REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHIL. GOLD PROCESSING & REFINING CORP.,
Petitioner,

CTA EB No. 756
(CTA Case No. 8048)

-versus-

Present:

Acosta, *PJ*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 2 8 2012 OAApolinario 1:35 p.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

Submitted for Decision before the Court *en banc* is a Petition for Review filed by petitioner Phil. Gold Processing and Refining Corp. (PGPRC) on May 12, 2011 assailing the Resolutions promulgated on December 23, 2010[1] and April 7,

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[1] *Rollo*, pp. 50-59. Concurred in by Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista registered his Dissenting Opinion.

2011,[2] granting Respondent's Motion to Dismiss and denying Petitioner's Motion for Reconsideration, respectively, entitled, *Phil. Gold Processing & Refining Corp., vs. Commissioner of Internal Revenue,*" docketed as CTA Case No. 8048 before the CTA Third Division.

The dispositive portion of the December 23, 2010 Resolution reads:

> **WHEREFORE**, premises *(sic)* respondent's prayer for the dismissal of the instant case is hereby **GRANTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED.**[3]

On the other hand, the dispositive portion of the April 7, 2011 Resolution provides:

> **WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[4]

THE FACTS

The antecedents as alleged by the petitioner in its Petition for Review *en banc* are as follows:

> Petitioner PGPRC is a domestic corporation duly organized and existing under Philippine laws with business address at 3rd Floor Corinthian Plaza Condominium Building, 121 Paseo de Roxas, Legaspi Village, Makati City, where it may be served with summons and other court processes. It is in the business of processing, milling, crushing,

[2] *Rollo*, pp. 61-66.
[3] *Id.*, at p. 54.
[4] *Id.*, at p. 66.

refining, smelting and concentrating mineral resources for export. Petitioner is duly represented in this suit by its Treasurer, Ms. Juanita Lilet Dato-Abuel.[5]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with the power and authority to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. Respondent may be served with summons and other court processes at her office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

Petitioner is registered with the Board of Investments (BOI) on a non-pioneer status as a "New Producer of Gold and Silver Ore" under Certificate of Registration No. 2008-042 issued on February 7, 2008.[7]

Petitioner is likewise registered with the BIR under Tax Identification No. 004-498-686-000 issued on March 15, 1996 and is classified as a Value Added Taxpayer.[8]

Petitioner is a VAT-registered entity that exports One Hundred Percent (100%) of its processed gold and silver ores. Such exports are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. Thus, all revenues derived by petitioner from export sales of the processed minerals are subject to value added tax (VAT) at zero percent (0%) rate

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[5] *Rollo*, p. 28.
[6] *Id.*, at p. 29.
[7] *Id.*, at p. 30.
[8] *Id.*

pursuant to Section 108 of the National Internal Revenue Code of 1997 (NIRC).[9]

Moreover, in (sic) January 27, 2010, the Board of Investments (BOI) approved petitioner's application for a Certification regarding the 100% export sales of its products and its compliance with BSP rules and regulations.[10]

At the commencement of its export business, petitioner purchased various goods and services to be used in its operations and in the completion of the construction of its processing plant. For this reason, petitioner incurred input VAT for those goods and services purchased locally.[11]

For various goods and services locally purchased by petitioner during the third quarter (period beginning January 1 to March 31, 2008) of its fiscal year ended June 30, 2008, petitioner paid the total amount of PESOS: TWO HUNDRED FIFTY SIX MILLION SIX HUNDRED TWELVE THOUSAND SEVEN HUNDRED SIXTY AND 41/100 (Php256,612,760.41). Said purchases are evidenced by various Official Receipts, Invoices and/or Vouchers issued by suppliers. Out of the total amount paid by petitioner as aforestated, the amount of PESOS: TWENTY SEVEN MILLION FOUR HUNDRED NINETY FOUR THOUSAND TWO HUNDRED

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[9] *Rollo,* p. 30.
[10] *Id.*
[11] *Id.,* at p. 31.

TWENTY FOUR AND 33/100 (Php27,494,224.33) was spent to cover the input VAT due.[12]

Being a corporation that exports 100% of its products and which sales are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, petitioner's revenues derived from the export sales of the processed minerals are subject to value added tax at zero percent (0%) rate pursuant to Section 108 (b)(1) of the NIRC, as amended. This being so, in accordance with Section 112 of the NIRC, as amended, inasmuch as the input VAT on purchases of goods and services are attributable to zero-rated sales, any input VAT so paid by petitioner shall be available as tax credit or refund.[13]

Thus, in a letter dated July 8, 2009, petitioner sought the BIR's confirmation that the input VAT on petitioner's local purchases of goods and services, among others, attributable to zero-rated sales can be claimed as tax credit or refund pursuant to Section 112 of the NIRC, as amended.[14]

Respondent Commissioner, in BIR Ruling No. DA (VAT-073) 435-2009 dated August 3, 2009, confirmed that the input VAT paid by petitioner for goods and services, among others, which are attributable to zero-rated sales are available as tax credit or refund pursuant to

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[12] *Rollo,* p. 31.
[13] *Id.*
[14] *Id.*

Section 112 of the NIRC, as amended. In the said Ruling, respondent pertinently stated:

> "In reply, please be informed that under Section 112 of the Tax Code, as amended, and implemented by Section 4.112-1 of the Revenue Regulations (RR) No. 16-05, a VAT-registered taxpayer may apply for tax credit or refund of input VAT attributable to zero-rated sales, to wit:
>
> "Section 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. –
>
> (a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services,
>
> **A VAT-registered person whose sales of goods, properties or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales.** The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The application should be filed within two (2) years after the close of taxable quarter when such sales were made.
>
> In case of zero-rated sales under Secs. 106(A)(2)(a)(1) and (2), and Sec. 106(A)(2)(b) and Sec. 108(B)(1) and (2) of the Tax Code, the payments for the sales must have been made in acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations.
>
> x x x." *(Underscoring supplied)*
>
> The aforecited provision was interpreted by this Office in *BIR Ruling No. DA-099-06* dated March 18, 2006, where it was ruled that any input VAT, without distinction, which are attributable to a company's zero-rated sales, shall be available as tax credit or refund pursuant to Section 112 of the Tax Code, as amended:
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> x x x x x x x x x
>
> Based on the foregoing, we hereby confirm your opinion that the input VAT on PGPRC's purchase of

> goods and services, including input VAT on importation of capital equipment, attributable to zero-rated sales are available as tax credit or refund pursuant to Section 112 of the Tax Code, as amended, and implemented by Section 4.112-1 of RR No. 16-05.
>
> x x x x x x x x x."[15]

On February 10, 2010, petitioner filed with the BIR its amended Quarterly Value Added Tax Return for the 3rd quarter of the fiscal year ended on June 30, 2008, which showed creditable input VAT it paid on account of the aforementioned purchase of goods and services for the said quarter in the amount of PESOS: TWENTY SEVEN MILLION FOUR HUNDRED NINETY FOUR THOUSAND TWO HUNDRED TWENTY FOUR AND 33/100 (Php27,494,224.33).[16]

On March 1, 2010, petitioner filed with the BIR's Revenue District Office (RDO) No. 47 (East Makati), Makati City a claim for refund and/or issuance of a tax credit certificate in the amount of PESOS: TWENTY SEVEN MILLION FOUR HUNDRED NINETY FOUR THOUSAND TWO HUNDRED TWENTY FOUR AND 33/100 (Php27,494,224.33) representing unutilized or unapplied creditable input taxes paid on the said purchases covering the period January 1 to March 31, 2008 considering that petitioner made no sales during the abovementioned quarter.[17]

The input VAT involved pertain to those paid by the petitioner during the period January 1 to March 31, 2008 which were reported in

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[15] *Rollo,* pp. 31-33.
[16] *Id.,* at p. 33.
[17] *Id.*

its quarterly Value Added Tax Return for the third quarter of the fiscal year ended June 30, 2008.[18]

Thus, petitioner claims that the two (2) year prescriptive period within which to file a claim for refund/tax credit with Respondent Commissioner is reckoned from the close of the taxable quarter when the said sales were made, i.e., March 31, 2010.[19]

On March 29, 2010, PGPRC filed its Petition for Review in accordance with Rule 6, Section 2 of the Revised Rules of the Court of Tax Appeals seeking for a refund or the issuance of tax credit certificate for excess and/or unutilized input VAT for the period January 1 to March 31, 2008 on the basis of its Quarterly Value Added Tax Return for the third quarter of the fiscal year ended June 30, 2008.[20]

In her Answer filed on May 24, 2010, respondent advanced the following Special and Affirmative Defenses:

> 5. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 7. Petitioner's claim for refund or issuance of tax credit certificate in the amount of **P27,494,224.33**, as alleged unutilized input VAT on purchases of goods and services attributable to its zero-rated sales for the period covering January 1 to March 31, 2008 were not fully substantiated by proper documents, such [as] sales invoices, official receipts and others.
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> 8. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed (sic) refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit. *gc*

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[18] *Rollo,* p. 33.
[19] *Id.,* at p. 34.
[20] Division *Rollo,* pp. 1-12.

9. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT.

10. The amount subject of the claim for refund of petitioner do not pertain in full to its input VAT attributable to its zero-rated sales for the period covering January 1 to March 31, 2008.

11. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

12. Petitioner failed to comply with the requirements under Section 112(C) of the 1997 Tax Code. The instant Petition for Review was prematurely filed with this Honorable Court on March 29, 2010, long before the 120-day period granted unto the CIR to act on its claim has ended. As such, herein respondent was deprived of an opportunity to rule on the application for input VAT refund of petitioner for the period covering January 1 to March 31, 2008. Hence, petitioner clearly violated the "**doctrine of exhaustion of administrative remedies.**" **(Steag Sate Power, Inc., vs. CIR, CTA Case Nos. 7458 and 7554, August 27, 2009).** Accordingly, the instant Petition for Review should be dismissed for **LACK OF CAUSE OF ACTION** and that this Honorable Court has no jurisdiction to entertain the instant case.

13. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

14. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation. (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95**) and as such, they are looked upon with disfavor. (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211**).[21]

On November 2, 2010, Petitioner filed its "Comment/Opposition (To Respondent's Affirmative Defense)."[22]

Acting on Respondent CIR's Special and Affirmative Defenses, the CTA Third Division issued its Resolution dated December 23, 2010, copy of which was

[21] Division *Rollo,* pp. 121-123.
[22] *Id.,* at pp. 186-192.

received by herein petitioner on January 6, 2011, in favor of the respondent and accordingly dismissed the Petition for Review for premature filing.[23]

On January 21, 2011, PGPRC filed its Motion for Reconsideration from the above CTA Resolution.[24] On January 31, 2011, respondent CIR filed her "Comment/Opposition (To Petitioner's Motion for Reconsideration)."[25]

On April 7, 2011, the CTA Third Division promulgated its Resolution denying Petitioner's Motion for Reconsideration.[26] On April 12, 2011, Petitioner PGPRC received a copy of the CTA Third Division's Resolution.[27]

On April 14, 2011, PGPRC filed a Motion for Extension of Time to File Petition for Review where the latter prays that they will be given up to May 12, 2011 within which to file its Petition for Review.[28] In a Minute Resolution[29] of this Court dated April 18, 2011, the Motion was granted and the movant was accordingly given an additional period of fifteen (15) days or until May 12, 2011 within which to file its Petition for Review.

On May 12, 2011, the Petition for Review before this Court was seasonably filed.[30]

In compliance with this Court's Resolution dated May 27, 2011,[31] the respondent filed its "Comment/Opposition (To Petitioner's Petition for Review)" on June 28, 2011.[32]

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[23] Division *Rollo,* at pp. 195-204.
[24] *Id.,* at pp. 206-217.
[25] *Id.,* at pp. 220-224.
[26] *Id.,* at pp. 227-232.
[27] *Id.,* at p. 226.
[28] *Id.,* at pp. 235-237.
[29] *Id.,* at p. 260.
[30] *Rollo,* at pp. 27-48.
[31] *Id.,* at pp. 211-212.
[32] *Id.,* at pp. 213-221.

On August 26, 2011, the Petitioner filed its Memorandum.[33] On the other hand, on September 6, 2011, the respondent instead filed its Manifestation and Motion[34] adopting all her arguments and affirmative defenses as previously discussed in her Comment/Opposition to the Petition for Review.

In a Resolution dated September 20, 2011,[35] this Court noted the Manifestation and Motion of the Respondent and rendered the case submitted for decision.

Hence, this Decision.

THE ISSUE

Petitioner anchors on its sole assignment of error to wit:

> **WHETHER OR NOT THE DOCTRINE ENUNCIATED BY THE SUPREME COURT IN ITS DECISION IN "COMMISSIONER OF INTERNAL REVENUE VS. AICHI FORGING COMPANY OF ASIA, INC." (G.R. NO. 184823) DATED OCTOBER 6, 2010 MAY BE APPLIED RETROSPECTIVELY.**[36]

Although the issue raised by the petitioner pertains only to the retrospective application of the Supreme Court ruling in *Aichi Forging Company, Inc., vs. Commissioner of Internal Revenue*,[37] the Court deems it appropriate to address the issues that are relevant and material to the resolution of this case. *Jc*

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[33] *Rollo,* pp. 229-244.
[34] *Id.,* at pp. 245-246.
[35] *Id.,* at pp. 250-251.
[36] Petition for Review, *Rollo,* p. 34.
[37] G.R. No. 184823, October 6, 2010, 632 SCRA 422. The *Aichi* ruling became final and executory on December 6, 2010.

THE COURT'S RULING

The Petition is bereft of merit. Let it be emphasized however, that we affirm the Resolutions of the Court in Division only insofar as the ground of premature filing strips this Court of jurisdiction over the case.

While it is true that petitioner's judicial claim was filed before the* Aichi *case was promulgated, this does not mean that the doctrine laid down in* Aichi *should only be applied prospectively.

Citing the Supreme Court ruling in *Columbia Pictures, Inc., vs. Court of Appeals,*[38] petitioner argues that a judicial interpretation becomes a part of the law as of the date the law was originally passed, subject only to the qualification that when a doctrine of the Court is overruled and a different view is adopted, the new doctrine must be applied prospectively and should not apply to parties who relied on the old doctrine and acted on the same in good faith. Therefore, the ruling of the High Court in *Aichi* should not yet bind the petitioner considering that its claim for refund was filed way before its promulgation.

Petitioner's argument is specious.

In the case of *Cemco Holdings, Inc., vs. National Life Insurance Company of the Philippines, Inc.,*[39] the High Court had the occasion to strike down the argument that the new doctrine pronounced by the Court should only be applied prospectively:

> [While] a judicial interpretation becomes a part of the law as of the date the law was originally passed, this is subject to the qualification

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[38] G.R. No. 110318, August 28, 1996, 261 SCRA 144.
[39] G.R. No. 171815, August 7, 2007, 529 SCRA 355, 375-376 citing the case of *Serrano vs. National Labor Relations Commission,* 387 Phil. 345, 357; 331 SCRA 331, 342-343 (2000).

> that when the doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.
>
> It is apparent that private respondent misconceived the import of the ruling. **The decision in Columbia Pictures does not mean that if a new rule is laid down in a case, it should not be applied in that case but that said rule should apply prospectively to cases arising afterwards. Private respondent's view of the principle of prospective application of new judicial doctrines would turn the judicial function into a mere academic exercise with the result that the doctrine laid down would be no more than a dictum and would deprive the holding in the case of any force.**
>
> **Indeed, when the Court formulated the Wenphil doctrine, which we reversed in this case, the Court did not defer application of the rule laid down imposing a fine on the employer for failure to give notice in a case of dismissal for cause. To the contrary, the new rule was applied right then and there.** x x x (Emphasis supplied)

It bears stressing that judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one.[40]

The law takes effect from the time it becomes effective and not from the time of the promulgation of a decision applying the law. Considering that the applicable law here is the NIRC of 1997 which took effect on January 1, 1998,[41] petitioner's claim falls within its coverage. Notably, it is only upon the effectivity of

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[40] *Eagle Realty Corporation vs. Republic,* G.R. 151424, July 31, 2009, 594 SCRA 555, 558, citing *Senarillos vs. Hermosisima,* 101 Phil. 561 (1956).

[41] *Commissioner of Internal Revenue vs. Michel J. Lhuiller Pawnshop, Inc.,* G.R. No. 150947, July 15, 2003, 406 SCRA 178 citing the case of *GSIS vs. Court of Appeals,* 334 Phil. 163, 175, 266 SCRA 187 (1997).

the statute that legal rights and obligations become available to those entitled by the language of the statute.[42] The validity and obligatory force of a law proceed from the fact that it has first been promulgated.[43]

Prescriptive periods for administrative and judicial claims for refund or issuance of tax credit certificate of unutilized input VAT under the National Internal Revenue Code (NIRC)

Petitioner argues that both the written claim for refund and the subsequent Petition for Review filed with this Court must be filed within the same two (2) year period, such that if the Commissioner takes his time in deciding the claim and the period of two (2) years is about to expire, the suit or proceeding must be commenced with this Court before the end of the two (2) year period, without awaiting the decision of the Commissioner and without awaiting the expiration of the one hundred twenty (120) days accorded to the latter to act on the taxpayer's claim for refund.

We are not persuaded.

To begin with, Section 112(A) of the NIRC is the prevailing rule on administrative claims for refund or issuance of tax credit certificates:

> 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**

[42] *Abakada Guro Party List vs. Purisima,* G.R. No. 166715, August 14, 2008, 562 SCRA 251.
[43] *Mighty Corporation vs. E & J Gallo Winery,* G.R. No. 154342, July 14, 2004, 434 SCRA 473.

> **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 volume of sales. (Emphasis supplied)
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> xxx xxx xxx

Thus, an application for a claim for refund of unutilized input VAT attributable to zero-rated sales may be made within two (2) years after the close of the taxable quarter when the sales were made. It is noteworthy that the above proviso applies only to claims for refund/credit before the respondent and not for purposes of filing a judicial claim before this Court.

On the other hand, Sec. 112(C) of the NIRC of 1997[44] provides a period within which to file its judicial claims:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (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.

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[44] As amended by Sec. 10 of Republic Act No. 9337, entitled, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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

Consequently, a claim for refund before this Court must be filed within a period of thirty (30) days either from receipt of the decision of the respondent or in case of the latter's inaction, upon the expiration of the one hundred and twenty (120)-day period reckoned from the date of the submission of complete documents in support of its application to decide on the administrative claim for refund. The 120-30 day period as provided by the NIRC is mandatory in nature and its non-compliance with necessarily result in the denial of the claim.

In the case at bar, PGPRC filed its administrative claim for refund for the first quarter of 2008 on March 1, 2010, thus, giving the respondent CIR until June 29, 2010 within which to act on petitioner's administrative claim. However, petitioner filed its judicial claim before this Court on March 29, 2010, hence, without waiting for the lapse of the one hundred twenty day (120)-period to decide as mandated by law. Despite the timely filing of the claim for refund on the administrative level, this Court is left with no choice but to deny petitioner's claim for refund on the ground of premature filing.

Non-observance of the periods provided under Sec. 112(C) of the NIRC will warrant the dismissal of the judicial claim for want of jurisdiction.

Since the judicial claim for refund of the PGPRC was prematurely raised, this Court is bereft of jurisdiction to take cognizance of the same. Consistent with the ruling of the High Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Corporation, Inc.,*[45] and in the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[46] which is applicable in this case held that the reckoning point of the two (2) year-prescriptive period for filing an administrative claim for refund is from the close of the taxable quarter when the relevant sales were made. Quoting *Aichi*, the Supreme Court said:

> ***Unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made***
>
> In computing the two-year prescriptive period for claiming a refund/credit of unutilized input VAT, the Second Division of the CTA applied Section 112(A) of the NIRC, which states:
>
>> 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, *gc*

[45] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[46] *Supra,* at note 37.

> That were 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 volume of sales. (Emphasis supplied)

The CTA *En Banc*, on the other hand took into consideration Sections 114 and 229 of the NIRC, which read:

> SEC. 114. Return and Payment of Value-Added Tax. –
>
> (A) In General. – Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer:** Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
>
> Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.
>
> x x x x
>
> SEC. 229. Recovery of tax erroneously or illegally collected. –
>
> No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

> Hence, the CTA *En Banc* ruled that the reckoning of the two-year period for filing a claim for refund/credit of unutilized input VAT should start from the date of payment of tax and not from the close of the taxable quarter when the sales were made.
>
> **The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* where we ruled that <u>Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.</u>** (Emphasis and underlining ours)
>
> xxx xxx xxx
>
> In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. **<u>To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.</u>** (Emphasis ours)

The *Aichi* ruling likewise provides that the respondent CIR has a period of one hundred twenty (120) days from the submission of complete documents to act on the claim for refund. Thereafter, a judicial recourse before this Court is allowed within a period of thirty (30) days from receipt of the decision, either denying the claim for refund or in case of inaction, upon the expiration of the one hundred and twenty (120) day period. **Non-observance of the 120-day period is fatal on the judicial claim for refund:**

xxx xxx xxx

The filing of the judicial claim was premature

However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:

> SEC. 112. Refunds or Tax Credits of Input Tax. – x x x x
>
> (D) 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) and (B) 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)

Section 112(D) 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.

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.

Respondent's assertion that 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.

There is nothing in Section 112 of the NIRC to support respondent's view. 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 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 for 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. <u>As we see it then, the 120-day period is crucial in filing an appeal with the CTA.</u>

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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 jurisdiction was acquired by the CTA.[47] (Emphasis ours)

[47] *Supra*, at note 37.

Moreover, since the CTA is a specialized court of limited jurisdiction,[48] we can only take cognizance of such matters as are clearly within our jurisdiction, *i.e.,* exclusive appellate jurisdiction on decisions/rulings or inaction of the CIR.[49] The law conferring jurisdiction on the CTA is Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, to wit:

> Sec. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes,** fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action in which case the inaction shall be deemed a denial;** (Emphasis ours)

The CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the CIR in cases involving refunds of internal revenue taxes. In case where the NIRC provides a specific period for action, the CIR's inaction shall be deemed a denial.

In this case, Section 112(C) of the NIRC of 1997, as amended, provides specific period of action, i.e., the 120-day period within which the CIR shall render a decision. When no decision is made after the 120-day period, the taxpayer has

[48] *Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp., et. al.,* G.R. 158540, July 8, 2004, 434 SCRA 65.
[49] *Commissioner of Internal Revenue vs. Taganito Mining Corporation,* CTA EB No. 559 (CTA Case No. 6867) April 18, 2011.

30 days within which to file an appeal with the CTA. If the taxpayer failed to do so, the taxpayer loses his right of judicial recourse. On the other hand, when a judicial claim is filed without awaiting the lapse of the 120-day period and there is no decision yet, the CTA acquires no jurisdiction as there is no decision or inaction to speak of. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also to pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[50]

Also, the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,*[51] should be applied by analogy in this case. It provides:

> **The decisions, rulings, or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal,** provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction** to entertain and determine the correctness of the assessments. **Such period is**

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[50] *Asia International Auctioneers, Inc. vs. Parayno, Jr.,* G.R. No. 163445, December 18, 2007, 540 SCRA 536, 552.
[51] G.R. 168498, April 24, 2007, 522 SCRA 144, 152-153 citing the case of *Chan Kian vs. Court of Tax Appeals*, 105 Phil. 904, 906 (1959).

> **not merely directory but mandatory and it is beyond the power of the courts to extend the same.** (Emphasis ours)

The Supreme Court ruled that the 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction. This applies to cases of refund under Section 112 where the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA. "It has been ruled that **perfection of appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional.** The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law."[52] **If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.**[53]

At this juncture, there was neither a showing that a decision was rendered by the CIR or that the 120-day period has already lapsed. Evidently, there is nothing yet to be reviewed by the CTA. Thus, the 120-day period is crucial in filing

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[52] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,* G.R. No. 167606, August 11, 2010, 628 SCRA 96, 105.
[53] *Ker & Company, Ltd., vs. The Court of Tax Appeals, et. al,* G.R. No. L-12396, January 31, 1962, 4 SCRA 160, 163.

an appeal with the CTA.[54] We reiterate the ruling that "a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."[55]

***The Supreme Court is the ultimate arbiter. The* Aichi *ruling must be applied outright under the principle of* stare decisis.**

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[56]

Moreover, we adhere to the principle *Stare decisis et non quieta movere.* Stand by the decision and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a

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[54] *Supra*, at note 37.
[55] *Id.*
[56] *Nacuray vs. National Labor Relations Commission,* G.R. No. 114924-27, March 18, 1997, 270 SCRA 9, 18 citing *Church Assistance Program, Inc. vs. Sibulo,* G.R. No. 76552, March 21, 1989, 171 SCRA 408.

competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[57]

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review is **DISMISSED.** Accordingly, the Resolutions dated December 23, 2010 and April 7, 2011 of the Court in Division are hereby **AFFIRMED** insofar as there is lack of jurisdiction on the ground of premature filing. Consequently, petitioner's claim for refund in the amount of P27,494,224.33 is **DENIED.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(I maintain my ***Dissenting Opinion***
as promulgated by the Third Division
of the Court in the assailed Resolutions)
LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[57] *Grand Placement and General Services Corporation vs. Court of Appeals,* G.R. No. 142358, January 31, 2006, 481 SCRA 189, 203-204 citing the case of *Negros Navigation Co., Inc. vs. Court of Appeals,* 346 Phil. 551, 563; 281 SCRA 534, 542-543 (1997).

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice