REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SAN ROQUE POWER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 938
(CTA Case Nos. 7882 & 7937)

Present:

Del Rosario, *PJ*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, *JJ.*

Promulgated:

JUN 25 2013 9:10 a.m.

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DECISION

DEL ROSARIO, *PJ*:

The Petition for Review under consideration is filed pursuant to Section 18 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, questioning the Decision dated February 8, 2012 of the Court's Third Division in the case entitled San Roque Power Corporation vs. Commissioner of Internal Revenue, docketed as CTA Case Nos. 7882 & 7937, as well as, the Resolution dated September 4, 2012 denying petitioner's Motion for Reconsideration of the assailed Decision for lack of merit.

The appealed CTA Case Nos. 7882 and 7937, which sought for refund or issuance of a tax credit certificate in the aggregate amount of P28,289,562.04, allegedly representing unutilized input VAT paid on domestic purchases of taxable goods and services for the four quarters of calendar year 2007, were dismissed in February 8, 2012 Decision of the Court in Division. CTA Case No. 7882 was dismissed for having been filed late, while CTA Case No. 7937 was dismissed for having been prematurely filed.

PARTIES

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Barangay San Roque, San Miguel, Pangasinan.[1]

Respondent, on the other hand, is the duly appointed CIR empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. Respondent holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

FACTS

The antecedent facts of the case, as narrated by the Court Division, are hereunder reproduced:[3]

> "Petitioner is principally engaged in the designing, constructing, erecting, assembling, owning, commissioning, and operating power-generating plants and related facilities, pursuant to and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government owned or controlled corporation, or other entity engaged in the development, supply or distribution of energy.
>
> Petitioner's 345 MW Hydroelectric Power Plant Project, a three unit rated 345 MW hydroelectric power generating facility, has been duly accredited as a Block Power Production Facility by the Department of Energy, as evidenced by its DOE Certification of Accreditation (No. 99-01-50) issued on January 20, 1999.
>
> On April 16, 2007, petitioner filed with the BIR its Original Quarterly VAT Returns for the first quarter of 2007.
>
> On May 12, 2007, petitioner filed with the BIR its Amended Quarterly VAT Returns for the first quarter of 2007.
>
> On July 18, 2007, petitioner filed with the BIR another Amended Quarterly VAT Returns for the first quarter of 2007.
>
> On July 23, 2007, petitioner filed with the BIR its Quarterly VAT Returns for the second quarter of 2007.
>
> For the first and second quarters of 2007, petitioner incurred unutilized input VAT credits from its purchases of capital goods, other domestic goods and services, as well as on its importations of goods, in the total amount of P17,459,164.54:

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[1] Rollo, p. 94
[2] Rollo, pp. 94-95
[3] Rollo, pp. 95-103

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2007 Taxable Quarter	INPUT VAT						TOTAL (Php)
	Purchases of Capital Goods not exceeding 1M	Allowable Input tax for the period on purchase of capital goods exceeding 1M	Domestic purchases - Goods other than Capital Goods (Php)	Importation of goods other than capital goods	Domestic purchases-Services (Php)	Services rendered by non-residents	
1st	19,018.93	150,811.53	1,127,738.78	54,343.00	2,082,238.91	362,437.40	3,796,588.55
2nd	15,042.86	170,081.12	1,600,779.89	62,391.00	11,390,996.06	546,499.36	13,785,790.29
TOTAL	34,061.79	320,892.65	2,728,518.67	116,734.00	13,473,234.97	908,936.76	17,582,378.84
Less: Output TAX for the 2nd qtr							(123,214.30)
Total Unutilized Input VAT for the 1st and 2nd quarters of 2007							17,459,164.54

The unutilized input VAT for the 1st and 2nd quarters of taxable year 2007, in the aggregate amount of P17,459,164.54, is attributable to its zero-rated sales of generated power to the National Power Corporation ("NPC").

