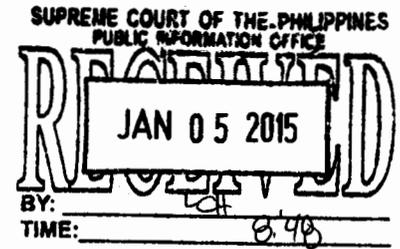




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **12 November 2014** which reads as follows:

G.R. No. 179864: KEPCO PHILIPPINES CORPORATION v. COMMISSIONER OF INTERNAL REVENUE; G.R. No. 194244: KEPCO ILIJAN CORPORATION v. COMMISSIONER OF INTERNAL REVENUE; G.R. No. 196934: KEPCO ILIJAN CORPORATION v. COMMISSIONER OF INTERNAL REVENUE; G.R. No. 201059: KEPCO PHILIPPINES CORPORATION v. COMMISSIONER OF INTERNAL REVENUE; G.R. No. 201438: KEPCO ILIJAN CORPORATION v. COMMISSIONER OF INTERNAL REVENUE; G.R. No. 201699: KEPCO PHILIPPINES CORPORATION v. COMMISSIONER OF INTERNAL REVENUE

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These six consolidated cases originated from full and partial denials of judicial claims for input value-added tax (VAT) refund filed prior to the 2010 case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,¹ affirming the 2008 case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*² on the 120+30-day rule.

**Petitions by Kepco Philippines Corporation (KEPHILCO)
G.R. Nos. 179864, 201059, 201699**

Petitioner KEPHILCO is a VAT-registered taxpayer engaged in the production and sale of electricity as an independent power producer, selling electricity to the National Power Corporation.³ It filed the following three petitions for review:⁴

I. G.R. No. 179864

This petition⁵ seeks to reverse and partially modify the Court of Tax Appeals (CTA) En Banc's June 29, 2007 decision,⁶ affirming the CTA Second Division *in toto*, and September 25, 2007 resolution,⁷ denying

¹ G.R. No. 184823, October 6, 2010, 632 SCRA 422 [Per J. Del Castillo, First Division].
² 586 Phil. 712 (2008) [Per J. Velasco, Jr., Second Division].
³ *Rollo* (G.R. No. 179864), p. 203.
⁴ The petitions were filed pursuant to Rule 45 of the Rules of Court.
⁵ *Rollo* (G.R. No. 179864), pp. 3-63.
⁶ *Id.* at 71-88. The decision was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Olga Palanca-Enriquez. Presiding Justice Ernesto D. Acosta penned a concurring and dissenting opinion.
⁷ *Id.* at 95-97. The resolution was penned by Associate Justice Caesar A. Casanova and concurred in by

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reconsideration.

KEPHILCO prays for “the additional amount of PhP4,215,567.37 over and above the PhP1,405,189.12 already awarded to the Petitioner by the CTA for a total amount of PhP5,620,756.49 representing Petitioner’s substantiated unutilized input VAT for the taxable year 2000.”⁸

On January 29, 2001, KEPHILCO filed its administrative claim for input VAT refund covering the first to third quarters of 2000, while it filed its letter-request covering the fourth quarter on March 21, 2001.⁹

Period	Input VAT
First Quarter of 2000	₱651,053.90
Second Quarter of 2000	₱1,092,198.44
Third Quarter of 2000	₱1,690,522.38
Fourth Quarter of 2000	₱2,494,723.54
Total:	₱5,928,498.26

On March 31, 2002, KEPHILCO filed a judicial claim with the CTA to toll the two-year prescriptive period since the Commissioner of Internal Revenue (CIR) had not acted on its administrative claims.¹⁰

On March 10, 2005, the CTA Second Division partially granted KEPHILCO’s petition with a refund of ₱1,405,189.12 representing unutilized VAT attributable to proven zero-rated sales of electricity to National Power Corporation.¹¹

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **REFUND** in favor of the petitioner the amount of P1,405,189.12 representing unutilized input value-added tax for taxable year 2000 attributable to proven zero-rated sales of electricity to NPC.

No pronouncement as to cost.

SO ORDERED.¹²

On June 17, 2005, the court division denied KEPHILCO’s motion for

Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista and Erlinda P. Uy. Presiding Justice Ernesto D. Acosta penned a concurring and dissenting opinion. Associate Justice Olga Palanca-Enriquez was on leave.

⁸ Id. at 258.

⁹ Id. at 72.

¹⁰ Id.

¹¹ Id. at 73 and 81.

¹² Id. at 73.

partial reconsideration for lack of merit, prompting petitioner to appeal with the CTA En Banc.¹³

On June 29, 2007, the CTA En Banc affirmed the CTA Second Division *in toto*:

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the March 10, 2005 Decision and June 17, 2005 Resolution of the *CTA Second Division* are hereby **AFFIRMED in toto**.

SO ORDERED.¹⁴

The CTA found that out of the declared ₱2,754,302,005.32 zero-rated sales, only ₱689,582,876.27 was established by official receipts formally offered by KEPHILCO:¹⁵

Period	Zero-Rated Sales
First Quarter of 2000	₱559,061,502.50
Second Quarter of 2000	₱735,857,511.71
Third Quarter of 2000	₱582,517,204.48
Fourth Quarter of 2000	₱876,865,786.63
Total:	₱2,754,302,005.32

Date	O.R.#	1 st Q	2 nd Q	3 rd Q	4 th Q	Total
3/6/00	151	74,666,735.62				74,666,735.62
4/3/00	154		74,679,090.12			74,679,090.12
5/9/00	157		69,764,211.54			69,764,211.54
6/5/00	159		74,724,067.62			74,724,067.62
7/-/00	160			72,250,997.18		72,250,997.18
8/7/00	162			74,649,209.79		74,649,209.79
9/5/00	166			72,271,487.22		72,271,487.22
10/5/00	169				64,549,345.47	64,549,345.47
11/7/00	171				54,722,259.90	54,722,259.90
12/7/00	173				57,305,471.81	57,305,471.81
TOTAL		74,666,735.62	219,167,369.28	219,171,694.19	176,577,077.18	₱689,582,876.27

The CTA, thus, apportioned the input taxes equivalent to the proven zero-rated sales of electricity to National Power Corporation, computed as

¹³ Id.

