REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

CRESCENT PARK 6-3 PROPERTY HOLDINGS, INC., Petitioner,	**CTA CASE NO. 8058**
	Members:
- versus -	**Uy,** *Acting Chairperson, and* **Fabon-Victorino**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 04 2013 9:51 Am

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D E C I S I O N

UY, *J.*:

The instant Petition for Review filed on March 31, 2010 seeks for a tax refund or issuance of tax credit certificate in the amount of P21,873,280.00, representing its alleged unutilized input value-added tax (VAT) for calendar year 2008.

THE FACTS

Culled from the records of this case, the factual antecedents are as follows:

Petitioner Crescent Park 6-3 Property Holdings, Inc. is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Company Registration Number CS200604935, with principal office address at Net One Center, Third Avenue corner 26th Street, E-Square Crescent Park West, Bonifacio Global City, Taguig City. It is also a VAT-registered entity as evidenced by its Bureau of Internal Revenue (BIR)

Certificate of Registration No. 9RC0000224650 VAT and Taxpayer's Identification Number (TIN) 006-939-704-000 VAT.[1]

Respondent is the Commissioner of Internal Revenue, sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law.[2]

Petitioner was established to buy and acquire by purchase, lease or otherwise, lands, and interest in land and to own, hold, improve, promote, develop, subdivide and manage any land owned, held or occupied by the corporation or belonging to them, to construct, erect and manage or administer buildings such as condominiums, apartments, hotels, restaurants, stores or other structures now or hereafter erected on any land owned, held or occupied by it.[3]

On January 5, 2008, petitioner and 6-3 Property Holdings, Inc., a Philippine Economic Zone Authority (PEZA)-registered entity (an Ecozone Facilities Enterprise) at E-Square Information Technology Park[4], entered into a contract, whereby the latter sold by virtue of a "Deed of Absolute Sale of Land on Installment" a parcel of land consisting of 1,600 square meters located at 30th Street corner 3rd Avenue, Bonifacio Global City, Taguig City, Metro Manila in favor of petitioner for the amount of P178,944,000.00.[5]

Subsequently, on January 9, 2008, petitioner and 6-3 Property Holdings, Inc. entered into a "Land Lease Agreement", whereby the same parcel of land covered by the "Deed of Absolute Sale of Land on Installment" was leased back by petitioner in favor of 6-3 Property Holdings, Inc. in order for the latter to build and maintain a PEZA-registered information technology building or facility. The term of the lease shall be for a period of fifty (50) years from the signing of the contract.[6]

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[1] Pars. 1 and 3, Summary of Admitted Facts, Amended Joint Stipulation of Facts and Issues (AJSFI), Docket, pp. 91-92.
[2] Par. 2, Summary of Admitted Facts, AJSFI, Docket, p. 92.
[3] Par. 4, Summary of Admitted Facts, AJSFI, Docket, pp. 92-93.
[4] Exhibit "D", Certificate of Registration No. 06-02-F (IT)
[5] Exhibit "C"
[6] Exhibit "T"

Petitioner filed its original and amended Quarterly VAT Returns for the years 2008 and 2009.[7] The said amended Quarterly VAT Returns[8], with the exception of amended Quarterly VAT Return for the third quarter of 2009[9], reported that petitioner had a tax overpayment in the amount of P21,473,280.00.

Petitioner, on March 29, 2010, filed an application for issuance of tax credit certificate representing unutilized input VAT in the amount of P21,473,280.00 with Revenue District Office No. 44 (Taguig-Pateros).[10]

Two days later or on March 31, 2010, petitioner filed its judicial claim for refund/issuance of tax credit certificate in its favor before this Court.

On May 24, 2012, respondent filed through registered mail, and duly received by this Court on June 2, 2010, her Answer to the Petition for Review and raised the following Special and Affirmative Defenses:[11]

"**SPECIAL AND AFFIRMATIVE DEFENSES**

5. The petition for review should be dismissed on the following grounds:

(a) Lack of cause of action on the part of the petitioner for non-exhaustion of administrative remedies.