The unutilized input VAT for the 1st and 2nd quarters of taxable year 2007 was allegedly not applied against the output VAT in the succeeding taxable quarters.

On October 23, 2007, petitioner filed with the BIR its Quarterly VAT Returns for the third quarter of 2007.

On January 23, 2008, petitioner filed with the BIR its Original Quarterly VAT Returns for the fourth quarter of 2007.

On February 7, 2008, petitioner filed with the BIR its Amended Quarterly VAT Returns for the fourth quarter of 2007.

On February 26, 2008, petitioner filed with the BIR another Amended Quarterly VAT Returns for the fourth quarter of 2007.

For the third and fourth quarters of 2007, petitioner incurred unutilized input VAT credits from its purchases of capital goods, other domestic goods and services, as well as on its importations of goods, in the total amount of P10,830,397.50:

2007 Taxable Quarter	INPUT VAT						TOTAL (Php)
	Purchases of Capital Goods not exceeding 1M	Allowable Input tax for the period on purchase of capital goods exceeding 1M	Domestic purchases - Goods other than Capital Goods (Php)	Importation of goods other than capital goods	Domestic purchases-Services (Php)	Services rendered by non-residents	
3rd	44,355.77	212,509.42	1,175,914.15	132,289.00	4,278,931.09	150,529.20	5,994,528.63
4th	12,428.57	(296,655.34)	959,160.91	122,048.00	3,980,850.49	61,150.54	4,838,983.17

TOTAL	56,784.34	(84,145.92)	2,135,075.06	254,337.00	8,259,781.58	211,679.74	10,833,511.80
Less: Output TAX for the 2nd qtr							(3,214.20)
Total Unutilized Input VAT for the 1st and 2nd *[sic]* quarters of 2007							10,830,397.50

The unutilized input VAT for the 3rd and 4th quarters of taxable year 2007, in the aggregate amount of P10,830,397.50, is attributable to its zero-rated sales of generated power to the NPC.

The unutilized input VAT for the 3rd and 4th quarters of taxable year 2007 was allegedly not applied against output VAT in the succeeding taxable quarters.

On May 28, 2008, petitioner filed its administrative claim for refund of unutilized input VAT for the first and second quarters of taxable year 2007.

On January 27, 2009, petitioner filed its administrative claim for refund of unutilized input VAT for the third and fourth quarters of taxable year 2007 in the amount of P11,883,843.50.

On March 30, 2009, petitioner filed an amended administrative claim for refund of unutilized input VAT for the third and fourth quarters of taxable year 2007 in the reduced amount of P10,830,397.50.

In view of respondent's inaction and in order to suspend the running of the two-year prescriptive period under the NIRC of 1997, *as amended*, on March 13, 2009, petitioner filed its judicial claim for refund of the unutilized input VAT for the 1st and 2nd quarters of taxable year 2007 with this Court, docketed as C.T.A. Case No. 7882.

On June 26, 2009 petitioner filed its judicial claim for refund of the unutilized input VAT for the 3rd and 4th quarters of taxable year 2007 with this Court, docketed as C.T.A. Case No. 7937.

On September 10, 2009, petitioner filed a 'Motion to Consolidate' C.T.A. Case No. 7937 with C.T.A. Case No. 7882, which the Court granted. Thus, C.T.A. Case No. 7937 was ordered consolidated with C.T.A. Case No. 7882, which bears the lower docket number.

In C.T.A. Case No. 7882, respondent CIR, in his answer, alleged by way of special and affirmative defenses:

> '5. Petitioner must prove that it has filed a claim for refund within the reglementary period provided by law. Section 112 of the NIRC of 1997 reads:
>
> > 'SEC. 112. *Refunds or Tax Credits of Input Tax.* –
> >
> > (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 the volume of sales.
>
> (B) *Capital Goods.* – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> (C) *Cancellation of VAT Registration.* – A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.
>
> (D) *Period Within Which Refund or Tax Credit of Input Taxes Shall be Made.* – In proper cases, 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 comp[l]ete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the 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.

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> (E) *Manner of Giving Refund.* – Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit.'

> 6. The Petition for Review was filed outside the period provided by law for judicial review. Petitioner's administrative refund was filed on May 28, 2008 and its Petition for Review was filed before the Honorable Court on March 13, 2009. From the abovequoted provision of law, petitioner had a period of 120 days or until September 25, 2008. Afterwards, petitioner may opt to file a Petition for Review within 30 days or until October 25, 2008. The instant Petition for Review was filed one hundred forty days later or on March 13, 2009. Clearly, petitioner's right to a judicial review has prescribed.

While in C.T.A. Case No. 7937, respondent CIR, in his answer, alleged by way of special and affirmative defenses:

> '6. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau;
>
> 7. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected.
>
> 8. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the Tax Code of 1997, as amended.
>
> 9. Petitioner must prove compliance with the following in order to be entitled to a claim for refund:
>
> > a. The registration requirements of a value-added taxpayer under the pertinent provisions of the Tax Code of 1997, as amended and its implementing regulations;
> >
> > b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the Tax Code, as amended;
> >
> > c. Submission of complete documents in support of the administrative claim for refund pursuant to Section 112(C) of the Tax Code of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of judicial claim;

d. That the input taxes in the amount of P10,830,397.50 allegedly representing input VAT from its domestic purchases of non-capital goods and services, as well as importations of goods for the 3rd and 4th quarters of calendar year 2007 were:

1. attributable to its zero-rated sales;
2. incurred or paid by petitioner; and
3. not applied against any output VAT liability;

e. That the claim for refund in the amount of Php10,830,397.50 representing unutilized input tax was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112(A) of the Tax Code, as amended;

f. Petitioner must likewise prove that it has complied with the governing rules and regulations with regard to recovery of taxes as provided in Section 112(a) of the Tax Code, as amended.

10. Corollary thereto, Section 112 of the NIRC provides:

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

(A) *Zero-Rated or Effectively Zero-Rated Sales.* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, <u>within two (2) years after the close of the taxable quarter when the sales were made</u>, 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. xxx

(B) *Capital Goods.* – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

(C) xxx

(D) *Period Within Which Refund or Tax Credit of Input Taxes Shall be Made.* In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes <u>within one hundred twenty (120) days from the date of submission of comp[l]ete documents</u> in support of the application filed in accordance with Subsections (A) and (B) hereof.

> <u>In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above</u>, the taxpayer affected may, within thirty (30) days from the 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.-'

> Petitioner presented Pia Tose O. Talosig and Ma. Milagros F. Padernal, as witnesses, and documentary evidence, marked as Exhibits "A" to "U", "W", "AA" to "HH", "AAA", "AAA1 to "EEE2", "RRR1 to "HHHH-1", inclusive of their sub-markings, which were all admitted by the Court.

> On the other hand, respondent waived his right to present evidence.

> Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.

> Both parties having complied thereto, the petition was deemed submitted for decision on September 16, 2011."

As mentioned earlier, the Court Division, in its Decision promulgated on February 8, 2012, dismissed the consolidated cases. The dispositive part of said Decision reads:

> "WHEREFORE, premises considered:
>
> 1) as regards C.T.A. Case No. 7882, the Petition for Review is hereby DISMISSED for having been filed late; and
>
> 2) as regards C.T.A. Case No. 7937, the Petition for Review is hereby DISMISSED for having been prematurely filed.
>
> SO ORDERED."

The Court Division found that while petitioner's administrative claim for refund for the first and second quarters of 2007 on May 28, 2008 was filed within the two-year prescriptive period pursuant to Section 112(A) of the NIRC of 1997, as amended, nevertheless, it ruled that the Petition for Review (CTA Case No. 7882) on March 13, 2009 was filed way beyond the 30-day appeal period. According to the Court Division, counting 120-days from May 28, 2008, the CIR had until September 25, 2008 to decide petitioner's administrative claim, and since the CIR failed to act on the claim pursuant to Section 112(C) of the NIRC, petitioner had 30 days from September 26, 2008 or only until October 25, 2008 to appeal the inaction.

With respect to petitioner's administrative claim for refund for the third and fourth quarters of 2007 on January 27, 2009, the Court Division ruled that while petitioner's amended administrative claim for refund on March 30, 2009 was timely filed, nevertheless, the Petition for Review docketed as CTA Case No. 7937 filed on June 26, 2009 was premature since petitioner did not wait for the lapse of the 120 days before filing its appeal with the CTA.

Dissatisfied with the foregoing Decision, petitioner filed its "Motion for Reconsideration" on February 27, 2012. Petitioner likewise filed its "Supplemental Motion for Reconsideration (With Motion for Leave)" on March 16, 2012, and its "Second Supplemental Motion for Reconsideration (With Motion for Leave of Court to Admit Evidence)" on April 18, 2012. The motions of petitioner, however, were denied in the Court Division's Resolution dated September 4, 2012, the dispositive part of which reads:

> "WHEREFORE, premises considered, petitioner's 'Motion for Reconsideration', 'Supplemental Motion for Reconsideration' and 'Second Supplemental Motion for Reconsideration' are hereby DENIED for lack of merit.
>
> SO ORDERED."

On September 21, 2012, petitioner filed its Motion for Extension of Time to File Petition for Review,[4] which was granted by this Court on September 25, 2012.[5]

Within the allowed period,[6] petitioner filed on October 8, 2012 the instant Petition for Review[7] questioning the aforesaid February 8, 2012 Decision and September 4, 2012 Resolution issued by the Court Division. Petitioner submits that the Decision and Resolution of the Court Division are erroneous based on the following grounds:

> 1. *Aichi* cannot be applied retroactively, and should be applied prospectively. Thus, the CTA-Division erred in giving *Aichi* a retroactive effect since *Aichi* has not been established when the petitioner filed both its administrative and judicial claims for refund.

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[4] Rollo, p. 1
[5] Rollo, p. 8
[6] Petitioner was granted a final and non-extendible period of fifteen (15) days from September 21, 2012 or until October 6, 2012, within whch to file its Petition for Review *(Rollo, p. 8)*. In view of the fact that October 6, 2012 fell on Saturday, the next working day is October 8, 2012 following Section 1, Rule 22 of the Revised Rules of Court which provides that if the last day of the period, as thus computed, falls on a Saturday, a Sunday or a legal holiday in the place where the court sits, the time shall not run until the next working day.
[7] Rollo, p. 13

> 2. The CTA-Division erred in disregarding the development of the statutes and jurisprudence on claims for VAT refund which shows that the two-year period provided in Section 229, Tax Code prevails over the 120-day period under Section 112(C), Tax Code.
>
> 3. The CTA-Division erred in disregarding the long established doctrine that compliance with the two-year prescriptive period under Section 229, Tax Code coupled with respondent's inaction on the administrative claim for refund is sufficient for the CTA to acquire jurisdiction over the case.
>
> 4. The CTA-Division erred in disregarding the impact of *Aichi* on the entire power generation industry and other investors and, thus, needs to be revisited.
>
> 5. Assuming that the doctrine established by *Aichi* is applicable, the CTA-Division erred in holding that petitioner amended its January 27, 2009 administrative claim when it informed respondent of the correct figure of the claim.
>
> 6. The CTA-Division erred in disregarding the sufficient and uncontroverted evidence presented by petitioner to prove its entitlement to its claim for refund of input VAT for the four quarters of CY 2007.

Petitioner specifically prayed the following reliefs from this Court, to wit:

> 1. Reverse the Court Division's Decision dated February 8, 2012 as well as the Resolution dated September 4, 2012;
>
> 2. Grant its Petition for Review; and
>
> 3. Declare that it is entitled to a refund of Twenty Eight Million Two Hundred Eighty Nine Thousand Five Hundred Sixty Two and 4/100 Pesos (Php28,289,562.04), representing unutilized input value-added tax (VAT) attributable to zero-rated sales for the four quarters of CY 2007.

In the Resolution dated November 8, 2012, this Court, without necessarily giving due course to the Petition for Review, directed respondent to file comment thereon.[8] In compliance with the order of the Court,

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[8] Rollo, p. 129

respondent filed on December 3, 2012 its Comment (Re: Petition for Review dated October 8, 2012)[9] stating the following arguments and defenses:

1. The Supreme Court merely interpreted and applied Section 112 of the National Internal Revenue Code of 1997, as amended; and

2. No vested right was violated by the application of Aichi Doctrine.

In the Resolution dated December 13, 2012, this Court resolved to give due course to the Petition for Review after considering the arguments/discussion raised therein and respondent's comment thereon.[10] In the same Resolution, this Court granted the parties a period of thirty (30) days within which to file their respective memoranda.

With the filing of the parties' respective memoranda within the period prescribed by the Court, the instant case was deemed submitted for decision on April 3, 2013.[11]

Hence, the Court's Decision.

PARTIES' ARGUMENTS

Petitioner argues that respondent is estopped under BIR Ruling No. DA-489-03 from claiming that petitioner's judicial claims for refund were not timely filed; that assuming the doctrine established by *Aichi* is applicable, it timely filed its judicial claim for refund and/or tax credit of unutilized input VAT for third and fourth quarters of CY 2007 (CTA Case No. 7937) since petitioner did not amend or supplant its January 27, 2009 administrative claim when it informed respondent of the correct figure of the claim; it has presented sufficient and uncontroverted evidence to prove its entitlement to its claim for refund of input VAT for the four quarters of CY 2007.

Respondent, on the other hand, claims that, in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, the Supreme Court merely interpreted and applied Section 112 of the National Internal Revenue Code of 1997, as amended; no vested right was violated by the application of *Aichi* doctrine since it involves procedural law;

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[9] Rollo, p. 137-144
[10] Rollo, p. 147
[11] Rollo, p. 273

the principle of *"stare decisis et non quieta movere (to adhere to precedents and not to unsettle things which are established)"* applies in the present case.

ISSUE

The lone issue to be resolved by this Court is whether or not the Court Division erred in dismissing the judicial claims.

RULING

Claims for refund or issuance of tax credit certificate of input tax attributable to zero-rated sales is sanctioned by Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337, which provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> (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 the 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.
>
> (B) *Cancellation of VAT Registration.* - A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, 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 in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the 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.

(D) *Manner of Giving Refund.* - Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit."

(Emphasis supplied)

From the foregoing provisions of the NIRC, an administrative claim for refund must be filed with the Commissioner of Internal Revenue (CIR) within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. The Supreme Court, however, in the consolidated cases of ***Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue***[12] *(San Roque case)* has clarified the reckoning of two-year prescriptive period for purposes of claim for refund of input tax in view of its decision in the cases of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue***[13] *(Atlas)* and ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation***[14] *(Mirant)*, to wit:

"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."

As regards the filing of judicial claims under Section 112(C) *[previously Sec. 112(D)]* of the NIRC, as amended, the Supreme Court made the following clarifications in ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***[15] *(Aichi case)*, *viz.*:

[12] G.R. Nos. 187485, 196113, 197156, February 12, 2013
[13] G.R. Nos. 141104 & 148763, June 8, 2007
[14] G.R. No. 172129, September 12, 2008
[15] G.R. No. 184823, October 6, 2010

> "Section 112(D)[16] 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.
>
> xxx. 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.
>
> xxx xxx xxx
>
> 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."

Moreover, in *San Roque* case, the Supreme Court *En Banc* has made it clear that the 120-day waiting period is mandatory and jurisdictional; that the 30-day period to appeal to the CTA the decision or inaction of the Commissioner under Section 112(C) should be applied exactly as worded since the law is clear, plain, and unequivocal. Relevant part of *San Roque* ruling is hereunder quoted:

> "Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with **the 120-day waiting period is mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1998. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. Thus, the waiting period has been in our statute books for more than fifteen (15) years before San Roque filed its judicial claim.
>
> **Failure to comply with the 120-day waiting 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**. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.

[16] Now Section 112(C) of the NIRC, as amended by R.A. No. 9337.

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The charter of the CTA expressly provides that its jurisdiction is to review on appeal 'decision of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes.' **When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no 'decision' of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within 'a specific period' required by law, such 'inaction shall be deemed a denial' of the application for tax refund or credit. It is the Commissioner's decision, or inaction 'deemed a denial,' that the taxpayer can take to the CTA for review. Without a decision or an 'inaction** x x x **deemed a denial' of the Commissioner, the CTA has no jurisdiction over a petition for review.**

San Roque's **failure to comply with the 120-day mandatory period renders its petition for review with the CTA void.** Article 5 of the Civil Code provides, 'Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.' San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized 'except when the law itself authorizes [its] validity.' There is no law authorizing the petition's validity.

It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, 'No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others.' For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.

xxx xxx xxx

At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. 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. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.

Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

> x x x the taxpayer affected may, within thirty (30) days from the 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. (Emphasis supplied)

This law is clear, plain, and unequivocal. **Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal**. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period."

(Emphasis supplied)

Notwithstanding the foregoing pronouncements, the Supreme Court *En Banc*, in the same *San Roque* case, recognizes two exceptions to justify non-compliance with the mandatory 120+30 day period set out in Section 112(C) of the NIRC. Pertinent portion of *San Roque* ruling provides:

"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.

Section 4 of the Tax Code, a new provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:

> Sec. 4. Power of the Commissioner To Interpret Tax Laws and To Decide Tax Cases. – **The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner**, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. Section 246 provides as follows:

> Sec. 246. Non-Retroactivity of Rulings. – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith.

Thus, a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, 'Any revocation, modification or reversal' without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the Atlas doctrine did not result in Atlas, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. xxx

xxx xxx xxx

Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commisioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

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."

(Emphasis supplied)

In the cases of ***Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue***[17] *(Mindanao),* the Supreme Court summarized the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112, *viz.*:

"(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.

[17] G.R. Nos. 193301 & 194637, March 11, 2013

(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)

This Court is duty-bound to adhere and apply the foregoing pronouncements of the Supreme Court. It is well-recognized rule that the Supreme Court, by tradition and in our system of judicial administration has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[18] All rulings of the Supreme Court on questions of law are conclusive and binding on all courts.[19]

In the case at bar, there is no dispute that petitioner's administrative claims for refund were timely filed within the two-year prescriptive period. What is being questioned is the Court Division's determination on the timeliness of petitioner's judicial claims. To recall, the Court Division dismissed CTA Case No. 7882 for having been filed late, and CTA Case No. 7937 for having been prematurely filed.

Upon review of the records of this case, and taking into consideration the ruling of the Supreme Court in the cases of *Aichi*, *San Roque* and *Mindanao*, this Court finds the petition for review partly meritorious.

As regards petitioner's appeal on March 13, 2009 docketed as CTA Case No. 7882, the Court Division is correct in finding that the same was filed beyond the prescribed 30-day period to appeal. Counting 120-days from May 28, 2008, the date when petitioner filed its administrative claim

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[18] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003 citing the case of GSIS v. Court of Appeals, 334 Phil. 163, 175.
[19] Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, Resolution dated September 21, 2007

for refund of input tax attributable to zero-rated sales for the 1st and 2nd quarters of 2007, the CIR had until September 25, 2008 within which to decide. Since the CIR failed to act within the 120-day period, there is in legal consequence a "denial by inaction" of petitioner's administrative claim, thereby giving petitioner the option to elevate its claim with the CTA within the 30-day appeal period pursuant to Section 112(C) of the NIRC, or until **October 25, 2008**. Like in *Mindanao* case,[20] petitioner's appeal before the Court Division on **March 13, 2009** was filed after the 30-day period; thus, it was correctly denied.

With respect to petitioner's appeal on June 26, 2009 docketed as CTA Case No. 7937, this Court is constrained to modify the conclusion reached by the Court Division. Although the Court Division correctly noted that petitioner failed to wait for the lapse of the 120-day period before it lodged its judicial claim on **June 26, 2009**, as the petition for review was filed barely 88 days after petitioner's amended application for refund on **March 30, 2009**, nonetheless, in light of *San Roque* ruling, petitioner's judicial claim must perforce be given due course on the basis of BIR Ruling No. DA-489-03, which, as decreed by the Supreme Court, is a general interpretative rule that may be relied upon from the time of its issuance on 10 December 2003 up to its reversal by *Aichi* on 6 October 2010, subject to the condition that the other requirements for refund entitlement are established by petitioner.

WHEREFORE, premises considered, the instant Petition for Review is **PARTLY GRANTED**. The Court Division's dismissal of CTA Case No. 7882 for having been filed late is **AFFIRMED**, while the Court Division's dismissal of CTA Case No. 7937 for having been prematurely filed is **REVERSED AND SET ASIDE**. Accordingly, CTA Case No. 7937 is **REMANDED** to the CTA-Third Division to make a proper and immediate determination of the propriety of the claim for refund or tax credit certificate, and consequently, make a declaration of the specific amount of refund or tax credit certificate to which petitioner is entitled to, if any.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

[20] Mindanao I judicial claim for the 3rd and 4th quarters of 2003 were filed late. The Supreme Court denied the same pursuant to Section 112(C) of the 1997 Tax Code.

WE CONCUR:

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

(I maintain my Separate Concurring Opinion dated February 8, 2012.)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(With Concurring and Dissenting Opinion)
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

(No Part)
MA. BELEN M. RINGPIS-LIBAN
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 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
Quezon City

EN BANC

SAN ROQUE POWER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE No. 938
(CTA Case Nos. 7822 & 7937)

Members:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS,
RINGPIS-LIBAN *JJ*.

Promulgated:

JUN 2 5 2013 9:10 a.m.

x---x

CONCURRING AND DISSENTING OPINION

CASANOVA, *J*.:

I agree with the majority in the denial of the Petition for Review filed by San Roque Power Corporation in the CTA Case No. 7882. The said appeal before the CTA Division was filed beyond the 30-day period, thereby violating the 120+30 rule prescribed under Section 112 (C) of the 1997 NIRC.

However, as regards the ruling of this Honorable Court in the CTA Case No. 7937, I humbly dissent with the majority opinion partly granting the instant Petition for Review.

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 CTA Case No. 7937, petitioner filed its Petition for Review on June 26, 2009, eighty-eight days after it filed its administrative claim, 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, petitioner is said to have filed its judicial claim on time, hence the decision of the majority to reverse and set aside aside the Decision[2] dated February 8, 2012 and Resolution[3] dated September 4, 2012, both promulgated by the CTA Third Division, and remand the instant case to the CTA Third Division to make a proper and immediate determination of the propriety of the claim for refund or tax credit certificate.

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[4], prudence dictates

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[1] G.R. Nos. 1874865, 196113 & 197156, February 12, 2013.
[2] CTA En Banc Rollo, Annex "A" to Petition for Review pp. 93-111.
[3] CTA En Banc Rollo, Annex "B" to Petition for Review, pp. 119-127.
[4] 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

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 Motion for Reconsideration should be denied.

CAESAR A. CASANOVA
Associate Justice

signed by the clerk, with a certificate that such judgment or final order has become final and executory.