¹⁴ Id. at 87.

¹⁵ Id. at 77.

follows:¹⁶

Supported zero-rated sales to NPC	689,582,876.27
Divided by the total declared zero-rated sales	<u>2,754,302,005.32</u>
Rate of supported zero-rated sales	0.25

Out of the ₱5,928,498.26 input VAT claimed by KEPHILCO, disallowances were made per commissioned independent certified public accountant (CPA), and per further verification by the court.¹⁷ The remaining validly supported input VAT amounted to ₱5,620,756.49.¹⁸ Thus, CTA computed its partial grant of refund as follows:¹⁹

Validly supported input VAT	5,620,756.49
Multiply by the Rate of supported zero-rated sales	<u>0.25</u>
Amount Refundable	₱1,405,189.12

On September 25, 2007, the CTA En Banc denied reconsideration:

WHEREFORE, finding no plausible basis, factual or legal, to grant the reconsideration sought for, Kepco's "**Motion for Reconsideration**" is hereby **DENIED** for lack of merit.

SO ORDERED.²⁰

Hence, KEPHILCO filed the instant petition raising the sole issue on whether VAT official receipts as a substantiation requirement for refund claims apply to zero-rated sales.

KEPHILCO argues that the "[s]ubstantiation requirements which strictly ask for presentation of VAT invoices or receipts [are] applicable only to purchases and not to zero-rated sales."²¹ It contends lack of basis for the CTA to pro-rate "valid and substantiated input VAT as against . . . supported zero-rated sales[.]"²² KEPHILCO also raises judicial legislation since "there is nothing, either a provision of law or any administrative regulation, which imposes a penalty of outright denial of refund, in case claimant was found to be non-compliant with invoicing requirements."²³

CIR counters that "mere advice for payment of energy fees . . . cannot

¹⁶ Id. at 77-78.

¹⁷ Id. at 78-79.

¹⁸ Id. at 79.

¹⁹ Id. at 81.

²⁰ Id. at 97.

²¹ Id. at 214.

²² Id. at 226.

²³ Id. at 232.

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be used as proof of actual payment of [National Power Corporation].”²⁴

At the outset, this court notes that KEPHILCO’s March 31, 2002 judicial claim was filed beyond the 120+30-day period reckoned from its administrative claim on January 29, 2001 for the first three quarters of 2000, and on March 21, 2001 for the fourth quarter of 2000.

In the fairly recent case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,²⁵ this court en banc affirmed with qualification the decision of its first division in *Aichi* by holding that compliance with the 120-day and the 30-day periods under Section 112 Tax Code, save for those VAT refund cases that were prematurely filed (i.e., before the lapse of the 120-day period) with the CTA between December 10, 2003 (when the Bureau of Internal Revenue Ruling No. DA-489-03 was issued) and October 6, 2010, is mandatory and jurisdictional.²⁶

The court also declared that, following *Mirant*, claims for refund or tax credit of excess input tax are governed not by Section 229 but only by Section 112 of the 1997 National Internal Revenue Code.²⁷

San Roque filed a motion for reconsideration and supplemental motion for reconsideration in G.R. No. 187485 arguing for the prospective application of the 120-day and 30-day mandatory and jurisdictional periods. The court denied this with finality in a resolution dated October 8, 2013. The same resolution also denied the CIR’s motion for reconsideration in G.R. No. 196113 assailing the validity of Ruling No. DA-489-03.²⁸

This court in *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*²⁹ reiterated the *San Roque* ruling that “the 30-day period to appeal is both mandatory and jurisdictional[,]”³⁰ and the window for exemption “is limited to premature filing and does not extend to late filing of a judicial claim.”³¹

The judicial claim having been filed out of time, the CTA had no jurisdiction over KEPHILCO’s petition.

Section 7(a) of Republic Act No. 9282 clearly provides for the CTA’s

²⁴ Id. at 162.

²⁵ G.R. No. 187485, February 12, 2013, 690 SCRA 336 [Per J. Carpio, En Banc].

²⁶ Id. at 398–399.

²⁷ Id. at 393–394.

²⁸ *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, October 8, 2013, 707 SCRA 66 [Per J. Carpio, En Banc].

²⁹ G.R. No. 191498, January 15, 2014, 713 SCRA 644 [Per C.J. Sereno, First Division].

³⁰ Id. at 669.

³¹ Id. at 673–674.

jurisdiction over refunds such that the CTA has exclusive appellate jurisdiction (a) to review CIR decisions, and (b) to review CIR inaction “where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]”

The matter of jurisdiction may be ruled upon regardless of stage of proceedings considering that a “[j]udgment rendered without jurisdiction is null and void, and void judgment cannot be the source of any right whatsoever.”³²

In view of the CTA decision’s nullity due to its lack of jurisdiction on KEPHILCO’s belatedly filed judicial claim, there is no need for this court to belabor petitioner’s issue on substantiation requirements.

Consequently, KEPHILCO’s input VAT refund claim for the taxable period 2000 is denied for being filed out of time.

