REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- **DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,** *Respondent.*	**CTA EB No. 829** (CTA Case No. 7695)

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DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD., *Petitioner,* - versus- **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.*	**CTA EB No. 831** (CTA Case No. 7695) Present: Del Rosario, PJ, Castañeda,Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ. Promulgated: JUN 17 2013 1:40 p.m.

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DECISION

COTANGCO-MANALASTAS, J.:

The instant case is a petition for review under Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, appealing the Decision[1] promulgated on March 7, 2011 by the CTA First Division in CTA Case No. 7695. The Decision disposed of the case, as follows:

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[1] *Rollo*, CTA EB No. 829, pp. 17-49.

> "WHEREFORE, the instant Petition for Review is PARTIALLY GRANTED. Accordingly, respondent Commissioner of Internal Revenue is hereby DIRECTED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favour of petitioner Deutsche Knowledge Services, Pte. Ltd., in the reduced amount of ONE MILLION NINE HUNDRED FIVE THOUSAND FOUR HUNDRED FORTY THREE AND 20/100 PESOS (Php1,905,443.20), representing input VAT paid on its purchases of capital goods and other goods and services for the 3rd and 4th quarters of 2005."[2]

CTA EB No. 829 is the appeal filed by the Commissioner of Internal Revenue, with Deutsche Knowledge Services Pte. Ltd., as respondent.

CTA EB No. 831 is the appeal filed by Deutsche Knowledge Services Pte. Ltd, after it filed a motion for extension of time to file petition for review. However, after due consideration, Deutsche Knowledge Services Pte. Ltd. filed a manifestation that it will no longer file a petition for review relative to the CTA Division's March 11, 2011 Decision.

On February 15, 2012, CTA EB No. 831 was consolidated with CTA EB No. 829, considering that both cases are appeals filed by both parties from the same Decision of the CTA First Division.[3]

The Facts[4]

The facts are as follows:

Petitioner is the Commissioner of the Bureau of Internal Revenue empowered to act upon claims for refund or tax credit as provided by law. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Quezon City.

Respondent Deutsche Knowledge Services Pte. Ltd. is the Philippine branch of a multinational company organized and existing under the laws of Singapore. It is authorized to conduct business in the Philippines as a regional operating

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[2] *Rollo*, pp. 47-48.
[3] *Rollo*, p. 138.
[4] *Rollo*, pp. 18-20.

headquarters (ROHQ) by the Securities and Exchange Commission as of April 25, 2005. It provides services 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, logistic services, research and development services and product development, technical support and maintenance, data processing and communication and business development.

Specifically, respondent acts as a shared services center that handles regional as well as global accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-related entities and product control.

In the 3rd and 4th quarters of CY 2005, respondent rendered services in the Philippines to persons engaged in business conducted outside the Philippines. It was paid in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

On October 24, 2005 and January 25, 2006, respondent filed its original quarterly VAT return for the 3rd and 4th quarters of CY 2005, respectively. For such quarters, it accumulated excess and unutilized input tax in the total amount of Php5,188,511.53 attributable to zero-rated sales and purchases of capital goods, broken down as follows:

CY 2005	Input VAT
3rd Quarter	₱ 1,882,159.76
4th Quarter	3,306,351.77
Total	**P 5,188,511.53**

On August 31, 2007, respondent filed with the BIR-Revenue District Office No. 47 an application for refund/tax credit of the cited excess and unutilized input VAT.

On October 24, 2007, respondent filed the Petition for Review with the CTA Division for alleged failure of petitioner to act on its application for refund/tax credit.

After trial, the CTA First Division ruled in favor of respondent, partially granting its claim for refund/issuance of tax credit certificate in the abovecited Decision dated March 7, 2011.

Petitioner and respondent both filed their motions for reconsideration which were likewise denied in the CTA First Division's Resolution dated September 1, 2011.

Issues

As grounds for appeal, petitioner raises the following:

I. Whether the Honorable Court of Tax Appeals (First Division) erred when it partially granted the refund/issuance of tax credit certificate in favor of respondent Deutsche Knowledge Services, Pte. Ltd., in the reduced amount of One Million Nine Hundred Five Thousand Four Hundred Forty Three and 20/100 pesos (PHP 1,905,443.20), representing input VAT paid on its purchases of capital goods and other goods and services for the 3rd and 4th quarters of 2005.[5]

II. Whether the Honorable Court of Tax Appeals (First Division) has jurisdiction over the respondent's petition.

Respondent, in its Comment, argues for the dismissal of the petition for review on the ground that the CTA Division properly decided the claim for refund.[6]

Ruling of the Court

Petitioner principally questions the jurisdiction of the CTA First Division on the ground that respondent did not wait for the lapse of the 120-day period when it filed its judicial claim. Such prematurity of the petition for review rendered the

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[5] *Rollo*, p. 8.
[6] *Rollo*, pp. 150-151.

