Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

HEDCOR SIBULAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 798
(CTA Case No. 8166)

Members:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:
MAY 3 0 2013

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AMENDED DECISION

MINDARO-GRULLA, J.:

This resolves Petitioner's Motion for Reconsideration[1] of the Decision[2] dated December 6, 2012 of this Court *en banc*, the dispositive portion of which states:

> *"**WHEREFORE**, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the assailed Resolutions dated April 12, 2011 and June 14, 2011 in CTA Case No. 8166 entitled "Hedcor Sibulan, Inc. vs. Commissioner of Internal Revenue, are hereby **AFFIRMED in toto**.*
>
> ***SO ORDERED."***

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[1] Filed on January 24, 2013.

[2] Penned by Associate Justice Caesar A. Casanova concurred in by Associate Justice Juanito C. Castañeda Jr., Associate Justice Erlinda P. Uy, Associate Justice Olga Palanca-Enriquez and Associate Justice Cielito N. Mindaro-Grulla. Associate Amelia R. Cotangco-Manalastas has Concurring and Dissenting Opinion joined by Presiding Justice Ernesto D. Acosta and Associate Justice Esperanza R. Fabon-Victorino. Associate Justice Lovell R. Bautista dissents.

In assailing this Court's Decision, petitioner Hedcor Sibulan Inc. asserts that:

I. Mirant is not applicable in this case.

II. Respondent, by her actions, is estopped from invoking the rule on exhaustion of administrative remedies.

III. The doctrine in Aichi should be applied prospectively to avoid injustice.

Petitioner argues that the Supreme Court's statement in the Mirant Case that Section 229 of the Tax Code applies only to erroneous payment and illegal collection of internal revenue taxes should be regarded as obiter dictum, hence, it should not be an authoritative precedent and it should not be applied in the instant case. Thus, petitioner claims that the Mirant Case cannot overrule the Atlas Case. Likewise, respondent argues that respondent had issued various regulations, circulars and rulings which convey a message that if the 2-year period is about to expire, the taxpayer may file a claim for refund with the Court of Tax Appeals. Moreover, petitioner insists that the doctrine in Aichi should be applied prospectively.

On the other hand, respondent in her Comment maintain that Section 112 of the 1997 NIRC is the applicable provision on petitioner's claim for refund; that premature filing and non-observance of the rule on exhaustion of administrative remedies is a jurisdictional issue; and that the application of Aichi case will not result in injustice.

We resolve.

This Court affirmed the Resolutions dated April 12, 2011 and June 14, 2011 of the Second Division of this Court in CTA Case No. 8166 which dismissed petitioner's petition before the Division based on the Supreme Court's Decision in the Aichi Case, to wit:

"We quote with approval the CTA Second Division's ruling in the Assailed Resolution dated April 12, 2011 that:

> *'The 120-day period provided under Section 112 of the 1997 Tax Code, as amended, is a mandatory requirement: Non compliance thereof will result to the dismissal of the case on the ground of lack of jurisdiction. In the case of Commissioner of Internal Revenue vs. Aichi Forging company of Asia, Inc., the Supreme Court ruled, to quote:*
>
> > *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 refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.*
> >
> > *xxx xxx xxx.*
> >
> > *Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.*
> >
> > *There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may,* ***within two 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." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete*

> *documents in support of the* ***application*** *filed in accordance with* ***Subsections (A)*** *and (B)" within which to decide on the claim.*
>
> *In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. 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.*
>
> *With regard to Commissioner of Internal Revenue v. Victorias Milling, Co., Inc. relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.*
>
> *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.*

In sum, the CTA En Banc finds no cogent justification to disturb the findings and conclusions spelled out in the Assailed Resolutions dated April 12, 2011 and June 14, 2011, both promulgated by the CTA Second Division. What the instant petition seeks is for the Court En Banc to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon by the Court."

However, in light of the Supreme Court decisions in the consolidated cases of Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485; Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113; and Philex Mining Corporation vs.

Commissioner of Internal Revenue, G.R. No. 197156 promulgated on February 12, 2013 (San Roque Case) which clarifies the application of the 120+30 day periods and of the application of Atlas, Mirant and Aichi doctrines, the Atlas Case insisted by petitioner is not the applicable jurisprudence and that the instant petition before the Court Division was not prematurely filed.[3]

The Supreme Court instructively held in the San Roque Case that:

"IV. ***Effectivity and Scope of the Atlas , Mirant and Aichi Doctrines***

The Atlas doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, ***should be effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in Mirant.*** *The Atlas doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the Atlas doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the verba legis rule. The Mirant ruling, which abandoned the Atlas doctrine, adopted the verba legis rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.*

The Atlas doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in

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[3] The majority concurs with the opinion of Associate Justice Juanito C. Castañeda, Jr. and voted that the consolidated cases of San Roque Power Corporation, G.R. No. 187485; Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113; and Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156 promulgated on February 12, 2013 (San Roque Case) and the consolidated cases of Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. No. 193301 and Mindanao I Geothermal Partnership Vs. Commissioner of Internal Revenue, G.R. No. 194637 promulgated on March 11, 2013, be followed.

Associate Justice Caesar A. Casanova, joined by Associate Justice Bautista, opined that it is possible that a Motion for Reconsideration thereof may have been filed and that until the said consolidated cases have attained finality, application thereof should be deferred. Nevertheless, the Supreme Court applied the San Roque Case in the Mindanao Case. Thereafter, the instant case was re-raffled to the undersigned ponente.

> ***issue in Atlas. The application of the 120+30 day periods was first raised in Aichi, which adopted the verba legis rule in holding that the 120+30 day periods are mandatory and jurisdictional.***
>
> xxx xxx xxx.
>
> *To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer.* ***One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the Atlas doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.****" (Emphasis supplied)*

Further, the Supreme Court in the consolidated cases of Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. No. 193301 and MIndanao I Geothermal Partnership Vs. Commissioner of Internal Revenue, G.R. No. 194637 promulgated on March 11, 2013 (Mindanao Case) reiterating the San Roque Case held as follows:

> *"Prescriptive Period for*
> *the Filing of Judicial Claims*
>
> *In determining whether the claims for the second, third and fourth quarters of 2003 have been properly appealed, we still see no need to refer to either Atlas or Mirant, or even to Section 229 of the 1997 Tax Code. The second paragraph of Section 112(C) of the 1997 Tax Code is clear: "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."*

The mandatory and jurisdictional nature of the 120+30 day periods was explained in San Roque:

> *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.

x x x x

There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.

*First, Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer "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 the creditable input tax due or paid to such sales." In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit "**within two (2) years**," **which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.*

Second, Section 112(C) provides that the Commissioner shall decide the application for refund or credit "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)." The reference in Section 112(C) of the submission of documents "in support of the application filed in accordance with Subsection A" means that the application in Section 112(A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two-year prescriptive period in Section 112(A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit.

Stated otherwise, the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner*. As held in Aichi, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund'* ***refers to applications for refund/credit with the CIR and not to appeals made to the CTA****."*

Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. ***Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period****. Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.*

The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain, and unequivocal language.

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).

*In San Roque, this Court ruled 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 in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.**"xxx.*

xxx xxx xxx.

Summary of Rules on Prescriptive Periods Involving VAT

*We summarize 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 of the 1997 Tax Code**, as follows:*

*(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.** (Emphasis Supplied)*

(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."*

Applying the foregoing[4], petitioner filed a claim for refund of its excess and unutilized input VAT for the second quarter to the fourth quarter of the calendar year 2008 on June 25, 2010. Ninety-seven days after from the filing of its administrative claim, petitioner filed on September 30, 2010, a petition which was raffled to the Second Division of this Court, a clear violation of the mandatory and jurisdictional 120+30 day period. However, petitioner can invoke BIR Ruling No. DA-489-03 issued on December 10, 2003. Petitioner filed its judicial claim after the issuance of BIR Ruling No. DA-489-03 but before October 6, 2010 when the Aichi doctrine was promulgated. Thus, petitioner is deemed to have filed its judicial claim on time before this Court in Division.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **GRANTED**. The Court En Banc's Decision which dismissed the instant Petition for Review is hereby **REVERSED AND SET ASIDE**. Hence, the Resolutions dated April 12, 2011 and June 14, 2011 of the Second Division of this Court in CTA Case No. 8166 are **REVERSED AND SET ASIDE**. Accordingly, CTA Case No. 8166 is hereby **REMANDED** to the Court of origin for further proceedings.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO No part
Presiding Justice

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[4] Ibid.

JUANITO C. CASTANEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(ON LEAVE)
ERLINDA P. UY
Associate Justice

(with Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

<u>CERTIFICATION</u>

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

HEDCOR SIBULAN, INC. Petitioner,	**CTA EB CASE No. 798** (CTA Case No. 8166)
	Members:
-versus-	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 30 2013 ... 1:00 p.m.

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DISSENTING OPINION

CASANOVA, J.:

With due respect to my esteemed colleagues, I dissent with the majority opinion granting the instant Motion for Reconsideration.

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

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

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, petitioner filed its Petition for Review on September 30, 2010, ninety-seven 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] of the CTA *En Banc* dated December 6, 2012 and Resolutions[3] dated April 12, 2011 and June 14, 2011, both promulgated by the CTA Second Division, and grant the present petition.

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 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

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[2] CTA En Banc Rollo, pp. 217-232.
[3] CTA En Banc Rollo, Annex "A" to Petition for Review, pp. 70-75 and Annex "B" to Petition for Review, pp. 76-82.
[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 signed by the clerk, with a certificate that such judgment or final order has become final and executory.