836 Phil. 529

THIRD DIVISION

[G.R. No. 203249, July 23, 2018]

SAN ROQUE POWER CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

MARTIRES, J.:

The application of the 120-day and 30-day periods provided in Section 112 (D) [later renumbered as Section 112 (C)] of the National Internal Revenue Code *(NIRC)* is at the heart of the present case.

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi),* [1] the Court considered whether the simultaneous filing of both the administrative claim (before the Bureau of Internal Revenue *[BIR])* and judicial claim (before the Court of Tax Appeals *[CTA])* for refund/credit of input VAT under the cited law is permissible. In that case, the respondent asserted that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period. We held that the premature filing of respondent's claim for refund/credit before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by that court.

In the case before us, San Roque Power Corporation *(petitioner)* brought its judicial claims before the CTA prior to the promulgation of the *Aichi* ruling. Yet, the lower court *(CTA En Banc)* dismissed the petitioner's judicial claims on the ground of prematurity, a decision that happily coincided with the Court's ruling in *Aichi.* In its petition, San Roque Power Corporation rues the retroactive application of *Aichi* to taxpayers who merely relied on the alleged prevailing rule of procedure antecedent to *Aichi* that allowed the filing of judicial claims before the expiration of the 120-day period.

We hold that there is no established precedence prior to *Aichi* that permits the simultaneous filing of administrative and judicial claims for refund/credit under Section 112 of the NIRC. Nonetheless, we concede that the CTA has jurisdiction over the claims in this case in view of our pronouncement in *Commissioner of Internal Revenue v. San Roque Power Corporation (San Roque).*[2] In said case, the Court, while upholding *Aichi,* recognized an exception to the mandatory and jurisdictional character of the 120-day period: taxpayers who relied on BIR Ruling DA-489-03, issued on 10 December 2003, until its reversal in *Aichi* on 6 October 2010, are shielded from the vice of prematurity. The said ruling expressly stated that "a 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."

THE FACTS

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the 4 April 2012 Decision[3] of the CTA En Banc in CTA EB No. 657. The CTA En Banc dismissed the petitioner's judicial claims on the ground of prematurity, thus, setting aside the CTA Second Division's partial grant of the refund claims in the consolidated CTA Case Nos. 7424 and 7492. In the subsequent 17 August 2012 Resolution[4] of the CTA En Banc, the court *a quo* denied the petitioner's motion for reconsideration.

The Antecedents

San Roque Power Corporation is a VAT-registered taxpayer which was granted by the BIR a zero-rating on its sales of electricity to National Power Corporation *(NPC)* effective 14 January 2004, up to 31 December 2004.[5]

On **22 December 2005** and **27 February 2006,** the petitioner filed two separate administrative claims for refund of its alleged unutilized input tax for the period 1 January 2004 up to 31 March 2004, and 1 April 2004 up to 31 December 2004, respectively.[6]

Due to the inaction of respondent CIR, the petitioner filed petitions for review before the CTA (raffled to the Second Division): *(1)* on **30 March 2006,** for its unutilized input VAT for the period 1 January 2004 to 31 March 2004, amounting to P17,017,648.31, docketed as CTA Case No. 7424; and *(2)* on **20 June 2006,** for the unutilized input VAT for the period 1 April 2004 to 31 December 2004, amounting to P14,959,061.57, docketed as CTA Case No. 7492.

The Ruling of the CTA Division

During trial, the petitioner presented documentary and testimonial evidence to prove its claim. On the other hand, respondent CIR was deemed to have waived its right to present evidence due to its failure to appear in the two scheduled hearings on the presentation of evidence for the defense. In due course, the CTA Division partially granted the refund claim of the petitioner in the total amount of P29,931,505.18 disposing as follows:

> **WHEREFORE,** premises considered, the instant Petitions for Review are hereby **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-NINE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FIVE PESOS AND 18/100 (P29,931,505.18)** in favor of petitioner, representing unutilized input VAT attributable effectively zero-rated sales of electricity to NPC for the four quarters of 2004.
>
> SO ORDERED.[7]

The CIR moved for reconsideration but to no avail. Thus, on 4 August 2010, the CIR filed a petition for review with the CTA En Banc.

The Petition for Review before the CTA En Banc

Among other issues, the CIR questioned the claimant's judicial recourse to the CTA as inconsistent with the procedure prescribed in Section 112 (D) of the NIRC. The CIR asserted that the petitions for review filed with the CTA were premature, and thus, should be dismissed.

The Ruling of the CTA En Banc

The CTA En Banc sided with the CIR in ruling that the judicial claims of the petitioner were prematurely filed in violation of the 120-day and 30-day periods prescribed in Section 112 (D) of the NIRC. The court held that by reason of prematurity of its petitions for review, San Roque Power Corporation failed to exhaust administrative remedies which is fatal to its invocation of the court's power of review. The dispositive portion of the CTA En Banc's assailed decision reads:

> **WHEREFORE,** the Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **GRANTED.** Accordingly, the Petition for Review filed by respondent on March 30, 2006 docketed as CTA Case No. 7424, as well as the Petition tor Review filed on June 20, 2006 docketed as CTA Case No. 7492 are hereby **DISMISSED** on ground of prematurity.
>
> **SO ORDERED.**[8]

The Present Petition for Review

The petitioner argues that at the time it filed the petitions for review before the CTA on 30 March 2006 and 20 June 2006, no ruling yet was laid down by the Supreme Court concerning the 120-day and 30-day periods provided in Section 112 of the NIRC. Instead, taxpayers such as the petitioner were guided only by the rulings of the CTA[9] which consistently adopted the interpretation that a claimant is not bound by the 120-day and 30-day periods but by the two-year prescriptive period as provided in Section 112 (A) of the NIRC. Such CTA decisions, according to the petitioner, are recognized interpretations of Philippines' tax laws.

The petitioner also asserts that the CTA En Banc erred in applying retroactively the *Aichi* ruling as regards the 120-day and 30-day periods under Section 112 of the NIRC for the following reasons: *(1)* the *Aichi* ruling laid down a new rule of procedure which cannot be given retroactive effect without impairing vested rights; *(2)* a judicial ruling overruling a previous one cannot be applied retroactively before its abandonment; and *(3)* a judicial decision which declares an otherwise permissible act as impermissible violates the *ex post facto* rule under the Constitution.

THE COURT'S RULING

We grant the petition.

I.

No retroactive application of the Aichi ruling

At the outset, it bears stressing that while *Aichi* was already firmly established at the time the CTA En Banc promulgated the assailed decision, nowhere do we find in such assailed decision, however, that the court *a quo* cited or mentioned the *Aichi* case as basis for dismissing the subject petitions for review. As we see it, the CTA En Banc merely relied on Section 112 (D) of the NIRC, which provides –

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (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:
>
> x x x x
>
> (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:
>
> In case of full or partial denial of the claim tor 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.** (emphases supplied)

– correctly interpreting the 120-day and 30-day periods prescribed therein as mandatory and jurisdictional. Thus, it cannot appropriately be insisted that the CTA En Banc's imputed error may be traced to a misplaced invocation of *Aichi.*

Be that as it may, the petitioner cannot find solace in the various CTA decisions that allegedly dispense with the timeliness of the judicial claim for as long as it is within

the two-year prescriptive period. Such legal posturing has already been passed upon.

Thus, in *San Roque,*[10] a case involving the same parties and substantially the same factual antecedents as in the present petition, we rejected the claim that the CTA decisions may be relied upon as binding precedents. We said –

> There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system. As held by this Court in *The Philippine Veterans Affairs Office v. Segundo:*
>
> > x x x Let it be admonished that decisions or the Supreme Court "applying or interpreting the laws or the Constitution . . . form part of the legal system of the Philippines," and, as it were, "laws" by their own right because they interpret what the laws say or mean. **Unlike rulings of the lower courts, which bind the parties to specific cases alone, our judgments are universal in their scope and application, and equally mandatory in character.** Let it be warned that to defy our decisions is to court contempt.[11] (emphasis supplied)

We further held in said case that Article 8 of the Civil Code[12] enjoins adherence to judicial precedents. The law requires courts to follow a rule already established in a **final decision** of the **Supreme Court.** Contrary to the petitioner's view, the decisions of the CTA are not given the same level of recognition.

Concerning the 120-day period in Section 112 (D) of the NIRC, there was no jurisprudential rule **prior to *Aichi*** interpreting such provision as permitting the premature filing of a judicial claim before the expiration of the 120-day period. The alleged CTA decisions that entertained the judicial claims despite their prematurity are not to be relied upon because they are not final decisions of the Supreme Court worthy of according binding precedence. That *Aichi* was yet to be promulgated at that time did not mean that the premature filing of a petition for review before the CTA was a permissible act.

It was only in *Aichi* that this Court directly tackled the 120-day period in Section 112 (D) of the NIRC and declared it to be mandatory and jurisdictional. In particular, *Aichi* brushed aside the contention that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and judicial claims are filed within the two-year prescriptive period provided in Section