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. 196513: KEPCO ILIJAN CORPORATION v. COMMISSIONER OF INTERNAL REVENUE

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This petition[1] docketed as G.R. No. 196513 prays that "the 14 October 2010 Decision and 08 April 2011 Resolution of the Court of Tax Appeals *En Banc* be partially modified, and a resolution be issued GRANTING petitioner's input VAT claim of Php606,106,764.71, over and above the Php45,911,253.27 already granted."[2]

On October 25, 2000, petitioner Kepco Ilijan Corporation (KEILCO) filed its quarterly value-added tax (VAT) return for the third quarter of 2000.[3]

On June 23, 2002, KEILCO filed an administrative claim for input VAT on domestic purchases of goods and services in the amount of ₱46,600,517.58.[4]

On September 26, 2002, KEILCO filed an administrative claim for input VAT on importations in the amount of ₱614,340,042.54.[5] The total amount claimed for refund was ₱660,940,560.12.[6]

On October 23, 2002, KEILCO filed a judicial claim with the Court of Tax Appeals (CTA).[7] The Commissioner of Internal Revenue (CIR) filed its answer on December 2, 2002, raising special and affirmative defenses, including the need for KEILCO to prove compliance with Sections 204(C) and 229 of the Tax Code, as amended.[8] KEILCO presented testimonial and documentary evidence during trial, while the CIR was considered to have waived such right due to repeated failure to appear for presentation of evidence despite notice.[9]

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1 *Rollo*, pp. 15–86.
2 Id. at 84.
3 Id. at 113.
4 Id. at 97 and 126–127.
5 Id. at 99 and 126–127.
6 Id. at 114.
7 Id. at 127.
8 Id. at 114–116.
9 Id. at 25.

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On May 15, 2009, the CTA Second Division[10] dismissed the petition:[11]

> **WHEREFORE**, premises considered, the petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**.
>
> **SO ORDERED**.[12]

On August 11, 2009, the court[13] denied reconsideration:[14]

> **WHEREFORE**, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[15]

On October 14, 2010, the CTA En Banc[16] partially granted the petition:[17]

> **WHEREFORE**, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of P45,911,253.27 representing unutilized input VAT paid by petitioner on its domestic purchases of goods and services for the 3rd quarter of taxable year 2000.
>
> **SO ORDERED**.[18]

On April 8, 2011, the court[19] denied KEILCO's motion for partial reconsideration insofar as the court's denial to refund KEILCO ₱614,340,042.54 based on KEILCO's September 26, 2002 administrative

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10 The decision was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy.

11 *Rollo*, pp. 173–189.

12 Id. at 188.

13 The resolution was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy.

14 *Rollo*, pp. 191–193.

15 Id. at 193.

16 The decision was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Lovell R. Bautista and Amelia C. Cotangco-Manalastas. Presiding Justice Ernesto D. Acosta penned a separate concurring opinion. Associate Justice Esperanza R. Fabon-Victorino concurred with the ponente and Justice Acosta's concurring opinion. Associate Justice Juanito C. Castañeda, Jr. penned a dissenting opinion. Associate Justices Erlinda P. Uy and Cielito N. Mindaro Grulla concurred with Justice Castañeda's dissenting opinion. Associate Justice Olga Palanca-Enriquez penned a concurring and dissenting opinion.

17 *Rollo*, pp. 112–138.

18 CTA en banc decision, G.R. No. 196513, *rollo*, p. 137.

19 The resolution was signed by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro Grulla. Presiding Justice Ernesto D. Acosta penned a concurring and dissenting opinion. Associate Justice Amelia R. Cotangco-Manalastas concurred with Presiding Justice Acosta's concurring and dissenting opinion. Associate Justices Lovell R. Bautista penned a separate opinion.

claim:[20]

> **WHEREFORE**, premises considered, the Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[21]

KEILCO argues that it seasonably filed its administrative and judicial claims consistent with applicable laws and jurisprudence.[22] A "[r]etroactive application of *Mirant* and *Aichi* amounts to a denial of Petitioner's right to due process."[23] KEILCO contends that these are not En Banc cases, and this court En Banc has not reversed earlier cases such as *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*.[24] KEILCO adds that CTA separate opinions after *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[25] still discuss that the 120+30-day rule is "merely permissive."[26] Even if this rule applies, the CIR's failure to object to the alleged premature filing amounts to a waiver of such defense.[27]