II. G.R. No. 201059

This petition³³ prays for reconsideration of the CTA En Banc’s October 25, 2011 decision³⁴ and March 16, 2012 resolution³⁵ “by rendering a resolution **GRANTING** the refund of Php14,221,843.60.”³⁶

On December 22, 2003, KEPHILCO filed an application for VAT zero-rate for its electricity sales to National Power Corporation in 2004.³⁷ KEPHILCO timely filed its quarterly VAT returns reflecting allegedly incurred input VAT from expenses on purchase of goods and services.³⁸

On October 28, 2005, KEPHILCO filed an administrative claim for refund with BIR Revenue District Office (RDO) No. 50 in the amount of ₱15,512,529.73, representing input VAT for taxable year 2004.³⁹

³² *El Greco Ship Manning and Management Corporation v. Commissioner of Customs*, 593 Phil. 476, 492 (2008) [Per J. Chico-Nazario, Third Division], citing *Vda. de Lopez v. Court of Appeals*, 506 Phil. 497, 505 (2005) [Per J. Garcia, Third Division].

³³ *Rollo* (G.R. No. 201059), pp. 17–66.

³⁴ *Id.* at 80–92. The decision was penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista penned a dissenting opinion. Associate Justice Olga Palanca-Enriquez was on leave.

³⁵ *Id.* at 75–79. The resolution was penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista maintained his dissenting opinion in the October 25, 2011 en banc decision.

³⁶ *Id.* at 64, emphasis in the original.

³⁷ *Id.* at 81.

³⁸ *Id.* at 82.

³⁹ *Id.* at 25 and 82.

On April 25, 2006, KEPHILCO filed its judicial claim with the CTA, to suspend the two-year prescriptive period considering CIR's inaction on its administrative claim.⁴⁰ CIR filed its answer on July 12, 2006.⁴¹ Respondent raised special and affirmative defenses such as petitioner's failure to show that the tax was "erroneously or illegally collected[.]"⁴²

Petitioner presented testimonial and documentary evidence during trial while respondent's counsel manifested on January 14, 2008 that he will submit the case for decision based on the records.⁴³ The parties were then ordered to file their respective memoranda.⁴⁴

Petitioner filed its memorandum on March 14, 2008 and also filed an urgent motion to reopen the case on May 8, 2008 to allow petitioner to present additional evidence.⁴⁵ Respondent filed no comment on the motion, and the court granted the motion.⁴⁶ Thus, on August 27, 2008 and November 10, 2008, petitioner recalled its witness Jennifer Castejon to prove, among others, that KEPHILCO "sells electricity solely to the National Power Corporation, that all of its sales are VAT zero-rated. . ."⁴⁷ Petitioner also filed its supplemental formal offer of evidence.⁴⁸ The case was then submitted for decision on August 11, 2009 with petitioner's memorandum and supplement to memorandum, and without respondent's memorandum.⁴⁹

On April 12, 2010, the CTA Special Second Division partially granted⁵⁰ the petition:

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT MILLION EIGHTY THREE THOUSAND THREE HUNDRED TWENTY SIX PESOS AND FIFTY FIVE CENTAVOS (P 8,083, 326.55)** in favor of petitioner Kepco Philippines Corporation, representing unutilized input VAT for taxable year 2004.

⁴⁰ Id.

⁴¹ Id. at 26 and 82.

⁴² Id. at 82.

⁴³ Id. at 26 and 83.

⁴⁴ Id. at 83.

⁴⁵ Id. at 26 and 83.

⁴⁶ Id.

⁴⁷ Id. at 84.

⁴⁸ Id. at 26 and 84.

⁴⁹ Id.

⁵⁰ Id. at 111-130. The decision was penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Juanito C. Castañeda, Jr. (Chair). Associate Justice Olga Palanca-Enriquez was on leave.

SO ORDERED.⁵¹

Both parties filed for reconsideration.⁵² On October 21, 2010, the court recalled and set aside its earlier decision, and dismissed the petition for lack of jurisdiction.⁵³

WHEREFORE, in view of the foregoing considerations, petitioner's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit, while respondent's Motion for Reconsideration is **GRANTED** on jurisdictional grounds.

Accordingly, our Decision dated April 12, 2010, in the above captioned case is hereby **RECALLED** and **SET ASIDE** and the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.⁵⁴

On October 25, 2011, the CTA En Banc affirmed the division:

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the October 21, 2010 Amended Decision of Former Second Division is hereby **AFFIRMED**.

SO ORDERED.⁵⁵

On March 16, 2012, the CTA En Banc denied reconsideration:

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.⁵⁶

Hence, the instant petition docketed as G.R. No. 201059 was filed. Petitioner argues its compliance with pronouncements by this court and the CTA that judicial claims must be filed "within 2 years from the filing of Quarterly VAT Returns."⁵⁷ Petitioner submits that jurisdiction is determined at the time of filing of the case, and based on the prevailing jurisprudence on April 25, 2006, the CTA acquired jurisdiction over its petition and any contrary decision can no longer oust such power.⁵⁸ Lastly, petitioner submits that the 2010 *Aichi* case on the 120+30-day rule "should only be applied

⁵¹ Id. at 129.

⁵² Id. at 27–28 and 84–85.

⁵³ Id. at 99–109.

⁵⁴ Id. at 108.

⁵⁵ Id. at 91.

⁵⁶ Id. at 78.

⁵⁷ Id. at 31.

⁵⁸ Id. at 49.

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prospectively.”⁵⁹

Respondent counters that KEPHILCO’s judicial claim was filed beyond the prescriptive period, thus, the CTA no longer had jurisdiction over the claim.⁶⁰ Respondent argues that *Aichi* interpreted Section 112 of the Tax Code, thus, it can be applied to cases pending at the time of its promulgation.⁶¹

The sole issue involves the timeliness of petitioner’s judicial claim considering Section 112(C) of the Tax Code, as amended:

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

.....

(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)

A simple reading of the above-quoted provision reveals that the taxpayer may appeal the denial or the inaction of the CIR only within 30 days from receipt of the decision that denies the claim or the expiration of the 120-day period given to the CIR to decide the claim.

