Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CARGILL PHILIPPINES, INC., Petitioner,	**G.R. No. 203774**
	Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN,
COMMISSIONER OF INTERNAL REVENUE, Respondent.	PEREZ, and PERLAS-BERNABE, *JJ.*
	Promulgated: MAR 11 2015

x----------x

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 18, 2012 and the Resolution[3] dated September 27, 2012 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 779, which affirmed the Amended Decision[4] dated April 20, 2011 of the CTA Special First Division (CTA Division) in CTA Case Nos. 6714 and 7262, dismissing petitioner Cargill Philippines, Inc.'s (Cargill) claims for refund of unutilized input value-added tax (VAT) for being prematurely filed.

---

1 *Rollo*, pp. 10-76.

2 Id. at 82-106. Penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas concurring; Associate Justice Lovell R. Bautista dissenting.

3 Id. at 108-113.

4 Id. at115-121-A. Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta concurring, and Associate Justice Lovell R. Bautista dissenting. (Page 6 of the Amended Decision dated April 20, 2011 is not attached to the *rollo*.)

The Facts

Cargill is a domestic corporation duly organized and existing under Philippine laws whose primary purpose is to own, operate, run, and manage plants and facilities for the production, crushing, extracting, or otherwise manufacturing and refining of coconut oil, coconut meal, vegetable oil, lard, margarine, edible oil, and other articles of similar nature and their by-products. It is a VAT-registered entity with Tax Identification No./VAT Registration No. 000-110-659-000.[5] As such, it filed its quarterly VAT returns for the second quarter of calendar year 2001 up to the third quarter of fiscal year 2003, covering the period April 1, 2001 to February 28, 2003, which showed an overpayment of □44,920,350.92 and, later, its quarterly VAT returns for the fourth quarter of fiscal year 2003 to the first quarter of fiscal year 2005, covering the period March 1, 2003 to August 31, 2004 which reflected an overpayment of □31,915,642.26.[6] Cargill maintained that said overpayments were due to its export sales of coconut oil, the proceeds of which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas and, thus, are zero-rated for VAT purposes.[7]

On June 27, 2003, Cargill filed an administrative claim for refund of its unutilized input VAT in the amount of □26,122,965.81 for the period of April 1, 2001 to February 28, 2003 (**first refund claim**) before the Bureau of Internal Revenue (BIR). Thereafter, or **on June 30, 2003**, it filed a judicial claim for refund, by way of a petition for review, before the CTA, docketed as CTA Case No. 6714. On September 29, 2003, it subsequently filed a supplemental application with the BIR increasing its claim for refund of unutilized input VAT to the amount of □27,847,897.72.[8]

On **May 31, 2005**, Cargill filed a second administrative claim for refund of its unutilized input VAT in the amount of □22,194,446.67 for the period of March 1, 2003 to August 31, 2004 (**second refund claim**) before the BIR. **On even date**, it filed a petition for review before the CTA, docketed as CTA Case No. 7262.[9]

For its part, respondent Commissioner of Internal Revenue (CIR) claimed, *inter alia*, that the amounts being claimed by Cargill as unutilized input VAT in its first and second refund claims were not properly documented and, hence, should be denied.[10]

---

5 Id. at 84.
6 Id.at 85.
7 Id. at 138.
8 See id. at 87.
9 See id. at 89.
10 See id. at 87-89.

On Cargill's motion for consolidation,[11] the CTA Division, in a Resolution[12] dated July 10, 2007, ordered the consolidation of CTA Case No. 6714 with CTA Case No. 7262 for having common questions of law and facts.[13]

The CTA Division Ruling

In a Decision[14] dated August 24, 2010 (August 24, 2010 Decision), the CTA Division partially granted Cargill's claims for refund of unutilized input VAT and thereby ordered the CIR to issue a tax credit certificate in the reduced amount of □3,053,469.99, representing Cargill's unutilized input VAT attributable to its VAT zero-rated export sales for the period covering April 1, 2001 to August 31, 2004.[15] It found that while Cargill timely filed its administrative and judicial claims within the two (2)-year prescriptive period,[16] as held in the case of *CIR v. Mirant Pagbilao Corp.*,[17] it, however, failed to substantiate the remainder of its claims for refund of unutilized input VAT, resulting in the partial denial thereof.[18]

Dissatisfied, CIR respectively moved for reconsideration,[19] and for the dismissal of Cargill's petitions, claiming that they were prematurely filed due to its failure to exhaust administrative remedies.[20] Cargill likewise sought for reconsideration,[21] maintaining that the CTA Division erred in disallowing the rest of its refund claims.

