Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

AICHI FORGING COMPANY OF ASIA, INC.,
Petitioner,

-*versus*-

COURT OF TAX APPEALS - EN BANC and COMMISSIONER OF INTERNAL REVENUE,
Respondents.

G.R. No. 193625

Present:

VELASCO, JR., *J.*,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

August 30, 2017

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DECISION

MARTIRES, *J.*:

The Commissioner of Internal Revenue (*CIR*) is given 120 days to decide[1] an administrative claim for refund/credit of unutilized or unapplied input Value Added Tax (VAT) attributable to zero-rated sales. In case of a decision rendered or inaction after the 120-day period, the taxpayer may institute a judicial claim by filing an appeal before the Court of Tax Appeals (CTA) within 30 days from the decision or inaction.[2] Both 120- and 30-day periods are mandatory and jurisdictional.[3] An appeal taken prior to the expiration of the 120-day period without a decision or action of the

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[1] Section 112 (D) [now renumbered as 112(C)], 1997 Tax Code.
[2] Id.
[3] See *Visayas Geothermal Power Company v. Commissioner*, G.R. No. 205279, 26 April 2017.

Commissioner is premature and, thus, without a cause of action. Accordingly, the appeal must be dismissed for lack of jurisdiction.

The Case

Before the Court is a special civil action for certiorari under Rule 65 of the Rules of Court filed by petitioner Aichi Forging Company of Asia, Inc. (AICHI) seeking the reversal and setting aside of the 18 February 2010 Decision[4] and 20 July 2010 Resolution[5] of the CTA En Banc in CTA-EB Case No. 519, which affirmed the 20 March 2009 Decision and 29 July 2009 Resolution of the CTA Second Division (CTA Division) in CTA Case No. 6540 that partially granted the claim of AICHI for tax refund/credit of unutilized or unapplied input VAT attributable to zero-rated sales.

The Antecedents

AICHI is a domestic corporation duly organized and existing under the laws of the Philippines, and is principally engaged in the manufacture, production, and processing of all kinds of steel and steel byproducts, such as closed impression die steel forgings and all automotive steel parts. It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer and with the Board of Investments (BOI) as an expanding producer of closed impression die steel forgings.

On 26 September 2002, AICHI filed with the BIR District Office in San Pedro, Laguna, a written claim for refund and/or tax credit of its unutilized input VAT credits for the third and fourth quarters of 2000 and the four taxable quarters of 2001. AICHI sought the tax refund/credit of input VAT for the said taxable quarters in the total sum of ₱18,030,547.77[6] representing VAT payments on importation of capital goods and domestic purchases of goods and services.[7]

As respondent CIR failed to act on the refund claim, and in order to toll the running of the prescriptive period provided under Sections 229 and 112 (D) of the National Internal Revenue Code (Tax Code), AICHI filed, on 30 September 2002, a Petition for Review before the CTA Division.[8]

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4 *Rollo,* pp. 32-49.
5 Id. at 50-55.
6 Later increased to ₱18,203,933.60, per AICHI's Amended Petition for Review with the CTA.
7 *Rollo,* pp. 33-36; *Joint Stipulation of Facts and Issues,* as adapted in the 18 February 2010 Decision of the CTA *En Banc.*
8 Id. at 38-39.

The Issues

The issue for resolution before the court was whether AICHI was entitled to a refund or issuance of a tax credit certificate of unutilized input VAT attributable to zero-rated sales and unutilized input tax on importation of capital goods for the period 1 July 2000 to 31 December 2001 (or six consecutive taxable quarters). Corollary thereto was the issue on whether the administrative claim (refund claim with the BIR) and judicial claim (Petition for Review with the CTA) were filed within the statutory periods for filing the claims.

The Proceedings before the CTA Division

After finding that both the administrative and judicial claims were filed within the statutory two-year prescriptive period,[9] the CTA Division partially granted the refund claim of AICHI.

The CTA Division denied AICHI's refund claim with respect to its purchase of capital goods for the period 1 July 2000 to 31 December 2001 because of the latter's failure to show that the goods purchased formed part of its Property, Plant and Equipment Account and that they were subjected to depreciation allowance. As to the claim for refund of input VAT attributable to zero-rated sales, the CTA only partially granted the claim due to lack of evidence to substantiate the zero-rating of AICHI's sales. In particular, the CTA denied VAT zero-rating on the sales to BOI-registered enterprises on account of non-submission of the required BOI Certification.[10] The dispositive portion of the decision[11] partially granting the refund claim reads as follows:

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[9] The finding was based on Section 112 of the NIRC, which provides:

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 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.