CTA Division without jurisdiction over the case, following the ruling in the *Aichi* case.[7]

Petitioner is correct that the CTA Division acquired no jurisdiction due to the prematurity of the judicial claim. However, the instant petition for review shall still be dismissed, as explained in the succeeding discussion.

Compliance with the 120-day waiting period is mandatory and jurisdictional

Respondent's administrative claim was filed on August 31, 2007. Respondent filed its judicial claim on October 24, 2007, which was merely 54 days after the administrative claim was filed, and before the lapse of the 120-day period given to the petitioner to grant or deny the claim. The judicial claim is clearly premature.

Section 112(C) of the 1997 Tax Code, as amended, grants the Commissioner 120 days from receipt of the complete documents, within which to act on the application for refund. Only after the lapse of the said 120 days or from the receipt of the adverse decision, may an aggrieved taxpayer, within 30 days therefrom, seek judicial intervention on its claim for refund via a petition for review.

As ruled in the *Aichi* case, and clarified in the *San Roque*[8] case, compliance with the 120-day period is mandatory and jurisdictional, *to wit*:

> "Failure to comply with the 120-day period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. L

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[7] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

[8] *Commissioner of Internal Revenue vs. San Roque Power Coporation*; *Taganito Mining Corporation vs. Commissioner of Internal Revenue*; *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

> Section 112(C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: 'x x x 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.' Following the *verba legis* doctrine, this law 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."[9]

BIR Ruling No. DA-489-03 provides an exception to the mandatory and jurisdictional 120+30 day periods

In the same *San Roque* case, the Supreme Court *En Banc*, apart from declaring the mandatory and jurisdictional nature of the 120+30 day periods, also recognized the existence of BIR Ruling No. DA-489-03[10] as a valid exception to the strict compliance with the 120+30 day periods.

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." It was further explained that "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."[11]

Under the foregoing, taxpayers who did not wait for the lapse of the 120-day period are still considered to have filed their petitions on time and not penalized for having filed their judicial claims prematurely.

In the instant case, respondent filed its judicial claim on October 24, 2007 or clearly within the period of exception

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[9] *Ibid.*
[10] Dated December 10, 2003.
[11] *Supra* Note 8, pp. 39-40.

established by the *San Roque* case, which is December 10, 2003 to October 6, 2010. Thus, even though respondent's petition for review was filed before the lapse of the 120-day period, the same is not treated as premature and dismissible.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision in C.T.A. Case No. 7695 dated March 7, 2011 is hereby **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(with Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(no part)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, 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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
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EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- **DEUTSCHE KNOWLEDGE, SERVICES PTE. LTD.,** Respondent.	**CTA EB No. 829** (CTA CASE No. 7695)
DEUTSCHE KNOWLEDGE, SERVICES PTE. LTD., Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB Case No. 831** (CTA Case No. 7695) Members: **DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA UY CASANOVA, FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS, *JJ.*** Promulgated: JUN 17 2013

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DISSENTING OPINION

CASANOVA, *J.*:

With due respect to my esteemed colleagues, I dissent with the majority opinion denying petitioner's Petition for Review filed on October 7, 2011.

I am aware of the recent pronouncement of the Supreme Court in the consolidated cases 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*[1] which clarifies the issue on the application of the 120-30 day prescriptive period for refund under Section 112 of the 1997 NIRC. In the said consolidated cases, particularly in the San Roque case, the Supreme Court ruled that from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court in the Aichi case on October 6, 2010, the taxpayer-claimant need not wait for the lapse of the 120-day period before it could file its judicial claim before the CTA.

In the present case, respondent filed its Petition for Review on October 24, 2007, fifty-four (54) days after it filed its administrative claim on August 31, 2007, thus violating the 120-30 rule. However, as it filed its judicial claim within the period after the issuance of BIR Ruling No. DA-489-03 and before the promulgation of the Aichi case, respondent is said to have filed its judicial claim on time, hence the decision of the majority to deny petitioner's Petition for Review and to affirm the March 7, 2011 Decision in CTA Case No. 7695.

Notwithstanding the foregoing, it is possible that a Motion for Reconsideration of the said decision may have been filed, thus, until the said Supreme Court case has attained finality and the corresponding entry of judgment has been made[2], prudence dictates that this Court's position on the matter be maintained and application of the new doctrine be, in the meantime, deferred.

In view of the foregoing, the undersigned votes that the instant Petition for Review should be granted considering that the

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[1] G.R. Nos. 1874865, 196113 & 197156, February 12, 2013.

[2] RULE 36

JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF

Sec. 2. *Entry of judgments and final orders.*

If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.

premature filing of judicial claim warrants a dismissal inasmuch as no jurisdiction was acquired by this Court.

CAESAR A. CASANOVA
Associate Justice