Under Section 112(C) of the National Internal Revenue Code (NIRC), respondent has 120 days from the submission of complete documents, within which to rule on an application for tax refund or credit. And only after the lapse of this period without any action on his part or receipt of his adverse decision that the aggrieved party

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[7] Exhibits "F" to "M-1"
[8] Exhibits "F-1", "G-1", "H-1", "I-1", "J-1", and "K-1"
[9] Exhibit "L-1"
[10] Exhibit "E"
[11] Docket, pp. 39-44.

may, within 30 days, elevate the case to the Honorable Court.

Petitioner filed its administrative claim for refund of its alleged unutilized input VAT for the first quarter of 2008 in the amount of P21,873,280.00 on March 29, 2012. Thus, respondent had until July 27, 2010, within which to make a ruling. Thereafter, petitioner had 30 days or until August 26, 2010, to challenge his adverse ruling or inaction with the Honorable Court.

Petitioner sprinted to the Honorable Court and prematurely filed the instant Petition for Review on March 31, 2010, or before the 120-day period granted unto the respondent lapsed effectively depriving the respondent of the opportunity to rule on the claim for refund. The failure of the petitioner to exhaust all available remedies, justifies the dismissal of the instant petition.

The taxpayer is given a period of two (2) years before appealing to the Court of Tax Appeals; and to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure **(Bermejo vs. Collector, L-3028, July 29, 1950).** The petition is pro-forma and was done merely to comply with the letter of the law and yet it disregarded the spirit or the very substance of the law. Section 112 indicates no exception justifying deviation from the required 120-day period granted unto respondent to resolve the claim for refund. The petitioner should have filed its claim for refund at the earliest possible time and should not have waited until the last moment because by then it would be too late for the respondent to act on petitioner's claim thereby destroying the essence of the doctrine of exhaustion of administrative remedies. Such delay on the part of the petitioner should not be rewarded with a grant of exception from the requirements of the law.

Petitioner's utter disregard to follow the provisions of Section 112(C) of the NIRC will undoubtedly lead to undesirable results and unimaginable chaos. A taxpayer desirous to resort directly to the Courts can effectively bypass respondent by filing administrative claim for refund only days before the expiration of the 2-year prescriptive period then immediately thereafter, on the pretext of the 'inaction' of respondent and the prescriptive period will lapse, file a corresponding petition for review with the Honorable Court. Such course of action will render nugatory the authority granted by law upon respondent to act accordingly on the claims for refund.

(b) Lack of jurisdiction for there was no decision or inaction which is tantamount to denial by the Commissioner that the Court of Tax Appeals could review simply because respondent was not given an opportunity to reach that decision

Only upon denial or the expiration of the allowable period of 120 days without any action on the part of respondent that petitioner may, within the period of 30 days from notice, invoke this Honorable Court's competence to hear its petition for review. Prior to that, the Honorable Court has no jurisdiction to entertain petitioner's appeal. The Court of Tax Appeals is a court of special jurisdiction and as such, it can take cognizance only of such matters as are clearly within its province.

6. Petitioner's sales of services to PEZA-registered enterprises to qualify as effectively zero-rated sales, the latter should have availed of the 5% preferential tax; otherwise, they are subject to 12% VAT under Section 108 of the NIRC.

It bears stressing that under Section 23 of Republic Act No. 7916, two different fiscal incentives are granted to an ecozone enterprise, to wit:

> 'SEC. 23. *Fiscal Incentives.* – Business establishments operating within the ECOZONE

> shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone Authority, *or* those provided for under Book VI of Executive Order No. 226, otherwise known as Omnibus Investments Code of 1987.'

Based on the aforequoted Section 23 of Republic Act (RA) No. 7916, a PEZA registered enterprise has the option to choose between two sets of fiscal incentives. One, is that provided for under Presidential Decree No. 66, as amended, and Section 24 of RA 7916 which includes the 5% preferential tax on gross income earned which is in lieu of national and local taxes, and second, as those provided for under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the value-added tax.

