REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PAN CENTURY SURFACTANTS, INC., *Petitioner,*	**CTA EB CASE NO. 898** (CTA Case No. 8210)
-versus-	Present: ***Del Rosario, P.J.*** ***Castañeda, Jr.,*** ***Bautista,*** ***Uy,*** ***Casanova,*** ***Fabon-Victorino,*** ***Mindaro-Grulla, and*** ***Cotangco-Manalastas, JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 14 2013

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DECISION

BAUTISTA, J.:

Before the Court *En Banc* is a "Petition for Review [Section 18 of Republic Act 1125, as amended by Republic Act 9282 and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals]" filed by petitioner Pan Century Surfactants, Inc., seeking a review of the Resolutions promulgated by the Second Division of the Court in Division on February 2, 2012,[1] and March 26, 2012,[2] which dismissed the Petition for Review filed by petitioner on December 29, 2010, on the ground that it was filed out of time.

[1] *Rollo*, (CTA EB Case No. 898), pp. 101-103; *Annex* "AG."
[2] *Id.*, at pp. 104-107; *Annex* "AH."

The Parties[3]

Petitioner Pan Century Surfactants, Inc. is a corporation duly organized and existing under the laws of the Philippines. It is a PEZA-registered Ecozone Export Enterprise located at the Jose Panganiban-SEZ engaged in the business of manufacturing fatty alcohol and fatty acids.

Respondent is the duly appointed Commissioner of Bureau of Internal Revenue ("BIR"), who is empowered to perform the duties of said office including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith.

The Facts

The facts of the case, as narrated in the Petition for Review[4] filed by petitioner on December 29, 2010, to the Court in Division:

> "On 03 April 2006, [p]etitioner was registered as a Philippine Economic Zone Authority (PEZA) Ecozone Export Enterprise. It is a qualified enterprise for the purpose of [Value-Added Tax] VAT zero-rating of its transactions with its local suppliers of goods, properties and services, in accordance with Section 106 of the Tax Code and Sections 4.106-6 and 4.108-6 of Revenue Regulation 16-2005, or the Consolidated Value Added Tax Regulations of 2005 ("Consolidated VAT Regulation"). Attached xxx are Certificate Nos. 2008-0640 and 2008-297, issued by the PEZA certifying the status of [p]etitioner as PEZA-registered Ecozone Export Enterprise and the VAT zero-rating of its transactions with its local suppliers of goods.
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> In 2008, [p]etitioner purchased crude coconut oil from Globe Coco Products Manufacturing Corp. (Globe Coco) and SC Global Coco Products, Inc. (SC Global). Pursuant to the said sale transactions, Globe Coco and SC Global, both being VAT registered passed Input VAT to the [p]etitioner. However, since [p]etitioner is a qualified enterprise for the

[3] *Id*, p. 2.
[4] *Records*, (CTA Case No. 8210) pp. 5-10.

purpose of VAT zero-rating of its transactions with its local suppliers of goods, [p]etitioner should not be liable for VAT. To address this erroneous payment of VAT, [p]etitioner applied for refund of the Input VAT, pursuant to the provisions of Section 112 of the Tax Code and Section 4.112-1 of the Consolidated VAT Regulation.

On 09 September 2008, the [p]etitioner claimed its erroneously paid VAT in connection with its sale transactions with Globe Coco for the period 01 April 2008 to 30 June 2008, amounting to Seven Million Six Hundred Ninety Three Thousand Two Hundred Seventy-Nine and Sixty Centavos (Php7,693,279.60). For this purpose, [p]etitioner filed BIR Form No. 1914 (Application for Tax Credits/Refunds) with Revenue District Office (RDO) No. 64 of Daet, Camarines Norte. xxx On 07 November 2008 the [p]etitioner through Revenue District Officer Socorro O. Ramos-Lafuente, wrote the Commissioner of Internal Revenue to follow-up on the status of its claim for tax refund. xxx A few days thereafter, on 12 November 2008, [p]etitioner wrote again Revenue District Officer Ramos-Lafuente to submit to the BIR, copies of BIR Form No. 2550M and 2550Q for the period January 2008 to June 2008. xxx