(B) *Capital Goods.* - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

> **WHEREFORE,** premises considered, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, Respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **SIX MILLION NINE HUNDRED NINETY ONE THOUSAND THREE HUNDRED TWENTY and 40/100 PESOS (P6,991,320.40),** representing unutilized input VAT attributable to zero-rated sales for the period covering July 1, 2000 to December 31, 2001.[12]

Only the CIR moved for reconsideration[13] of the said decision. The CTA Division denied the motion,[14] hence, the appeal by the CIR to the CTA En Banc.

The Proceedings before the CTA En Banc

The CIR questioned the partial grant of the refund claim in favor of AICHI. It claimed that the court did not acquire jurisdiction over the refund claim in view of AICHI's failure to observe the 30-day period to claim refund/tax credit as specified in Sec. 112 of the Tax Code, i.e., appeal to the CTA may be filed *within 30 days* from receipt of the decision denying the claim or *after expiration of 120 days* (denial by inaction). With the filing of the administrative claim on 26 September 2002, the CIR had until 20 January 2003 to act on the matter; and if it failed to do so, AICHI had the right to elevate the case before the CTA within 30 days from 20 January 2003, or on or before 20 February 2003. However, AICHI filed its Petition for Review on 30 September 2002, or before the 30-day period of appeal had commenced. According to the CIR, this period is jurisdictional, thus,

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[10] Section 3 of RMO 9-2000 provides:

> SEC. 3. Sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:
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> (1) The supplier must be VAT-registered;
> (2) The BOI-registered buyer must likewise be VAT-registered;
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a ***Certification*** to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of ***zero-rating for its sales to said BOI-registered buyers***; and
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec. 4.108-1 of Revenue Regulations No. 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer. (Emphasis supplied.)

[11] *Rollo,* pp. 341-372.

[12] Id. at 371.

[13] Id. at 379-386.

[14] Id. at 400-402.

AICHI's failure to observe it resulted in the CTA not acquiring jurisdiction over its appeal.[15]

The CTA En Banc was not persuaded. The court ruled that the law does not prohibit the simultaneous filing of the administrative and judicial claims for refund.[16] It further declared that what is controlling is that both claims for refund are filed within the two-year prescriptive period.[17] In sum, the CTA En Banc affirmed the assailed decision and resolution of the CTA Division, disposing as follows:

> **WHEREFORE,** the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the March 20, 2009 Decision and July 29, 2009 Resolution of the *CTA Former Second Division* in CTA Case No. 6540 entitled, *"Aichi Forging Company of Asia, Inc. vs. Commissioner of Internal Revenue"* are hereby **AFFIRMED *in toto*.**[18]

This time, both the CIR and AICHI separately filed motions for reconsideration of the CTA En Banc decision. In the assailed resolution of the CTA En Banc, the court ruled:

> **WHEREFORE,** premises considered, there having no new matters or issues advanced by the petitioner-CIR in its Motion which may compel this Court to reverse, modify or amend the March 20, 2009 Decision of the CTA *En Banc*, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit. On the other hand, respondent-AICHI's (sic) Motion for Reconsideration is hereby **DENIED** for being filed out of time.[19]

On 24 September 2010, or sixty days from receipt of the said resolution, AICHI, through a new counsel, filed the instant petition alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the CTA En Banc when it issued the assailed decision and resolution.

The Present Petition for Certiorari

To support its petition, AICHI raised the following grounds:

> **A. PETITIONER'S MOTION FOR RECONSIDERATION (of the Decision promulgated on 18 February 2010) WAS FILED ON TIME;**

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[15] Id. at 409-412.
[16] Id. at 39.
[17] Id. at 40.
[18] Id.
[19] Id. at 52-53.

B. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE SAID MOTION WAS FILED OUT OF TIME, IN THE INTEREST OF SUBSTANTIAL JUSTICE, AND DUE TO GROSS NEGLIGENCE OF PETITIONER'S FORMER COUNSEL, THE HONORABLE COURT OF TAX APPEALS EN BANC SHOULD HAVE CONSIDERED PETITIONER'S MOTION FOR RECONSIDERATION;

C. PETITIONER IS ENTITLED TO THE CLAIMED REFUND AS EVIDENCED BY THE CERTIFICATION ISSUED BY THE BOARD OF INVESTMENTS.[20]

Citing Section 1, Rule 15 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals (Revised CTA Rules),[21] AICHI claims that it has fifteen (15) days from receipt of the questioned decision of the CTA En Banc within which to file a motion for reconsideration. Considering that it received the 18 February 2010 Decision of the CTA *En Banc* on 25 February 2010, and that it filed the Motion for Reconsideration on 12 March 2010, AICHI asserts that the filing of the said motion was made within the prescriptive period provided in the law.[22]

AICHI also ascribes gross negligence on the part of its former counsel when it repeatedly failed to avail of the remedies under the law after obtaining unfavorable decisions and/or resolutions of the CTA, to wit: (1) failure to file a motion for reconsideration or new trial from the decision of the CTA Division partially denying AICHI's claim for refund; and (2) failure to appeal to the Supreme Court after receiving the resolution of the CTA En Banc denying AICHI's motion for reconsideration of the decision of the CTA En Banc. Such gross negligence of the former counsel, AICHI claims, does not bind the latter and, thus, its motion for reconsideration of the decision of the CTA En Banc ought to have been considered by the latter.[23]

Finally, AICHI argues that it is entitled to the refund of unutilized input VAT because its sales to Asian Transmission Corporation and Honda Philippines are qualified for zero-rating, the latter being a BOI-registered enterprise, as evidenced by a Certification issued by the BOI. Said certification was attached by AICHI in its motion for reconsideration from the CTA En Banc decision.[24]

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[20] Id. at 18.

[21] The provision reads:

Section 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received the notice of the decision, resolution or order of the Court in question.

[22] *Rollo*, pp. 19-20.

[23] Id. at 21-24.

[24] Id. at 24-26.

Without giving it due course, we required the respondents to submit their comment to the said petition.[25]

The Arguments of the CIR

In its Comment,[26] the CIR anchored its opposition to the petition on the following arguments:

> I. PETITIONER FAILED TO AVAIL OF THE PROPER REMEDY.
>
> II. THE CTA EN BANC DID NOT ERR WHEN IT DENIED PETITIONER'S MOTION FOR RECONSIDERATION.
>
> III. PETITIONER IS NOT ENTITLED TO ITS CLAIM FOR REFUND.[27]

The CIR maintains that under Republic Act No. 9282 (R.A. No. 9282)[28] and the Revised CTA Rules,[29] an aggrieved party may appeal a decision or ruling of the CTA En Banc by filing a verified petition for review under Rule 45 of the Rules of Court. Conformably thereto, the petitioner should have filed a petition for review on certiorari under Rule 45 instead of a special civil action for certiorari under Rule 65. Being procedurally flawed, the instant petition must be dismissed outright.[30]

As to the timeliness of the motion for reconsideration, the CIR contends that the petitioner had mistakenly reckoned the counting of the 15-day period to file the motion for reconsideration from the receipt of the

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[25] Id. at 488.
[26] Id. at 530 to 551.
[27] Id. at 534.
[28] Id. at 536.The relevant provision reads:

> SEC. 19. Review by Certiorari. – A party adversely affected by a decision or ruling of the CTA en banc may file with the Supreme Court a verified petition for review on certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

[29] Id. The pertinent provision reads:

> **Rule 16**
>
> **APPEAL**
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> SECTION 1. *Appeal to Supreme Court by petition for review on certiorari.* – A party adversely affected by a decision or ruling of the Court en banc may appeal therefrom by filing with the Supreme Court a verified petition for review on certiorari within fifteen days from receipt of a copy of the decision or resolution, as provided in Rule 45 of the Rules of Court. If such party has filed a motion for reconsideration or for new trial, the period herein fixed shall run from the party's receipt of a copy of the resolution denying the motion for reconsideration or for new trial.

[30] *Rollo*, p. 537.

decision of the CTA En Banc. The CIR maintains that the reckoning point should be the petitioner's receipt of the decision of the CTA Division. Considering that no such motion for reconsideration within the 15-day period was filed by the petitioner before the CTA Division, the CIR concludes that the petitioner's right to question the decision of the CTA Division had already lapsed and, accordingly, the petitioner may no longer move for a reconsideration of a decision which it never questioned.[31]

Anent petitioner AICHI's entitlement to the claim for refund, the CIR contends that the BOI Certification, which was attached to the petitioner's Motion for Reconsideration, dated 12 March 2010, should not be considered at all as it was presented only during appeal (before the CTA En Banc). In any event, the certification does not prove AICHI's claim for refund. In said certification, it is required by the terms and conditions that AICHI must comply with the production schedule of 3,900 metric tons or the peso equivalent of ₱257,400,000.00. However, this data is not verifiable from the petitioner's Quarterly VAT Returns or from the testimonies of its witness. The CIR, thus, submits that the noncompliance with the BOI terms and conditions further warrants the denial of AICHI's claim for refund.[32]

The Issues

Based on the opposing contentions of the parties, the issues for resolution are the following: *(1)* whether AICHI availed of the correct remedy; *(2)* whether AICHI can still question the CTA Division ruling; and *(3)* whether AICHI sufficiently proved its entitlement to the refund or tax credit.

The Court's Ruling

We deny the petition.

