COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. AIR LIQUIDE PHILIPPINES, INC., RESPONDENT.

G.R. No. 210646. July 29, 2015

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari seeking to reverse and set aside the July 29, 2013 Decision[1] and the December 17, 2013 Resolution[2] of the Court of Tax Appeals En Banc (CTA En Banc), in CTA EB Case No. 943, which reversed and set aside the July 3, 2012 Decision[3] and the September 24, 2012 Resolution of the Court of Tax Appeals Second Division (CTA Division), in a case involving an application for issuance of a tax credit certificate for unutilized input VAT.

Respondent Air Liquide Philippines, Inc. (ALPI) is a domestic corporation registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) entity. It sells chemical products and renders certain related services to the Philippine Economic Zone Authority (PEZA) enterprises. On January 22, 2008, ALPI filed with the BIR its Quarterly VAT Return for the 4[th] quarter of 2007.

Subsequently, on December 23, 2009, ALPI filed with petitioner Commissioner of Internal Revenue (CIR), through BIR Revenue District Office (RDO) No. 121, an application for issuance of a tax credit certificate for its unutilized input VAT in the amount of P23,254,465.64 attributable to its transactions with PEZA-registered enterprises for the 4[th] quarter of 2007.

On December 29, 2009, or only six (6) days later, ALPI filed its petition for review with the CTA Division, without awaiting the resolution of its application for tax credit certificate or the expiration of the 120-day period under Section 112(C) of the National Internal Revenue Code (NIRC).

CTA Division Ruling

In its July 3, 2012 decision, the CTA Division, instead of ruling on the merits, dismissed the judicial claim for VAT refund for lack of jurisdiction. The CTA Division noted that the CIR was given a period of one hundred twenty (120) days within which to either grant or deny the claim for VAT refund or credit. ALPI, however, filed its judicial claim before the CTA only 6 days after the filing of the administrative claim for tax credit with the CIR. The failure of ALPI to observe the compulsory 120-day period warranted the dismissal of its petition. The decretal portion of the decision declared:

> WHEREFORE, premises considered, the present Petition for Review is hereby DISMISSED for lack of jurisdiction.
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> SO ORDERED.

ALPI moved for reconsideration, but the motion was denied by the CTA Division in its September 24, 2012 Resolution. Aggrieved, ALPI filed a petition for review with the CTA En Banc.

CTA En Banc Ruling

On July 29, 2013, the CTA En Banc rendered the assailed decision and reversed the ruling of the CTA Division, citing the consolidated cases of CIR v. San Roque, CIR v. Taganito and CIR v. Philex[4] (San Roque). In these cases, the Court recognized the legal effects of BIR Ruling No. DA-489-03, which stated 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." Thus, all taxpayers could rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in CIR v. Aichi[5] (Aichi) on October 6, 2010, where it ruled that the 120+30-day period was mandatory and jurisdictional.

Consequently, as ALPI filed its judicial claim for VAT credit on December 29, 2009, then it was covered by BIR Ruling No. DA-489-03. ALPI need not wait for the lapse of the 120-day period before it could seek judicial relief. The CTA En Banc remanded the case to the CTA Division for the determination of the propriety of the VAT refund or credit claim. The dispositive portion of the assailed decision stated:

> WHEREFORE, premises considered, the instant Petition for Review filed on October 25, 2012 is hereby GRANTED. The assailed Decision dated July 3, 2012 and the assailed Resolution dated September 24, 2012 promulgated by CTA-Second Division, which dismissed the Petition for Review docketed as CTA Case No. 8017, are hereby REVERSED and SET ASIDE.
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> Accordingly, CTA Case No. 8017 is hereby REMANDED to the CTA-Second Division for the proper and immediate determination of the propriety of the claim for refund or tax credit certificate. Thereafter, the CTA-Second Division shall make a declaration of the specific amount of refund or tax credit certificate to which petitioner is entitled to, if any.
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> SO ORDERED.

The CIR filed its motion for reconsideration, but it was denied by the CTA En Banc in its December 17, 2013 Resolution.

Hence, this present petition.

> ISSUE
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> WHETHER OR NOT THE CTA DIVISION ACQUIRED JURISDICTION OVER ALPI'S PETITION FOR REVIEW.

The CIR contends that the CTA Division did not acquire jurisdiction over ALPI's petition because of its failure to observe the 120+30 day rule in filing a judicial claim for refund or tax credit certificate. Moreover, ALPI could not benefit from the consolidated cases of San Roque. In those cases, the taxpayers relied in good faith on BIR Ruling No. DA-489-03 which allowed the seeking of judicial relief without waiting for the lapse of the 120-day period. In the present case, ALPI did not assert and invoke BIR Ruling No. DA-489-03 in its petitions before the CTA Division and the CTA En Banc. Hence, it cannot be said that ALPI was misled in relying on BIR Ruling No. DA-489-03 in its premature filing before the CTA Division.

In its Comment,[6] filed on July 28, 2014, ALPI made a survey of recent Court decisions that applied the San Roque case. It argued that in Republic v. GST Philippines,[7] CIR v. Visayas Geothermal,[8] Team Energy Corp. v. CIR,[9] Proctor & Gamble v. CIR,[10] and Visayas Geothermal v. CIR,[11] the Court applied BIR Ruling No. DA-489-03 because the judicial claims for VAT refund in these cases were filed within the interim period from December 10, 2003 to October 6, 2010; and yet, the taxpayer claimants did not expressly state that they relied or claimed to be misled by the said BIR Ruling. Thus, ALPI concluded there was no need to specifically invoke BIR Ruling No. DA-489-03 before a taxpayer could benefit from it.

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In its Reply,[12] filed on December 3, 2014, the CIR asserted that from the start, a taxpayer must expressly allege and prove that it was indeed misled by the provision of BIR Ruling No. DA-489-03; and that it could not be invoked as a mere afterthought. This was in keeping with the well-settled rule that tax credit or refund is strictly construed against the taxpayer.

The Court's Ruling

The petition is bereft of merit.

BIR Ruling No. DA-489-03, issued on December 10, 2003, stated 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 a petition for review. This rule, however, was nullified in Aichi, promulgated on October 6, 2010. Aichi emphasized that the failure to await the decision of the Commissioner or the lapse of 120-day period prescribed in Section 112(C) amounted to a premature filing.

To elucidate on the seemingly conflicting doctrines, San Roque clarified, once and for all, that BIR Ruling No. DA-489-03 was a general interpretative rule. Thus, all taxpayers can rely on the said BIR ruling from the time of its issuance on December 10, 2003 up to its reversal by this Court in Aichi on October 6, 2010, where it was held that the 120+30-day periods are mandatory and jurisdictional. In other words, the Aichi ruling was prospective in application.

In the present case, ALPI can benefit from BIR Ruling No. DA-489-03. It filed its judicial claim for VAT credit certificate on December 29, 2009, well within the interim period from December 10, 2003 to October 6, 2010, so there was no need to wait for the lapse of 120 days prescribed in Section 112 (c) of the NIRC.

The CIR asserted, however, that ALPI cannot invoke the exception from the San Roque Ruling as it did not particularly allege BIR Ruling No. D-489-03 in its petition before the CTA. Thus, it poses a valid question: Is there a need for a taxpayer to specifically invoke BIR Ruling No. DA-489-03 to benefit from the same?

The Court answers in the negative. To reiterate, San Roque, held that BIR Ruling No. DA-489-03 was 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. Thus, it applies to all taxpayers alike, and not only to one particular taxpayer.

The Court agrees with ALPI in its survey of cases which shows that BIR Ruling No. DA-489-03 was applied even though the taxpayer did not specifically invoke the same. As long as the judicial claim was filed between December 10, 2003 and October 6, 2010, then the taxpayer would not be required to wait for the lapse of 120-day period. This doctrine has been consistently upheld in the recent decisions of the Court.[13] On the other hand, in Nippon Express v. CIR,[14] Applied Food Ingredients v. CIR[15] and Silicon Philippines v. CIR,[16] the taxpayer did not benefit from BIR Ruling No. DA-489-03 because they filed their precipitate judicial claim before December 10, 2003.

Indeed, BIR Ruling No. DA-489-03 is a general interpretative law and it applies to each and every taxpayer. To subscribe to the contention of the CIR would alter the Court's ruling in San Roque. It will lead to an unreasonable classification of the beneficiaries of BIR Ruling No. DA-489-03 and further complicate the doctrine. ALPI cannot be faulted for not specifically invoking BIR Ruling No. DA-489-03 as the rules for its application were not definite until the San Roque case was promulgated.

In the furtherance of the doctrinal pronouncements in San Roque, the better approach would be to apply BIR Ruling No. DA-489-03 to all taxpayers who filed their judicial claim for VAT refund within the period of

exception from December 10, 2003 to October 6, 2010. Consequently, this case must be remanded to the CTA Division for the proper determination of the refundable or creditable amount due to ALPI, if any.

WHEREFORE, the petition is DENIED. The July 29, 2013 Decision and the December 17, 2013 Resolution of the Court of Tax Appeals En Banc in CTA EB Case No. 943 are AFFIRMED in toto. Accordingly, the case is REMANDED to the CTA Second Division for the proper determination of the refundable or creditable amount due to the respondent, if any.

SO ORDERED.

Carpio, (Chairperson), Brion, and Perlas-Bernabe,[*] JJ., concur.
Leonen, J., I dissent consistent with my position in San Roque v. CIR.

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[*] Designated Acting Member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 2115, dated July 22, 2015.

[1] Penned by Presiding Justice Roman G. Del Rosario with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalstas, and Ma. Bellen M. Ringpis-Liban, concurring; Associate Justice Caesar A. Casanova dissents; rollo, pp. 28-42.

[2] Id. at 46-49.

[3] Penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Juanito C. Castañeda, Jr., and Caesar A. Casanova, concurring; id. at 50-77.

[4] G.R. No. 187485, G.R. No. 196113 and G.R. No. 197156, February 12, 2013, 690 SCRA 336.

[5] 646 Phil. 710 (2010).

[6] Rollo, pp. 214-233.

[7] G.R. No. 190872, October 17, 2013, 707 SCRA 695.

[8] G.R. No. 181276, November 11, 2013, 709 SCRA 89.

[9] G.R. No. 190928, January 13, 2014, 713 SCRA 142.

[10] G.R. No. 202071, February 19, 2014, 717 SCRA 204.

[11] G.R. No. 197525, June 4, 2014, 725 SCRA 130.

[12] Rollo, pp. 243-249.

[13] See CBK Power v. CIR, G.R. No. 198928, December 18, 2014; Mindanao II Geothermal v. CIR, G.R. No. 204745, December 08, 2014; Taganito Mining Corp. v. CIR, G.R. No. 201195, November 26, 2014; Taganito Mining Corp. v. CIR, G.R. No. 198076, November 19, 2014; AT&T Communications v. CIR, G.R. No. 185969, November 19, 2014; CIR v. Aichi Forging, G.R. No. 183421, October 22, 2014; CIR v. Mindanao II Geothermal, G.R. No. 189440, June 18, 2014; and Taganito Mining Corp. v. CIR, G.R. No. 197591, June 18, 2014.

[14] G.R. No. 196907, March 13, 2013, 693 SCRA 456.

[15] G.R. No. 184266, November 11, 2013, 709 SCRA 164.

[16] G.R. No.184360 & 184361, February 19, 2014, 717 SCRA 30.

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