On 01 April 2009, the [p]etitioner claimed its erroneously paid VAT in connection with its sale transactions with SC Global for the period July 2008 to December 2008, amounting to Seven Million Four Hundred Eleven Thousand Four Hundred Eighty-Seven and Fourteen Centavos (Php7,41 l,487.14). For this purpose, the Petitioner through Assistant Revenue District Officer Modesto Avila Jr., wrote the Commissioner of Internal Revenue and submitted copies of BIR Forms Nos. 1914, 2550M and 2550Q, for the period July 2008 to December 2008. xxx Petitioner wrote Revenue District Officer Marcelino M. Quito on 28 July 2010 and 04 September 2010 to inquire on the status of the application for refund. xxx

In 2009, the [p]etitioner sold its goods, which were manufactured using the crude coconut oil purchased from Globe Coco and SC Global. xxx

> To reiterate its request for VAT refund, the [p]etitioner wrote the Honorable Commissioner of Internal Revenue. xxx [On] 20 December 2010 xxx, bearing the stamped notations of receipt by the BIR on 21 December 2010, xxx.
>
> To date, the [r]espondent Commissioner of Internal Revenue has yet to respond to [p]etitioner's applications for tax refund. Considering that more than one hundred twenty (120) days had lapsed from the dates of submission of complete documents in support of the applications for tax refund filed with the Commissioner of Internal Revenue and the 2-year prescriptive period for filing a claim with the Court of Tax Appeals (CTA) has not yet lapsed, the [p]etitioner is filing the instant Petition with this Honorable Court."

On January 28, 2011, respondent filed her Answer, stating specifically that the Court has no jurisdiction over the subject case since it filed its judicial claim beyond the time allowed by law.[5]

On November 10, 2011, respondent filed a "Motion to Dismiss," alleging that petitioner failed to file its Petition for Review within the period specified by law.[6]

On February 2, 2012, the Court in Division issued the assailed Resolution granting the "Motion to Dismiss" filed by respondent, stating that the Petition for Review was indeed filed out of time.[7]

Petitioner filed a "Motion for Reconsideration" on February 14, 2012,[8] while respondent filed her "Comment" on March 9, 2012.[9] However, the Court in a Resolution promulgated on March 26, 2012 denied the "Motion for Reconsideration."[10]

Not satisfied, petitioner filed the present Petition for Review on April 30, 2012.[11]

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[5] *Id.*, pp. 53-58.
[6] *Id.*, pp. 115-121.
[7] *Id.*, pp. 177-179.
[8] *Id.*, pp. 180-184, with attachments.
[9] *Id.*, pp. 218-221.
[10] *Id.*, pp. 222-225.
[11] *Rollo*, pp. 7-20.

Hence, this Decision.

The Issues

Based on the Petition for Review filed on April 30, 2012,[12] petitioner raised the sole issue of:

> "WHETHER OR NOT THE COURT OF TAX APPEALS SECOND DIVISION MISAPPRECIATED THE FACTS OF THE CASE WHEN IT PROMULGATED THE 02 FEBRUARY 2012 AND 26 MARCH 2012 RESOLUTIONS"

Respondent failed to file her Memorandum, as required by the Court.

The Ruling of the Court *En Banc*

The Court *En Banc* finds no merit in the Petition for Review filed by Pan Century Surfactants, Inc.

