REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILEX MINING CORPORATION,
Petitioner,

CTA EB Case No. 728
(CTA Case No. 7838)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 3 1 2012 mAApolinario 10:00 a.m.

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner, Philex Mining Corporation, assailing the Decision[1] dated September 16, 2010, and the Resolution[2] dated February 14, 2011, of the former Second Division of the Court denying petitioner's refund of its alleged excess and unutilized input Value-Added Tax ("VAT") amounting to Php 14,467,735.03.

The Parties

Petitioner, Philex Mining Corporation, is a corporation duly organized under Philippine laws, with principal office at 27 Philex Building, Fairlane Street, Pasig

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[1] *Rollo*, CTA EB Case No. 728, pp. 19-33.
[2] *Rollo*, pp. 34-41.

City, and is engaged in the mining business, which includes the exploration and operation of mine properties and the commercial production and marketing of mine products. Petitioner is a VAT-registered taxpayer, with VAT Registration Certificate No. 35-6-000731 effective October 29, 1987, and under BIR Form No. 2303 as of January 31, 1997. Petitioner also has a duly approved Application for Zero-Rate effective April 12, 1998, pursuant to Section 4.100-3 of Revenue Regulations No. 7-95.

Respondent, Commissioner of Internal Revenue, is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the National Internal Revenue Code (NIRC) and holds office at the Bureau of Internal Revenue ("BIR") National Office Buildings, BIR Road, Diliman, Quezon City.

The Facts

The relevant antecedents are stated by the Court in Division in its Decision dated September 16, 2010 as follows:

> "Petitioner filed its Original VAT Return for the third quarter of 2006 on October 19, 2006. Petitioner filed an Amended VAT Return on February 28, 2008, which reflected total zero-rated sales of P2,954,247,235.93, domestic purchases of goods in the amount of P4,379,839.34 with input tax of P525,580.72, importation of goods of P115,191,615.00 with input tax of P13,822,993.80, and purchases of services in the amount of P993,004.25 with input tax of P119,160.51.
>
> Petitioner filed its claim for refund/tax credit with the One-Stop Shop Inter-agency Tax Credit and Duty Drawback Center of the Department of Finance on January 10, 2007, per Application No. 54768 for the amount of P14,467,735.03.
>
> Respondent has not taken any action on petitioner's administrative claim for refund; hence petitioner filed its judicial claim with this Court on October 6, 2008.

In his Answer filed on November 5, 2008, respondent alleged the following Special and Affirmative Defenses:

> 6. The claim for refund is still under examination by the respondent's Bureau;
> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
> 8. The grant of claim for refund [is] tantamount to an exemption from taxation which is construed strictly against the claimant and in favour of the taxing authority;
> 9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.

On December 4, 2008, the parties filed their "Stipulation of Facts and Issues," which was approved by this Court in a Resolution dated December 12, 2008; thus the Pre-Trial was terminated and the parties were ordered to proceed with the trial on the merits.

Petitioner filed its Formal Offer of Evidence on June 9, 2009, offering Exhibits "A" to "J," inclusive of sub-markings; which were duly admitted in a Resolution dated July 30, 2009.

During the hearing held on September 16, 2009, counsel for respondent manifested that he is constrained to waive respondent's right to present evidence since he has not received any report of the investigation from the concerned BIR Revenue District Office. The parties were likewise given a period of thirty (30) days from September 16, 2009 or until October 16, 2009, within which to file their respective Memorandum.

On October 22, 2009, the case was ordered submitted for decision, considering petitioner's Memorandum filed on October 16, 2009 and the report of this Court's Records Division that respondent failed to file his Memorandum."[3] (Citations omitted.)

The Ruling of the Court in Division

Citing the Supreme Court's holding in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*

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[3] *Rollo*, pp. 20-22.

("*Mirant* Case"),[4] which states that excess unutilized input VAT must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless whether said tax was paid or not, the Court in Division denied the Petition for Review[5].

