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# FIRST DIVISION

# [ G.R. No. 211072, November 07, 2016 ]

## COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD., RESPONDENT.

## DECISION

**CAGUIOA, J:**

Before the Court is a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Amended Decision[2] dated July 29, 2013 and Resolution[3] dated January 7, 2014 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 815. The CTA *En Banc* reversed and set aside its earlier decision dated January 31, 2013, which affirmed the CTA First Division's dismissal of the claim for refund or issuance of tax credit filed by respondent Deutsche Knowledge Services, Pte. Ltd. (DKS) in CTA Case No. 7940 on the ground of prematurity, and remanded the case to the court of origin for further proceedings.

### Facts

DKS is the Philippine branch of a multinational company organized and existing under and by the virtue of the laws of Singapore. It is licensed to do business as a regional operating headquarters in the Philippines.

On July 25, 2007, DKS filed its original Quarterly Value Added Tax (VAT) Return for the 2nd quarter of CY 2007 with the Bureau of Internal Revenue (BIR).

On June 18, 2009, DKS filed with the BIR-Revenue District Office No. 47 an Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the 2nd quarter of CY 2007 in the amount of P8,767,719.30. Subsequently, on June 30, 2009, or even before any action by the CIR on its administrative claim, DKS filed a Petition for Review with the CTA, docketed as CTA Case No. 7940.

Trial commenced and DKS filed its Formal Offer of Evidence on September 22, 2010, which was admitted by the CTA First Division in a Resolution dated December 1, 2010.

Meanwhile, on October 6, 2010, while DKS's claim for refund or tax credit was pending before the CTA First Division, this Court promulgated *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[4] (*Aichi*). In that case, the Court held that compliance with the 120-day period granted to the CIR, within which to act on an administrative claim for refund or credit of unutilized input VAT, as provided under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, is mandatory and jurisdictional in filing an appeal with the CTA.

On February 21, 2011, the CIR filed a Motion to Dismiss,[5] stating that the CTA First Division lacked jurisdiction because respondent's Petition for Review was prematurely filed.

In a Resolution dated April 26, 2011,[6] the CTA First Division dismissed respondent's judicial claim, the decretal portion of which reads:

> WHEREFORE, premises considered, the Motion to Dismiss dated February 21, 2011, filed by respondent [CIR], is hereby GRANTED. Consequently, the Petition for Review dated June 30, 2009, filed by petitioner Deutsche Knowledge Services Pte. Ltd. is hereby DISMISSED.
>
> SO ORDERED.[7]

The CTA First Division ruled that the petition for review filed by DKS on June 30, 2009, or barely twelve (12) days after the filing of its administrative claim for refund, was clearly premature justifying its dismissal. The CTA First Division explained that pursuant to Section 112(C) of the NIRC and the jurisprudence laid down in *Aichi*, it is a mandatory requirement to wait for the lapse of the 120-day period granted to petitioner to act on the application for refund or issuance of tax credit, before a judicial claim may be filed with the CTA.

DKS moved for reconsideration, but the same was denied by the CTA First Division in its Resolution[8] dated August 2, 2011.

Aggrieved, DKS elevated the matter to the CTA *En Banc*, raising the following arguments: (1) the CTA First Division validly acquired jurisdiction of its judicial claim for refund; (2) *Aichi* should not be applied indiscriminately to all claims for VAT refund; (3) the prospective application of the *Aichi* interpretation on the observance of the 120-day rule is legally and equitably imperative; and (4) DKS is entitled to a refund of its claimed input VAT for the 2nd quarter of CY 2007.

On January 31, 2013, the CTA *En Banc* rendered a Decision[9] affirming the April 26, 2011 and August 2, 2011 Resolutions of the CTA First Division. It agreed with the CTA First Division in applying the ruling in *Aichi* which warranted the dismissal of DKS's judicial claim for refund on the ground of prematurity.

In the meantime, on February 12, 2013, this Court decided the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue* [10] (*San Roque*), wherein the Court recognized BIR Ruling No. DA-489-03 as an exception to the 120-day period.

Invoking this Court's pronouncements in *San Roque*, DKS moved for reconsideration. The CTA *En Banc* found merit in said motion and rendered the assailed Amended Decision, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant *Motion for Reconsideration (Re: Decision dated January 31, 2013)* is hereby **GRANTED**. The *Decision* dated January 31, 2013, which affirmed the CTA First Division's dismissal of the Petition for Review docketed as CTA Case No. 7940 on the ground of prematurity, is hereby **REVERSED AND SET ASIDE**.

Accordingly, CTA Case No. 7940 is hereby **REMANDED** to the court of origin for further proceedings.

**SO ORDERED.**[11]

The CIR filed a Motion for Reconsideration but the motion was denied for lack of merit by the CTA *En Banc* in its Resolution[12] dated January 7, 2014.

Hence, this petition.

**Issue**

The singular issue submitted by the Petition for this Court's resolution is whether the CTA *En Banc* erred in taking cognizance of the case and holding that DKS's petition for review was not prematurely filed with the CTA First Division.

**The Court's Ruling**

The Petition lacks merit.

***Exception to the mandatory and jurisdictional nature of the 120-day period under Section 112(C) of the NIRC***

Section 112 of the NIRC provides for the rules on claiming refunds or tax credits of unutilized input VAT, the pertinent portions of which read as follows:

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

xxxx

(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)

Based on the plain language of the foregoing provision, a VAT registered taxpayer claiming for a refund or tax credit of its excess and unutilized input VAT must file an

administrative claim within two (2) years from the close of the taxable quarter when the sales are made. After that, the CIR is given 120 days, from the submission of complete documents in support of said administrative claim, within which to grant or deny said claim. Upon receipt of CIR's decision, denying the claim in full or partially, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has 30 days within which to file a petition for review with the CTA.

As earlier stated, this Court in *Aichi* clarified that the 120-day period granted to the CIR is mandatory and jurisdictional, the non-observance of which is fatal to the filing of a judicial claim with the CTA. The Court further explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertains only to the filing of the administrative claim with the BIR; while the judicial claim may be filed with the CTA within 30 days from the receipt of the decision of the CIR or expiration of 120-day period of the CIR to act on the claim. Thus:

> **Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim.** In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. **However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.**
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> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
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> Respondent's assertion 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 has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two 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." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.
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> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or