We apply *San Roque* in that compliance with the 120-day and the 30-day periods under Section 112 Tax Code is mandatory and jurisdictional, save for those VAT refund cases that were prematurely filed (i.e. before the lapse of the 120-day period) with the CTA between December 10, 2003 (when BIR Ruling No. DA-489-03 was issued) and October 6, 2010.⁶²

KEPHILCO filed its administrative claim on October 28, 2005, and its judicial claim on April 25, 2006. Thus, KEPHILCO filed its judicial claim

⁵⁹ Id. at 53.

⁶⁰ Id. at 210.

⁶¹ Id. at 213–215.

⁶² *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 336, 398–399 [Per J. Carpio, En Banc].

29 days after the lapse of the prescribed 120+30-day period. The CTA En Banc found:

As can be gleaned from the records, notwithstanding the timely filing of the administrative claim, the judicial claim was filed only on April 25, 2006, twenty-nine (29) days after the lapse of the prescribed period. Thus, **due to the late filing of petitioner's Petition for Review, the Court is, therefore, bereft of jurisdiction to act on the said judicial claim.**⁶³ (Emphasis supplied)

KEPHILCO filed the judicial claims within the window for exemption created in *San Roque*. However, this court in *Mindanao II Geothermal* reiterated the *San Roque* ruling that “the 30-day period to appeal is both mandatory and jurisdictional[.]”⁶⁴ and the window for exemption “is limited to premature filing and does not extend to late filing of a judicial claim.”⁶⁵

Consequently, considering that late filing of its judicial claim, this court resolves to affirm the CTA in dismissing the petition.

III. G.R. No. 201699

This petition⁶⁶ prays for reconsideration of the CTA En Banc's January 10, 2012 decision⁶⁷ and April 23, 2012 resolution⁶⁸ “by rendering a resolution **GRANTING** the refund of Php11,262,584.47.”⁶⁹

On December 22, 2004, KEPHILCO filed an application for VAT zero-rate for its electricity sales to National Power Corporation in 2005. Petitioner timely filed its quarterly VAT returns for the first three quarters of 2005 and for its monthly return for October 2005. KEPHILCO allegedly incurred input VAT amounting to ₱11,262,584.47 from expenses on purchase of goods and services from January 1 to October 31, 2005.⁷⁰

On October 28, 2005, KEPHILCO filed an administrative claim for

⁶³ *Rollo* (G.R. No. 201059), p. 89.

⁶⁴ *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014, 713 SCRA 644, 669 [Per C.J. Sereno, First Division].

⁶⁵ *Id.* at 673–674.

⁶⁶ *Rollo* (G.R. No. 201699), pp. 16–65.

⁶⁷ *Id.* at 79–90. The decision was penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista penned a dissenting opinion.

⁶⁸ *Id.* at 74–77. The resolution was penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista maintained his dissenting opinion in the January 10, 2012 en banc decision. Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez were on wellness leave.

⁶⁹ *Id.* at 63, emphasis in the original.

⁷⁰ *Id.* at 80.

refund with BIR RDO No. 50 for input VAT for the first three quarters of 2005. On December 7, 2005, it filed an administrative claim for refund for input VAT incurred for October 2005.⁷¹

On April 25, 2007, KEPHILCO filed its judicial claim with the CTA.⁷² The CIR filed its answer on July 16, 2007,⁷³ raising special and affirmative defenses such as KEPHILCO's failure to show that the tax was "erroneously or illegally collected."⁷⁴ The case was submitted for decision on November 6, 2009 with petitioner's memorandum, and without respondent's memorandum.⁷⁵

On October 19, 2010, the CTA Former Second Division dismissed⁷⁶ the petition for being filed out of time:

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for being filed out of time.

SO ORDERED.⁷⁷

On February 23, 2011, the court denied⁷⁸ reconsideration:

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.⁷⁹

On January 10, 2012, the CTA En Banc found that the judicial claim filed on April 25, 2007 was filed beyond the 30-day period from the lapse of the 120-day period for the Commissioner to decide the claim, applying *Aichi*.⁸⁰ The court affirmed the division *in toto*:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the October 19, 2010 Decision and the February 23, 2011 Resolution of the CTA Former Second Division are hereby **AFFIRMED in toto**.

⁷¹ Id. at 80, 85 and 100.

⁷² Id.

⁷³ Id. at 81.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id. at 98–109. The decision was penned by Associate Justice Juanito C. Castañeda, Jr. (Chair) and concurred in by Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez.

⁷⁷ Id. at 108.

⁷⁸ Id. at 111–116. The resolution was penned by Associate Justice Juanito C. Castañeda, Jr. (Chair) and concurred in by Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez.

⁷⁹ Id. at 116.

⁸⁰ Id. at 85–87.

SO ORDERED.⁸¹

On April 23, 2012, the CTA En Banc denied reconsideration:

WHEREFORE, there having no new matters or issues advanced by petitioner in its Motion which may compel this Court to reverse, modify or amend the Assailed Decision of the CTA *En Banc*, the instant **Motion for Reconsideration** is hereby **DENIED** for lack of merit. Our decision dated January 10, 2012 dismissing present Petition for Review for lack of merit stands.

SO ORDERED.⁸²

Hence, the instant petition docketed as G.R. No. 201699 was filed. Petitioner raises the same arguments made in its petition docketed as G.R. No. 201059 earlier discussed.⁸³

Respondent counters that “Section 112 of the [Tax Code] requires compliance with the [120+30-day period] to file [a] judicial claim for unutilized input VAT.”⁸⁴ Petitioner filed its administrative claims on October 28, 2005 and December 7, 2005, giving respondent 120 days or until February 25, 2006 and April 6, 2006 to act on the claims.⁸⁵ On the other hand, petitioner had 30 days from February 25, 2006 and April 6, 2006 or until March 27, 2006 and May 8, 2006, “to appeal respondent’s inaction on its [administrative] claims. . .”⁸⁶ Petitioner only filed its judicial claim on April 25, 2007, clearly beyond the prescriptive period.⁸⁷

Respondent adds that *Aichi* merely applied Section 112 of the Tax Code, already existing when petitioner filed its claim, and did not set a new doctrine.⁸⁸

The sole issue involves the timeliness of petitioner’s judicial claim. Similar to G.R. No. 201059, for reasons earlier discussed, this court applies its ruling in *San Roque* on the mandatory 120+30-day period, reiterated in *Mindanao II Geothermal* in that “the 30-day period to appeal is both mandatory and jurisdictional,”⁸⁹ and the window for exemption “is limited to premature filing and does not extend to late filing of a judicial claim.”⁹⁰

⁸¹ Id. at 89.

⁸² Id. at 76.

⁸³ Id. at 28.

⁸⁴ Id. at 192.

⁸⁵ Id. at 196.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id. at 201.

⁸⁹ *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014, 713 SCRA 644, 669 [Per C.J. Sereno. First Division].

⁹⁰ Id. at 673-674.

Consequently, considering the late filing of its judicial claim, this court resolves to affirm the CTA in dismissing the petition.

**Petitions by Kepco Ilijan Corporation (KEILCO)
G.R. Nos. 194244, 196934, 201438**

Petitioner KEILCO is also a VAT-registered taxpayer that sells electricity exclusively to National Power Corporation.⁹¹ It filed the following three petitions for review.

IV. G.R. No. 194244

This petition⁹² prays for the reversal of the CTA En Banc May 6, 2010 decision⁹³ and October 26, 2010 resolution,⁹⁴ and the CTA Second Division May 7, 2009 decision⁹⁵ and July 23, 2009 resolution.⁹⁶ Petitioner prays that respondent be ordered “to refund to Petitioner KEILCO, or in the alternative issue a tax credit certificate, in the amount of P533,170,502.24 representing Petitioner’s claim of unutilized input taxes paid to Respondent for the fourth (4th) quarter of the taxable year 2000.”⁹⁷

On January 25, 2001, KEILCO filed its quarterly VAT return for the fourth quarter of 2000 showing:⁹⁸

Input Tax Carried Over from Previous Quarter	1,146,358,112.36
Domestic Purchases for the Quarter	147,951,468.58
Importation of Goods for the Quarter	385,219,033.66
Total Available Input Tax	1,679,528,614.60

On January 10, 2003, KEILCO filed an administrative claim for refund with the BIR for P533,170,502.24 “representing the VAT allegedly paid on domestic purchases and importation of capital goods/equipment and

⁹¹ *Rollo* (G.R. No. 196934), pp. 24 and 121.

⁹² *Rollo* (G.R. No. 194244), pp. 14–59.

⁹³ *Id.* at 83–95. The decision was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas. Associate Justice Caesar A. Casanova was on leave.

⁹⁴ *Id.* at 65–82. The resolution was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista was on leave.

⁹⁵ *Id.* at 102–116. The decision was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr. (Chair) and Erlinda P. Uy.

⁹⁶ *Id.* at 96–100. The resolution was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr. (Chair) and Erlinda P. Uy.

⁹⁷ *Id.* at 57.

⁹⁸ *Id.* at 84–85.

services for the fourth quarter of calendar year 2000. . .”⁹⁹

After 12 days or on January 22, 2003, KEILCO filed a judicial claim with the CTA.¹⁰⁰ The CIR filed its answer on March 13, 2003 raising special and affirmative defenses including premature filing of judicial claim, and petitioner’s non-entitlement to the refund of the amounts prayed for.¹⁰¹

KEILCO presented testimonial and documentary evidence during trial while the CIR waived its right to present evidence by counsel’s repeated failure to appear during hearings, despite due notice.¹⁰²

On May 7, 2009, the CTA Second Division dismissed the petition:

WHEREFORE, premises considered, the petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**.

SO ORDERED.¹⁰³

On July 23, 2009, the court denied reconsideration:

WHEREFORE, premises considered, petitioner’s “Motion For Reconsideration” is hereby **DENIED** for lack of merit.

SO ORDERED.¹⁰⁴

On May 6, 2010, the CTA En Banc affirmed the division:

WHEREFORE premises considered, the petition is hereby **DENIED**. The Decision of the former Second Division of this Court on CTA Case No. 6590, dated May 7, 2009, and its Resolution, dated July 23, 2009, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.¹⁰⁵

On October 26, 2010, the court denied reconsideration:

WHEREFORE, premises considered, petitioner’s “Motion for Reconsideration” is hereby **DENIED** for lack of merit.

⁹⁹ Id. at 85.

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Id. at 85–86.

¹⁰³ Id. at 115.

¹⁰⁴ Id. at 100.

¹⁰⁵ Id. at 94.

SO ORDERED.¹⁰⁶

Hence, the instant petition docketed as G.R. No. 194244. Petitioner argues that it seasonably filed its administrative and judicial claims in accordance with established pronouncements by this court and applicable BIR regulations.¹⁰⁷ The *Mirant* and *Aichi* rulings cannot be retroactively applied.¹⁰⁸ Petitioner adds that it has sufficient factual and legal basis for its claim.¹⁰⁹

Respondent submits that the two-year period is reckoned from the close of the taxable quarter and not from the filing of the quarterly VAT return.¹¹⁰ Respondent agrees with the CTA on the inapplicability of the *Atlas*¹¹¹ and *Mirant* doctrines since the provisions involved in these cases are “separate and distinct from the law on [input VAT refund claims] on capital goods.”¹¹²

The sole issue involves the timeliness of petitioner’s administrative claim, specifically, on when the two-year prescriptive period is reckoned.

Section 112(A) of the Tax Code, as amended, clearly 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: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volumes of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes*

¹⁰⁶ Id. at 82.

¹⁰⁷ Id. at 26.

¹⁰⁸ Id. at 39.

¹⁰⁹ Id. at 52.

¹¹⁰ Id. at 257.

¹¹¹ *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 551 Phil. 519 (2007) [Per J. Chico-Nazario, Third Division].

¹¹² *Rollo* (G.R. No. 194244), p. 258.

shall be allocated ratably between his zero-rated and non-zero-rated sales. (Emphasis supplied)

The 2010 case of *Aichi* affirmed the 2008 case of *Mirant* in that Section 112(A) applies in determining when to reckon the running of the two-year prescriptive period for unutilized input tax refund claims.¹¹³ The court explained that Sections 204(C) and 229 “apply only to instances of erroneous payment or illegal collection of internal revenue taxes.”¹¹⁴ Under Section 112(A), the period must be reckoned from the close of the taxable quarter when the sales were made.¹¹⁵

The 2013 case of *San Roque* clarified the effectivity of the *Atlas*, *Mirant*, and *Aichi* doctrines on when to reckon the two-year prescriptive period as follows:

The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant*. The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. *Prior to the Atlas doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the verba legis rule.* The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.¹¹⁶ (Emphasis supplied)

The close of the fourth taxable period of 2000 being December 31, 2000, KEILCO had until December 31, 2002 to file its administrative claim. KEILCO’s January 10, 2003 administrative claim was, thus, filed beyond the prescriptive period.

Consequently, this court resolves to affirm the Court of Tax Appeals in dismissing the petition.

V. G.R. No. 196934

This petition¹¹⁷ prays that this court “**REVERSE** and **SET ASIDE** the assailed Decision and Resolution of the CTA *En Banc* and **ORDER** the

¹¹³ *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010, 632 SCRA 422, 437–438 [Per J. Del Castillo, First Division].

¹¹⁴ *Id.* at 437.

¹¹⁵ *Id.* at 439–440.

¹¹⁶ *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 336, 397 [Per J. Carpio, En Banc].

¹¹⁷ *Rollo* (G.R. No. 196934), pp. 15–98.

REFUND or ISSUANCE OF TAX CREDIT CERTIFICATE for the amount of **Php43,025,931.29.**¹¹⁸

On December 22, 2003, KEILCO filed an application for VAT zero-rate for its electricity sales to National Power Corporation in 2004.¹¹⁹ KEILCO made domestic purchases of goods and services in 2004 as costs for its electricity production and sales to National Power Corporation, accumulating input taxes amounting to ₱45,357,998.44.¹²⁰ KEILCO's 2004 VAT returns reflect the following zero-rated sales:¹²¹

Year 2004	Zero-rated Sales/Receipts
1st Quarter	1,637,748,690.31
2nd Quarter	1,820,980,585.76
3rd Quarter	1,706,051,141.96
4th Quarter	1,698,793,509.30
Total	₱6,863,573,927.33

On October 28, 2005, KEILCO filed an administrative claim for input VAT on importations and domestic purchases of goods and services used in its electricity production and sales.¹²²

On April 25, 2006, KEILCO filed a judicial claim with the CTA.¹²³ CIR filed its answer raising special and affirmative defenses, including the need for petitioner to prove compliance with Sections 112, 204(c) and 229 of the Tax Code, as amended.¹²⁴ "Trial ensued and thereafter the case was submitted for decision on March 19, 2008. . ."¹²⁵

On January 5, 2009, the CTA Second Division partially granted¹²⁶ the petition:

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. **ACCORDINGLY**, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** amounting to **THIRTY TWO MILLION TWO HUNDRED SEVENTY SIX THOUSAND EIGHTY AND 88/100 PESOS (P32,276,080.88)** to petitioner Kepco Ilijan Corporation, representing its unutilized input VAT for the second, third, and fourth quarters of calendar year 2004.

¹¹⁸ Id. at 96, emphasis in the original.

¹¹⁹ Id. at 122.

¹²⁰ Id.

¹²¹ Id. at 122-123.

¹²² Id. at 123.

¹²³ Id.

¹²⁴ Id. at 123-124.

¹²⁵ Id. at 124.

¹²⁶ Id. at 151-170. The decision was penned by Associate Justice Juanito C. Castañeda, Jr. (Chair) and concurred in by Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez.

SO ORDERED.¹²⁷

On July 21, 2009, the court denied¹²⁸ KEILCO's motion for partial reconsideration and respondent's motion for reconsideration:

WHEREFORE, premises considered, petitioner's *Motion for Partial Reconsideration* and respondent's *Motion for Reconsideration* are hereby **DENIED** for lack of merit.

SO ORDERED.¹²⁹

On January 27, 2011, the CTA En Banc denied¹³⁰ KEILCO's petition and granted CIR's petition:

WHEREFORE, the Petition for Review filed by Kepco Ilijan Corporation docketed as C.T.A. EB No. 516 is hereby **DENIED**, for lack of merit.

On the other hand, the Petition for Review filed by the Commissioner of Internal Revenue docketed as C.T.A. EB No. 518, is **GRANTED**. The assailed Decision dated January 5, 2009 and the Resolution dated July 21, 2009 are **REVERSED** and **SET ASIDE**. Accordingly, the claim for refund or issuance of Tax Credit Certificate filed by Kepco Ilijan Corporation is **DENIED**, for lack of jurisdiction.

SO ORDERED.¹³¹

On May 16, 2011, the CTA En Banc denied¹³² KEILCO's motion for reconsideration:

WHEREFORE, finding no cogent reason to reverse, amend or modify the Decision of the Court *En Banc* dated January 27, 2011, Kepco's *Motion for Reconsideration* is hereby **DENIED**, for lack of merit.

¹²⁷ Id. at 169.

¹²⁸ Id. at 172–177. The resolution was penned by Associate Justice Juanito C. Castañeda, Jr. (Chair) and concurred in by Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez.

¹²⁹ Id. at 177.

¹³⁰ Id. at 119–139. The decision was penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista penned a dissenting opinion. Associate Justice Juanito C. Castañeda, Jr. was on leave.

¹³¹ Id. at 137–138.

¹³² Id. at 107–116. The resolution was penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista maintained his dissenting opinion in the January 27, 2011 en banc decision. Associate Justice Caesar A. Casanova, on leave.

SO ORDERED.¹³³

Petitioner argues that it seasonably filed its administrative and judicial claims consistent with applicable laws and jurisprudence,¹³⁴ and that “*Mirant* and *Aichi* can only be applied prospectively.”¹³⁵ Petitioner contends that a retroactive application of these rulings amount to a denial of due process.¹³⁶ In any case, assuming this rule applies, respondent’s failure to object on the petition’s filing amounts to a waiver of such defense.¹³⁷ Petitioner also contends that “[t]he use of ‘TIN-V’ in receipts or invoices is sufficient compliance with the invoicing requirement.”¹³⁸

Respondent counters that Section 112 of the Tax Code, as amended, clearly provides that an administrative claim must be filed within “two (2) years after the close of the taxable quarter when the pertinent sales were made,”¹³⁹ and the Commissioner has 120 days from this filing within which to act on the claim after which, the taxpayer has 30 days to appeal the Commissioner’s adverse decision or inaction with the CTA.¹⁴⁰ In *Aichi*, the court ruled that the two-year period in Section 112 of the Tax Code, as amended, “refers only to the filing [sic] of the administrative claim for refund or credit with the BIR and does not include judicial recourse[.]”¹⁴¹

The issue involves the timeliness of petitioner’s judicial claim. This court applies its ruling in *San Roque* on the mandatory 120+30-day period, reiterated in *Mindanao II Geothermal* in that “the 30-day period to appeal is both mandatory and jurisdictional,”¹⁴² and the window for exemption “is limited to premature filing and does not extend to late filing of a judicial claim.”¹⁴³

Petitioner’s administrative claim on October 28, 2005 for all quarters of 2004 was well within the two-year period. Pursuant to Section 112, respondent had 120 days from October 28, 2005, or until February 25, 2006, within which to act on petitioner’s claim. From February 25, 2006, petitioner had 30 days, or until March 27, 2006, to file a judicial claim with the CTA. Petitioner only filed its judicial claim on April 25, 2006.

The judicial claim having been belatedly filed, the court need not go

¹³³ Id. at 115.

¹³⁴ Id. at 34.

¹³⁵ Id. at 54.

¹³⁶ Id. at 57.

¹³⁷ Id. at 81.

¹³⁸ Id. at 83.

¹³⁹ Id. at 350.

¹⁴⁰ Id. at 350–351.

¹⁴¹ Id. at 352.

¹⁴² *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014, 713 SCRA 644, 669 [Per C.J. Sereno, First Division].

¹⁴³ Id. at 673–674.

into petitioner's argument on the use of 'TIN-V' in receipts or invoices in relation to invoicing requirements.

Consequently, considering the late filing of its judicial claim, this court resolves to affirm the CTA *En Banc* in dismissing the petition.

VI. G.R. No. 201438

This petition¹⁴⁴ prays that "the Decision dated 15 November 2011 and Resolution dated 10 April 2012 of the Court of Tax Appeals *En Banc* be **RECONSIDERED** by rendering a resolution to **GRANTING** [sic] the refund of Php71,595,764.50 already granted by the CTA Third Division."¹⁴⁵

KEILCO filed quarterly and monthly VAT returns for the first three quarters of 2005 and for October 2005.¹⁴⁶ This shows that KEILCO incurred input VAT from expenses in importation and domestic purchases of goods and services.¹⁴⁷

On October 28, 2005, KEILCO filed an administrative claim with BIR RDO No. 50 for the refund of ₱63,950,558.01 representing VAT input taxes paid on importations and domestic purchases of capital goods/equipment for the first three quarters of 2005.¹⁴⁸

On December 7, 2005, KEILCO filed another administrative claim for refund in the amount of ₱9,761,023.29 allegedly representing VAT input taxes incurred for the month of October 2005.¹⁴⁹

On April 24, 2007, KEILCO filed its judicial claim with the CTA.¹⁵⁰ CIR filed its answer on June 26, 2007; raising special and affirmative defenses such as the requirement for petitioner to show it complied with Sections 112, 204(C) and 229 of the Tax Code, as amended, and petitioner's failure to show that the tax was "erroneously or illegally collected[.]"¹⁵¹ KEILCO presented testimonial and documentary evidence during trial while respondent "submitted the case for decision based on the pleadings."¹⁵²

On February 2, 2010, the CTA Third Division partially granted¹⁵³ the

¹⁴⁴ *Rollo* (G.R. No. 201438), pp. 16–61.

¹⁴⁵ *Id.* at 60, emphasis in the original.

¹⁴⁶ *Id.* at 68.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 69.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 69–70.

¹⁵³ *Id.* at 101–119. The decision was penned by Associate Justice Lovell R. Bautista (Chair) and concurred

petition and ordered the refund of ₱71,595,764.50:

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the reduced amount of ₱71,595,764.50, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales of electricity to NPC for the period covering January 1, 2005 to October 31, 2005.

SO ORDERED.¹⁵⁴

On October 18, 2010, the court denied¹⁵⁵ reconsideration:

WHEREFORE, finding no reversible error committed by this Court in the assailed *Decision*, respondent's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.¹⁵⁶

On November 15, 2011, the CTA En Banc granted¹⁵⁷ CIR's petition by denying KEILCOs judicial claim for being filed out of time:

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **GRANTED**. Accordingly, the Decision of CTA Third Division dated February 2, 2010 and the Resolution dated October 18, 2010 are hereby reversed and set aside. Petitioner's refund claim of ₱73,711,581.30 is **DENIED** on the ground that the judicial claim for the period covering January 1, 2005 to October 31, 2005 was filed out of time.

SO ORDERED.¹⁵⁸

On April 10, 2012, the CTA En Banc denied¹⁵⁹ reconsideration:

in by Associate Justice Amelia Cotangco-Manalastas. Associate Justice Olga Palanca-Enriquez penned a concurring and dissenting opinion.

¹⁵⁴ Id. at 117-118.

¹⁵⁵ Id. at 127-134. The resolution was penned by Associate Justice Lovell R. Bautista (Chair) and concurred in by Associate Justice Amelia R. Cotangco-Manalastas. Associate Justice Olga Palanca-Enriquez penned a dissenting opinion.

¹⁵⁶ Id. at 134.

¹⁵⁷ Id. at 67-88. The decision was penned by Associate Justice Juanito C. Castañeda, Jr. concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez and Cielito N. Mindaro-Grulla. Associate Justice Lovell R. Bautista penned a dissenting opinion. Associate Justices Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas were on leave.

¹⁵⁸ Id. at 87.

¹⁵⁹ Id. at 94-99. The decision was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista maintained his dissenting opinion in the November 15, 2011 en banc decision. Presiding Justice Ernesto D. Acosta was on leave.

WHEREFORE, finding no reversible error committed by this Court in the assailed Decision promulgated on November 15, 2011, respondent's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.¹⁶⁰

Thus, KEILCO filed the instant petition.

Petitioner argues that when it filed its judicial claim on April 24, 2007, it complied with existing jurisprudence and CTA pronouncements that "judicial claims should be filed within 2 years from the filing of Quarterly VAT Returns."¹⁶¹ Petitioner submits that jurisdiction is determined at the time the case was filed. Thus, consistent with prevailing jurisprudence then, the CTA acquired jurisdiction over its petition.¹⁶² Petitioner also argues that it relied in good faith on the two-year rule, and that *Aichi's* 120+30-day rule should be applied prospectively.¹⁶³

Respondent counters that the CTA En Banc correctly found that petitioner's April 24, 2007 judicial claim was filed beyond the time allowed,¹⁶⁴ and consequently, correctly denied the claim for lack of jurisdiction.¹⁶⁵

The issue involves the timeliness of petitioner's judicial claim. This court applies its ruling in *San Roque* on the mandatory 120+30-day period, reiterated in *Mindanao II Geothermal* in that "the 30-day period to appeal is both mandatory and jurisdictional,"¹⁶⁶ and the window for exemption "is limited to premature filing and does not extend to late filing of a judicial claim."¹⁶⁷

As found by the CTA En Banc, even if the administrative claims filed on October 28, 2005 and December 7, 2005 were filed within the two-year prescriptive period, the judicial claim filed only on April 24, 2007 was clearly filed beyond the 30-day period from the lapse of the 120-day period for respondent to decide on the claim.¹⁶⁸

Consequently, this court denies the petition, and affirms the CTA En Banc in denying petitioner's claim.

¹⁶⁰ Id. at 98.

¹⁶¹ Id. at 28.

¹⁶² Id. at 45.

¹⁶³ Id. at 49.

¹⁶⁴ Id. at 208.

¹⁶⁵ Id. at 230.

¹⁶⁶ *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014, 713 SCRA 644, 669 [Per C.J. Sereno, First Division].

¹⁶⁷ Id. at 673-674.

¹⁶⁸ *Rollo* (G.R. No. 201438), p. 86.

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DISPOSITIVE

WHEREFORE, the court resolves as follows:

A) For petitioner KEPHILCO:

- 1) In **G.R. No. 179864**, this court resolves to **DENY** KEPHILCO's petition praying for the refund of "the additional amount of P4,215,567.37 over and above the P1,405,189.12 already awarded[.]"¹⁶⁹ This court further resolves to **SET ASIDE** the Court of Tax Appeals Second Division's March 10, 2005 decision, affirmed by the Court of Tax Appeals En Banc's June 29, 2007 decision, and **DENY** the total amount claimed as refund on the ground of lack of jurisdiction of the Court of Tax Appeals over the belatedly filed March 31, 2002 petition;
- 2) In **G.R. No. 201059**, this court resolves to **DENY** the petition and **AFFIRM** the Court of Tax Appeals En Banc's October 25, 2011 decision affirming the Court of Tax Appeals Special Second Division's October 21, 2010 amended decision that dismissed KEPHILCO's belated petition for lack of jurisdiction;
- 3) In **G.R. No. 201699**, this court resolves to **DENY** the petition and **AFFIRM** the Court of Tax Appeals En Banc's January 10, 2012 decision affirming *in toto* the Court of Tax Appeals Former Second Division's October 19, 2010 decision that dismissed KEPHILCO's petition for being filed out of time;

B) For petitioner KEILCO:

- 4) In **G.R. No. 194244**, this court resolves to **DENY** the petition and **AFFIRM** the Court of Tax Appeals En Banc's May 6, 2010 decision affirming the Court of Tax Appeals Second Division's May 7, 2009 decision that dismissed KEILCO's petition;
- 5) In **G.R. No. 196934**, this court resolves to **DENY** the petition and **AFFIRM** the Court of Tax Appeals En Banc's January 27, 2011 decision granting respondent's petition and denying the refund claim for lack of jurisdiction;

¹⁶⁹ Rollo (G.R. No. 179864), p. 258.

- 6) In **G.R. No. 201438**, this court resolves to **DENY** the petition and **AFFIRM** the Court of Tax Appeals En Banc's November 15, 2011 decision granting respondent's petition and denying the refund claim for being filed out time;

SO ORDERED.

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court 11/17/15

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GR179864; 194244; 196934; 201059; 201438 & 201699.
11/12/14 (107, 175 & 218(b))SR