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. 890
(CTA Case No. 8051)

Members:
ACOSTA, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *J.J.*

Promulgated:
DEC 06 2012 1:45 p.m.

x- x

DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on April 30, 2012, by petitioner- Hedcor Sibulan Inc., seeking the reversal of the January 5, 2012 Decision[2]

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[1] Petition for Review, CTA En Banc Rollo, pp. 6-37.
[2] Annex "A" to the Petition for Review, Ibid, pp. 39-49.

(Assailed Decision) and March 28, 2012 Resolution[3] (Assailed Resolution) of the Court of Tax Appeals (CTA) Third Division in CTA Case No. 8051, entitled "*Hedcor Sibulan, Inc., vs. Commissioner of Internal Revenue*, the respective dispositive portion of which reads, as follows:

> January 5, 2012 Decision
>
> "**WHEREFORE**, premises considered, the present Petition for Review is hereby **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED.**"
>
> March 28, 2012 Resolution
>
> "**WHEREFORE**, premises considered, petitioner's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

The facts of the case, as found by the CTA Third Division, are as follows:

> "Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Sta. Cruz, Davao Del Sur.
>
> On the other hand, respondent 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.
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> xxx xxx
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> Petitioner is principally engaged in the business of power generation through hydropower and subsequent sale of generated power to the Davao Light and Power Company, Inc. (DLPCI).

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[3] Annex "B" to the Petition for Review, Ibid, pp. 58-62.

On April 21, 2008, petitioner filed with the BIR its Original Quarterly VAT Returns for the first quarter of 2008.

On May 20, 2008, petitioner filed with the BIR its Amended Quarterly VAT Returns for the first quarter of 2008.

For the first quarter of 2008, petitioner incurred unutilized input VAT credits from its domestic purchases of goods and services in the total amount of P9,379,866.27:

2008 Taxable Quarter	INPUT VAT		TOTAL (Php)
	Domestic purchases—Goods other than Capital Goods (Php)	Domestic purchases—Services (Php)	
FIRST	505,991.90	8,873,874.37	9,379,866.27

Petitioner allegedly did not have any local sales subject to VAT at 12%. As a consequence thereof, petitioner did not have any output VAT liability against which its unutilized input VAT may be applied or credited.

The input VAT paid and incurred by petitioner on its domestic purchases of goods and services for the 1st quarter of 2008 amounting to Php9,379,866.27 is attributable to its zero-rated sales of generated power.

On March 29, 2010, petitioner filed its administrative claim for refund of unutilized input VAT for the first quarter of taxable year 2008.

In view of respondent's inaction and pursuant to *Section 229 of the NIRC of 1997, as amended,* on March 30, 2010, petitioner filed its judicial claim for refund with this Court, docketed as C.T.A. Case No. 8051.

In her Answer, respondent alleged by way of special and affirmative defenses:

'xxx xxx

4. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau.

5. The amount of P9,379,866.27 being claimed by petitioner as unutilized input VAT on purchases of goods and services for the first quarter of calendar year 2008 was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its rights to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. To support its claim, it is imperative for the petitioner to prove the following, viz:

a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

b. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payments of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance with Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P9,379,866.27 allegedly paid by petitioner on its unutilized input VAT on purchases of goods and services for the first quarter of calendar year 2008 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) of the NIRC of 1997;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the NIRC of 1997, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95; (RE: Substantiation of Claims for Input Tax Credit); and

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations No. 7-95 (Re: Persons who can avail of the Input Tax Credits).

8. The petition for Review was prematurely filed. There was likewise no proof of compliance with the prescribed checklist of requirements to be submitted involving a claim for VAT refund pursuant to RMO No. 53-98, hence, there

was no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 112(D) of the NIRC of 1997. It is worthy of emphasis that Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law Section 112 (D) of the NIRC categorically provides, thus:

> 'SEC. 112. Refunds or Tax Credits of Input Tax.
>
> xxx 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 within one hundred twenty (120) days from the date of submission of complete 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.'

Petitioner presented Arlene Galace and Emmanuel Y. Mendoza, as witnesses, and documentary evidence, marked as Exhibits 'A' to 'D', 'F' to 'H-1', 'BB-1' to 'FF-1', 'AAA' to 'EEE-1', inclusive of their sub-markings, which were admitted by the Court, except for Exhibit 'E', which was denied admission for petitioner's failure to submit the original thereof for comparison.

On the other hand, respondent waived her right to present evidence and submitted the case for decision.

> Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; after which the case shall be deemed submitted for decision.
>
> Both parties having complied therewith, on September 7, 2011, the petition was deemed submitted for decision."

On January 5, 2012, the CTA Third Division promulgated its Decision dismissing the Petition for Review for having been prematurely filed.

Unfazed, a Motion for Reconsideration[4] was filed by petitioner on January 25, 2012. Respondent filed her Comment/Opposition (Re: Motion for Reconsideration)[5] on February 20, 2012. However, the said motion was denied by the CTA Third Division in a Resolution[6] dated March 28, 2012 for lack of merit.

Hence, the instant Petition for Review.

Respondent, in compliance with the Court *En Banc's* Resolution[7] dated June 18, 2012, filed her Comment/ Opposition (Re: Petition for Review)[8] on July 2, 2012.

In a Resolution[9] dated July 17, 2012, the Court directed both parties to submit simultaneously their respective memorandum within thirty (30) days from the receipt thereof. In compliance therewith, respondent filed a Manifestation[10] on August 10, 2012, stating that she is adopting the Comment/Opposition to the Petition for Review filed on July 2, 2012 as her Memorandum. Petitioner, on the other hand, filed its Memorandum[11] on September 10, 2012. Thereafter, on September 25, 2012, the case was submitted for Decision.[12]

In the case at bench, petitioner raised the following issues for the resolution of this Court, to wit:

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[4] Docket (Vol. 2), pp. 577-596.
[5] Ibid, pp. 599-606.
[6] Id, pp. 608-612.
[7] CTA En Banc Rollo, pp. 64-65.
[8] Ibid, pp. 66-73.
[9] Id, pp. 75-76.
[10] Id, pp. 77-80.
[11] Id, pp. 86-145.
[12] Per Resolution dated September 25, 2012, Id, pp.147-148.

a. The Petition for Review was not prematurely filed before the CTA-Division;
b. The periods under Section 112 (C) of the NIRC of 1997, as amended, are not mandatory in nature; and
c. Aichi's interpretation of Section 112 of the NIRC of 1997, as amended, should not be applied to a case filed before its promulgation.

After a careful evaluation of the arguments, as well as jurisprudence on the matter, *We* find the Petition for Review bereft of merit.

This Court would like to stress that the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,[13] categorically emphasized the mandatory requirement to observe the 120-30 day period provided under Section 112(C) of the 1997 NIRC, as amended by Republic Act (RA) 8424, prior to instituting a judicial claim with the CTA, to wit:

> "However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112 (D) of the NIRC, which provides that:
>
> > SEC. 112. Refunds or Tax Credits of Input Tax. —
> >
> > xxx xxx 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 within one hundred twenty (120) days from the date of submission of complete 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

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[13] G.R. No. 184823, October 6, 2010.

> expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.
>
> **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.**
>
> **In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.**
>
> 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.
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> xxx xxx xxx
>
> **In fine, the premature filing of respondents claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."** (Emphasis ours)

Applying the foregoing jurisprudence, petitioner's administrative claim for refund/credit of its unutilized input VAT was timely filed on March 29, 2010, and respondent has 120-days to decide on the said claim. However, as can be gleaned from the records, petitioner did not wait for the 120-day period to lapse before it filed the instant petition. Its judicial claim docketed as CTA Case No. 8051 was filed on March 30, 2010, one (1) day after it filed its administrative claim. Thus, the CTA Third Division committed no error in dismissing the instant case for having been prematurely filed.

The premature filing of petitioner's judicial claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by this Court.