KEILCO also argues that its importations — subject of the September 26, 2002 administrative claim for input VAT refund — are classified as capital goods under Section 4.106-1 of Revenue Regulations 7-95, and substantiated by documents.[28] KEILCO submits that the court erroneously disallowed its claim for lack of proof that KEILCO "treated such goods as depreciable asset or part of its properties/assets in its books."[29] KEILCO alleges misapprehension of facts and invokes the exception against the rule that only questions of law may be raised in a petition for review on certiorari.[30]

The CIR counters that KEILCO's judicial claim on October 23, 2002 was premature as it gave the CIR only 27 days to act on KEILCO's administrative claim filed on September 26, 2002.[31]

On KEILCO's argument regarding the nature of its importations as depreciable assets, the CIR submits that this was already disposed of by the CTA, whose factual findings are binding and conclusive upon this court.[32]

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20 *Rollo*, pp. 92–100.
21 Id. at 99.
22 Id. at 29.
23 Id. at 45.
24 Id. at 41.
25 G.R. No. 184823, October 6, 2010, 632 SCRA 422 [Per J. Del Castillo, First Division].
26 Id. at 51.
27 Id. at 57.
28 Id. at 67.
29 Id.
30 Id. at 69.
31 Id. at 237–238.
32 Id. at 239-240.

The issue involves the timeliness of KEILCO's judicial claim.

We apply *Commissioner of Internal Revenue v. San Roque Power Corporation* [32] in that compliance with the 120-day and the 30-day periods under Section 112 of the Tax Code is mandatory and jurisdictional, save for those VAT refund cases that were prematurely (i.e., before the lapse of the 120-day period) filed with the CTA between December 10, 2003 (when BIR Ruling No. DA-489-03 was issued) and October 6, 2010.[33]

The court in *San Roque* also declared that, following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,*[34] 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.[35]

The CTA En Banc correctly held that:

> Petitioner has two (2) years from September 30, 2000, the close of the taxable quarter, on until September 30, 2002, within which to file its administrative claim.
>
> On September 26, 2002, petitioner filed its administrative claim and respondent has until January 24, 2003 (i.e. 120 days from September 26, 2002) within which to act/decide on the claim. Clearly, petitioner has timely filed its administrative claim.
>
> Within thirty (30) days from the lapse of the 120-day period or from January 25, 2003 until February 23, 2003, petitioner should have filed its judicial claim for refund with the CTA in Division. Petitioner filed its Petition for Review on October 23, 2002, before the lapse of the 120-day period for the respondent to decide, and before the 30-day period to appeal to the CTA commences to run, thus, the claim for refund in the amount of P614,340,042.54 was prematurely filed.[36]

The judicial claim having been prematurely filed, the court need not go into KEILCO's invocation of a factual question regarding the nature of its importations as depreciable assets.

Consequently, since KEILCO prematurely filed its judicial claim for the amounts administratively claimed on September 26, 2002, and since such filing does not fall within the *San Roque* window, this court resolves to

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32 G.R. No. 187485, February 12, 2013, 690 SCRA 336 [Per J. Carpio, En Banc].
33 Id. at 398–399.
34 586 Phil. 712 (2008) [Per J. Velasco, Jr., Second Division].
35 *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 336, 393–394 [Per J. Carpio, En Banc].
36 *Rollo*, p. 99.

affirm the CTA in dismissing the petition.

WHEREFORE, this court resolves to **DENY** the petition, **REVERSE** and **SET ASIDE** the Court of Tax Appeals En Banc's October 14, 2010 decision partially granting Kepco Ilijan Corporation's petition, and **AFFIRM** the Court of Tax Appeals Second Division's May 15, 2009 decision that dismissed the petition for being prematurely filed.

SO ORDERED.

Very truly yours,

MA. LOURDES C. PERFECTO
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GR196513. 11/12/14 (107, 175 & 218[c])SR