I.

The CTA had no jurisdiction over the judicial claim. AICHI's judicial claim was filed prematurely and, thus, without cause of action.

First, we invoke the age-old rule that when a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of

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[31] Id. at 540-542.
[32] Id. at 545-546.

the case.[33] Guided by this principle, we shall discuss the timeliness of AICHI's judicial claim, although not raised by the parties in the present petition, in order to determine whether the CTA validly acquired jurisdiction over it. The matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[34] In addition, courts have the power to *motu proprio* dismiss an action over which it has no jurisdiction. The grounds for *motu proprio* dismissal by the court are provided in Rule 9, Section 1 of the Revised Rules of Court, to wit:

> SECTION 1. *Defenses and objections not pleaded* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has ***no jurisdiction over the subject matter***, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (emphasis supplied)

On the judicial claim for refund or tax credit of AICHI, the CTA did not validly acquire jurisdiction over such judicial claim because the appeal before the court was made prematurely. When the CTA acts without jurisdiction, its decision is void. Consequently, the answer to the second issue, i.e., whether AICHI can still question the CTA ruling, becomes irrelevant.

The present case stemmed from a claim for refund or tax credit of alleged unutilized input VAT attributable to zero-rated sales and unutilized input VAT on the purchase of capital goods for the third and fourth quarters of 2000 and the four taxable quarters of 2001. The refund or tax credit of input taxes corresponding to the six taxable quarters were combined into one **administrative claim** filed before the BIR on **26 September 2002**. On the other hand, the **judicial claim** was filed before the CTA, through a petition for review, on **30 September 2002**, or ***a mere four days*** after the administrative claim was filed. It is not disputed that the administrative claim was not acted upon by the BIR.

Convinced that the judicial claim of AICHI was properly made, the CTA Division took cognizance of the case and proceeded with trial on the merits. Among the issues presented by the parties was the timeliness of both the administrative and judicial claims of AICHI. In its decision, the CTA Division categorically found that both the dates of filing the administrative claim and judicial claim were within the two-year prescriptive period

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[33] See *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR*, 757 Phil. 54, 69 (2015), citing *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR*, 727 Phil. 487, 499 (2014).

[34] Id., citing *Nippon Express (Philippines) Corporation v. CIR*, 706 Phil. 442, 450-451 (2013).

reckoned from the close of each of the taxable quarters from the third quarter of 2000 up to the last quarter of 2001, to wit:

Year	Quarter	Reckoning point of counting the 2-year period	Expiry date of prescriptive period	Date of filing of administrative claim	Date of filing of judicial claim
2000	3rd	September 30, 2000	September 30, 2002	September 26, 2002	September 30, 2002
	4th	December 31, 2000	December 31, 2002	September 26, 2002	September 30, 2002
2001	1st	March 31, 2001	March 31, 2003	September 26, 2002	September 30, 2002
	2nd	June 30, 2001	June 30, 2003	September 26, 2002	September 30, 2002
	3rd	September 30, 2001	September 30, 2003	September 26, 2002	September 30, 2002
	4th	December 31, 2001	December 31, 2003	September 26, 2002	September 30, 2002

The relevant provisions of the 1997 Tax Code[35] at the time AICHI filed its claim for refund or credit of unutilized input tax reads:

> 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
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> (B) Capital Goods. – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes.
>
> The application may be made only ***within two (2) years after the close of the taxable quarter when the importation or purchase was made.***
>
> x x x x
>
> (D) Period within which Refund or Tax Credit of Input Taxes shall be Made.-In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes ***within one hundred twenty***

[35] Before the amendments introduced by R.A. No. 9337 and R.A. No. 9361. R.A. No. 9337 took force on 1 November 2005; R.A. No. 9361 on 28 November 2006.

> ***(120) days from the date of submission of complete documents*** in support of the application filed in accordance with Subsections (A) and (B) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or **the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.** (emphasis supplied)

The law contemplates two kinds of refundable amounts: (1) unutilized input tax paid on capital goods purchased, and (2) unutilized input tax attributable to zero-rated sales. The claim for tax refund or credit is initially filed before the CIR who is vested with the power and primary with jurisdiction to decide on refunds of taxes, fees or other charges, and penalties imposed in relation thereto.[36] In every case, the filing of the administrative claim should be done ***within two years***. However, the reckoning point of counting such two-year period varies according to the kind of input tax subject matter of the claim. For the input tax paid on capital goods, the counting of the two-year period starts from the close of the taxable quarter *when the purchase was made*; whereas, for input tax attributable to zero-rated sale, from the close of the taxable quarter *when such zero-rated sale was made* (not when the purchase was made).

From the submission of the complete documents to support the claim, the CIR has a period of one hundred twenty (120) days to decide on the claim. If the CIR decides within the 120-day period, the taxpayer may initiate a judicial claim by filing within 30 days an appeal before the CTA. If there is no decision within the 120-day period, the CIR's inaction shall be deemed a denial of the application.[37] In the latter case, the taxpayer may institute the judicial claim, also by an appeal, within 30 days before the CTA.

Generally, the 120-day waiting period is both mandatory and jurisdictional.

In a long line of cases,[38] the Court had interpreted the 120-day period as both mandatory and jurisdictional such that the taxpayer is forced to await

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[36] See Section 4, Tax Code.

[37] Section 11, R.A. No. 1125, as amended; See also *CIR v. San Roque Power Corporation*, 703 Phil. 310, 355 (2013).

[38] Some of these cases are: *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. CIR*, G.R. No. 201326, 8 February 2017; *Deutsche v. CIR*, G.R. No. 197980, 1 December 2016; *Coral Bay Nickel Corporation v. CIR*, G.R. No. 190506, 13 June 2016; *Procter and Gamble Asia PTE Ltd. V. CIR*, G.R. No. 204277, 30 May 2016 791 SCRA 392, 407; *Silicon Philippines, Inc. v. CIR*, 757 Phil. 54, 68 (2015); *Pilipinas Total Gas, Inc. v. CIR*, G.R. No. 207112, 8 December 2015, 776 SCRA 395, 428; *Mindanao II Geothermal Partnership v. CIR*, 749 Phil. 485, 491 (2014); *CIR v. San Roque Power*

the expiration of the period before initiating an appeal before the CTA. This must be so because prior to the expiration of the period, the CIR still has the statutory authority to render a decision. If there is no decision and the period has not yet expired, there is no reason to complain of in the meantime. Otherwise stated, there is no cause of action yet as would justify a resort to the court.

A premature invocation of the court's jurisdiction is fatally defective and is susceptible to dismissal for want of jurisdiction. Such is the very essence of the doctrine of exhaustion of administrative remedies under which the court cannot take cognizance of a case unless all available remedies in the administrative level are first utilized. Whenever granted by law a specific period of time to act, an administrative officer must be given the full benefit of such period. Administrative remedies are exhausted upon the full expiration of the period without any action.

The first test case regarding the mandatory and jurisdictional nature of the 120+30-day waiting periods[39] provided in Section 112 (D)[40] of the 1997 Tax Code is *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*, G.R. No. 184823, 6 October 2010.[41] In that landmark case, the Court rejected as without legal basis the assertion of the respondent taxpayer 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. The Court explained that Section 112 (D) contemplated two scenarios: (1) a decision is made *before* the expiration of the 120-day period; and (2) no decision *after* such 120-day period. In either instance, the appeal with the CTA can only be made within 30 days *after* the decision or inaction. Emphatically, *Aichi* announced that the 120-day period is crucial in filing an appeal with the CTA.

The exception: Judicial claims filed from 10 December 2003 up to 6 October 2010

Nonetheless, in the subsequent landmark decision of *CIR v. San Roque Power Corporation, Taganito Mining Corporation v. CIR,* and *Philex Mining Corporation v. CIR (San Roque),*[42] the Court recognized an instance when a prematurely filed appeal may be validly taken cognizance of by the

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Corporation 703 Phil. 310 (2013); *Nippon Express (Philippines) Corporation v. CIR,* 706 Phil. 442, 450 (2013); *CIR v. Aichi Forging Company of Asia, Inc.*, 646 Phil. 710 (2010).

39 The precursor of the 120-day period under Section 112 (D) of the 1997 Tax Code is Section 106 (d) of the old 1977 Tax Code which provided for a 60-day period for the Commissioner to decide on the claim. Such 60-day (now 120-day) period has been interpreted, most recently in *CIR v. San Roque Power Corporation*, 703 Phil. 310, 354 (2013), as both mandatory and jurisdictional in character.

40 Now renumbered Section 112 (C), Tax Code, pursuant to R.A. No. 9337.

41 646 Phil. 710 (2010).

42 Supra note 37.

CTA. *San Roque* relaxed the strict compliance with the 120-day mandatory and jurisdictional period, specifically for Taganito Mining Corporation, in view of **BIR Ruling No. DA-489-03**, dated **10 December 2003**, which expressly declared that the *"taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of petition for review."* Pertinently, the prematurely filed appeal of San Roque Power Corporation before the CTA was dismissed because it came *before* the issuance of BIR Ruling No. DA-489-03. On the other hand, Taganito Mining Corporation's appeal was allowed because it was taken *after* the issuance of said BIR Ruling.[43]

Subsequently, in *Taganito Mining Corporation v. CIR,*[44] the Court reconciled the doctrines in *San Roque* and the *2010 Aichi case* by enunciating that during the window period from 10 December 2003 (issuance of BIR Ruling No. DA-489-03) to 6 October 2010 (date of promulgation of *Aichi*), taxpayer-claimants need not observe the stringent 120-day period. We said –

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

Here, it is not disputed that AICHI had timely filed its *administrative* claim for refund or tax credit before the BIR. The records show that the claim for refund/tax credit of input taxes covering the six separate taxable periods from the 3rd Quarter of 2000 up to the 4th Quarter of 2001 was made on 26 September 2002. Both the CTA Division and CTA En Banc correctly ruled that it fell within the two-year statute of limitations. However, its judicial claim was filed a mere four days later on 30 September 2002, or ***before*** the window period when the taxpayers need not observe the 120-day mandatory and jurisdictional period. Consequently, the general rule applies.

AICHI is similarly situated as San Roque Power Corporation in *San Roque* – both filed their appeals to the CTA without waiting for the 120-day period to lapse ***and*** before the aforesaid window period. As in *San Roque,*

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[43] Unlike the cases of San Roque and Taganito, the case of Philex was not a *prematurely* filed appeal but a *belatedly* filed appeal, that is, the appeal was filed long after the 120+30 day period. The appeal of Philex was dismissed for lack of jurisdiction, the 30-day period of appeal being jurisdictional in nature. *Taganito Mining Corporation v. CIR,* 703 Phil. 310 (2013).

[44] 736 Phil. 591, 600 (2014)..

AICHI failed to comply with the mandatory 120-day waiting period, thus, the CTA ought to have dismissed the appeal for lack of jurisdiction.

The judicial claim need not fall within the 2-year period.

Both the CTA Division and CTA En Banc were convinced that a simultaneous filing of the administrative and judicial claims is permissible so long as the two claims fall within the two-year prescriptive period.

We do not agree.

Aichi already settled the matter concerning the proper interpretation of the phrase *"within two (2) years x x x apply for the issuance of a tax credit certificate or refund"* found in Section 112 (D) of the 1997 Tax Code. *Aichi* clarified that the phrase refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. All that is required under the law is that the appeal to the CTA is brought within 30 days from either decision or inaction.

Under the foregoing interpretation, there may be two possible scenarios when an appeal to the CTA is considered fatally defective even when initiated ***within*** the two-year prescriptive period: *first,* when there is no decision and the appeal is taken ***prior*** to the lapse of the 120-day mandatory period,[45] except only the appeal within the window period from 10 December 2003 to 6 October 2010;[46] *second,* the appeal is taken ***beyond*** 30 days from either decision or inaction "deemed a denial."[47] In contrast, an appeal ***outside*** the 2-year period is not legally infirm for as long as it is taken within 30 days from the decision or inaction on the administrative claim that must have been initiated within the 2-year prescriptive period. In other words, the appeal to the CTA is always initiated within 30 days from decision or inaction ***regardless*** whether the date of its filing is within or outside the 2-year period of limitation.

To repeat, except only to the extent allowed by the window period, there is no legal basis for the insistence that the *simultaneous* filing of both administrative and judicial claims (pursuant to Section 112 of the Tax Code) is permissible for as long as both fall within the 2-year prescriptive period.

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[45] Illustrated by *Nippon Express (Philippines) Corporation v. CIR,* 706 Phil. 442 (2013).
[46] Illustrated by *Taganito Mining Corporation v. CIR,* 703 Phil. 310 (2013).
[47] Illustrated by *Philex Mining Corporation v. CIR,* 703 Phil. 310 (2013).

Existing jurisprudence involving petitioner Aichi

There are two other cases involving AICHI wherein we resolved the same issue on the timeliness of the judicial claims before the CTA – the first is the landmark case of *Aichi (hereinafter 2010 Aichi)*; and the second is *Commissioner v. Aichi Forging Company of Asia, Inc. (2014 Aichi),*[48] promulgated in 2014.

Worth mentioning is the predominantly striking similarities between the two cases: *(1)* both involved applications for refund/tax credit of unutilized input VAT under Section 112 of the Tax Code; *(2)* the administrative claims were timely filed before the CIR; *(3)* the judicial claims before the CTA were premature;[49] and *(4)* the judicial claims were ***filed after 10 December 2003***, or the date of the issuance of BIR Ruling No. DA-489-03.[50] Yet, the Court arrived at divergent conclusions on the application of the 120-day period – in *2010 Aichi*, the Court applied the strict compliance with the mandatory 120-day waiting period; whereas, in *2014 Aichi,* the premature filing was allowed following the exception laid down in *San Roque (2013)*. Thus, the Court denied the judicial claim in *2010 Aichi* due to the CTA's lack of jurisdiction over it, but sustained such jurisdiction in *2014 Aichi*.

We clarify.

In *2010 Aichi,* the Court passed upon the timeliness of the judicial claim with the CTA *without* considering BIR Ruling No. DA-489-03. The reason is simple: none of the parties, especially Aichi, had raised the matter on the effect of the said BIR Ruling. It is reasonable to think that Aichi saw no need to present the issue since the CTA already gave due course to its petition and the Commissioner questioned, on motion for reconsideration, the simultaneous filing of both the administrative and judicial claims only after the CTA First Division partially ruled in favor of Aichi. The CTA First Division denied the motion holding that the law does not prohibit the simultaneous filing of the administrative and judicial claims for refund. The CTA En Banc subsequently sustained the CTA First Division, although we dismissed such reasoning in view of the clear wordings of Section 112.

It was only in the 2013 case of *San Roque* that BIR Ruling No. DA-489-03 was raised for the first time and, thus, the Court was presented a clear opportunity to discuss its legal effect. The doctrine on the exception to

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[48] 746 Phil. 85 (2014).

[49] In *2010 Aichi*, both the administrative and judicial claims were filed on the same day. In *2014 Aichi,* the judicial claim was filed a mere two days after the filing of the administrative claim.

[50] In *2010 Aichi*, the appeal with the CTA was filed on 30 September 2004; whereas the appeal in *2014 Aichi* was filed on 31 March 2005.

the strict application of the 120-day period laid down in *San Roque* became the controlling law that was followed in numerous subsequent cases, one of which is *2014 Aichi.* Thus, even though the appeal with the CTA in *2010 Aichi* fell within the window period, the exception could not be applied as this was first recognized only in 2013 when *San Roque* was promulgated. On the other hand, it is different in *2014 Aichi* as it must yield to *San Roque.*

The present case, just like *2014 Aichi,* is very much similar to *2010 Aichi,* with the only notable distinction being the date of filing of the appeal with the CTA. As stated previously, the appeal in this case came before the window period. However, such distinction is not significant as our conclusions here and in *2010 Aichi* are the same, that is, the CTA did not acquire jurisdiction in view of the mandatory and jurisdictional nature of the 120-day waiting period.

Considering our holding that the CTA did not acquire jurisdiction over the appeal of AICHI, the decision partially granting the refund claim must therefore be set aside as a void judgment.

The rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void.[51] A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars anyone, and under which all acts performed and all claims flowing out are void.[52] We quote our pronouncement in *Canero v. University of the Philippines*:[53]

> A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.

Since the judgment of the CTA Division is void, it becomes futile for any of the parties to question it. It, therefore, does not matter whether AICHI had timely filed a motion for reconsideration to question either the decision of the CTA En Banc or the CTA Division.

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[51] *Paulino v. Court of Appeals,* 735 Phil. 448, 459 (2014).
[52] Id. See also *Imperial v. Hon. Armes,* G.R. No. 178842, 30 January 2017.
[53] 481 Phil. 249, 267 (2004).

II.

The petitioner adopted the wrong remedy in assailing the decision of the CTA *En Banc.*

We agree with the CIR that the filing of the present Petition for Certiorari under Rule 65 of the 1997 Rules of Court is procedurally flawed. What the petitioner should have done to question the decision of the CTA En Banc was to file before this Court a petition for review under Rule 45 of the same Rules of Court. This is in conformity with Section 11 of R.A. No. 9282, the pertinent text reproduced here:

> **SECTION 11.** Section 18 of the same Act is hereby amended as follows:
>
> SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.
>
> SEC. 19. *Review by Certiorari.* – A party adversely affected by a decision or ruling of the CTA en banc may file with the Supreme Court a verified petition for review on certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

Likewise, Section 1, Rule 16 the Revised CTA Rules provides:

> **RULE 16**
>
> **APPEAL**
>
> **SECTION 1.** *Appeal to Supreme Court by petition for review on certiorari.* – A party adversely affected by a decision or ruling of the Court en banc may appeal therefrom by filing with the Supreme Court a verified petition for review on certiorari within fifteen days from receipt of a copy of the decision or resolution, as provided in Rule 45 of the Rules of Court. If such party has filed a motion for reconsideration or for new trial, the period herein fixed shall run from the party's receipt of a copy of the resolution denying the motion for reconsideration or for new trial.

A petition for certiorari under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law.[54]

In this case, there is a plain, speedy and adequate remedy that is available – appeal by certiorari under Rule 45. Appeal is available because the 20 July 2010 Resolution of the CTA En Banc was a final disposition as it denied AICHI's full claim for refund or tax credit of creditable input taxes. The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. AICHI's resort to certiorari proceedings under Rule 65 is, therefore, erroneous and it deserves nothing less than an outright dismissal.

In several cases, the Court had allowed the liberal application of the Rules of Court. Thus, we treated as appeal by certiorari under Rule 45 what otherwise was denominated or styled as a petition for certiorari under Rule 65, provided the petition must have been filed within the reglementary period of 15 days from receipt of the assailed decision or resolution. Outside of this circumstance, there should be a strong and justifiable reason for a departure from the established rule of procedure. As the Court had held, it is only for the most persuasive of reasons can such rules be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[55]

Here, the petition was filed on the 60th day following the receipt of the assailed resolution of the CTA En Banc, or outside of the 15-day period of appeal by certiorari under Rule 45 but within the 60-day period for filing a petition for certiorari under Rule 65. Unfortunately, petitioner AICHI had not demonstrated any justifiable reason for us to relax the rules and disregard the procedural infirmity of its adopted remedy. What the petitioner merely did was invoke substantial justice by ascribing gross negligence on the part of its previous counsel. It cites its previous counsel's failure to file a motion for reconsideration of the CTA Division's ruling partially denying its claim for refund, and to promptly file an appeal before this Court from the denial of its motion for reconsideration assailing the decision of the CTA En Banc.

We are not persuaded.

The well-settled rule is that negligence and mistakes of counsel bind the client. The exception is when the negligence of counsel is so gross as to constitute a violation of the due process rights of the client.[56] Even so, it

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[54] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC,* 716 Phil. 500, 512 (2013).
[55] *Galang v. Court of Appeals*, 276 Phil. 748, 755 (1991).
[56] *Ong Lay Hin v. Court of Appeals*, 752 Phil. 15, 23-25 (2015).

must be convincingly shown that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests.[57] In *Bejarasco, Jr. v. People*,[58] this court reiterated:

> For the exception to apply . . . the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.

If indeed the petitioner was earnest in recovering the full amount of its refund claim, it could have avoided the negative consequences of the failure to move for dismissal from the CTA Division's partial denial of its claim by simply making a follow-up from its lawyer regarding the status of its case. Worse, it committed the same mistake again by staying passive even after denial of its motion for reconsideration from the decision of the CTA En Banc. Party-litigants share in the responsibility of prosecuting their complaints with assiduousness and should not be expected to simply sit back, relax, and await a favorable outcome.[59] Absent any other compelling reasons, we cannot apply the exception to the rule that the negligence of counsel binds the client so as to excuse the wrongful resort to a petition for certiorari instead of an appeal. Besides, AICHI's citation of the negligence of counsel was meant for the CTA to grant its motion for reconsideration, not for this Court to give due course to the present petition. Thus, there is no cogent justification for granting to the petitioner the preferential treatment of a liberal application of the rules.

It must be emphasized, however, that the outright dismissal of the petition for being the wrong remedy does not mean that the CTA decision and resolution stand. As discussed, the decision of the CTA Division is null and void; therefore, no right can be obtained from it or that all claims flowing out of it is void.

Epilogue

Petitioner AICHI came to this court expecting a reversal of the partial denial of its claim for refund/credit so that it could recover more in addition to what it had been allowed by the CTA. Regrettably, AICHI comes out empty-handed in our judgment. We could not rule on the jurisdiction of the CTA any other way. The law and jurisprudence speak loud and clear. Our solemn duty is to obey it.

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[57] Ibid.
[58] 656 Phil. 337, 340 (2011), cited in *Ong Lay Hin v. CA*, supra Note 56 at 25.
[59] *Spouses Zarate v. Maybank Philippines, Inc.*, 498 Phil 825-837 (2005).

All told, the CTA has no jurisdiction over AICHI's judicial claim considering that its Petition for Review was filed prematurely, or without cause of action for failure to exhaust the administrative remedies provided under Section 112 (D) of the Tax Code, as amended. In addition, AICHI availed of the wrong remedy. Likewise, we find no need to pass upon the issue on whether petitioner AICHI had substantiated its claim for refund or tax credit. Indisputably, we must deny AICHI's claim for refund.

WHEREFORE, for lack of jurisdiction, the 20 March 2009 Decision and 29 July 2009 Resolution of the Court of Tax Appeals Second Division in CTA Case No. 6540, and the 18 February 2010 Decision and 20 July 2010 Resolution of the Court of Tax Appeals En Banc in CTA-EB Case No. 519 are hereby **VACATED** and **SET ASIDE**.

Consequently, the petition before this Court is **DENIED.** No costs.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
OCT 04 2017