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SUMMARY OF SIGNIFICANT SC TAX DECISIONS (JANUARY TO MARCH 2014)

1. An exception to the 120+30 day periods provided in Section 112 of the NIRC is the period from December 10, 2003 to October 10, 2010, where a petition for review in a claim for refund of input taxes related to zero-rated sales may be filed with the CTA without waiting for the lapse of 120 day.

On December 20, 2006, taxpayer filed an administrative claim for cash refund or issuance of tax credit certificate corresponding to the input Vat reported for the 1st 3 quarters of 2005 and monthly VAT declaration for October 2005. Due to inaction on its claim, taxpayer filed a petition for review before the CTA on April 18, 2007. The CTA dismissed the petition on the ground that it was prematurely filed, having been filed on April 18, 2007 or only 199 days from December 20, 2006.

On appeal to the Supreme Court, the latter ruled that a VAT-registered taxpayer claiming for refund or tax credit of their excess and unutilized input taxes must file their administrative claim within 2 years from the close of the taxable quarter when the sales were made. After that, the taxpayer must await the decision or ruling of denial of its claim, whether full or partial, or the expiration of the 120-day period from the submission of the complete documents in support of such claim. Once the taxpayer received the decision or ruling of denial or the expiration of the 120-day period, it may file its petition for review with the CTA within 30 days. Citing the earlier cases of *CIR vs. Aichi Forging Company of Asia, Inc*.[1] (Aichi Case), the Supreme Court ruled that the 120-30-day period in Section 112(C) of the NIRC is mandatory and its non-observance is fatal to the filing of the judicial claim with the CTA.

The Court, however, cited also the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[2], where it was clarified that the mandatory and jurisdictional nature of the 120-30-day rule does not apply on claims for refund that were prematurely filed during the interim period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the Aichi Case was promulgated. The exemption was premised on the fact that prior to the promulgation of the Aichi Case, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 where the BIR expressly ruled that the taxpayer need not waif for the expiration of the 120-day period before it could seek judicial relief with the CTA.

This case can benefit from BIR Ruling No. DA-489-03 because it was filed on April 18, 2007 after the issuance of BIR Ruling No. DA-489-03 but before October 6, 2010, the date when the Aichi Case was promulgated. ***(Team Energy Corporation vs. Commissioner of Internal Revenue, G.R. No. 197760, January 13, 2014[3])***

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[1] G.R. No. 184823, October 6, 2010

[2] G.R. Nos. 187485, 196113, 197156, February 12, 2013

[3] The exception to the 120+30 days rule was also applied in the case of Commissioner of Internal Revenue vs. Toledo Power, Inc., G.R. No. 183880, January 20, 2014

2. **Stamping of the word "zero-rated" in the invoice is sufficient compliance with the law.**

In a taxpayer's claim for refund of input taxes related to zero-rated sales, the BIR argued, among others, that the taxpayer failed to comply with the invoicing requirements to prove entitlement to the refund or issuance of tax credit certificate. According to the Supreme Court, although the word "zero-rated" was merely stamped and not pre-printed, the same is sufficient compliance with the law, since the imprinting of the word "zero-rated" was required merely to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the BIR to properly implement and enforce the other VAT provisions of the Tax Code. ***(Commissioner of Internal Revenue vs. Toledo Power, Inc., G.R. No. 183880, January 20, 2014)***

3. ***The*** **two-year prescriptive period as provided in Section 112 of the Tax Code applies only to administrative claim, not to the judicial claim.**

Taxpayer filed its 2002 first quarter VAT return on April 25, 2002. Subsequently, on December 22, 2003, it filed an administrative claim for refund of unutilized input VAT with the BIR for the calendar year 2002, including the first quarter. Due to BIR's inaction, taxpayer elevated its claim before the CTA on April 22, 2004. The CTA En Banc denied the claim for the 1st quarter of 2002 on the ground that it was filed beyond the 2-year period prescribed in Section 112(A) of the Tax Code. According to the CTA En Banc, the judicial claim should not have been filed beyond March 31, 2004, the end of the 2 years from March 31, 2002.

Citing its decision in the San Roque Case, the Supreme Court ruled that a taxpayer can file his administrative claim for refund or credit at any time within the 2-year prescriptive period. What is only required of him is to file his judicial claim within 30 days after denial of his claim or after the expiration of the 120-day period within which the BIR can decide on its claim. In this case, there is no question that taxpayer timely filed its administrative claim with the BIR within the required period. However, since its administrative claim was filed within the 2-year period, and its judicial claim was filed on the 1st day after the expiration of the 120day period granted to the BIR to decide on the claim, the claim for refund for the 1st quarter of 2002 should be granted. ***(Team Energy Corporation vs. Commissioner of Internal Revenue, G.R. No. 190928, January 13, 2014)***

4. Summary of Rules on the Prescriptive Period for Claiming Refund or Credit of Input VAT

a) Two-year prescriptive period

1. It is only the administrative claim that must be filed within the 2-year prescriptive period. *(Aichi Case)*
2. The proper reckoning date for the 2-year prescriptive period is the close of the taxable quarter when the relevant sales were made. *(San Roque Case)*
3. The only other rule is the Atlas ruling, which applied only from 8 June 2007 to 12 September 2008. Atlas states that the 2-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. *(San Roque)*

b) 120+30 day rule

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.
2. The 30-day period always applies, whether there is denial or inaction on the part of the BIR.
3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi and San Roque Cases)*
4. As an exception to the general rule, the premature filing is allowed only if filed between December 10, 2003 and October 5, 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque)*
5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *(San Roque)* (***Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014)***

5. In a claim for refund of input taxes related to zero-rated sales, if the BIR fails to decide within the 120-day period provided by law, the inaction is deemed denial of the application which the taxpayer must elevate to the CTA within 30 days from the end of the 120-day period. A petition filed beyond the 30-day period is considered filed out-of-time and the CTA does not acquire jurisdiction.

For the 1st quarter of 1999 and second quarter of 2000, taxpayer filed a claim for refund of input taxes related to zero-rated sales with the BIR, through its One-Stop-Shop Inter-agency Tax Credit and Duty Drawback Center of the Department of Finance. Due to the inaction of the BIR on the administrative claims, the taxpayer filed its petitions for review before the CTA. The relevant filing periods are as follows:

Period Covered	Filing of VAT Return	Filing of the Administrative Claim	Filing of the Judicial Claim
1st quarter 1999	April 22, 1999	August 6, 1999	March 30, 2001
2nd quarter 2000		August 10, 2000	June 28, 2002

Citing the case of *Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113 and 197156, February 12, 2013 (San Roque for brevity),* the Supreme Court ruled that the taxpayer's judicial claims were filed late and way beyond the prescriptive period,. For the 1st quarter of 1999, taxpayer filed on August 6, 1999 an administrative claim for refund. From August 6, 1999, the BIR had until December 4, 1999, the last day of the 120-day period, to decide taxpayer's claim for refund. But since the BIR did not act on the claim on or before the said date, taxpayer had until January 3, 2000, the last day of the 30-day period to file its judicial claim. However, taxpayer failed to file an appeal within 30 days from the lapse of the 120-day period, thus, in consonance with the ruling in *Philex* in the *San Roque ponencia*, taxpayer's claim for tax credit or refund should have been dismissed for having been filed late. The CTA did not acquire jurisdiction over the petition for review.

Similarly, the taxpayer's claim for the 2nd quarter of 2000 should have been dismissed for having been filed out of time. Taxpayer filed on August 10, 2000 its administrative claim for refund. The BIR then had until December 8, 2000 to grant or deny the claim. With the inaction of the BIR to

decide on the claim which was deemed a denial of the claim for tax credit or refund, taxpayer had until January 7, 2001 or 30 days from December 8, 2000 to file its petition for review with the CTA. However, taxpayer again failed to comply with the 120+30 day period provided under Section 112(C) since it filed its judicial claim only on June 28, 2002 or 536 days late. Thus, the petition for review, which was belatedly filed, should have been dismissed by the CTA which acquired no jurisdiction to act on the petition. (***Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 184360, February 19, 2014***[4]***)***

6. Petition for certiorari seeking the nullification of an interlocutory order of an RTC judge involving a claim for tax refund is vested with the CTA, not with the CA.

The City of Manila, through its city treasurer, assessed taxes against some private corporations. Because the payment of the taxes assessed was a precondition for the issuance of the business permits, these private corporations were constrained to pay under protest. Later, said private corporations filed a complaint with the Regional Trial Court (RTC) denominated as one for "Refund or Recovery of Illegally and/or Erroneously-Collected Local Business Tax, Prohibition with Prayer to Issue TRO and Writ of Preliminary Injunction". In a subsequent order, the RTC granted these private corporation's application for writ of preliminary injunction. After the RTC denied the City of Manila's motion for reconsideration, the latter fled a special civil action for certiorari with the Court of Appeals (CA) assailing the order of the RTC. The CA dismissed the petition holding that it has no jurisdiction over the petition. Since the appellate jurisdiction over the private corporation's compliant for tax refund, which was filed with the RTC, is vested in the Court of Tax Appeals (CTA), it follows that a petition for certiorari seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the CTA.

The Supreme Court agreed with the CA. According to the Supreme Court, the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It thus follows that the CTA is vested with jurisdiction to issue writs of certiorari in these cases. It can be reasonably concluded that the authority of the CTA to take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction. ***(The City of Manila vs. Hon. Caridad H. Grecia-Cuerdo, G.R. No. 175723, February 2, 2014)***

[4] The same decision was made in the case of CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. No. 198729-30, January 15, 2014