EN BANC

[G.R. No. 202066, September 30, 2014]

CBK POWER COMPANY LIMITED, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

[G.R. NO. 205353]

CBK POWER COMPANY LIMITED, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

LEONEN, J.:

CBK Power Company Limited filed two petitions for review[1] assailing the dismissal of its judicial claim for tax credit of unutilized input taxes on the ground of premature filing.

The first petition[2] was filed on July 16, 2012, docketed as G.R. No. 202066. This involves a tax credit claim for P58,802,851.18 covering the period of January 1, 2007 to December 31, 2007.[3]

The other petition[4] was filed on March 4, 2013, docketed as G.R. No. 205353. This involves a tax credit claim for P43,806,549.72 covering the period of January 1, 2006 to December 31, 2006.[5]

CBK Power Company Limited is a VAT-registered domestic partnership with the sole purpose of engaging in "all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric powerplants and their related facilities located in the Province of Laguna."[6]

The Bureau of Internal Revenue Ruling No. DA-146-2006 was issued on March 17, 2006, stating that "petitioner is an entity engaged in hydropower generation, and that its billings and fees for the sale of electricity to NPC are subject to VAT at zero percent (0%) rate under Section 108(B)(7) of the Tax Code of 1997, as amended by R.A. No. 9337."[7]

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On March 26, 2009, petitioner filed an administrative claim with the Bureau of Internal Revenue Laguna Regional District Office No. 55 for the issuance of a tax credit certificate for P58,802,851.18.[8] This amount represented "unutilized input taxes on its local purchases and/or importation of goods and services, capital goods and payments for services rendered by non-residents, which were all attributable to petitioner's zero-rated sales for the period of January 1, 2007 to December 31, 2007, pursuant to Section 112 (A) of the Tax Code of 1997, as amended."[9]

The next day, March 27, 2009, petitioner filed a petition for review with the Court of Tax Appeals since respondent had not yet issued a final decision on its administrative claim.[10] Respondent raised prematurity of judicial claim as one of its defenses in its answer.[11]

"[P]etitioner presented documentary and testimonial evidence to support its claim [during trial,

while] respondent filed a Motion to Dismiss on December 6, 2010."[12] Petitioner filed a comment on/opposition to the motion to dismiss on December 17, 2010.[13]

In the January 28, 2011 resolution,[14] the Court of Tax Appeals Third Division[15] granted respondent's motion and dismissed the petition for having been prematurely filed:

> **WHEREFORE**, premises considered, respondent's "***Motion to Dismiss***" is hereby **GRANTED**. Accordingly, the ***Petition for Review*** filed in the above-captioned case is hereby DISMISSED for having been prematurely filed.
>
> **SO ORDERED**.[16]

In the April 5, 2011 resolution,[17] the Court of Tax Appeals Third Division denied reconsideration for lack of merit:

> **WHEREFORE**, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[18]

In the February 1, 2012 decision,[19] the Court of Tax Appeals En Banc[20] dismissed the petition and affirmed the Third Division's resolutions:

> **WHEREFORE**, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED**. Accordingly, the Resolutions of CTA Third Division dated January 28, 2011 and April 5, 2011 are hereby **AFFIRMED.**
>
> **SO ORDERED**.[21]

In the May 24, 2012 resolution,[22] the Court of Tax Appeals denied reconsideration for lack of merit:

> **WHEREFORE**, finding no reversible error committed by this Court in the assailed Decision promulgated on February 1, 2012, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[23]

Hence, CBK Power Company Limited filed the instant petition docketed as G.R. No. 202066.

Petitioner argues that Section 112(C)[24] of the Tax Code, as amended, "is directory and permissive, and not mandatory nor jurisdictional, as long as it is made within the two (2)-year prescriptive period prescribed under Section 229[25] of the same Code,"[26] citing cases such as *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*[27] and *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation.*[28]

Petitioner submits that the recent cases of *Silicon Philippines Inc. v. Commissioner of Internal Revenue*[29] and *Southern Philippines Power Corp. v. Commissioner of Internal Revenue*[30] should have been considered. These are inconsistent with the ruling in the earlier case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia*;[31] thus, *Aichi* should not be

applied.[32]

Petitioner further asserts that assuming arguendo that the interpretations in *Aichi* and *Mirant Pagbilao* on the two-year prescription period were those intended by law, the lower court would have erred in retroactively applying such ruling to the instant case.[33]

Lastly, petitioner faults the lower court for not considering "the huge negative financial impact on the [p]etitioner and other businesses and the business community as a whole of the denial of refunds or issuance of tax credit certificates for unutilized input taxes."[34]

Respondent counters that *Aichi* and *Mirant* merely interpreted Section 112 of the Tax Code.[35] Consequently, these formed part of the law at the time of its original enactment and properly applied to petitioner.[36] Respondent is bound by the *Aichi* ruling.[37]

On February 18, 2013, petitioner filed its reply.[38] Both parties then filed their respective memoranda.[39]

On August 27, 2013, this court En Banc accepted the consolidation of the petition docketed as G.R. No. 205353[40] with the petition docketed as G.R. No. 202066.[41]

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Petitioner filed its original and amended quarterly VAT returns for the four quarters of 2006 on the following dates:[42]

2006 Taxable Quarter	Original VAT Return (date filed)	Amended VAT Return (date filed)
1st	April 25, 2006	December 28, 2007 March 31, 2008
2nd	July 25, 2006	April 18, 2008
3rd	October 20, 2006	May 7, 2008
4th	January 24, 2007	July 21, 2008

The amended returns reported zero-rated sales and input tax credits as follows:[43]

Zero-Rated Sales for the period of January 01 to December 31, 2006	
2006 Taxable Quarter	Zero-Rated Sales/Receipts
1st	1,583,390,407.46
2nd	1,648,748,033.50
3rd	1,599,882,354.64
4th	1,547,858,529.27
TOTAL	**6,379,879,324.87**

Input Tax Credits for the period of January 1 to December 31, 2006						
2006 Taxable Quarter	Purchase of Capital Goods exceeding P1 Million	Domestic Purchase of Goods Other than Capital Goods	Importation of Goods Other than Capital Goods	Domestic Purchase of Services	Services Rendered by Non-Residents	Total Input Tax Credits
1st	1,870,700.70	1,821,359.38	556,816.00	4,151,387.81	968,642.68	9,368,906.57
2nd	1,346,348.83	1,209,055.88	1,152,424.00	5,797,606.67	1,199,547.36	10,704,981.94
3rd	2,998,466.11	1,425,019.73	810,906.00	10,921,541.86	302,627.14	16,458,560.84
4th	344,377.46	1,620,670.63	654,763.00	8,586,528.36	1,608,644.90	12,814,984.35

TOTAL	6,559,893.10	6,076,104.82	3,174,909.00	29,457,064.70	4,079,462.08	**49,347,433.70**

From the total reported input tax of P49,347,433.70 for 2006, petitioner sought tax credit certificates in the amount of P43,806,549.72.[44]

On March 31, 2008, petitioner filed an administrative claim with the Bureau of Internal Revenue Laguna Regional District Office No. 55 for the issuance of a tax credit certificate for P7,559,943.44, representing unutilized input tax for the period of January 1, 2006 to March 31, 2006.[45]

On April 23, 2008, petitioner filed a petition for review[46] with the Court of Tax Appeals Division, alleging respondent's inaction on its administrative claim.[47]

On July 23, 2008, petitioner filed another administrative claim with the Bureau of Internal Revenue Laguna Regional District Office No. 55 for the issuance of a tax credit certificate for ? 36,246,606.28, representing unutilized input tax for the period of April 1, 2006 to December 31, 2006.[48]

The next day, July 24, 2008, petitioner filed a petition for review[49] with the Court of Tax Appeals Division on the same claim.[50]

The Court of Tax Appeals Division consolidated these two petitions on judicial claims for unutilized input tax covering the taxable year of 2006. Petitioner adduced evidence during trial while respondent rested its case without presenting any.[51]

On December 3, 2010, the Court of Tax Appeals Third Division[52] dismissed the consolidated cases for having been prematurely filed:

> **WHEREFORE**, premises considered, the instant Petitions for Review are hereby **DISMISSED** for having been prematurely filed.[53]

On April 7, 2011, it likewise denied reconsideration for lack of merit:

> **WHEREFORE**, premises considered, petitioner's ***Motion for Reconsideration*** is **DENIED** for lack of merit.[54]

On October 4, 2012, the Court of Tax Appeals En Banc[55] denied the petition for lack of merit.

> **WHEREFORE**, the Petition for Review filed by petitioner CBK Power Company Limited on May 06, 2011, is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED**.[56]

On January 15, 2013, it denied reconsideration for lack of merit.

> **WHEREFORE**, the Motion for Reconsideration dated November 7, 2012, filed by petitioner is hereby **DENIED**, for lack of merit.
>
> SO ORDERED.[57]

Hence, CBK Power Company Limited filed the instant petition, docketed as G.R. No. 205353, raising substantially the same arguments made in its earlier petition docketed as G.R. No. 202066.

In its consolidated comment, respondent explained that the two-year period pertains to administrative claims with the Commissioner of Internal Revenue, while judicial claims with the Court of Tax Appeals must be made within 30 days reckoned from either receipt of the Commissioner's decision or after the lapse of the 120-day period for the Commissioner to act on the administrative claim.[58] Observance of the 120-day period under Section 112 of the Tax Code is mandatory and jurisdictional, and non-compliance results in the denial of the claim.[59] Respondent submits that *Aichi* and *Mirant Pagbilao* apply.[60]

This court noted petitioner's reply on June 3, 2014.

The main issue in these consolidated cases involves the timeliness of petitioner's judicial claims for the issuance of tax credit certificates considering Section 112(C) of the Tax Code, as amended:

> Section 112. *Refunds or Tax Credits of Input Tax.* —
>
> . . . .
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes *within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed* in accordance with Subsection (A) hereof.
>
> ***In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.*** (Emphasis supplied)

Timeliness of judicial claim

A simple reading of the provision quoted above reveals that the taxpayer may appeal the denial or the inaction of the Commissioner of Internal Revenue only within thirty (30) days from receipt of the decision that denied the claim or the expiration of the 120-day period given to the Commissioner to decide the claim.

In the fairly recent case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[61] this court En Banc affirmed with qualification the decision of its First Division in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[62] This court held that compliance with the 120-day and the 30-day periods under Section 112 of the Tax Code, save for those Value-added Tax refund cases that were prematurely (i.e., before the lapse of the 120-day period) filed with the Court of Tax Appeals between December 10, 2003 (when the Bureau of Internal Revenue Ruling No. DA-489-03 was issued) and October 6, 2010, is mandatory and jurisdictional.[63]

This court also declared that, following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[64] claims for refund or tax credit of excess input tax are governed not by Section 229 but only by Section 112 of the 1997 National Internal Revenue Code.[65]

In *San Roque,* a motion for reconsideration and supplemental motion for reconsideration in G.R. No. 187485 were filed, arguing for the prospective application of the 120-day and 30-day mandatory and jurisdictional periods. This court denied the motion for reconsideration with finality