Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ENERGY DEVELOPMENT CORPORATION, *Petitioner,*	**G.R. No. 203367**
	Present:
	LEONEN, *J.*, *Chairperson,*
- versus -	HERNANDO,
	INTING,
	DELOS SANTOS and
	LOPEZ, J. Y., *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	March 17, 2021

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the May 31, 2012 Decision[2] and August 29, 2012 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA *En Banc* Case No. 809 which denied petitioner Energy Development Corporation's (EDC) appeal for lack of merit and for lack of cause of action.

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1 *Rollo*, pp. 10-60.

2 Id. at 61-79; penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Juanito C. Castañeda, Jr. (with separate concurring opinion), Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas.

3 Id. at 80-86; penned by Presiding Justice Acosta with the same Associate Justices concurring except Justice Lovell R. Bautista who wrote a concurring and dissenting opinion and was joined by Justice Cielito N. Mindaro-Grulla.

The assailed rulings of the CTA *En Banc* affirmed with modification the May 9, 2011 Resolution[4] of the CTA Second Division dismissing EDC's judicial claim[5] for tax credit or refund of its unutilized input value-added taxes (VAT) for 2007 in the amount of ₱89,103,931.29 lack of cause of action based on our ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[6] *(Aichi).*

The Facts:

EDC is a domestic corporation registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer.[7] On various dates, EDC filed its quarterly VAT Returns and the amendments thereof, for the year 2007 through Electronic Filing & Payment System of the BIR.

On March 30, 2009, EDC filed with the BIR Large Taxpayers District Office, Makati City an administrative claim for tax credit or refund of its unutilized input VAT for its zero-rated sales amounting to ₱89,103,931.29 for the taxable year 2007.[8]

On April 24, 2009, EDC filed an appeal/Petition for Review with the CTA docketed as CTA Case No. 7926 which was initially raffled to its First Division and subsequently transferred to its Second Division.[9]

The dates of EDC's filings of its 2007 Quarterly VAT Returns and administrative and judicial claims for input VAT tax credit or refund are as follows:[10]

Taxable Year 2007	Date of Filing (Quarterly Amended Quarterly VAT Returns)	Date of Filing (Administrative /Judicial Claim)
1st Quarter	April 25, 2007/December 22, 2007	March 30, 2009/April 24, 2009
2nd Quarter	July 19, 2007/December 22, 2007	March 30, 2009/April 24, 2009
3rd Quarter	October 25, 2007/December 22, 2007	March 30, 2009/April 24, 2009
4th Quarter	January 25, 2008/none	March 30, 2009/April 24, 2009

4 Id. at 165-171.
5 Via Petition for Review.
6 646 Phil. 710 (2010).
7 *Rollo*, p. 63; Under VAT Certificate of Registration No. OCN8RC0000018858.
8 Id. at 64.
9 Id. at 65; January 7, 2010 Order.
10 Id. at 63-64.

On June 18, 2009, respondent Commissioner of Internal Revenue (CIR) opposed the claim of EDC, arguing that EDC failed to substantiate its claim for input VAT tax credit or refund by the submission of proper documents.[11]

Trial ensued with EDC presenting its evidence.

On October 6, 2010, the Supreme Court promulgated its Decision in *Aichi*[12] which delineated the prescriptive periods for filing separate administrative and judicial claims for input VAT refund or tax credit of the then Section 112 (A) and (C),[13] of the National Internal Revenue Code of 1997 (NIRC).

In parallel proceedings, the CTA effected a flurry of dismissals of judicial claims, all anchored on our ruling in *Aichi.*

On March 25, 2011, the CIR filed a Motion to Dismiss[14] EDC's Petition for Review citing EDC's failure to comply with the prescriptive periods under Section 112 (C), of the NIRC. The CIR alleged that EDC did not wait for: (a) the CIR's action on its administrative claim for input VAT tax credit or refund before appealing to the CTA within 30 days, and (b) in the alternative of the CIR's inaction, reckon the 30-day period to appeal from the expiration of 120 days from the date of the submission of complete documents to support the administrative claim under Section 112 (A).[15]

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11 Id. at 64-65.

12 *Supra* at note 6.

13 1997 NIRC, 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 certicate 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 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.

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(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 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.

14 *Rollo,* pp. 143-148.

15 Id.

EDC opposed the CIR's motion to dismiss arguing that *Aichi* cannot be applied retroactively to cases where the claim for input VAT tax credit or refund arose before *Aichi's* promulgation and especially since the period relied upon for availment of remedies was based on prevailing jurisprudence. EDC further argued that our ruling in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* (*Atlas*)[16] is *apropos* where we ruled that the two-year prescriptive period under Section 229[17] of the NIRC applies to claims for refund or tax credit of unutilized input VAT.

Ruling of the CTA Second Division.

The CTA Second Division, in its May 9, 2011 Resolution,[18] dismissed EDC's petition for review for prematurity:

> **WHEREFORE**, premises considered, respondent's "**Motion to Dismiss**" filed on March 25, 2011 is hereby **GRANTED**. **Accordingly**, the instant Petition for Review is **DENIED** for having been prematurely filed.[19]

The CTA Second Division held that Section 112 (A), of the NIRC is clear that "a taxpayer may apply for an administrative claim for refund of its unutilized input VAT payments 'within two years reckoned from the close of the taxable quarter when the relevant sales were made".[20]

Citing *Aichi,* the Second Division of the tax court explained that after the filing of the administrative claim, the taxpayer must wait for the decision of the CIR thereon or the lapse of the 120-day period from the submission of the complete documents in support thereof before filing a petition for review with the CTA. In both instances, the filing of the judicial claim must be made within 30 days of either reckoning event or period.[21]

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16 551 Phil 519 (2007).

17 SECTION 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

18 *Rollo,* pp. 165-171.

19 Id. at 171.

20 Id. at 168.

21 Id. at 168-169.

Lastly, the CTA Second Division rejected EDC's argument that Section 229 of the NIRC is applicable to claims for input VAT tax credit or refund. Citing its own Revised Rules of the Court of Tax Appeals[22] and our ruling in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant)*,[23] the CTA Second Division reiterated that the two-year prescriptive period to file a petition for review with the CTA refers to cases of disputed assessment in Section 228 of the NIRC, the section preceding the invoked Section 229, and not claims for refund of input VAT under Section 112 thereof. Specifically, the CTA Second Division noted that the requirement of filing a petition for review within the two-year period only applies to instances of *erroneous payment or illegal collection* of internal revenue taxes. In all, taxpayers cannot avail of the provisions of Section 229 in cases of refund of unutilized creditable input VAT as the latter is *not an erroneously, illegally or unlawfully collected tax.*[24]

EDC moved for reconsideration which was denied by the CTA Second Division in its July 15, 2011 Resolution.[25]

Posthaste, EDC appealed to the CTA *En Banc* raising the issue of:

> WHETHER OR NOT [EDC] HAD TIMELY AND DULY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR TAX CREDIT/REFUND OF ITS INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALE OF STEAM AND PURCHASES UNDER THE "CONSTRUCTION-IN-PROGRESS" AMOUNTING TO ₱89,103,931.29 FOR THE YEAR 2007.[26]

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22 See A.M. No. 05-11-07-CTA, Rule 4, Section 3(a)(2):

> **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions*— The Court in Divisions shall exercise:
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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> x x x x
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and ***Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code**[.] (Emphasis supplied)

23 586 Phil. 712 (2008).

24 *Rollo*, pp. 169-170.

25 *Rollo*, pp. 187-190.

26 Id. at 68.

The Ruling of the CTA *En Banc*.

In its assailed May 31, 2012 Decision, the CTA *En Banc* affirmed the CTA Second Division's dismissal of EDC's petition for review based on *Aichi*, *viz.*:

> **WHEREFORE,** the assailed resolutions dated May 9, 2011 and July 15, 2011 in CTA Case No. 7926 of the Second Division of this Court are hereby **AFFIRMED WITH MODIFICATION**. The instant Petition for Review is hereby **DENIED** for lack of merit and for lack of cause of action.[27]

Applying the Court's pronouncement in *Aichi*, the CTA *En Banc* ruled that while EDC timely filed its administrative claim for input VAT tax credit or refund under Section 112 (A) of the NIRC, *i.e.,* within two years from the close of the taxable quarter when the sales were made, EDC however prematurely filed its judicial claim or the appeal to the CTA when it did not comply with the indispensable requirement for the taxpayer to await the action or inaction of the CIR within the 120-day period as prescribed in Section 112 (C).[28]

According to the CTA *En Banc*, EDC's premature filing of its judicial claim is a violation of the doctrine of exhaustion of administrative remedies and thus not a jurisdictional defect. Consequently, EDC's cause of action against the CIR had not yet ripened when it filed its petition for review before the CTA. In short, the dismissal of EDC's petition for review was correct but ought to have been based on lack of cause of action.[29]

EDC forthwith filed a motion for reconsideration which was subsequently denied by the CTA *En Banc*.[30]

EDC thus comes to this Court decrying the dismissal of its petition for review based on our ruling in *Aichi* that the filing of the judicial claim must await either of the CIR's action or inaction within a 120-day period, on the administrative claim under Section 112 (A) and (C) of the NIRC. In the main, EDC argues that *Aichi* is not applicable, either retroactively or as a controlling doctrine, in claims for refund of unutilized input VAT.

Issues

EDC posited the following assignment of errors:

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27 Id. at 71.
28 Id. at 70.
29 Id. at 70-71.
30 *Supra* note 3.

I. WHETHER OR NOT THE *AICHI* CASE CAN RETROACTIVELY APPLY TO CASES ALREADY FILED OR PENDING IN COURTS PRIOR TO ITS PROMULGATION.

II. WHETHER OR NOT THE *AICHI* CASE IS THE CONTROLLING DOCTRINE IN CASES INVOLVING CLAIMS FOR REFUND OF UNUTILIZED INPUT VAT.

III. WHETHER OR NOT THE *AICHI* CASE BEING A RULING OF A DIVISION OF THIS HONORABLE COURT CAN OVERTURN PREVIOUS DOCTRINES RENDERED BY ITS OTHER DIVISIONS.

IV. WHETHER OR NOT THE 2-YEAR PRESCRIPTIVE PERIOD FOR FILING CLAIMS FOR REFUND UNDER SECTION 112(A) IN RELATION TO 112(C) OF THE NATIONAL INTERNAL REVENUE CODE REFERS ONLY TO ADMINISTRATIVE CLAIMS.

V. WHETHER OR NOT THE DOCTRINE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES PROPERLY APPLIES TO [EDC'S] CASE.

VI. WHETHER OR NOT THE DENIAL OF THE CLAIM FOR REFUND CONSTITUTES UNJUST ENRICHMENT AND SOLUTIO INDEBITI ON THE PART OF THE GOVERNMENT.[31]

We fuse the issues into the singular issue of whether EDC timely filed its judicial claim or its petition for review before the CTA, for unutilized input VAT tax credit or refund under Section 112, (A) and (D) of the NIRC.

Our Ruling

The bone of contention herein lies in the applicability, or inapplicability, of our ruling in *Aichi* which squarely ruled on the prescriptive periods for the filing of a judicial claim. However, it must be pointed out that the touchstone of EDC's *cassus belli* is found on Section 112 (C) of the NIRC.

Section 112 (A) and (C) of the NIRC.

The contentious provision, before its recent amendment by Republic Act No. 10963,[32] provides:

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

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31 *Rollo*, pp. 24-25.

32 Section 36 of the Tax Reform for Acceleration and Inclusion (TRAIN) law amended Section 112 (D) of the 1997 NIRC.

> 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 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.
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> x x x x
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> (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 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.

Notably, the recent amendment to Section 112 (C)[33] finally removed the confusion on the reckoning period for judicial claims by legislating a singular action for the CIR to decide on the administrative claim for input VAT tax credit or refund within a period of ninety (90) days.

Contrary to the arguments of EDC, our ruling in *Aichi* is definitive on the nature of the prescriptive periods for the filing of claims for input VAT tax credit or refund under the then Section 112 (A) and (C) of the NIRC.

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[33] Sec. 112. *Refunds or Tax Credits of Input Tax* -
(A) x x x
(B) x x x
(C) *Period within which Refund of Input Taxes shall be Made.*— In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
"In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within [the] ninety (90)-day period shall be punishable under Section 269 of this Code.
x x x x.

Aichi delineated the applicability of the two-year prescriptive period mentioned in Section 112 (A) of the NIRC solely to administrative claims for input VAT tax credit or refund, thus:

> 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 . . . 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 [(C)] 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.**
>
> In fact, applying the two-year period to judicial claims would render nugatory Section 112 [(C)] 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 [(C)] 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.[34] (Emphasis supplied)

Moreover, both subsections (A) and (C) speak of **different periods** within which **different claims** ought to be made. Although these subsections are not specifically designated as either an "administrative claim" or a "judicial claim," the classification of claims and their distinct and separate prescriptive periods can be gleaned from the wordings thereof.

Aside from the fact that subsection (A) is the introductory and initial paragraph on the main section on "Refunds or Tax Credits of Input Tax," subsection (C) specifically refers to it as a preceding claim or application for input VAT tax credit or refund made by the taxpayer before the CIR which the latter, in proper cases, shall grant or issue within 120 days from the date of submission of complete documents in support of the application or claim filed. Plainly, therefore, the CIR has 120 days within which to act on the administrative claim which necessarily precedes the filing of a judicial claim.

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[34] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, supra* note 6 at 731-732.

The second paragraph of subsection (C) then specifically covers both a prior action of the CIR or his inaction in the period of 120 days afforded him to decide on the administrative claim. In both instances, as has been repeatedly found and reinforced in jurisprudence, the taxpayer claiming the input VAT refund or tax credit has 30 days from the action, or the 120-day period of inaction, by the CIR.

As held in *Aichi,* there is nothing in Section 112 of the NIRC which sanctions the simultaneous filing of administrative and judicial claims, and the filing of the judicial claim prior to the action of the CIR or the lapse of the 120-day period within which the CIR is required to act on the administrative claim.[35]

Neither can EDC take refuge in the prior cases of *Atlas*[36] and *Mirant*[37] as the issues raised therein did not squarely rule on the nature of the prescriptive periods for both administrative and judicial claims for input VAT tax refund or credit under Section 112 (A) and (C) of the NIRC. Besides, the Court has already squarely ruled on the confliction of *Atlas* from the exact provision of law, Section 112 (A), while *Aichi* based its ruling in *Mirant* regarding the prescriptive period for administrative claims.

The law is explicit. Indeed, *Atlas* and *Mirant* dealt with the two-year prescriptive period for filing a tax refund or credit provided in both Section 230 (now Section 229 of the NIRC)[38] and Section 112 (A). Specifically, the cases ruled **on the two-year prescriptive period for the filing of administrative claims** reckoned from either: (1) the close of the taxable quarter when the zero-rated sales were made according to the specific provision of law in Section 112 (A) as ruled in *Mirant*; and (2) the date of filing of the quarterly VAT return as ruled in *Atlas* drawing an analogy to the then Section 230 of the 1977 Tax Code (now Section 229 of the NIRC) as an erroneously or illegally collected tax.

EDC's interpretation of Section 112 engulfs to other provisions of the NIRC which do not specifically deal with claims for input VAT tax refund or credit. Instead of applying directly the particular provision on refund or credit of input VAT, EDC insists on applying a different section (229) on "Recovery of Tax Erroneously or Illegally Collected."

Section 112 (A) simply cannot be invoked as the prescriptive period for both administrative and judicial claims of input VAT tax refund or credit with

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35 Id. at 731.
36 Supra note 11.
37 Supra note 17.
38 Supra note 12.

the CIR. The taxpayer claiming input VAT tax credit or refund should not ignore subsection (C) on judicial claims, and persist in the notion that the correct prescriptive period to file any of the claims can be found in an entirely separate provision and chapter (Chapter III) on "Protesting, Assessment, Refund, Etc."

The teachings in *Commissioner of Internal Revenue v. San Roque Power Corporation (San Roque).*[39]

San Roque clarified the jurisdictional doctrines in *Aichi.*

First. The 120+30 day mandatory jurisdictional periods in Section 112 (C) are clear, plain and unequivocal:

> Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is mandatory and jurisdictional. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. Thus, the waiting period has been in our statute books for more than fifteen (15) years before San Roque filed its judicial claim.
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> Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.
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> The charter of the CTA expressly provides that its jurisdiction is to review on appeal "decisions of the Commissioner of Internal Revenue in cases involving . . . refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "a specific period" required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review.

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39 703 Phil. 310 (2013).

San Roque's failure to comply with the 120-day mandatory period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity.

It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.

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x x x **The *Atlas* doctrine does not interpret, expressly or impliedly, the 120+30 day periods.**

In fact, Section 106 (b) and (e) of the Tax Code of 1977 as amended, which was the law cited by the Court in Atlas as the applicable provision of the law did not yet provide for the 30-day period for the taxpayer to appeal to the CTA from the decision or inaction of the Commissioner. Thus, the *Atlas* doctrine cannot be invoked by anyone to disregard compliance with the 30-day mandatory and jurisdictional period. Also, the difference between the *Atlas* doctrine on one hand, and the Mirant doctrine on the other hand, is a mere 20 days. The *Atlas* doctrine counts the two-year prescriptive period from the date of payment of the output VAT, which means within 20 days after the close of the taxable quarter. The output VAT at that time must be paid at the time of filing of the quarterly tax returns, which were to be filed "within 20 days following the end of each quarter."

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Whether the *Atlas* doctrine or the *Mirant* doctrine is applied to San Roque is immaterial because what is at issue in the present case is San Roque's non-compliance with the 120-day mandatory and jurisdictional period, which is counted from the date it filed its administrative claim with the Commissioner. The 120-day period may extend beyond the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period. However, San Roque's fatal mistake is that it did not wait for the Commissioner to decide within the 120-day period, a mandatory period whether the *Atlas* or the *Mirant* doctrine is applied.

At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: "x x x 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." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.

Section 112 (C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

> . . . 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.

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.[40] (Emphasis supplied; citations omitted)

Second. The depiction of the applicable prescriptive periods for administrative and judicial claims and the levels of compliance under Section 112 (A) and (C) of the NIRC:

II. Prescriptive Periods under Section 112 (A) and (C)

There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.

First, Section 112 (A) clearly, plainly, and unequivocally provides that the taxpayer "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 the creditable input tax due or paid to such sales." In

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[40] Id. at 354-361.

short, the law states that the taxpayer may apply with the Commissioner for a refund or credit "within two (2) years," which means at anytime within two years. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.

Second, Section 112 (C) provides that the Commissioner shall decide the application for refund or credit "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)." The reference in Section 112 (C) of the submission of documents "in support of the application filed in accordance with Subsection A" means that the application in Section 112 (A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two-year prescriptive period in Section 112 (A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. Stated otherwise, the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner. As held in *Aichi*, the "phrase 'within two years . . . apply for the issuance of a tax credit or refund' refers to applications for refund/credit with the CIR and not to appeals made to the CTA."

Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period. Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.

The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain, and unequivocal language.

Section 112 (A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at any time within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such

> filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112 (A) and (C).[41]

Third. The ruling in *Atlas* was abandoned in *Mirant* which was subsequently affirmed in *Aichi* where the 120+30 day jurisdictional periods was first raised. *Aichi* simply followed the *verba legis* rule enshrined in the statute, Section 112, (A) and (C). We emphasized in *San Roque*, thus:

> 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 compliance with the 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.[42] (Emphasis in the original)

Last. The exception to the strict application of *Aichi* and the general interpretative rules issued by the CIR which ultimately save EDC's herein petition. Given the difficult question of law and conflicting rulings by the Court, EDC and taxpayers alike have hedged their actions in the filing of simultaneous administrative and judicial claims or the filing of premature judicial claims on an incorrect interpretation of Section 112 (A) and (C) of the NIRC.

The Court ruled in *San Roque* that all taxpayers can rely on BIR Ruling No. DA-489-03 dated December 10, 2003 issued by the CIR from the time of its issuance up to its reversal in *Aichi* on October 6, 2010:

> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03

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41 Id. at 363-365.

42 Id. at 370-371.

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." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

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.

Section 4 of the Tax Code, a new provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:

> Sec. 4. Power of the Commissioner To Interpret Tax Laws and To Decide Tax Cases. — 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.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. Section 246 provides as follows:

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.

Thus, a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, "Any revocation, modification or reversal" without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the Atlas doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and Aichi prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. x x x

> x x x x

[T]he only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

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 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. (Emphasis ours)

> However, BIR Ruling No. DA-489-03 cannot be given retroactive effect for four reasons: first, it is admittedly an erroneous interpretation of the law; second, prior to its issuance, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law; third, prior to its issuance, no taxpayer can claim that it was misled by the BIR into filing a judicial claim prematurely; and fourth, a claim for tax refund or credit, like a claim for tax exemption, is strictly construed against the taxpayer.[43]

Application to the case at bench.

Clearly, from the foregoing, EDC did not comply with Section 112 (C) of the NIRC relative to the filing of its judicial claim before the CTA. Thus, even without harping on the applicability of *Aichi*, EDC's premature judicial claim has no leg to stand on.

However, applying the exception molded in *San Roque*, *i.e.*, that "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,"[44] EDC's petition for review before the CTA should be reinstated since the filing of its administrative and judicial claims fell within the stated period.

On this score, we remove the cobwebs in the declaration of the CTA *En Banc* that EDC's premature filing of its petition for review merely failed to exhaust administrative remedies which "is not a jurisdictional defect."[45] As has been repeatedly emphasized herein and in the auspicious case of *San Roque*, the 120+30 day prescriptive periods in the law is mandatory and jurisdictional.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The May 31, 2012 Decision and August 29, 2012 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 809 are **REVERSED and SET ASIDE.** The Petition for Review of petitioner Energy Development Corporation in CTA Case No. 7926 before the Court of Tax Appeals Second Division is **REINSTATED** and the proceedings therein are to be resumed with dispatch.

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[43] Id. at 372-376.
[44] Id. at 376.
[45] See *Rollo* p. 70.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

HENRI JEAN PAUL INTING
Associate Justice

EDGARDO DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
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.

MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

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.

DIOSDADO M. PERALTA
Chief Justice