Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AICHI FORGING COMPANY OF ASIA, INC.,
Respondent.

G.R. No. 183421

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:
OCT 22 2014

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DECISION

SERENO, *CJ:*

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by the Commissioner of Internal Revenue. (petitioner). The Petition assails the Decision[2] dated 30 April 2008 and Resolution[3] dated 12 June 2008 issued by the Court of Tax Appeals *En Banc* (CTA *En Banc*) in C.T.A. EB No. 324.

THE FACTS

Aichi Forging Company of Asia, Inc. (respondent) is engaged in the business of manufacturing, producing, and processing all kinds of steel and steel by-products, such as closed impression die steel forging, and all automotive steel parts.

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[1] *Rollo*, pp. 10-36.
[2] Id. at 38-51; penned by Associate Justice Olga Palanca-Enriquez and concurred in by then Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista and Caesar A. Casanova.
[3] Id. at 52-54.

On 29 March 2005, respondent filed with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 057, an application for tax credit/refund amounting to ₱5,057,120.95 representing the former's paid input value-added taxes (VAT) for the first quarter of taxable year 2003. Respondent claimed that it was entitled to a refund/credit of the input VAT paid on its purchases of goods, services, capital goods, and on its importation of goods other than capital goods that were attributable to zero-rated sales in the total amount of ₱149,174,477.94.

On 31 March 2005, respondent filed a Petition with the CTA docketed as C.T.A. Case No. 7187.

After trial, the CTA First Division rendered a Decision on 13 August 2007. It partly granted the Petition and ordered the refund to respondent of the reduced amount of ₱4,138,397.57. That amount represented the input VAT respondent paid on its purchases of goods, services, capital goods, and on its importation of goods other than capital goods.

On appeal, the CTA *En Banc* affirmed the CTA First Division after finding no reversible error. Respondent was found to have complied with all the requisites for claiming a refund under Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997.

THE ISSUES

Petitioner's appeal is anchored on the following grounds:

1. The Court of Tax Appeals sitting En Banc erred in holding that respondent is entitled to a refund considering that respondent failed to comply with the requirements of a valid application for a tax refund. Hence, the judicial claim made before the Court of Tax Appeals deserve outright dismissal for being premature.

2. Respondent has not sufficiently proven its entitlement to a tax refund in the reduced amount of ₱4,138,397.57 representing alleged input taxes paid by it for the period of January 1, 2003 to March 31, 2003.[4]

THE COURT'S RULING

Section 112 of the NIRC of 1997 laid down the manner in which the refund or credit of input tax may be made, to wit:

> 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

[4] Id. at 19.

> 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 of 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.
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> x x x x
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> (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.
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> 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.

At the outset, petitioner raises the issue of the timeliness of respondent's judicial claim before the CTA. Petitioner contends that the Petition of respondent was prematurely filed with the CTA, considering that it was filed barely two days after respondent had filed the administrative claim with the BIR. Allegedly, petitioner was not given the chance to properly address the administrative claim. The CTA, however, held that the judicial claim clearly fell within the two-year prescriptive period for filing claims for a refund of input VAT.

This Court will clarify.

Section 112(A) provides for a two-year prescriptive period after the close of the taxable quarter when the sales were made, within which a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax. In the consolidated tax cases *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* [5](hereby collectively referred to as *San Roque*), the Court

[5] G.R. Nos. 187485, 196113, 197156, 12 February 2013, 690 SCRA 336.

clarified that the two-year period refers to the filing of an administrative claim with the BIR.

In this case, respondent's sales to PEZA−registered entities amounted to □149,075,454.37 for the period 1 January 2003 to 31 March 2003. Accordingly, respondent was not liable to pay any output VAT thereon, and the unutilized input VAT incurred by and attributable to it may be the proper subject of a claim for a refund. Therefore, considering that respondent was claiming the refund of input VAT incurred for the first quarter of 2003, it had until 31 March 2005 − or the close of the taxable quarter when the zero-rated sales were made − within which to file its administrative claim for a refund. On this note, we find that petitioners had complied with the two-year prescriptive period when it filed its claim on 29 March 2005.

In accordance with Section 112(D) of the NIRC of 1997, petitioner had one hundred twenty (120) days from the date of submission of complete documents in support of the application within which to decide on the administrative claim. Considering that the burden to prove entitlement to a tax refund is on the taxpayer, and absent any evidence to the contrary, it is presumed that in order to discharge its burden, respondent attached to its application[6] filed on 29 March 2005 complete supporting documents necessary to prove its entitlement to a refund. Thus, the 120-day period for the CIR to act on the administrative claim commenced on that date.

We agree with petitioner that the judicial claim was prematurely filed on 31 March 2005, since respondent failed to observe the mandatory 120-day waiting period to give the CIR an opportunity to act on the administrative claim. However, the Court ruled in *San Roque* that BIR Ruling No. DA-489-03 allowed the premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim:[7]

> The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.
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> 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 with the

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[6] *Applied Food Ingredients Company, Inc. v. CIR*, G.R. No. 184266, 11 November 2013.
[7] Supra note 5.

> 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.**[8] (Emphasis supplied)

In *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue and Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*,[9] this Court has reiterated:

> Notwithstanding a strict construction of any claim for tax exemption or refund, **the Court in *San Roque* recognized that BIR Ruling No. DA-489-03 constitutes equitable estoppel in favor of taxpayers. 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."** This Court discussed BIR Ruling No. DA-489-03 and its effect on taxpayers, thus:
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> x x x x
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> > 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.

Therefore, respondent's filing of the judicial claim barely two days after the administrative claim is acceptable, as it fell within the period during which the Court recognized the validity of BIR Ruling No. DA-489-03.

The second issue raised by petitioner is purely factual.

WHEREFORE, premises considered, the instant Petition is **DENIED**.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[8] Id. at 398-399.
[9] G.R. Nos. 193301 and 194637, 11 March 2013, 693 SCRA 49, 86-87.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice