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SECOND DIVISION

[G.R. No. 209306, September 27, 2017]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. HEDCOR SIBULAN, INC., RESPONDENT.

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 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 P9,379,866.27, 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 P9,379,866.27.[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 HSFs 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 HSFs 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 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.

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 P9,379,866.27.[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 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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> 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.