

On September 1, 2009, the CTA Special First Division “partially granted the Petition and ordered the refund of P161,462,492.03 representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the second, third and fourth quarters of taxable year 2001,”⁷ stated as follows:

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **ISSUE** a tax credit certificate or **REFUND** to petitioner the amount of P161,462,492.03 representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the second, third and fourth quarters of 2001, as computed below:

Amount of Input VAT Claim		P338,279,058.65
Less: Prescribed Claim – 1 st Quarter		<u>79,500,084.48</u>
Unprescribed Input VAT Claim		258,778,974.17
Less: Input VAT Claim Pertaining to Non-Capital Goods per the ICPA’s Report	P1,145,312.22	
Add: Net Overstatement of Input VAT per schedule vs. Input VAT per return for the first and second quarters of 2001	<u>103,828.00</u>	<u>1,249,140.22</u>
Unprescribed Input VAT Claim Pertaining to Capital Goods		P257,529,833.95
Less: Not Properly Substantiated Input VAT		
a. Per the ICPA’s Report	P1,858,120.34	
b. Per this Court’s further verification	<u>94,209,221.58</u>	<u>96,067,341.92</u>
Refundable Input VAT on Capital Goods Purchases		<u>P161,462,492.03</u> ⁸

On March 11, 2010, the court partially granted KEILCO’s motion for reconsideration, increasing the amount for refund:⁹

WHEREFORE, premises considered, petitioner-KEPCO’s Motion for Partial Reconsideration is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **ISSUE** a tax credit certificate or **REFUND** to petitioner the amount of **P237,974,498.55**, representing unutilized input VAT on capital goods purchases for the four quarters of 2001, as computed below:

Amount of Input VAT Claim	P 338,279,058.65
Less: Input VAT Claim Pertaining to Non-Capital Goods/Services	1,606,007.11

⁷ Id. at 75.

⁸ Id. at 26.

⁹ Id. at 108–115. The amended decision was penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista of the Court of Tax Appeals Special First Division.

Input VAT Claim on Capital Goods/Services	P 336,673,051.54
Less: Not Properly Substantiated Input VAT	
a. Per ICPA Report	3,265,235.41
b. Per this Court's further verification	95,433,317.58
Refundable Input VAT on Capital Goods/Services	P 237,974,498.55

SO ORDERED.¹⁰

KEILCO filed a petition with the CTA En Banc dated April 21, 2010, praying for "the inclusion of the disallowed amount of Php94,909,877.58."¹¹ The court gave the petition due course, and the case was later submitted for decision.¹²

KEILCO filed a motion to withdraw the case dated December 23, 2010, which the court denied by resolution dated March 29, 2011.¹³ KEILCO filed a motion for reconsideration on this denial, and a supplement to the motion for reconsideration.¹⁴ The court denied both motions by resolution dated June 13, 2011.¹⁵ On August 26, 2011, KEILCO filed a petition¹⁶ with this court via Rule 65, docketed as G.R. No. 198079, questioning the denial of its motion to withdraw case.

On June 13, 2011, the CTA En Banc dismissed KEILCO's petition, reversed the division, and denied petitioner's refund claim on the ground of prescription and premature filing.¹⁷

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. Accordingly, the Decision dated September 1, 2009 and Amended Decision dated March 11, 2010 issued by the Special First Division in CTA Case No. 6682, are hereby reversed and set aside. Petitioner's refund claim of P94,909,877.58 is **DENIED** on the grounds of prescription for the first quarter of taxable year 2001 and premature filing of the refund claim for the second, third and fourth quarters of the same taxable year.

SO ORDERED.¹⁸

¹⁰ Id. at 114.

¹¹ Id. at 26-27.

¹² Id. at 27.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 28.

¹⁶ *Rollo* (G.R. No. 198079), pp. 3-45.

¹⁷ *Rollo* (G.R. No. 199418), pp. 73-94. 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, and Cielito N. Mindaro-Grulla. Presiding Justice Ernesto D. Acosta penned a concurring and dissenting opinion, concurred in by Associate Justices Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista penned a dissenting opinion.

¹⁸ Id. at 93.

On November 15, 2011, the court denied reconsideration:¹⁹

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

SO ORDERED.²⁰

Hence, KEILCO filed the instant petition for review arguing the timeliness of its administrative and judicial claims.²¹ KEILCO contends that it relied in good faith on the two-year rule, and that the 120+30-day rule in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*²² should be applied prospectively.²³

Respondent counters that the CTA En Banc correctly dismissed the petition for lack of jurisdiction.²⁴ Respondent submits that the law clearly provides for the CTA's jurisdiction – exclusive appellate jurisdiction (a) to review CIR decisions, and (b) to review CIR inaction²⁵ “if the [National Internal Revenue Code] NIRC provides a specific period within which to act and the Commissioner of Internal Revenue fails to do so within such period.”²⁶ KEILCO filed its judicial claim only eight days after its administrative claim with respondent CIR.²⁷ Thus, KEILCO's judicial claim was premature, warranting outright dismissal for lack of jurisdiction.²⁸

Respondent adds that *Aichi's* ruling on the mandatory 120+30-day period applies as “[j]udicial decisions interpreting the law as of the time of its effectivity is not tantamount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one.”²⁹

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

We apply *Commissioner of Internal Revenue v. San Roque Power*

¹⁹ Id. at 64–70. The resolution was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, and Cielito N. Mindaro-Grulla. Presiding Justice Ernesto D. Acosta penned a concurring and dissenting opinion. Associate Justice Lovell R. Bautista maintained his vote as promulgated in the En Banc decision. Associate Justice Esperanza R. Fabon-Victorino was on wellness leave. Associate Justice Amelia R. Cotangco-Manalastas was on official business.

²⁰ Id. at 69.

²¹ Id. at 30.

²² G.R. No. 184823, October 6, 2010, 632 SCRA 422 [Per J. Del Castillo, First Division].

²³ *Rollo* (G.R. No. 199418), pp. 42–43.

²⁴ Id. at 272.

²⁵ Id. at 273.

²⁶ Id. at 275.

²⁷ Id. at 277.

²⁸ Id.

²⁹ Id. at 280.

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*Corporation*³⁰ 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, 2010.³¹

As regards the timeliness of the administrative claim, Section 112(A) of the Tax Code, as amended, clearly provides that the two-year prescriptive period for administrative claims be reckoned from “the close of the taxable quarter when the sales were made.” *San Roque* clarified the effectivity of the *Atlas*,³² *Mirant*,³³ and *Aichi*³⁴ doctrines on this matter 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.*³⁵ (Emphasis supplied)

Petitioner filed its administrative claim for 2001 on April 15, 2003 prior to the effectivity of *Atlas*. Thus, KEILCO’s claim for the first quarter of 2001 was filed beyond the two-year period that ended on March 31, 2003.

Petitioner filed its judicial claim with the CTA on April 23, 2003, only eight days after its administrative claim. This filing does not fall within the *San Roque* window from December 10, 2003 to October 6, 2010. Thus, petitioner’s non-observance of the 120+30-day period renders its petition with the CTA premature, disqualifying its refund claim for the second, third, and fourth quarters of 2001 on this ground.

WHEREFORE, this court resolves to **DENY** the petition and **AFFIRM** the Court of Tax Appeals En Banc’s June 13, 2011 decision

³⁰ GR. No. 187485, February 12, 2013, 690 SCRA 336 [Per J. Carpio, En Banc].

³¹ Id. at 398–399.

³² *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 551 Phil. 519 (2007) [Per J. Chico-Nazario, Third Division].

³³ *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, 586 Phil. 712 (2008) [Per J. Velasco, Jr., Second Division].

³⁴ *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, GR. No. 184823, October 6, 2010, 632 SCRA 422 [Per J. Del Castillo, First Division].

³⁵ *Commissioner of Internal Revenue v. San Roque Power Corporation*, GR. No. 187485, February 12, 2013, 690 SCRA 336, 397 [Per J. Carpio, En Banc].

reversing and setting aside the Court of Tax Appeals Division's amended decision, and denying Kepco Ilijan Corporation's refund claim on the grounds of prescription for the first quarter of 2001, and premature filing for the second, third, and fourth quarters of 2001.

SO ORDERED.

Very truly yours,


 MA. LOURDES Q. PERFECTO
 Division Clerk of Court *by M/S*

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