It must be pointed out that an ecozone enterprise cannot avail of these two sets of fiscal incentives at the same time. This was explained by the Bureau of Internal Revenue in VAT Ruling Nos. 037-98; 043-98; 027-99; and 063-99 *(Read-Rite Philippines, Inc. (Formerly Sunward Technologies Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5659, September 29, 2000).* Thus, if the petitioner's PEZA-registered client *(6-3 Property Holdings, Inc. ['6-3 PHI', for brevity] in this case)* had availed of the fiscal incentives under Executive Order No. 226, that is, an income tax holiday, it became subject to value-added tax. Therefore, petitioner's sale of services to 6-3 PHI shall be subject to 12% VAT.

Under Sections 4.100-3 and 4.102-2 of Revenue Regulations No. 7-95, implementing Sections 100(a)(2)(C) and 100(b)(3) of the old National Internal Revenue Code (NIRC) [now Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended, the term 'effectively zero-rated sale of goods, property and services' shall only apply to sales made by a VAT-registered person to a person or entity who is exempt from indirect tax, pursuant to the provisions of a special law or international agreement in which the Philippines is a signatory.

The special law in this case is R.A. No. 7916, otherwise known as the Special Economic Zone Act of 1995. There is no existing provision under this law that a PEZA-registered enterprise is exempt from indirect tax. Hence, petitioner's PEZA- registered clients are only exempt from income taxes during their Income Tax Holiday. Even after the expiration of the Income Tax Holiday, petitioner's PEZA-registered clients shall only be exempt from all national and local taxes. However, all these taxes to which petitioner's PEZA-registered clients shall enjoy exemption refer to direct taxes. On the other hand, the 12% VAT imposed on its purchases of goods, property or services are direct taxes in the hands of its supplier (petitioner in this case) but indirect taxes in the hands of petitioner's PEZA- registered clients since the same are passed-on as part of the cost of its purchases.

Accordingly, PEZA-registered enterprises' suppliers of services (petitioner in this case) cannot qualify for zero-percent (0%) VAT, hence, shall be subject to 12% VAT on their sales to such PEZA-registered enterprises pursuant to Section 108 of the NIRC of 1997.

In ***BIR Ruling No. DA-253-06 dated April 12, 2006***, wherein a clarification was sought whether a property that is being leased out to a PEZA-registered company which has been granted Income Tax Holiday (ITH) is subject to 10% or 0% VAT, the BIR had the occasion to rule that:

> 'In view of the foregoing, it is the opinion of this Office that the lease of property by la O'David to UEPI, a PEZA-registered enterprise, during the latter's 4-year ITH is subject to the ten (10%) VAT.'

Moreover, looking at the transaction from the standpoint of 6-3 PHI, the lease by petitioner to 6-3 PHI of its real property seemingly would not qualify to be subject of the zero-percent (0%) VAT pursuant to the 'Cross Border Doctrine' of the VAT system. Under the said doctrine, if the seller is subject to the regular internal revenue taxes, its sale of service to a PEZA-registered enterprise shall be subject to zero-percent (0%) VAT since the use for or benefit from such purchase of service shall eventually be translated into actual export of goods or translated into technical export of goods. The foregoing rationale used under the 'Cross Border Doctrine' will not apply in the instant case since 6-3 PHI is not engaged in processing, manufacturing, converting or repacking of goods that are subsequently exported.

7. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

9. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 112(A)(C) of the 1997 Tax Code, as amended, including Revenue Regulations No. 5-87 as amended by Revenue Regulations Nos. 3-88 and 7-95.