To reiterate, the Aichi case is the prevailing doctrine on the mandatory observance of the 120-30 day period under Section 112 (C) of the 1997 NIRC, as amended, before filing an appeal with the Court of Tax Appeals. Consequently, this Court has no other recourse but to uphold and apply the ruling of the Supreme Court, it being the final arbiter of justifiable controversy. 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.[14]

Moreover, the interpretation placed upon Section 112(C) of the 1997 NIRC, as amended by RA 8424, retroacts to the date of the enactment of the said Code on January 1, 1998, following the well-settled rule that "judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect."[15]

Furthermore, the Court of Tax Appeals in *CBK Power Company Limited vs. Commissioner of Internal Revenue*[16] *(CTA Case Nos. 7771 and 7814, December 3, 2010)* justifies the application of the *Aichi Case* in this wise:

> "To hold otherwise would not only offend the above-cited principles, but would altogether undermine the very foundations upon which the afore-cited principles were pronounced by the Supreme Court in the aforementioned decisions.
>
> Under the principle of *stare decisis et non quieta movere,* past judicial precedents should be followed in subsequent cases by all courts in the land. Hence, the cases of *Mirant* and *Aichi* constitute as *stare decisis* to the case at bar."

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[14] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003, citing the case of GSIS vs. Court of Appeals, 334 Phil. 163.
[15] Eagle Realty vs. Republic of the Philippines et al., G.R. No. 151424, July 31, 2009.
[16] CTA Case Nos. 7771 and 7814, December 3, 2010

Following the above-cited principle of *stare decisis et non quieta movere* which simply means follow past precedents and do not disturb what has been settled, it is worthy of emphasis that the principles laid down in *Aichi case* have been adopted in several recent decisions[17] of the Court of Tax Appeals *En Banc* for the purpose of maintaining consistency in our jurisprudence.

In sum, there is no cogent reason or justification to disturb the findings and conclusion spelled out in the Assailed January 5, 2012 Decision and March 28, 2012 Resolution of the CTA Third Division.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the January 5, 2012 Decision and March 28, 2012 Resolution of the CTA Third Division are hereby **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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[17] Philex Mining Corporation vs. CIR, CTA EB No. 787 (CTA Case Nos. 7933 & 7968), September 24, 2012; Procter & Gamble Asia, Pte. Ltd., CTA EB Case No. 742 (CTA Case Nos. 7581 & 7639), September 21, 2012; Harte-Hanks Philippines, Inc., vs. CIR, CTA EB No. 748 (CTA Case No. 8050), September 7, 2012; Kepco Ilijan Corporation vs. CIR, CTA EB Case No. 733 (CTA Case No. 6966), September 6, 2012; Harte-Hanks Philippines, Inc., vs. CIR, CTA EB No. 813 (CTA Case No. 8124), August 16, 2012; Steag State Power, Inc. (Formerly State Power Development Corporation) vs. CIR, CTA EB Case No. 710 (CTA Case Nos. 7458 & 7554), July 19, 2012; Mirant (Navotas II) Corporation vs. CIR, CTA EB No. 783 (CTA Case No. 7619), July 18, 2012; Visayas Geothermal Power Company vs. CIR, CTA EB No. 761 (CTA Case No. 7737), July 11, 2012; Kepco Ilijan Corporation vs. CIR, CTA EB Case No. 611 (CTA Case No. 6682), June 13, 2011; Crescent Park 18-2 Property Holdings, Inc., vs. CIR, CTA EB Case No. 684 (CTA Case No. 8061), June 8, 2011; CIR vs. Mindanao I Geothermal Partnership and Mindanao I Geothermal Partnership vs. CIR, CTA EB Case Nos. 673 & 675 (CTA Case No. 6906), April 19, 2011; CIR vs. Taganito Mining Corporation, CTA EB Case No. 559 (CTA Case No. 6867), April 18, 2011; CIR vs. Team Energy Corporation, CTA EB Case No. 603 (CTA Case No. 7229 & 7298), April 8, 2011.

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

(I maintain my Dissenting Opinion on the Decision dated January 5, 2012)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

Pursuant to Article VIII, Section 13 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