Republic of the Philippines
Supreme Court
Manila

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FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Respondent.

G.R. No. 211072

Present:

SERENO, *C.J.*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:

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DECISION

CAGUIOA, *J.*:

Before the Court is a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Amended Decision[2] dated July 29, 2013 and Resolution[3] dated January 7, 2014 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 815. The CTA *En Banc* reversed and set aside its earlier decision dated January 31, 2013, which affirmed the CTA First Division's dismissal of the claim for refund or issuance of tax credit filed by respondent Deutsche Knowledge Services, Pte. Ltd. (DKS) in CTA Case No. 7940 on the ground of prematurity, and remanded the case to the court of origin for further proceedings.

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1 *Rollo*, pp. 10- 27.

2 Id. at 34-44. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban, concurring; Associate Justice Caesar A. Casanova, dissenting; and Associate Justices Lovell R. Bautista and Cielito N. Mindaro-Grulla, on leave.

3 Id. at 47-53. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Ma. Belen M. Ringpis-Liban, concurring.

Facts

DKS is the Philippine branch of a multinational company organized and existing under and by the virtue of the laws of Singapore. It is licensed to do business as a regional operating headquarters in the Philippines.

On July 25, 2007, DKS filed its original Quarterly Value Added Tax (VAT) Return for the 2nd quarter of CY 2007 with the Bureau of Internal Revenue (BIR).

On June 18, 2009, DKS filed with the BIR-Revenue District Office No. 47 an Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the 2nd quarter of CY 2007 in the amount of ₱8,767,719.30. Subsequently, on June 30, 2009, or even before any action by the CIR on its administrative claim, DKS filed a Petition for Review with the CTA, docketed as CTA Case No. 7940.

Trial commenced and DKS filed its Formal Offer of Evidence on September 22, 2010, which was admitted by the CTA First Division in a Resolution dated December 1, 2010.

Meanwhile, on October 6, 2010, while DKS's claim for refund or tax credit was pending before the CTA First Division, this Court promulgated *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[4] (*Aichi*). In that case, the Court held that compliance with the 120-day period granted to the CIR, within which to act on an administrative claim for refund or credit of unutilized input VAT, as provided under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, is mandatory and jurisdictional in filing an appeal with the CTA.

On February 21, 2011, the CIR filed a Motion to Dismiss,[5] stating that the CTA First Division lacked jurisdiction because respondent's Petition for Review was prematurely filed.

In a Resolution dated April 26, 2011,[6] the CTA First Division dismissed respondent's judicial claim, the decretal portion of which reads:

> WHEREFORE, premises considered, the Motion to Dismiss dated February 21, 2011, filed by respondent [CIR], is hereby GRANTED. Consequently, the Petition for Review dated June 30, 2009, filed by petitioner Deutsche Knowledge Services Pte. Ltd. is hereby DISMISSED.
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> SO ORDERED.[7]

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4 646 Phil. 710 (2010).

5 *Rollo*, pp. 54-60.

6 Id. at 62-74. Penned by Associate Justice Esperanza R. Fabon-Victorino with Associate Justice Erlinda P. Uy, concurring and Presiding Justice Ernesto D. Acosta on leave.

7 Id. at 74.

The CTA First Division ruled that the petition for review filed by DKS on June 30, 2009, or barely twelve (12) days after the filing of its administrative claim for refund, was clearly premature justifying its dismissal. The CTA First Division explained that pursuant to Section 112(C) of the NIRC and the jurisprudence laid down in *Aichi*, it is a mandatory requirement to wait for the lapse of the 120-day period granted to petitioner to act on the application for refund or issuance of tax credit, before a judicial claim may be filed with the CTA.

DKS moved for reconsideration, but the same was denied by the CTA First Division in its Resolution[8] dated August 2, 2011.

Aggrieved, DKS elevated the matter to the CTA *En Banc,* raising the following arguments: (1) the CTA First Division validly acquired jurisdiction of its judicial claim for refund; (2) *Aichi* should not be applied indiscriminately to all claims for VAT refund; (3) the prospective application of the *Aichi* interpretation on the observance of the 120-day rule is legally and equitably imperative; and (4) DKS is entitled to a refund of its claimed input VAT for the 2nd quarter of CY 2007.

On January 31, 2013, the CTA *En Banc* rendered a Decision[9] affirming the April 26, 2011 and August 2, 2011 Resolutions of the CTA First Division. It agreed with the CTA First Division in applying the ruling in *Aichi* which warranted the dismissal of DKS's judicial claim for refund on the ground of prematurity.

In the meantime, on February 12, 2013, this Court decided the consolidated cases of *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*[10] (*San Roque*), wherein the Court recognized BIR Ruling No. DA-489-03 as an exception to the 120-day period.

Invoking this Court's pronouncements in *San Roque*, DKS moved for reconsideration. The CTA *En Banc* found merit in said motion and rendered the assailed Amended Decision, the dispositive portion of which reads as follows:

> **WHEREFORE,** premises considered, the instant *Motion for Reconsideration (Re: Decision dated January 31, 2013)* is hereby **GRANTED.** The *Decision* dated January 31, 2013, which affirmed the CTA First Division's dismissal of the Petition for Review docketed as CTA Case No. 7940 on the ground of prematurity, is hereby **REVERSED AND SET ASIDE.**

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8 *Rollo*, pp. 77-99.
9 Id. at 102-113.
10 703 Phil. 310 (2013).

Accordingly, CTA Case No. 7940 is hereby **REMANDED** to the court of origin for further proceedings.

SO ORDERED.[11]

The CIR filed a Motion for Reconsideration but the motion was denied for lack of merit by the CTA *En Banc* in its Resolution[12] dated January 7, 2014.

Hence, this petition.

Issue

The singular issue submitted by the Petition for this Court's resolution is whether the CTA *En Banc* erred in taking cognizance of the case and holding that DKS's petition for review was not prematurely filed with the CTA First Division.

The Court's Ruling

The Petition lacks merit.

Exception to the mandatory and jurisdictional nature of the 120-day period under Section 112(C) of the NIRC

Section 112 of the NIRC provides for the rules on claiming refunds or tax credits of unutilized input VAT, the pertinent portions of which read as follows:

> Sec. 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
>
> (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.**

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11 Supra note 2, at 43.

12 Supra note 3.

> 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. (Emphasis supplied)

Based on the plain language of the foregoing provision, a VAT-registered taxpayer claiming for a refund or tax credit of its excess and unutilized input VAT must file an administrative claim within two (2) years from the close of the taxable quarter when the sales are made. After that, the CIR is given 120 days, from the submission of complete documents in support of said administrative claim, within which to grant or deny said claim. Upon receipt of CIR's decision, denying the claim in full or partially, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has 30 days within which to file a petition for review with the CTA.

As earlier stated, this Court in *Aichi* clarified that the 120-day period granted to the CIR is mandatory and jurisdictional, the non-observance of which is fatal to the filing of a judicial claim with the CTA. The Court further explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertains only to the filing of the administrative claim with the BIR; while the judicial claim may be filed with the CTA within 30 days from the receipt of the decision of the CIR or expiration of 120-day period of the CIR to act on the claim. Thus:

> **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.**
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> 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.
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> 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.
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> 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**.
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> x x x x
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> 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.[13] (Emphasis supplied)

Subsequently, in *San Roque,* while the Court reiterated the mandatory and jurisdictional nature of the 120+30 day periods, it recognized as an exception BIR Ruling No. DA-489-03, issued prior to the promulgation of *Aichi*, where the BIR expressly allowed the filing of judicial claims with the CTA even before the lapse of the 120-day period. The Court held that BIR Ruling No. DA-489-03 furnishes a valid basis to hold the CIR in estoppel because the CIR had misled taxpayers into filing judicial claims before the CTA even before the lapse of the 120-day period:

> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.
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> x x x x
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> BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a

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[13] Supra note 4, at 731-732.

> government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.
>
> **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.**[14] (Emphasis supplied)

Following *San Roque,* the Court, in a catena of cases,[15] has consistently adopted the rule that the 120-day waiting period does **not** apply to claims for refund that were prematurely filed during the period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003, until October 6, 2010, when the *Aichi* was promulgated; but before and after said period, the observance of the 120-day period is mandatory and jurisdictional.[16]

In this case, records show that DKS filed its administrative and judicial claim for refund on June 18, 2009 and June 30, 2009, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though DKS filed its judicial claim without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque.* Verily, the CTA *En Banc*

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14 Supra note 10, at 373-376.