10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal**

> **Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**"

During trial, petitioner presented testimonial and documentary evidence. In the Resolution dated January 6, 2012[12], petitioner's evidence were admitted by this Court, with the exception of Exhibits "A", "E-1", "O", "O-1", "P", "Q", and "S" for failure of petitioner to present the originals thereof for comparison. Consequently, petitioner filed a Motion for Partial Reconsideration on January 26, 2012[13] as regard the exhibits denied by the Court. During the hearing of said Motion on February 2, 2012, petitioner manifested that Exhibit "A" was admitted by the parties in the Amended Joint Stipulation of Facts and Issues, and by respondent in her Answer; and thereafter, moved for a commissioner's hearing in order to present certified true copies of said denied exhibits. Respondent interposed no objection thereto. Thus, the Court granted petitioner's motion to present the certified true copies of Exhibits "O", "O-1", and "P."[14]

On February 21, 2012, petitioner recalled its witness Mylene Bautista, who identified the certified true copies of Exhibits "A", "O", "O-1", "S", and "P", which were compared to the originals thereof; she also identified her Judicial Affidavit executed on February 20, 2012, which was marked as Exhibit "TT". Accordingly, in the Resolution dated March 29, 2012[15], the Court granted petitioner's Motion for Partial Reconsideration and admitted Exhibits "A", "O", "O-1", "P", and "S" as part of petitioner's evidence.

On the other hand, respondent, through counsel, manifested that she will not be presenting any evidence. The parties were therefore directed by the Court to file their respective Memorandum.[16]

In the Resolution dated June 7, 2012, the case was submitted for decision, considering petitioner's Memorandum filed

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[12] *Id.,* pp. 486-487.
[13] *Id.,* pp. 491-496.
[14] *Id.,* p. 498.
[15] *Id.,* pp. 580-583.
[16] Minutes of the meeting held on February 21, 2012, Docket, pp. 547-548.

on May 11, 2012 and respondent's manifestation that she would no longer file a Memorandum.[17]

Hence, this Decision.

THE ISSUES

The parties submit the following issues [18] for the Court's consideration:

> "A. Whether Petitioner is entitled to refund or issuance of tax credit certificate in the amount of TWENTY ONE MILLION FOUR HUNDRED SEVENTY THREE THOUSAND TWO HUNDRED EIGHTY PESOS (Php21,473,280.00) on its unutilized input VAT attributed to its zero rated sale of service in 2008.
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> a. Whether Petitioner is a VAT Registered entity;
> b. Whether petitioner is engaged in zero-rated or effectively zero-rated sales;
> c. Whether the input taxes being claimed are due or paid;
> d. Whether the input taxes being claimed have not been applied against output taxes during and in the succeeding quarters;
> e. Whether the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
> f. Whether the claim is filed within two years after the close of the taxable quarter when such sales were made;
> g. Whether or not the Petitioner's claim for refund/tax credit allegedly representing VAT input taxes is substantiated by documentary evidence.
>
> B. Whether or not the Petition for Review should be dismissed for lack of cause of action on the part of the petitioner for non-exhaustion of administrative remedies

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[17] *Id.,* p. 613.
[18] Issues, AJSFI, Docket, pp. 94-95.

by filing the instant Petition before the expiration of the 120-day period as provided for under Section 112 (C) of the NIRC;

C. Whether or not the Honorable Court has jurisdiction over the instant Petition inasmuch as there was no decision or inaction which is tantamount to denial by the Commissioner that the Court of Tax Appeals could review simply because respondent was not given an opportunity to reach that decision or to act accordingly on the claim for refund within the 120-day period."

THIS COURT'S RULING

Petitioner seeks the issuance of tax credit certificate or refund of unutilized input VAT in the amount of P21,473,280.00 for calendar year 2008. It anchors its claim for refund or issuance of tax credit certificate on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, the pertinent provision of which is quoted hereunder, to wit:

"**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 of 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 volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Based on aforementioned legal provision, the requisites for the refund or issuance of tax credits of input VAT due or paid, attributable to zero-rated or effectively zero-rated sales, are as follows:

1. The taxpayer must be VAT-registered;

2. The taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;

3. The claim must be filed within two years after the close of the taxable quarter when such sales were made; and

4. The creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.[19]

As regards the first requisite, admittedly in the parties' Amended Joint Stipulation of Facts and Issues, petitioner is a VAT registered entity as evidenced by Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000224650 and Taxpayer's Identification Number 006-939-704-000 VAT.[20]

With respect to the second, as well as the fourth requisites, the Court deems it proper to first look at compliance with the third requisite, which is, whether or not the refund claim was filed by petitioner within two (2) years after the close of the taxable quarter

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[19] *Silicon Philippines Inc. vs. Commissioner of Internal Revenue,* G.R. No. 172378, January 17, 2011.
[20] Par. 3, Summary of Admitted Facts, AJSFI, Docket, pp. 91-96, at p, 92

when the sales were made. A negative finding will cause the denial of the instant claim.

Section 112(A) of the NIRC of 1997, categorically states that, prior to seeking judicial recourse before the Court of Tax Appeals, a VAT-registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax attributable to zero-rated or effectively zero-rated sales within two (2) years after the close of the taxable quarter when the sales or purchases were made. Clearly therefore, the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under said section starts from the close of the taxable quarter when the relevant sales or purchases were made pertaining to the input VAT regardless of whether said tax was paid or not.

In the case of ***Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)***,[21] the Supreme Court held that:

> "The above proviso (Sec. 112 [A]) clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer **must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid**. xxx" (*Emphasis Ours)*

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[21] G.R. No. 172129, September 12, 2008.

Applying the aforequoted *Mirant case* to petitioner's subject refund claim for input VAT incurred for the first quarter of calendar year 2008 (which closed on March 31, 2008), petitioner had until March 31, 2010 to file its refund claim. It appears that petitioner's refund claim was filed before the Revenue District Office No. 44 (Taguig-Pateros) of the BIR on March 29, 2010[22]. Thus, the administrative claim was timely filed within the said two-year prescriptive period.

Having timely filed a refund claim before the Bureau of Internal Revenue (BIR), Section 112 (C) of the NIRC of 1997 provides a specified period for the Commissioner of Internal Revenue to act on the said claim, as well as, the taxpayer's remedy in case of denial thereof. Said Section reads as follows:

> "(C)[23] *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 Subsections (A) hereof.**
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> 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.**
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> xxx xxx xxx." *(Emphasis Ours)*

Thus, from date of submission of complete documents in support of an administrative claim for refund with the BIR, the Commissioner of Internal Revenue has a **120-day period** within

[22] Exhibits "E", "E-1", and "E-2"
[23] Previously Section 112(D) before Republic Act No. 9337 took effect on November 1, 2005.

which to act on a claim for refund refund/applications for issuance of the tax credit certificate. Upon denial thereof, or upon expiration of the **120-day period**, the taxpayer has a **30-day period** within which to appeal said adverse decision or unacted claim before the Court of Tax Appeals.

Observance of all the periods mentioned in Section 112, namely: the 2-year period to file an administrative claim, the 120-day period for the Commissioner of Internal Revenue to act thereon, and the 30-day period to seek judicial recourse in case of denial thereof, was extensively explained by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***,[24] wherein the High Court elucidated on the significance of the periods as follows:

> "Section 112(D)[25] 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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> xxx. 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

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[24] G.R. No. 184823, October 6, 2010.
[25] Now Section 112(C) upon effectivity of Republic Act No. 9337 in November 1, 2005.

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.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**

xxx xxx xxx." *(Emphasis and underscoring Ours)*

In light of the landmark decision of the Supreme Court in the **Aichi** case, it is now well-settled that a taxpayer-claimant must comply, not only with the two-year period within which to file a refund/tax credit claim with the Bureau of Internal Revenue, but it must also give the Commissioner of Internal Revenue a period of one hundred twenty (120) days from submission of the complete documents in support of its claim, within which to act on the claim. In case of a partial or full denial of such claim, or the lapse of the 120 day period without any action by the Commissioner on said claim, the taxpayer may seek judicial recourse before the Court of Tax Appeals within a period of thirty (30) days from receipt of the adverse decision or inaction of the Commissioner.

Applying the foregoing discussions in the case at bench, We have earlier ruled that petitioner has indeed complied with the required two-year period within which to file a refund/tax credit claim with the Bureau of Internal Revenue by filing its administrative claim on March 29, 2010 (within the period from the close of the taxable quarter when the relevant sales or purchases were made). However, petitioner's judicial recourse before this Court through the instant Petition for Review filed on March 31, 2010 was premature as the same was filed prior to the lapse of the 120-day period provided under Section 112. We reckon the commencement of the said 120-day period simultaneously with the date of filing of petitioner's administrative claim on March 29, 2010, or until July 29, 2010, as there is no showing that petitioner further submitted additional supporting documents thereafter.

Indubitably, petitioner miserably failed to observe the 120-day period under Section 112(C) of the NIRC of 1997, as amended, to give the Commissioner of Internal Revenue the opportunity to act on its refund claim. Correspondingly, the premature filing of its Petition for Review before this Court warrants a dismissal inasmuch as no jurisdiction was acquired thereto.

This jurisdictional nature of such premature filing is consistent with the pronouncements made in the ***Aichi case***[26], the prevailing jurisprudence on the matter, wherein the Supreme Court made the following pronouncements:

> **"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.
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> xxx xxx xxx
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> In fine, **the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no**

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[26] *Supra.*, note 23.

<u>jurisdiction was acquired by the CTA</u>." *(Emphasis and underscoring Ours).*

Clearly therefore, the premature filing of the judicial claim before this Court makes the instant petition dismissible as no jurisdiction was acquired by the Court to entertain the instant case.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[27] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[28]

Petitioner however contends that the *Aichi case*[29] and the 120-30 day rule should not be applied in the present case because decisions of the High Court at the time of the filing of the instant Petition for Review held that the 120-30 day period under Section 112(D) [now Section 112(C)] of the NIRC of 1997 is merely permissive or not mandatory. Allegedly, the doctrine provided in the *Aichi case* was abandoned in subsequent decisions of the Supreme Court.

We disagree with petitioner.

The doctrine enunciated in the *Aichi case* could only be overturned by a subsequent decision of the Supreme Court *En Banc* as provided under Section 4(3) of Article VIII of the 1987 Constitution, to wit:

"ARTICLE VIII
JUDICIAL DEPARTMENT

xxx xxx xxx

(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such

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[27] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[28] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.
[29] *Supra.*, note 23.

Members. When the required number is not obtained, the case shall be decided *en banc*: Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."

As the *Aichi* case has not been overturned by a decision of the Supreme Court *En Banc*, this Court is left with no recourse but to apply the Aichi ruling in the instant case.

Moreover, this Court is bound by the doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) embodied in Article 8 of the Civil Code of the Philippines.[30] The doctrine of *stare decisis* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court. A decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[31]

Lastly, on the argument that the premature filing of the instant Petition for Review did not divest this Court of its jurisdiction to hear the instant claim for being merely a violation of the doctrine of exhaustion of administrative remedies, which is allegedly waivable if not invoked, it bears mentioning that records of the case shows that respondent has in fact raised the same as one of her Special and Affirmative Defenses contained in the Answer posted on May 24, 2012[32], to wit: "[l]ack of cause of action on the part of the petitioner for non-exhaustion of administrative remedies". Thus, on the ground of lack of cause of action, the instant case is likewise dismissible.

In view of the foregoing, this Court finds that the discussion on the remaining stipulated issues, more particularly pertaining to the merits of the instant claim, becomes no longer necessary.

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[30] *Lazatin, et al. vs. Desierto, et al.*, G.R. No. 147097, June 5, 2009.
[31] *Fermin, et al. vs. People of the Philippines*, G.R. No. 157643, March 28, 2008.
[32] *Supra.*, note 11.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for having been prematurely filed.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached after due consultation before the case was assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice