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SECOND DIVISION

[G.R. No. 201195, November 26, 2014]

TAGANITO MINING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the October 19, 2011 Decision[1] and the March 22, 2012 Resolution[2] of the Court of Tax Appeals *(CTA)* En Banc, in CTA EB Case No. 656, which affirmed as to result only, the April 8, 2010 Decision[3] and the June 3, 2010 Resolution[4] of the CTA Second Division *(CTA Division)* denying the petitioner's claim for refund.

The Facts

Petitioner Taganito Mining Corporation *(Taganito)*, a value-added tax *(VAT)* and Board of Investments *(BOI)* registered corporation primarily engaged in the business of exploring, extracting, mining, selling, and exporting precious metals and all kinds of ores, metals, and their by-products, filed through the Bureau of Internal Revenue's *(BIR)* computerized filing system, its Original Quarterly VAT Returns for the first to fourth quarters of taxable year 2006 on the following dates:

Taxable Quarter	Date of Filing
First	April 24, 2006
Second	July 19, 2006
Third	October 18, 2006
Fourth	January 25, 2007

Subsequently, Taganito filed its Amended Quarterly VAT Returns on October 18, 2006 for the first and second quarters of 2006, and on March 25, 2008 for the fourth quarter of 2006.

On March 26, 2008, Taganito filed with respondent Commissioner of Internal Revenue *(CIR)*, through the Excise Taxpayers' Assistance Division under the Large Taxpayers Division *(LTAID-II)*, a claim for credit/refund of input VAT paid on its domestic purchases of taxable goods and services and importation of goods amounting to P22,421,260.26, for the period covering January 1, 2006 to December 31, 2006.

On April 17, 2008, as respondent CIR had not yet issued a final decision on the administrative claim, Taganito filed a judicial claim before the CTA Division with the intention of tolling the running of the two-year period to judicially claim a tax

credit/refund under Section 229 of the National Internal Revenue Code of 1997 *(NIRC)*.

On March 17, 2009, Taganito filed a motion for partial withdrawal of petition, to the extent of P17,810,137.26, in view of the approval by the BIR of its application for tax credit/refund in the amount of P15,725,188.58 and the allowance of the previously disallowed amount of P2,084,648.68.

On May 26, 2009, in accordance with the order of the CTA, Taganito filed a supplemental petition for review limiting the issue of the case to the remaining amount of P4,611,123.00, representing alleged excess input VAT paid on the importation of capital goods from January 1, 2006 to December 31, 2006. The following official receipts *(OR)* were submitted in support of its claim:

Month	OR No.	Net Amount	Input
January	0028847	P11,314,310.00	P1,131,431.00
February	014371	28,997,433.33	3,479,692.00
Total			**P4,611,123.00**

On April 8, 2010, the CTA Division denied Taganito's petition for review and its supplemental petiton for review for lack of merit.[5] It held that the official receipts did not prove Taganito's actual payment of the claimed input VAT. Specifically, no year was indicated in OR No. 0028847. It further held that the claim should be denied for failure to meet the substantiation requirements under Section 4.110-8(a)(1) of Revenue Regulation *(R.R.)* No. 16-05, providing that input taxes for the importation of goods must be substantiated by the import entry or other equivalent document showing actual payment of VAT on the imported goods.

It also ruled that Taganito failed to prove that the importations pertaining to the input VAT claim were in the nature of capital goods or properties, and assuming *arguendo* that they were capital goods, the input VAT was not amortized over the estimated useful life of the said goods, all in accordance with Sections 4.110-3 and 4.113-3 of R.R. No. 16-05, as amended by R.R. No. 4-2007.

The CTA Division later denied Taganito's motion for reconsideration.Taganito, thus, appealed to the CTA En Banc.

In the assailed Decision, dated October 19, 2011, the CTA En Banc disposed , as follows:

> **WHEREFORE**, in light of the foregoing considerations, the Petition for Review is hereby **DENIED** for lack of merit. The instant Petition for Review filed thereto is **DISMISSED** for lack of jurisdiction.
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> The Decision dated April 8, 2010 and the Resolution dated June 3, 2010 of the Court in Division in CTA Case No. 7769 are hereby **AFFIRMED** as to result only.
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> **SO ORDERED.**[6]

In light of the ruling in *CIR v. Aichi Forging Company of Asia, Inc.*[7] (Aichi), the CTA En Banc held that in accordance with Section 112(C) of the NIRC, it was incumbent upon the taxpayer to give the CIR a period of 120 days to either partially or fully deny the claim; and it was only upon the denial of the claim or after the expiration of the 120-day period without action, that the taxayer could seek judicial recourse. Considering that Taganito filed its judicial claim before the expiration of the 120-day period, the CTA En Banc ruled that the judicial claim was prematurely filed and, consequently, it had no jurisdiction to entertain the case.

Nonetheless, in the exercise of its judicial prerogative to resolve the merits of the case, the CTA En Banc held that it agreed with the ruling of the CTA Division that Taganito failed to prove that it complied with the substantiation requirements, considering that the burden of proof rested upon the taxpayer to establish by sufficient and competent evidence its entitlement to the refund.

In the assailed Resolution, dated March 22, 2012, the CTA En Banc denied Taganito's motion for reconsideration.[8]

Hence, the present petition where Taganito raises the following:

Grounds for the Petition

I. The Court of Tax Appeals En Banc committed serious error and acted with grave abuse of discretion tantamount to lack or excess of jurisdiction in erroneously applying the *Aichi* doctrine to the instant case for the following reasons:

    A. The *Aichi* ruling is issued in violation of Art. VIII, Sec. 4(3)[9] of the 1987 Constitution;

    B. The *Aichi* doctrine is an erroneous application of the law; and

    C. Even if the *Aichi* doctrine is good law, its application to the instant case will be in violation of petitioner's right to due process and the principles of *stare decisis* and *lex prospicit, non respicit*

II. The Court of Tax Appeals En Banc committed serious error and acted with grave abuse of discretion tantamount to lack or excess of jurisdiction:

    A. By failing to consider that the findings of fact of the CTA Division are not in accordance with the evidence on record and with existing laws and jurisprudence

    B. By failing to state in the Questioned Decision, the factual and legal bases for its agreement to the CTA Division's finding that Petitioner failed to prove compliance with substantiation

requirements

C. By not granting the amount of petitioner's excess VAT input taxes being claimed for refund which are clearly supported by evidence on record.[10]

Taganito basically argues that prior to *Aichi,* it was a well-settled doctrine that a taxpayer need not wait for the decision of the CIR on its administrative claim for refund before filing its judicial claim, in accordance with the period provided in Section 229 of the NIRC stating that no suit for the recovery of erroneously or illegally collected tax shall be filed after the expiration of two years from the date of payment of the tax.

The petitioner also insists that the official receipts issued by the authorized agent banks acting as collection agents of the respondent, constituted more than sufficient proof of payment of the VAT. It further points to the report of the independent certified public accountant *(CPA)*, showing that the purchases and input VAT paid/incurred were properly recorded in the books of accounts. It adds that the balance sheet in its 2006 audited financial statements should be considered as it contained a note providing the details of its subsidiary ledger recording the purchase of capital goods. Taganito explains that it is not difficult to understand that a dump truck is capital equipment in a mining operation, as contained in the import entry internal revenue declaration *(IEIRD)* and testified to by its Vice-President for Finance. Lastly, the petitioner argues that because the CTA found that the purchases were not capital goods, the rule on the amortization of input tax cannot, thus, be applied to it.

In the Comment[11] to the petition, the CIR counters that *Aichi* is a sound decision and that pursuant thereto, the petitioner's judicial claim for refund was prematurely filed. The CIR further argues that Taganito failed to comply with the necessary substantiation requirements to prove actual payment of the claimed input VAT.

In its Reply,[12] Taganito concedes that the issue on the prescriptive periods for filing of tax credit/refund of unutilized input tax has been finally put to rest in the Court's En Banc decision in the consolidated cases of *Commission of Internal Revenue vs. San Roque Power Corporation* (G.R. No. 187485), *Taganito Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 196113), and *Philex Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 197156).[13]

Taganito, in accordance with the said decision, now argues that since it filed its judicial claim after the issuance of BIR Ruling No. DA-489-03, but before the adoption of the *Aichi* doctrine, it can invoke the said BIR ruling which provided 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." Taganito avers that its petition for review was, therefore, not prematurely filed before the CTA.

As to the issue of substantiation, the petitioner points out that respondent CIR directed that the amount of P4,611,123.00 be indorsed to the Bureau of Customs, which it insists is further proof that it actually paid the input taxes claimed.

Ruling of the Court

Judicial claim timely filed

The Court agrees with petitioner that the prevailing doctrine pertinent to the issue at hand is *CIR v. San Roque Power Corporation (San Roque).*[14] It was conclusively settled therein that it is Section 112 of the NIRC which is applicable specifically to claims for tax credit certificates and tax refunds for unutilized creditable input VAT, and not Section 229. The recent case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue encapsulates the relevant ruling in San Roque*:

> Two sections of the NIRC are pertinent to the issue at hand, namely Section 112 (A) and (D) and Section 229, to wit:
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> **SEC. 112. Refunds or Tax Credits of Input Tax. –**
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> **(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 of 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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> **(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 (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,**