Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 209306**
	Present:
	CARPIO,* *J.*,
	PERALTA,** *Acting Chairperson,*
- versus -	PERLAS-BERNABE,
	CAGUIOA, and
	REYES, JR., *JJ.*
HEDCOR SIBULAN, INC., Respondent.	Promulgated:
	27 SEP 2017

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RESOLUTION

CAGUIOA, *J.*:

Assailed in this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, filed by petitioner Commissioner of Internal Revenue (CIR), are the Amended Decision[2] dated May 30, 2013 and Resolution[3] dated September 17, 2013 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 890. The CTA *En Banc* reversed and set aside its earlier Decision[4] dated December 6, 2012, which affirmed the CTA Third Division's (CTA Division) dismissal of respondent Hedcor Sibulan, Inc.'s (HSI) judicial claim on the ground of prematurity, in CTA Case No. 8051; and remanded the case to the CTA Division for the determination of HSI's entitlement to a

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* On official leave.

** Per Special Order No. 2487 dated September 19, 2017.

1 *Rollo,* pp. 8-49.

2 Id. at 50-59. Penned by Associate Justice Esperanza R. Fabon-Victorino with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas concurring, Associate Justice Caesar A. Casanova dissenting, and Presiding Justice Roman G. Del Rosario, no part.

3 Id. at 62-66. Penned by Associate Justice Esperanza R. Fabon-Victorino with Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban concurring.

4 Id. at 67-78. Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas concurring and Associate Justice Lovell R. Bautista dissenting.

refund of its alleged unutilized input value-added tax (VAT) for the first quarter of calendar year 2008, if any.

The Facts

HSI is a domestic corporation duly organized and existing under Philippine laws and is principally engaged in the business of power generation through hydropower and subsequent sale of generated power to the Davao Light and Power Company, Inc.[5]

On April 21, 2008, HSI filed with the BIR its Original Quarterly VAT Returns for the first quarter of 2008.[6]

On May 20, 2008, HSI filed with the BIR its Amended Quarterly VAT Returns for the first quarter of 2008, which showed that it incurred unutilized input VAT from its domestic purchases of goods and services in the total amount of ₱9,379,866.27, attributable to its zero-rated sales of generated power.[7] Further, HSI allegedly did not have any local sales subject to VAT at 12%, which means that HSI did not have any output VAT liability against which its unutilized input VAT could be applied or credited.[8]

On March 29, 2010, HSI filed its administrative claim for refund of unutilized input VAT for the first quarter of taxable year 2008 in the amount of ₱9,379,866.27.[9]

On March 30, 2010, or one day after filing its administrative claim, HSI filed its judicial claim for refund with the CTA, docketed as CTA Case No. 8051.[10]

In its Answer, the CIR argued, *inter alia*, that the HSI's judicial claim was prematurely filed and there was likewise no proof of compliance with the prescribed requirements for VAT refund pursuant to Revenue Memorandum Order (RMO) No. 53-98.[11]

Meanwhile, on October 6, 2010, while HSI's claim for refund or issuance of tax credit certificate (TCC) was pending before the CTA Division, this Court promulgated *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[12] (*Aichi*) where the Court held that compliance with the 120-day period granted to the CIR, within which to act on an administrative claim for refund or credit of unutilized input VAT, as provided under Section

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5 Id. at 68.
6 Id. at 69.
7 Id.
8 Id.
9 Id.
10 Id.
11 Id. at 69, 71.
12 646 Phil. 710 (2010).

112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, is mandatory and jurisdictional in filing an appeal with the CTA.

Following *Aichi,* the CTA Division, in its Decision[13] dated January 5, 2012, dismissed HSI's judicial claim for having been prematurely filed.[14]

HSI filed a motion for reconsideration which the CTA Division denied for lack of merit, in its Resolution[15] dated March 28, 2012.

Aggrieved, HSI elevated the matter to the CTA *En Banc* arguing that (1) its Petition for Review was not prematurely filed with the CTA Division; (2) the periods under Section 112(C) of the NIRC of 1997, as amended, are not mandatory in nature; and (3) the Court's ruling in *Aichi* should not be given a retroactive effect.[16]

On December 6, 2012, the CTA *En Banc* rendered a Decision[17] affirming the CTA Division's Decision and Resolution. The CTA *En Banc* emphasized that following the principle of *stare decisis et non quieta movere*, the principles laid down in *Aichi* needed to be applied for the purpose of maintaining consistency in jurisprudence.[18]

On January 2, 2013, HSI filed a Motion for Reconsideration.[19]

On February 12, 2013, during the pendency of said motion with the CTA *En Banc*, the Court decided the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue*, and *Philex Mining Corporation v. Commissioner of Internal Revenue*[20] (*San Roque*), where BIR Ruling No. DA-489-03 was recognized as an exception to the mandatory and jurisdictional nature of the 120-day waiting period under Section 112(C) of the NIRC of 1997, as amended.

In view of this Court's pronouncements in *San Roque,* the CTA *En Banc*, on May 30, 2013, rendered the assailed Amended Decision reversing and setting aside its December 6, 2012 Decision[21] and remanding the case to the CTA Division for a complete determination of HSI's full compliance with the other legal requirements relative to its claim for refund or tax credit of its alleged unutilized input VAT for the first quarter of calendar year 2008.

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13 Id. at 79-90. Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justice Amelia R. Cotangco-Manalastas concurring and Associate Justice Lovell R. Bautista dissenting.
14 Id. at 89.
15 Id. at 98-102.
16 Id. at 73-74.
17 Id. at 67-78.
18 Id. at 77.
19 Id. at 289.
20 703 Phil. 310 (2013).
21 *Rollo,* pp. 50-59.

The CIR filed a motion for reconsideration, which the CTA *En Banc* denied in the assailed Resolution[22] dated September 17, 2013.

Hence, this petition, raising the following issues:

> Whether HSI timely filed its judicial claim for refund/credit on March 30, 2010, a day after filing its administrative claim.
>
> Whether HSI is entitled to its claim for refund/credit representing the alleged unutilized input VAT for the first quarter of calendar year 2008 amounting to ₱9,379,866.27.[23]

The Court's Ruling

The petition lacks merit.

Under Section 112(C) of the NIRC of 1997, as amended, the CIR is given a period of 120 days within which to grant or deny a claim for refund. Upon receipt of the CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA.

As earlier stated, the Court in *Aichi* clarified that the 120+30-day periods are mandatory and jurisdictional, the non-observance of which is fatal to the filing of a judicial claim with the CTA. Subsequently, however, the Court, in *San Roque,* recognized an exception to the mandatory and jurisdictional nature of the 120+30-day periods. The Court held that BIR Ruling No. DA-489-03, issued prior to the promulgation of *Aichi*, which explicitly 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,"[24] furnishes a valid basis to hold the CIR in estoppel because the CIR had misled taxpayers into prematurely filing their judicial claims with the CTA:

> 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**

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22 Id. at 62-66.

23 Id. at 18-19.

24 *Cargill Philippines, Inc. v. Commissioner of Internal Revenue,* 755 Phil. 820, 829 (2015).

> **assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.**
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> x x x x
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> BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a 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, <u>all</u> 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.**[25] (Emphasis and underscoring supplied)

In *Taganito Mining Corporation v. Commissioner of Internal Revenue,*[26] the Court reconciled the pronouncements in *Aichi* and *San Roque* in this wise:

> Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that **<u>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</u>** before it could file a judicial claim for refund of excess input VAT before the CTA. **<u>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.</u>**[27] (Emphasis and underscoring supplied)

Here, records show that HSI filed its judicial claim for refund on March 30, 2010, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though HSI's claim was filed without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque.* BIR Ruling No. DA-489-03 effectively shielded the filing of HSI's judicial claim from the vice of prematurity.[28] The CTA *En Banc* was therefore correct in setting aside its earlier Decision dismissing HSI's claim on the ground of prematurity; and

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25 Supra note 20, at 373-376.

26 736 Phil. 591 (2014).

27 Id. at 600; See also *CE Luzon Geothermal Power Co., Inc. v. Commissioner of Internal Revenue,* 767 Phil. 782, 790 (2015).

28 See *Republic v. GST Philippines, Inc.*, 719 Phil. 728, 744 (2013).

remanding the case to the CTA Division for a complete determination of HSI's entitlement to the claimed VAT refund, if any.

The CIR, however, impugns the validity of BIR Ruling No. DA-489-03 asserting that (1) it was merely issued by a Deputy Commissioner, and not the CIR, who is exclusively authorized by law to interpret tax matters; and (2) it was already repealed and superseded on November 1, 2005 by Revenue Regulations No. 16-2005 (RR 16-2005), which echoed the mandatory and jurisdictional nature of the 120-day period under Section 112(C) of the NIRC.

The Court is not persuaded.

In the Court *En Banc's* Resolution in *San Roque* dated October 8, 2013,[29] the Court upheld the authority of a Deputy Commissioner to issue interpretative rules. The Court said that the NIRC does not prohibit the delegation of the CIR's power under Section 4 thereof. The CIR may delegate the powers vested in him under the pertinent provisions of the NIRC to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the CIR.[30]

Moreover, in *Procter and Gamble Asia Pte, Ltd. v. Commissioner of Internal Revenue,*[31] the Court, reiterating its ruling in *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*,[32] held that **all** taxpayers may rely upon BIR Ruling No. DA-489-03, as a general interpretative rule, from the time of its issuance on December 10, 2003 until its effective reversal by the Court in *Aichi.*[33] The Court further ruled that while RR 16-2005 may have re-established the necessity of the 120-day period, taxpayers cannot be faulted for still relying on BIR Ruling No. DA-489-03 even after the issuance of RR 16-2005 because the issue on the mandatory compliance of the 120-day period was only brought before the Court and resolved with finality in *Aichi.*[34]

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED**. The Amended Decision dated May 30, 2013 and the Resolution dated September 17, 2013 of the CTA *En Banc* in CTA EB No. 890 are hereby **AFFIRMED.**

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29 *Commissioner of Internal Revenue v. San Roque Power Corp.*, 719 Phil. 137 (2013).
30 Id. at 164.
31 G.R. No. 205652, September 6, 2017.
32 G.R. No. 211072, November 7, 2016.
33 Id. at 9.
34 Id.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

(On official leave)
ANTONIO T. CARPIO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice