Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 197519

Present:

CARPIO, *J., Chairperson,*
PERALTA,
PERLAS-BERNABE,*
CAGUIOA, and
REYES, JR., *JJ.*

Promulgated:

08 NOV 2017

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DECISION

CAGUIOA, *J.:*

The Case

This is a Petition for Review[1] on *Certiorari* (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated January 12, 2011 (Assailed Decision) and Resolution[3] dated June 30, 2011 (Assailed Resolution) rendered by the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 630.

The Assailed Decision and Resolution stem from an appeal from the Amended Decision[4] dated April 30, 2010 rendered by the CTA Special First Division in C.T.A. Case No. 7506, directing the issuance of a Tax Credit Certificate (TCC) in the amount of Five Million Two Hundred Seventy-Eight Thousand Thirty-Six Pesos and 6/100 (₱5,278,036.06) in the name of petitioner Mindanao I Geothermal Partnership (M1).

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* On official leave.

1 *Rollo,* pp. 41-68.

2 Id. at 7-24. Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista (with Separate Opinion, id. at 25-32), Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas concurring.

3 Id. at 34-38.

4 Id. at 281-288. Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta dissenting (with Dissenting Opinion, id. at 289-290) and Associate Justice Caesar A. Casanova concurring.

The Facts

The undisputed facts, summarized by the CTA First Division, and thereafter adopted by the CTA *En Banc*, are as follows:

> [M1] entered into a Build-Operate-Transfer [BOT] contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the finance, design, construction, testing, commissioning, operation, maintenance, and repair of a 47-megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to [M1] at no cost. In turn, [M1] shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf of PNOC-EDC. [M1's] 47-megawatt geothermal power plant project has been accredited by the Department of Energy (DOE) as a Private Sector Generation Facility, pursuant to the provision of Executive Order No. 215 and evidenced by Certificate of Accreditation No. 95-03-07. In order to facilitate the operations and management of the said geothermal plant, it entered into an Operations and Maintenance Agreement with Marubeni Energy Services Corporation (MESC).
>
> For the second to fourth quarters of taxable year 2004, [M1] filed its Quarterly [Value-Added Tax (VAT)] Returns on the following dates:

Quarter	Date filed	Date Amended
Second	July 22, 2004	June 22, 2005
Third	October 22, 2004	June 22, 2005
Fourth	January 25, 2005	June 22, 2005

> On August 16, 2005, [M1] filed a letter-request for the issuance of [TCC] with the BIR Large Taxpayers Service arising from its excess and unutilized creditable input taxes in the amount of [₱]9,470,500.39, accumulated from the first to fourth quarters of taxable year 2004. However, said application for issuance of [TCC] remains unacted (sic) upon by respondent [Commissioner of Internal Revenue (CIR)] despite the lapse of the one hundred twenty (120)-day period provided under Section 112(D) of the National Internal Revenue Code (NIRC) of 1997, as amended.
>
> On July 21, 2006, [M1] filed [its] Petition for Review, praying for the issuance of [a TCC] in the amount of [₱]6,199,278.90 instead of the amount of [₱]9,470,500.39, which covers merely the second to fourth quarters of taxable year 2004.[5]
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> On September 18, 2006, [the CIR] filed his Answer interposing the following counter-arguments:
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> > "4. [M1's] claim for refund is subject to administrative investigation by the Bureau;
> >
> > 5. [M1] must prove that it paid the alleged VAT input taxes for the period in question;
> >
> > 6. [M1] must prove that the same alleged input VAT was not utilized against any output VAT liability;

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[5] According to M1, it no longer pursued its claim for unutilized creditable input taxes for the first quarter of 2004 as it failed to elevate the same to the CTA within the two (2)-year period under Section 112(A) of the NIRC. See *rollo*, p. 44.

> 7. [M1] must prove that its sales are VAT zero-rated as contemplated under Section 112 (A) of the Tax Code of 1997;
>
> 8. [M1] must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales;
>
> 9. [M1] must prove that the claim was filed within [the] period prescribed by law;
>
> 10. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund; [and]
>
> 11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption of (sic) taxation."[6]

CTA First Division Rulings

On May 12, 2009, the CTA First Division rendered a Decision,[7] the dispositive portion of which reads:

> **WHEREFORE**, [M1's] claim for issuance of [TCC] is hereby **PARTIALLY GRANTED**. Accordingly, [the CIR] is hereby **ORDERED TO ISSUE A [TCC]** in favor of [M1] in the reduced amount of [₱]2,279,821.99, representing its excess and unutilized input VAT for the period covering the third and fourth quarters of taxable year 2004.
>
> **SO ORDERED.**[8]

The CTA First Division granted M1's claim for unutilized input value-added tax (VAT) for the third and fourth quarters of 2004, but denied M1's claim corresponding to the second quarter of the same year for having been filed out of time.[9]

Citing *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*[10] *(Mirant),* the CTA First Division held that under Section 112(A) of the National Internal Revenue Code of 1997 (NIRC), administrative *and* judicial claims for issuance of a TCC or refund of unutilized creditable input VAT arising from VAT zero-rated sales must be filed within two (2) years from the end of the quarter when the pertinent sales were made, regardless of when the corresponding input VAT had been paid.[11]

Considering that the last day of the second quarter of 2004 fell on June 30, 2004, the CTA First Division found that M1 only had until June 30,

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6 Id. at 251-253.

