Mirant. The Atlas doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the Atlas doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the verba legis rule. The Mirant ruling, which abandoned the Atlas doctrine, adopted the verba legis rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.
>
> The Atlas doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in Atlas. The application of the 120+30 day periods was first raised in Aichi, which adopted the verba legis rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a

ground for dismissing the judicial suit due to prematurity.

Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies. Such doctrine is basic and elementary.

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 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 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 no 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, 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.

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BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. 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." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

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.

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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."[19] (Underlining Ours.)

Thus, in accordance with the Supreme Court's most recent decision, both the filing of the petitioner's administrative claim on April 15, 2008 and its judicial claim on April 24, 2008 were filed on time.

To continue, relevant to the discussion of petitioner's claim is Section 112 of the 1997 NIRC, as amended which states:

"***SEC. 112. Refunds or Tax Credits of Input Tax. —***

[19] G.R. No. 187485; G.R. No. 196113; G.R. No. 197156, February 12, 2013.

> "***(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 or 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 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. "

To be entitled to a refund or issuance of a TCC of unutilized input taxes attributable to zero-rated or effectively zero-rated sales, petitioner must be able to comply with the following requirements:

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. that input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

In its Quarterly VAT Return for the 1st quarter of 2006,[20] petitioner reflected the following input VAT, the subject claim of this case:

Domestic Purchases of Goods other than Capital Goods	₱ 413,082.06
Domestic Purchase of Services	2,428,853.76
Total Input VAT	₱2,841,935.82

With regard to the first requisite for entitlement for refund/tax credit, petitioner alleges that it is a multinational company organized and existing under the laws of Singapore. Petitioner is licensed to do business as a regional operating headquarters in the Philippines by the Securities and Exchange Commission on April 25, 2005, pursuant to the Omnibus Investment Code of 1987, as amended by Republic Act No. 8756,[21] and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services and product development; technical support and maintenance; data processing and communication and business development.[22]

For the 1st quarter of 2006, petitioner claims that it generated sales from services rendered to non-resident foreign corporations

[20] Exhibit "C."
[21] An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, amending for the purpose certain provisions of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.
[22] *Records* (CTA Case No. 7775), p.186.

engaged in business conducted outside of the Philippines for which it was paid for in Euro and other acceptable foreign currency remitted inward through the banking system and duly accounted for in accordance with the rules and regulations of the BSP. Petitioner maintains, further, that such services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. [23]

In line with this, a circumspect examination of petitioner's VAT returns for the first quarter of 2006[24] would show that no zero-rated sales were declared by it which would verily give merit to its claim for refund of creditable input tax. It is clear from the earlier cited Section 112(A) of the NIRC of 1997 that in order to claim for a refund/tax credit of input VAT, there must be zero-rated or effectively zero-rated sales to which the input VAT sought to be refunded are attributable. Given that there are no zero-rated sales to speak of during the first quarter of 2006, petitioner is, therefore, not entitled to a refund of input taxes amounting to ₱2,841,935.82 allegedly attributable thereto.

It is settled that tax refunds, like tax exemptions, are construed strictly against the taxpayer and that the claimant has the burden of

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[23] Sec.108. *Value-added Tax on Sales of Services and Use or Lease of Properties* –

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(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 90%) rate:

(1)Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresidential person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

[24] Exhibits "EE-2" to "EE-4"

proof to establish the factual basis of its claim for tax credit or refund.[25] In view of the above finding, petitioner's claim must fail.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(On Leave)
ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[25] *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA EB Case No. 298, January 18, 2008 citing *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, 280 SCRA 459.

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.

ROMAN G. DEL ROSARIO
Presiding Justice