In essence, petitioner relies on the following grounds to support its claim:

> "I.
>
> THE COURT OF TAX APPEALS' SECOND DIVISION MISAPPRECIATED THE FACTS OF THE CASE WHEN IT PROMULGATED THE 02 FEBRUARY 2012 RESOLUTION GRANTING THE MOTION TO DISMISS FILED BY THE RESPONDENT AND DENYING THE PETITION FOR REVIEW FILED BY PETITIONER FOR BEING FILED OUT OF TIME; and
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> II.
>
> THE COURT OF TAX APPEALS' SECOND DIVISION MISAPPRECIATED THE FACTS OF THE CASE

[12] *Id.*

WHEN IT PROMULGATED THE 26 MARCH 2012 RESOLUTION DENYING THE MOTION FOR RECONSIDERATION FILED BY THE PETITIONER FOR LACK OF MERIT."[13]

In essence, petitioner wants the Court *En Banc* to review the factual circumstances in the present case.

To summarize, petitioner filed an administrative claim for refund on September 9, 2008 for the second quarter of the taxable year 2008, while a separate administrative claim for refund was lodged on April 1, 2009 for the third fourth quarter of the same taxable year of 2008. After the inaction of the Bureau of Internal Revenue in processing the administrative claim, petitioner then filed the Petition for Review dated December 29, 2010.

At the filing of the instant Petition for Review, the prevailing rulings of the Supreme Court were the cases of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation ("Mirant case")*,[14] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. ("Aichi case")*[15].

In the *Mirant case*, it was held that the reckoning of the two (2)-year prescriptive period provided under Section 112(A) of the 1997 NIRC within which to file a claim for refund or tax credit must be counted from the close of the pertinent quarter when the sales were made.

In the *Aichi case*, it was held that:

> "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

[13] *Id.*, pp. 11-12.
[14] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[15] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days."

With these cases, the Court shall now determine whether or not petitioner was able to file the two administrative claims and the judicial claim within the prescribed period.

In the case of the administrative claims made on September 9, 2008 and April 1, 2009, covering the second and third quarters, respectively of taxable year 2008, it is clear that these were made within the prescriptive period allowed by law.

The next hurdle is to determine whether or not the judicial claim filed on December 29, 2010 was filed within the reglementary period.

In this regard, the recent case of *Commissioner of Internal Revenue v. San Roque Power Corporation,*[16] sheds light, to quote:

> "Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim long after the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. In any event, whether governed by jurisprudence before, during, or after the Atlas case, Philex's judicial claim will have to be rejected because of late filing. Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the Atlas doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the Mirant and Aichi doctrines, Philex's judicial claim was indisputably filed late.
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> The Atlas doctrine cannot save Philex from the late filing of its judicial claim. The inaction of the Commissioner on Philex's claim during the 120-day period is, by express

[16] *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, Philex Mining Corporation v. Commissioner of Internal Revenue,* G.R. Nos. 187485, 196113, 197156, February 12, 2013.

provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences."

In addition, the Supreme Court held:

"Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at anytime within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C)."[17]

The above cited case merely reaffirmed the *Aichi case*, in that the non-observance of the 120 and 30 day rule will be fatal to the cause. The only exemption is the period covered by BIR Ruling No. DA-489-03 which was from December 10, 2003 to October 6, 2010. Thus, at the time when the Petition for Review was filed in this case, the 120 and 30 day rule was already mandatory and jurisdictional.

Thus, as applied to this case:

Administrative Claim	End of 120 Days	End of 30 Days
September 9, 2008	January 7, 2009	February 6, 2009
April 1, 2009	July 30, 2009	August 29, 2009

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[17] *Id.*

It becomes clear in this case that the Petition for Review filed on December 29, 2010 was beyond the periods provided by law. By the Court's computation, six hundred ninety one (691) days from the first administrative claim and four hundred eighty seven (487) days from the second administrative claim lapsed before petitioner filed its judicial claim.

Thus, as correctly pointed out by the Court in Division when it granted the "Motion to Dismiss" filed by respondent on November 10, 2011, the Petition for Review was filed out of time.

WHEREFORE, premises considered, the Petition for Review filed by Pan Century Surfactants, Inc. on April 30, 2012 is hereby **DENIED**. The Resolutions dated February 2, 2012 and March 26, 2012, promulgated by the Second Division of the Court are hereby **AFFIRMED** *in toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

No part.
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

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