

SECOND DIVISION

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

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

DECISION

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 4th 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 4th 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.

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.

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.

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

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