In an **Amended Decision**[22] **dated April 20, 2011**, the CTA Division preliminarily denied the individual motions of both parties, to wit: (*a*) CIR's motion for reconsideration for lack of notice of hearing; (*b*) CIR's motion to dismiss on the ground of *estoppel*; and (*c*) Cargill's motion for reconsideration for lack of merit.[23]

Separately, however, the CTA Division superseded and consequently reversed its August 24, 2010 Decision. Citing the case of *CIR v. Aichi Forging Company of Asia, Inc.* (*Aichi*),[24] it held that the 120-day period provided under Section 112 (D) of the National Internal Revenue Code

---

11 Not attached to the *rollo*.
12 Not attached to the *rollo*.
13 *Rollo*, pp. 89-90.
14 Id. at 124-165. Penned by Associate Justice Caesar A. Casanova with Associate Justice Lovell R. Bautista concurring and Presiding Justice Ernesto D. Acosta concurring and dissenting.
15 Id. at 164.
16 See id. at 137-138.
17 586 Phil. 712 (2008).
18 See *rollo*, pp. 160-164.
19 Not attached to the *rollo*.
20 Id. at 115-117.
21 See motion for reconsideration dated September 13, 2010; id. at 171-189.
22 Id. at 115-121-A.
23 See id. at 116-119 and 121.
24 G.R. No. 184823, October 6, 2010, 632 SCRA 422.

(NIRC) must be observed prior to the filing of a judicial claim for tax refund.[25] As Cargill failed to comply therewith, the CTA Division, without ruling on the merits, dismissed the consolidated cases for being prematurely filed.[26]

Aggrieved, Cargill elevated its case to the CTA *En Banc*.

The CTA En Banc Ruling

In a Decision[27] dated June 18, 2012, the CTA *En Banc* affirmed the CTA Division's April 20, 2011 Amended Decision, reiterating that Cargill's premature filing of its claims divested the CTA of jurisdiction, and perforce, warranted the dismissal of its petitions. To be specific, it highlighted that Cargill's petition in CTA Case No. 6714 was filed on June 30, 2003, or after the lapse of three (3) days from the time it filed its administrative claim with the BIR; while its petition in CTA Case No. 7672 was filed on the same date it filed its administrative claim with the BIR, *i.e.*, on May 31, 2005. As such, the CTA *En Banc* ruled that Cargill's judicial claims were correctly dismissed for being filed prematurely.[28]

Cargill moved for reconsideration[29] which was, however, denied by the CTA *En Banc* in a Resolution[30] dated September 27, 2012, hence, this petition.

The Issue Before the Court

The core issue in this case is whether or not the CTA *En Banc* correctly affirmed the CTA Division's outright dismissal of Cargill's claims for refund of unutilized input VAT on the ground of prematurity.

The Court's Ruling

The petition is partly meritorious.

Allowing the refund or credit of unutilized input VAT finds its genesis in Executive Order No. 273,[31] series of 1987, which is recognized as the "Original VAT Law." Thereafter, it was amended through the passage of

---

25 See id. at 442-444. See also *rollo*, p. 119.
26 See *rollo*, pp. 119-121.
27 Id. at 82-106.
28 See id. at 101-105.
29 Not attached to the *rollo*.
30 Id. at 108-113.
31 Entitled "ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES" (Effective January 1, 1988).

Republic Act No. (RA) 7716,[32] RA 8424,[33] and, finally by RA 9337,[34] which took effect on November 1, 2005. Considering that Cargill's claims for refund covered periods before the effectivity of RA 9337, Section 112 of the NIRC, as amended by RA 8424, should, therefore, be the governing law,[35] the pertinent portions of which read:

> Section 112. *Refunds or Tax Credits of Input Tax. –*
>
> (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, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x.
>
> x x x x
>
> (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**. (Emphases and underscoring supplied)
>
> x x x x

In the landmark case of *Aichi*, it was held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. As such, its non-observance would warrant the dismissal of the judicial claim for lack of jurisdiction. It was, withal, delineated in *Aichi* that the two (2)-year prescriptive period would

---

[32] Entitled "AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES" (Approved May 5, 1994).

[33] Entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES" (Effective January 1, 1998).

[34] Entitled "AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES." Its effectivity clause provides that it shall take effect on July 1, 2005 but due to a Temporary Restraining Order filed by some taxpayers, the law took effect on November 1, 2005 when the TRO was finally lifted by the Court. (Republic of the Philippines, Bureau of Internal Revenue: Tax Code <http://www.bir.gov.ph/index.php/tax-code.html> [visited February 26, 2015].)

