REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 2247
(CTA Case No. 7940)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

-versus-

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Respondent.

Promulgated: NOV 0 2 2021

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR) posted on March 16, 2020 and received by this Court on June 2, 2020, pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[2], which prays for the reversal and setting aside of the *Decision* dated August 14, 2019[3] (Assailed Decision) and the *Resolution* dated February 6, 2020[4] (Assailed Resolution) promulgated by the Special First Division of the Court of Tax Appeals (CTA) in CTA Case No. 7940 entitled "*Deutsche Knowledge Services, PTE. LTD. vs.*

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[1] *Rollo*, CTA EB No. 2247, pp. 5-14.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 16-44.
[4] *Id.*, pp. 46-56.

Commissioner of Internal Revenue", and the rendition instead of a new judgment denying respondent's claim for refund.

The Facts

Respondent Deutsche Knowledge Services, PTE. LTD. (DKS) is the Philippine branch of a multinational company organized and existing under and by the virtue of the laws of Singapore. It is licensed to do business as a regional operating headquarters in the Philippines.[5]

On July 25, 2007, respondent DKS filed its original Quarterly Value Added Tax (VAT) Return for the 2nd quarter of CY 2007 with the Bureau of Internal Revenue (BIR).[6]

On June 18, 2009, respondent filed with the BIR-Revenue District Office No. 47 an Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the 2nd quarter of CY 2007 in the amount of P8,767,719.30. Subsequently, on June 30, 2009, or even before any action by petitioner CIR on its administrative claim, respondent filed a Petition for Review with this Court, docketed as CTA Case No. 7940.[7]

Trial commenced and respondent filed its Formal Offer of Evidence on September 22, 2010, which was admitted by the CTA First Division in a Resolution dated December 1, 2010.[8]

Meanwhile, on October 6, 2010, while respondent's claim for refund or tax credit was pending before the Court in Division, the Supreme Court promulgated *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[9] (*Aichi* case) In that case, the Court held that compliance with the 120-day period granted to the CIR, within which to act on an administrative claim for refund or credit of unutilized input VAT, as provided under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, is mandatory and jurisdictional in filing an appeal with the CTA.[10]

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[5] Facts, *Commissioner of Internal Revenue v. Deutsche Knowledge Services, PTE. LTD.*, G.R. No. 211072, November 07, 2016.
[6] *Ibid.*
[7] *Ibid.*
[8] *Ibid.*
[9] G.R. No. 184823, October 06, 2010.
[10] *Supra.*, Note 5.

On February 21, 2011, petitioner CIR filed a Motion to Dismiss, stating that the CTA First Division lacked jurisdiction because respondent's Petition for Review was prematurely filed.[11]

In a Resolution dated April 26, 2011, the Court in Division dismissed respondent's judicial claim, the dispositive portion of which reads:[12]

> "WHEREFORE, premises considered, the Motion to Dismiss dated February 21, 2011, filed by respondent [CIR], is hereby GRANTED. Consequently, the Petition for Review dated June 30, 2009, filed by petitioner Deutsche Knowledge Services Pte. Ltd. is hereby DISMISSED.
>
> SO ORDERED."

The Court in Division ruled that the petition for review filed by respondent DKS on June 30, 2009, or barely twelve (12) days after the filing of its administrative claim for refund, was clearly premature justifying its dismissal. The Court in Division explained that pursuant to Section 112(C) of the NIRC and the jurisprudence laid down in the *Aichi* case, it is a mandatory requirement to wait for the lapse of the 120-day period granted to petitioner to act on the application for refund or issuance of tax credit, before a judicial claim may be filed with the CTA.[13]

Respondent moved for reconsideration, but the same was denied by the Court in Division in its Resolution dated August 2, 2011.[14]

Aggrieved, respondent elevated the matter to this Court under CTA EB No. 815, raising the following arguments: (1) the Court in Division validly acquired jurisdiction of its judicial claim for refund; (2) *Aichi* case should not be applied indiscriminately to all claims for VAT refund; (3) the prospective application of the *Aichi* interpretation on the observance of the 120-day rule is legally and equitably

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[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*

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imperative; and (4) respondent is entitled to a refund of its claimed input VAT for the 2nd quarter of CY 2007.[15]

On January 31, 2013, this Court rendered a Decision affirming the April 26, 2011 and August 2, 2011 Resolutions of the Court in Division. It agreed with it in applying the ruling in *Aichi* which warranted the dismissal of respondent's judicial claim for refund on the ground of prematurity.[16]

In the meantime, on February 12, 2013, the Supreme Court decided the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue*[17] (*San Roque* case), wherein the Court recognized BIR Ruling No. DA-489-03 as an exception to the 120-day period.[18]

Invoking the ruling in *San Roque* case, respondent DKS moved for reconsideration. This Court, under CTA EB No. 815, found merit in said motion and rendered the assailed Amended Decision, the dispositive portion of which reads as follows:[19]

> "WHEREFORE, premises considered, the instant Motion for Reconsideration (Re: Decision dated January 31, 2013) is hereby GRANTED. The Decision dated January 31, 2013, which affirmed the CTA First Division's dismissal of the Petition for Review docketed as CTA Case No. 7940 on the ground of prematurity, is hereby REVERSED AND SET ASIDE.
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> Accordingly, CTA Case No. 7940 is hereby REMANDED to the court of origin for further proceedings.
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> SO ORDERED."

Petitioner filed a Motion for Reconsideration but the motion was denied for lack of merit under the Resolution dated January 7, 2014.[20]

Hence, petitioner CIR filed a Petition for Review on Certiorari under Rule 45 of the Rules of Court before the

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[15] *Ibid.*
[16] *Ibid.*
[17] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[18] *Supra.*, Note 5.
[19] *Ibid.*
[20] *Ibid.*

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Supreme Court, docketed as G.R. No. 211072, which was subsequently dismissed on November 07, 2016. The dispositive portion reads as follows:

> "WHEREFORE, premises considered, the instant petition for review is hereby DENIED. The Amended Decision dated July 29, 2013 and the Resolution dated January 7, 2014 of the CTA *En Banc* in CTA EB No. 815 are hereby AFFIRMED. Let this case be REMANDED to the CTA First Division for the proper determination of the refundable amount due to respondent, if any.
>
> SO ORDERED."

Thus, the case was remanded to the Court in Division which partially granted respondent's claim for refund in Assailed Decision where the dispositive portion reads as follow:

> "WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE in the amount of P1,252,603.30, representing petitioner's unutilized input VAT arising from its zero-rated sales for the 2nd quarter of CY 2007.
>
> SO ORDERED."

The parties, both felt aggrieved, filed their separate Motion for Partial Reconsideration which were both denied under the Assailed Resolution where the dispositive portion reads:

> "WHEREFORE, in light of the foregoing considerations, petitioner's and respondent's respective Motions for Partial Reconsideration are hereby DENIED for lack of merit.
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> SO ORDERED."

Hence, the instant Petition for Review was filed by petitioner CIR on March 16, 2020 through registered mail and received by this Court on June 2, 2020 after being granted[21] his Motion for Extension of Time to File Petition for Review[22].

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[21] *Rollo*, Minute Resolution dated March 10, 2020.
[22] *Id.*, pp. 1-2.

On July 13, 2020[23], this Court directed respondent DKS to file its *Comment*[24] which it filed on July 24, 2020. Thus, on October 5, 2020[25], the instant petition was submitted for decision.

The Issue

The sole issue to be resolved in the instant petition is:

> Whether the petitioner is entitled to the partial grant of its claim for refund of its unutilized input VAT arising from its zero-rated sales for the 2nd quarter of CY 2007.

Arguments of Petitioner[26]

Petitioner CIR argues that the determination of respondent's output VAT liability is merely for the purpose of ascertaining respondent's entitlement to its unutilized input VAT claim for refund and not for imposing any deficiency tax.

Petitioner CIR also argues that respondent is not entitled to the subject claim for refund because its output VAT liability is higher than the substantiated input VAT claim, and that respondent's sales of service do not qualify as zero-rated sales, hence, they should be subjected to 12% output VAT.

Argument of Respondent[27]

On the other hand, respondent DKS counter-argues that the arguments raised by petitioner are mere rehash arguments in his Motion for Reconsideration (MR) of the Assailed Resolution dated February 6, 2020. Respondent insists that petitioner is trying to collect a deficiency output VAT sans the required valid assessment

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[23] *Rollo*, Resolution dated July 13, 2020, pp. 71-72.
[24] *Id.*, pp. 73-78.
[25] *Rollo*, Resolution dated October 5, 2020, pp. 81-82.
[26] *Id.*, Discussion, Petition for Review, pp. 7-11.
[27] *Rollo*, Comment, pp.

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Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
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> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by an MR which was denied in the subject assailed *Resolution* dated February 6, 2020.

Furthermore, petitioner CIR, through its Revenue Region No. 8B South NCR, received the Assailed Resolution on February 14, 2020. In accordance with the abovementioned provisions of the RRCTA, petitioner CIR had until February 29, 2020 to file the instant petition. However, since the due date fell on a Saturday, petitioner had until March 2, 2020 within which to file the instant petition.

On February 28, 2020, a Motion for Extension of Time to File Petition for Review was posted by petitioner which the Court received on March 6, 2020. The motion prayed that the filing of said petition be extended until March 15, 2020 which was granted by the Court in its Minute Resolution dated March 10, 2020. The petition for review was filed on March 16,

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2020 since March 15, 2020 fell on a Sunday. Hence, the filing of said petition was on time.

A closer study and evaluation of the instant petition reveal that the discussion in petitioner's Petition for Review[28] as compared to his Motion for Partial Reconsideration attached as Annex "C"[29] which was addressed by the Assailed Resolution, is substantially the same, hence, constitutes mere rehash arguments.

Furthermore, the arguments raised by petitioner are questions as to the factual findings of the Court in Division. In *Heirs of Teresita Villanueva et al. v. Heirs of Petronila Syquia Mendoza et al.*[30], the Supreme Court ruled that:

> "Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight."

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (Formerly Mirant (Phils.) Energy Corporation*[31], the Supreme Court ruled on this matter as follows:

> "With regard to the second requirement, it is fundamental that the **findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion** considering that the members of the Division are in the best position to analyze the documents presented by the parties..." (*Emphasis supplied*)

Thus, in the absence of any evidence to the contrary on such factual findings, this Court will not disturb the ruling of the Court in Division.

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[28] *Rollo*, CTA EB No. 2247, pp. 6-11.
[29] *Id.*, pp. 57-58 and 61-62.
[30] G.R. No. 209132, June 05, 2017.
[31] G.R. No. 188016, January 14, 2015.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the *Decision* dated August 14, 2019[32] and *Resolution* dated February 6, 2020[33] are hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[32] *Supra.*, Note 3.
[33] *Supra.*, Note 4.

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

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