The Court in Division found that petitioner's administrative claim was filed on January 10, 2007, while the Petition for Review or judicial claim was filed on October 6, 2008. Applying the *Mirant* case, petitioner had only until September 30, 2008 to file its administrative and judicial claim. Consequently, petitioner was already barred from claiming a refund for unutilized input VAT for the third quarter of 2006 by the time the Petition for Review was filed. The Court in Division found it unnecessary to discuss whether or not petitioner fulfilled the other requisites for a refund.

On October 15, 2012, petitioner filed a "Motion for Reconsideration,"[6] arguing that the Court in Division erred in finding that petitioner's right to file a judicial claim for refund has prescribed; that the cited *Mirant* Case is not applicable; and that the earlier ruling in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*,[7] which states that the two-year prescriptive period to file a judicial claim for input VAT is reckoned from the date of filing of the related quarterly VAT return, is applicable to petitioner's case.

On February 14, 2011, the Court in Division promulgated a Resolution denying petitioner's "Motion for Reconsideration" for lack of merit. The Court in Division, applying *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia*,[8] cited petitioner's failure to file the Petition for Review within thirty (30) days

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[4] G.R. No. 172129, September 12, 2008.
[5] *Rollo*, p. 26.
[6] *Rollo*, pp. 34-41.
[7] G.R. Nos. 141104 and 148763, June 8, 2007.
[8] G.R. No. 184823, October 6, 2010.

from the lapse of the one hundred twenty (120)-day period granted to the respondent CIR to act on the claim, as basis of the denial.

Consequently, the petitioner filed a Petition for Review before the Court *En Banc* on February 28, 2011.

Issues

The petitioner gives the following grounds for its Petition for Review, *viz*:

> "I.
>
> The former 2nd Division erred in ruling that the Petition for Review that herein petitioner filed with the CTA is barred by prescription based on its retroactive application to this case of the October 6, 2010 SC Decision in Aichi which appears to have superseded the then well-established ruling that petitioner had relied on in good faith when it filed the Petition for Review on October 6, 2008. This retroactive application of Aichi that now prejudices petitioner violates existing SC Rulings stating that "when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who have relied on the old doctrine and acted on the faith thereof; and
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> II.
>
> The former 2nd Division erred in not ruling that since Section 112(D) uses the word "may" to qualify the 30-day period to appeal, a judicial claim is not mandatorily required to be filed within 30 days after the lapse of the 120-day period that the law grants the respondent to act on the refund claim. Thus, a judicial claim may be filed within the 2-year period stated in the prevailing jurisprudence at the time it is filed.

Ruling of the Court En Banc

Petitioner's main argument is based on the alleged error in applying the *Aichi Ruling* retroactively. Petitioner argues that the *Aichi* ruling is a new doctrine which should only be applied prospectively, and instead, the *Atlas* case should be applied.

The Court is not persuaded.

It should be noted that the *Atlas* case was decided under the 1977 Tax Code whereas the *Mirant* case and *Aichi* ruling were decided under the 1997 Tax Code.

Furthermore, the *Atlas* case and *Mirant* case resolved the issue on the reckoning point of the prescriptive periods in filing the administrative claim for refund, which was resolved in the *Mirant* case to be from the close of the taxable quarter. On the other hand, the *Aichi* ruling definitively declared that the periods under Section 112(A) and (D) [now, Section 112(A) and (C)] of the 1997 Tax Code should be applied in claims for input VAT refund.

Section 112(A) and (C) of the 1997 Tax Code, as amended, are very clear and categorical in stating the period for the administrative and judicial claims for refund. Thus, there is no need for a judicial interpretation of the law considering that a clear and "to the letter" application of the law is possible. In other words, where a provision of law speaks categorically, the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms.[9] Sections 112(A) and (C) are quoted below:

> "Sec. 112. Refunds or Tax Credits of Input Tax. –
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> (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, xxx
>
> xxx
>
> (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

[9] *Luzon Stevedoring Corporation vs. Court of Tax Appeals*, G.R. No. 30232, July 29, 1988, citing *Allied Brokerage Corporation vs. Commissioner of Customs*, G.R. No. L-27641, August 31, 1971.

> 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."