7 Id. at 250-260. Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta dissenting (with Dissenting Opinion, id. at 261-264) and Caesar A. Casanova concurring.

8 Id. at 260.

9 See id. at 255-259.

10 586 Phil. 712 (2008).

11 Id. at 254.

2006 within which to file its administrative and judicial claims. Thus, the CTA First Division found that while M1's administrative claim (filed on August 16, 2005) was filed within the said period, its judicial claim (filed on July 21, 2006) was not.[12]

Subsequently, both parties filed their respective motions for partial reconsideration (MPR).

For its part, M1 argued that its claim for VAT refund for the second quarter of 2004 should not have been denied on the basis of *Mirant,* as this case was promulgated two (2) years after M1's judicial claim was filed before the CTA. Instead, M1 maintains that the two (2)-year prescriptive period should have been reckoned from the filing of the relevant Quarterly VAT Returns, in accordance with the Court's earlier pronouncement in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[13] *(Atlas)*.[14]

On the other hand, the CIR argued that M1 failed to comply with Section 112(C), since M1 elevated its judicial claim before the CTA beyond the thirty (30)-day period following the expiration of the CIR's period to act. The CIR maintains that since this requirement is mandatory, M1's non-compliance precludes the CTA from assuming jurisdiction over its judicial claim.[15]

The parties' MPRs were resolved by the CTA First Division in its Amended Decision dated April 30, 2010, in this wise:

> **WHEREFORE**, premises considered, [the CIR's] [MPR] is hereby **DENIED** for lack of merit; while [M1's] [MPR] is hereby **PARTIALLY GRANTED**. [The CTA First Division's] *Decision* dated May 12, 2009 is hereby **MODIFIED**. Accordingly, [the CIR] is hereby **ORDERED TO ISSUE A [TCC]** in the amount of [₱]5,278,036.06 in favor of [M1], representing its unutilized input VAT for the second, third, and fourth quarters of taxable year 2004.
>
> **SO ORDERED.**[16]

Aggrieved, the CIR elevated the case to the CTA *En Banc* through a Petition for Review[17] filed under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals.[18]

On January 12, 2011, the CTA *En Banc* granted CIR's Petition for Review through the Assailed Decision, thus:

> **WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the Amended Decision dated April 30,

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12 Id. at 254-255.
13 551 Phil. 519 (2007).
14 See *rollo*, pp. 284-285.
15 See id. at 282.
16 Id. at 288.
17 Id. at 291-304.
18 A.M. No. 05-11-07-CTA, November 22, 2005.

> 2010 rendered by the Former First Division of this Court in C.T.A. Case No. 7506 is hereby **REVERSED** and **SET ASIDE**, and another one is hereby entered dismissing the Petition for Review filed in C.T.A. Case No. 7506 for having been filed late.
>
> **SO ORDERED.**[19]

M1 filed a motion for reconsideration, which the CTA *En Banc* denied through the Assailed Resolution[20] dated June 30, 2011. M1 received a copy of the Assailed Resolution on July 7, 2011.[21]

On July 22, 2011, M1 filed before the Court a Motion for Additional Time to File Petition for Review,[22] praying for an additional period of thirty (30) days, or until August 21, 2011, within which to file a petition for review.

Subsequently, M1 filed the present Petition on August 22, 2011, to which the CIR filed its Comment[23] on March 12, 2012. Thereafter, M1 filed its Reply to CIR's Comment on October 10, 2012.[24]

The Issue

The sole issue for this Court's resolution is whether the CTA *En Banc* erred when it dismissed M1's judicial claim for being filed out of time.

The Court's Ruling

The Petition lacks merit.

Section 112 of the NIRC provides the procedure for filing claims for VAT refunds, and prescribes the corresponding periods therefor. The provision states, in part:

> 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: *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

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19 *Rollo*, pp. 22-23.
20 Id. at 34-38.
21 Id. at 41.
22 Id. at 3-5.
23 Id. at 765-784.
24 Id. at 821-841.

> exempt sale of goods or 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. *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
>
> 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.
>
> **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 and underscoring supplied)

The Petition calls into question the proper application of: (*i*) the two (2)-year period under Section 112(A); and (*ii*) the one hundred twenty (120) and thirty (30)-day periods under Section 112(C). These questions, however, have long been put to rest in the cases of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[25] *(Aichi)* and *Commissioner of Internal Revenue v. San Roque Power Corporation*[26] *(San Roque).*

In *Aichi,* the Court unequivocally ruled that the two (2)-year period under Section 112(A) should be reckoned from the close of the taxable quarter when the sales were made consistent with the plain import of the NIRC. The Court also clarified that the two (2)-year period only applies to administrative claims, and does *not* extend to judicial claims. Anent judicial claims, the Court held that the one hundred twenty (120) and thirty (30)-day periods under Section 112(C) are mandatory and jurisdictional, such that judicial claims filed before the denial of the taxpayers' administrative claim or the lapse of the one hundred twenty (120)-day period in case of the CIR's inaction would be deemed premature, while judicial claims filed beyond the thirty (30)-day period after such denial or lapse would be deemed filed out of time.[27]

Subsequently, the Court's ruling in *San Roque* set out exceptions to the mandatory periods under Section 112(C), thus:

> 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.

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25 646 Phil. 710 (2010).

26 703 Phil. 310 (2013).

27 See *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, supra note 25, at 728, 730-732.

> **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.**[28] (Emphasis and underscoring supplied)

Specifically, the Court, in *San Roque,* held that **BIR Ruling No. DA-489-03**, which states that "[the] taxpayer-claimant need not wait for the lapse of the [one hundred twenty (120)]-day period before x x x seek[ing] judicial relief with the CTA by way of [p]etition for [r]eview"[29] serves as a valid claim for equitable estoppel recognized under Section 246 from the time it was issued on December 10, 2003 until it was overturned on October 6, 2010.[30]

In turn, the principles decreed in *Aichi* and *San Roque* were later synthesized in the consolidated cases of *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue* and *Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*[31] (2013 Consolidated Cases) involving M1's claim for unutilized input VAT for the year 2003. The 2013 Consolidated Cases summarized the relevant periods under Section 112, as follows:

> (1) An administrative claim must be filed with the CIR within two [2] years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has [one hundred twenty (120)] days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The [one hundred twenty (120)]-day period may extend beyond the two [2]-year period from the filing of the administrative claim if the claim is filed in the later part of the two [2]-year period. If the [one hundred twenty (120)]-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
>
> (3) **A judicial claim must be filed with the CTA within [thirty] 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the [one hundred twenty (120)]-day period without any action from the CIR.**
>
> (4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on [December 10, 2003] up to its reversal by this Court in *Aichi* on [October 6, 2010], as an exception to the mandatory and jurisdictional 120+30 day periods.[32] (Emphasis supplied)

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28 *Commissioner of Internal Revenue v. San Roque Power Corporation*, supra note 26, at 373.
29 Id. at 372-373.
30 See id. at 376.
31 706 Phil. 48 (2013).
32 Id. at 86-87.

Proceeding therefrom, it becomes clear that M1's judicial claim for the second, third and fourth quarters of 2004 were filed out of time. The Court notes the following relevant dates:

Quarter	Close of Taxable Quarter	Amended Administrative Claim	Expiration of CIR's period to Act	Judicial Claim
Second	June 30, 2004	June 22, 2005	October 20, 2005	July 21, 2006
Third	September 30, 2004	June 22, 2005	October 20, 2005	July 21, 2006
Fourth	December 31, 2004	June 22, 2005	October 20, 2005	July 21, 2006

The thirtieth (30th) day following October 20, 2005 (which is the date when the CIR's period to act expired) fell on November 19, 2005, a Saturday. Accordingly, M1 had until November 21, 2005, the next working day, to file its judicial claim before the CTA. As M1 filed its judicial claim over seven (7) months beyond the expiration of the thirty (30)-day period, the CTA *En Banc* correctly ordered its dismissal. To be sure, while BIR Ruling No. DA-489-03 was in effect at the time M1 filed its judicial claim, said ruling only constitutes a valid claim for equitable estoppel with respect to **premature** judicial claims, and not those filed beyond the 120+30-day periods under Section 112(C).

Finally, it bears stressing that neither *Atlas* nor *Mirant* had been promulgated at the time M1 filed its administrative and judicial claims. Hence, M1's argument that *Atlas* was controlling at the time it filed its judicial claim is erroneous and misleading, as the Court already found in the 2013 Consolidated Cases:

> *Atlas* was promulgated on [June 8, 2007], while *Mirant* was promulgated on [September 12, 2008]. It is therefore misleading to state that *Atlas* was the controlling doctrine at the time of filing of the claims. The 1997 Tax Code, which took effect on [January 1, 1998], was the applicable law at the time of filing of the claims in issue. x x x[33] (Emphasis omitted)

Accordingly, the Petition should be denied.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED.** The Assailed Decision dated January 12, 2011 and Resolution dated June 30, 2011 of the CTA *En Banc* in C.T.A. EB No. 630 are hereby **AFFIRMED**.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

[33] *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, supra note 31, at 74.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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