15 See *Commissioner of Internal Revenue v. Toledo Power Company,* G.R. Nos. 195175 & 199645, August 10, 2015, 765 SCRA 511; *Commissioner of Internal Revenue v. Air Liquide Philippines, Inc.,* G.R. No. 210646, July 29, 2015, 764 SCRA 385; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,* G.R. No. 173241, March 25, 2015, 754 SCRA 279; *Cargill Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 203774, March 11, 2015, 753 SCRA 124; *Panay Power Corporation (formerly Avon River Power Holdings Corporation) v. Commissioner of Internal Revenue*, G.R. No. 203351, January 21, 2015, 746 SCRA 588; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015, 745 SCRA 663; *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue,* G.R. No. 204745, December 8, 2014, 744 SCRA 143; *CBK Power Company Limited v. Commissioner of Internal Revenue,* G.R. No. 198928, December 3, 2014, 743 SCRA 693; *Taganito Mining Corporation v. Commissioner of Internal Revenue,* G.R. No. 198076, November 19, 2014, 741 SCRA 196; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, October 22, 2014, 739 SCRA 147; *CBK Power Company Limited v. Commissioner of Internal Revenue,* 744 Phil. 559 (2014); *San Roque Power Corp. v. Commissioner of Internal Revenue,* 737 Phil. 387 (2014); *Miramar Fish Company, Inc. v. Commissioner of Internal Revenue,* G.R. No. 185432, June 4, 2014, 724 SCRA 611; *Silicon Philippines, Inc. v. Commissioner of Internal Revenue,* 727 Phil. 487 (2014); *Commissioner of Internal Revenue v. Team Sual Corporation,* 726 Phil. 266 (2014); *Commissioner of Internal Revenue. v. Toledo Power, Inc.,* 725 Phil. 66 (2014); *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership,* 724 Phil. 534 (2014); *Team Energy Corp. v. Commissioner of Internal Revenue,* 724 Phil. 127 (2014); *Commissioner of Internal Revenue v. Visayas Geothermal Power Company, Inc.,* 720 Phil. 710 (2013); *Nippon Express (Phils.) Corp. v. Commissioner of Internal Revenue,* 706 Phil. 442 (2013).

16 *Taganito Mining Corporation v. Commissioner of Internal Revenue*, 736 Phil. 591, 600 (2014).

did not err in reversing the dismissal of DKS's judicial claim and remanding the case to the CTA First Division for the resolution of the case on the merits.

Application and validity of BIR Ruling No. DA-489-03

The CIR now claims that BIR Ruling No. DA-489-03 is invalid because it was merely issued by a Deputy Commissioner and not by the CIR, who is exclusively authorized by law to interpret the provisions of the NIRC.

The Court is not persuaded. The Court *En Banc*'s Resolution in *San Roque* dated October 8, 2013[17] is instructive:

> In asking this Court to disallow Taganito's claim for tax refund or credit, the CIR repudiates the validity of the issuance of its own BIR Ruling No. DA-489-03. "Taganito cannot rely on the pronouncements in BIR Ruling No. DA-489-03, being a mere issuance of a Deputy Commissioner.
>
> Although Section 4 of the 1997 Tax Code provides that the "power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance," Section 7 of the same Code does not prohibit the delegation of such power. Thus, "**[t]he Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."[18]

Finally, the CIR contends that even assuming that BIR Ruling No. DA-489-03 should be considered as an exception to the 120-day period; it was already repealed and superseded on November 1, 2005 by Revenue Regulations No. 16-2005 (RR 16-2005), which echoed the mandatory and jurisdictional nature of the 120-day waiting period under Section 112 of the NIRC. Thus, DKS cannot rely on BIR Ruling No. DA-489-03 because its claim was filed in June 2009 or almost four (4) years since RR 16-2005 took effect.

In other words, the CIR posits that compliance with the 120-day period should only be considered permissible from December 10, 2003, when BIR Ruling No. DA-489-03 was issued, until October 31, 2005, prior to the effectivity of RR 16-2005.

The Court disagrees.

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[17] *Commissioner of Internal Revenue v. San Roque Power Corp.*, 719 Phil. 137 (2013).
[18] Id. at 163-164.

Again, it has already been settled in *San Roque* that BIR Ruling No. DA-489-03 is a general interpretative rule which **all** taxpayers may rely upon from the time of its issuance on December 10, 2003 until its effective reversal by the Court in *Aichi*. While RR 16-2005 may have re-established the necessity of the 120-day period, taxpayers cannot be faulted for still relying on BIR Ruling DA-489-03 even after the issuance of RR 16-2005 because the issue on the mandatory compliance of the 120-day period was only brought before the Court and resolved with finality in *Aichi*.

All told, the Court maintains that the 120-day period is permissible from December 10, 2003, when BIR Ruling No. DA-489-03 was issued, until October 6, 2010, when *Aichi* was promulgated; but before and after said period, the observance of the 120-day period is mandatory and jurisdictional.

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED.** The Amended Decision dated July 29, 2013 and the Resolution dated January 7, 2014 of the CTA *En Banc* in CTA EB No. 815 are hereby **AFFIRMED.** Let this case be **REMANDED** to the CTA First Division for the proper determination of the refundable amount due to respondent, if any.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
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