[35] See *Republic v. GST Philippines, Inc.*, G.R. No. 190872, October 17, 2013, 707 SCRA 695, 700-703.

only apply to administrative claims, and not to judicial claims.[36] Accordingly, once the administrative claim is filed within the two (2)-year prescriptive period, the taxpayer-claimant must wait for the lapse of the 120-day period and, thereafter, he has a 30-day period within which to file his judicial claim before the CTA, even if said 120-day and 30-day periods would exceed the aforementioned two (2)-year prescriptive period.[37]

Nevertheless, the Court, in the case of *CIR v. San Roque Power Corporation*[38] (*San Roque*), recognized an exception to the mandatory and jurisdictional nature of the 120-day period. *San Roque* enunciated that BIR Ruling No. DA-489-03 dated December 10, 2003, which expressly declared 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," provided a valid claim for equitable *estoppel* under Section 246[39] of the NIRC.[40]

In the more recent case of *Taganito Mining Corporation v. CIR*,[41] the Court reconciled the pronouncements in *Aichi* and *San Roque*, holding that from **December 10, 2003 to October 6, 2010** which refers to the interregnum when BIR Ruling No. DA-489-03 was issued until the date of promulgation of *Aichi*, taxpayer-claimants need not observe the stringent 120-day period; but before and after said window period, the mandatory and jurisdictional nature of the 120-day period remained in force, *viz.*:

> Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that **during the period December 10, 2003** (when BIR Ruling No. DA-489-03 was issued) **to October 6, 2010** (when the *Aichi* case was promulgated), **taxpayers-claimants need not observe the 120-day period** before it could file a judicial claim for refund of excess input VAT before the CTA. **Before and after the aforementioned period (*i.e.*, December 10, 2003 to October 6, 2010), the observance of**

---

36 See *CIR v. Aichi Forging Company of Asia, Inc.*, supra note 24, at 435-444.

37 See *Taganito Mining Corporation v. CIR*, G.R. No. 197591, June 18, 2014.

38 G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

39 Section 246 of the NIRC provides:

> SEC. 246. *Non-Retroactivity of Rulings*. – Any revocation, modification or reversal of any of the **rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (Emphases and underscoring supplied)

40 *CIR v. San Roque Power Corporation*, supra note 38, at 401.

41 Supra note 37.

> **the 120-day period is mandatory and jurisdictional to the filing of such claim**.[42] (Emphases and underscoring supplied)

In this case, records disclose that anent Cargill's first refund claim, it filed its administrative claim with the BIR on June 27, 2003, and its judicial claim before the CTA on June 30, 2003, or **before the period when BIR Ruling No. DA-489-03 was in effect**, *i.e.*, from December 10, 2003 to October 6, 2010. As such, it was incumbent upon Cargill to wait for the lapse of the 120-day period before seeking relief with the CTA, and considering that its judicial claim was filed only after three (3) days later, the CTA *En Banc,* thus, correctly dismissed Cargill's petition in CTA Case No. 6714 for being prematurely filed.

In contrast, records show that with respect to Cargill's second refund claim, its administrative and judicial claims were both filed on May 31, 2005, or **during the period of effectivity of BIR Ruling NO. DA-489-03**, and, thus, fell within the exemption window period contemplated in *San Roque, i.e.*, when taxpayer-claimants need not wait for the expiration of the 120-day period before seeking judicial relief. Verily, the CTA *En Banc* erred when it outrightly dismissed CTA Case No. 7262 on the ground of prematurity.

This notwithstanding, the Court finds that Cargill's second refund claim in the amount of ₱22,194,446.67 which allegedly represented unutilized input VAT covering the period March 1, 2003 to August 31, 2004 should not be instantly granted. This is because the determination of Cargill's entitlement to such claim, if any, would necessarily involve factual issues and, thus, are evidentiary in nature which are beyond the pale of judicial review under a Rule 45 petition where only pure questions of law, not of fact, may be resolved.[43] Accordingly, the prudent course of action is to remand CTA Case No. 7262 to the CTA Division for resolution on the merits, consistent with the Court's ruling in *Panay Power Corporation v. CIR*.[44]

WHEREFORE, the petition is **PARTLY GRANTED**. Accordingly, the Decision dated June 18, 2012 and the Resolution dated September 27, 2012 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 779 are hereby **AFFIRMED** only insofar as it dismissed CTA Case No. 6714. On the other hand, CTA Case No. 7262 is **REINSTATED** and

---

42 See id.

43 See *Atlas Consolidated Mining and Development Corporation v. CIR,* G.R. No. 159471, January 26, 2011, 640 SCRA 504, 514-515, citing *Atlas Consolidated Mining and Dev't. Corp. v. CIR,* 551 Phil. 519, 558-560 (2007).

44 In said case, an amended decision was likewise issued by the CTA Special First Division dismissing Panay Power Corporation's (PPC) claim for refund for being prematurely filed. Considering, however, that PPC filed its administrative and judicial claim during the effectivity of BIR Ruling No. DA-489-03, *i.e.*, the exemption window period, the Court, thus, ordered the remand of the case to the CTA Special First Division to determine PPC's entitlement, if any, to a tax refund since this matter involves questions of fact. (See G.R. No. 203351, January 21, 2015).

REMANDED to the CTA Special First Division for its resolution on the merits.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
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