Clearly, then, even without the rulings in *Mirant* and *Aichi*, a straightforward application of Section 112(A) and (C) will produce the same result. Administrative claims for refund of unutilized input VAT must be filed within two years from the close of the taxable quarter when the sales were made. Judicial claims must be filed within thirty (30) days from receipt of the Commissioner of Internal Revenue's decision denying the claim or after the expiration of the one hundred twenty-day period.

Applying the foregoing, the Court in Division explained:

> "As aforementioned, petitioner filed its administrative claim on January 10, 2007, counting 120 days therefrom, respondent has until May 10, 2007, within which to decide the case. Since the claim remained unresolved notwithstanding the lapse of the 120-day period; petitioner has 30 days within which to file an appeal with this Court. Counting 30 days from May 10, 2007, petitioner has until June 9, 2007. However, since June 9, 2007 falls on a Saturday, and June 11, which is a Monday, was declared a holiday in view of the Independence Day celebration; petitioner has until June 12, 2007, the next working day, as provided by Section 1, Rule 22 of the Rules of Court, to appeal before this Court. However, the instant Petition for Review was filed only on October 6, 2008, beyond the reglementary period."[10]

Petitioner further argues that the use of the word "may" in Section 112(C) means that a judicial claim is not mandatorily required to be filed within 30 days after the lapse of the 120-day period.

In the instant case, while petitioner is correct that the word "may" is permissive, the Court does not agree that it relates to the period within which an appeal may be taken to this Court. As the provision is phrased, the word "may" relates to the taxpayer's option to appeal or not to appeal, upon the denial of its claim

[10] *Rollo*, pp. 40-41.

for refund or after the expiration of the 120-day period. However, if the taxpayer opts to appeal, such claim must be filed within the 30-day period given from receipt of the denial or the expiration of the 120-day period. Thus, it is the option to appeal which is permissive, however, the period to appeal must be mandatorily complied with.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the impugned Decision of the Court in Division dated September 16, 2010, and Resolution dated February 14, 2011 are hereby **AFFIRMED.**

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Separate Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

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Promulgated:

AUG 3 1 2012 ~~Apolinario~~ 10:00 a.m.

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SEPARATE CONCURRING OPINION

BAUTISTA, J.:

While I agree with the Court *En Banc* in denying the Petition for Review filed by petitioner Philex Mining Corporation for lack of merit, I am compelled to vary from the basis of the said opinion of the Court.

With all due respect, I do not agree with the retroactive application of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia.*[1] The basic legal maxim *lex prospicit, non respicit,* or the law looks forward not backward, sums up the rule on prospective application of the law. The principle of prospectivity applies not

[1] G.R. No. 184823, October 6, 20120, 632 SCRA 442.

only to original or amendatory statutes, administrative rulings, and circulars, but also, to judicial decisions.[2] In the case of *People vs. Jabinal,*[3] the Supreme Court explains:

> "Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system." The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that the law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim "legis interpretatio legis vim obtinet" — the interpretation placed upon the written law by a competent court has the force of law. . . . , but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof." (Underlining Ours.)

Petitioner filed its Petition for Review on October 6, 2008. The case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*[4] was promulgated by the Supreme Court on September 12, 2008, making it the applicable jurisprudence at the time of filing.

Accordingly, I vote that the Petition for Review filed by Philex Mining Corporation, be denied for being filed out of time.

LOVELL R. BAUTISTA
Associate Justice

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[2] *Columbia Pictures, Inc., Orion Pictures Corporation, Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, United Artists Corporation, Universal City Studios, Inc., The Walk Disney Company, and Warner Brothers, Inc. vs. Court of Appeals, Sunshine Home Video, Inc. and Danilo Pekindario,* G.R.No. 110318, August 28, 1996, 252 SCRA 259, citing *Co vs. Court of Appeals, et al.,* G.R. No. 100716, October 28, 1993, 227 SCRA 444.
[3] G.R. No. L-30061, February 27, 1974, 55 SCRA 607.
[4] G.R. No. 172129, September 12, 2008, 656 SCRA 172.