Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE Petitioner, - versus - **MINDANAO I GEOTHERMAL PARTNERSHIP,** Respondent.	EB Case No. 476 (CTA Cases Nos. 7228, 7286 & 7318)
MINDANAO I GEOTHERMAL PARTNERSHIP, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	EB Case No. 483 (CTA Cases Nos. 7228, 7286 & 7318) Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ. Promulgated: NOV 2 4 2010 ArsApolinario 1:30 p.m.

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AMENDED DECISION

CASANOVA, *J.*:

For resolution are the Commissioner of Internal Revenue's ("CIR") Motion for Reconsideration[1] filed on June 16, 2010 and Mindanao I Geothermal

[1] En Banc Rollo (EB No. 476), pp. 182-199

Partnership's ("MIGP") Motion for Partial Reconsideration[2] filed on June 18, 2010, both seeking reconsideration of this Court's Decision[3] promulgated on May 31, 2010.

Since the parties' respective Motion rests on different grounds, the Court shall address them separately.

The Commissioner of Internal Revenue (CIR) seeks to reconsider the Decision on the ground that:

> "Respondent Mindanao I Geothermal Partnership (MIGP) Is Not Entitled To a Refund In The Amount of P10,523,177.53 Representing Alleged Unutilized Input VAT For The Four Quarters of Taxable Year 2003."[4]

CIR argues that claims for refund partake the nature of exemptions and should be strictly construed against the claimant and cannot be allowed unless granted in explicit and categorical language; that, Sec. 229 of the 1997 Tax Code is inapplicable in the light of the Supreme Court ruling in the Mirant case[5]; and, that the procedure prescribed under Section 112(D) of the NIRC of 1997 should be followed first before this Court can act on MIGP's claim.

After a careful evaluation and consideration of the facts as well as jurisprudence on the matter, this Court finds CIR's Motion to be meritorious.

In Our Decision dated May 31, 2010, We ruled in this manner:

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[2] Ibid, pp. 200-212
[3] Ibid, pp. 151-163
[4] Motion for Reconsideration, par. 1, En Banc Rollo, p. 183
[5] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2007

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> "**WHEREFORE**, premises considered, the Petitions for Review are hereby **DISMISSED** for lack of merit. Accordingly, the October 24, 2008 Decision and March 10, 2009 Resolution of the CTA Former Second Division in CTA Case Nos. 7228, 7286 and 7318, entitled Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue are hereby **AFFIRMED** in toto.
>
> **SO ORDERED**."

In affirming the CTA Former Second Division Decision and Resolution, We, in effect, recognized and confirmed MIGP's entitlement to tax credit certificate in the reduced amount of P10,523,177.53, representing MIGP's unutilized input VAT for the four (4) taxable quarters of taxable year 2003. However, in the light of the most recent ruling of the Supreme Court in the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,[6] We are constrained to reconsider Our ruling in Our May 31, 2010 Decision.

We agree with the CIR's contention that Section 229 of the 1997 Tax Code is inapplicable in view of the ruling in the Mirant case. The High Tribunal, in the abovementioned case, settled the issue in this wise:

> "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 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.' We explained that:

[6] G.R. No. 184823, October 6, 2010

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x x x x x x x x x

> Considering the foregoing discussion, **it is clear that Sec. 112(A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes**. (Emphasis supplied)

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. 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."

Again, We agree with CIR's argument that the procedure prescribed under Section 112(D) of the 1997 Tax Code should be followed first before this Court can act on MIGP's claim.

The Supreme Court elucidating on this issue ruled as follows:

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

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> (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, it 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 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

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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. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

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."

Applying, therefor, the above ruling in the case at Bench:

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C.T.A. Case No. 7228:

(1) For calendar year 2003, MIGP filed with the BIR its Quarterly VAT Returns for the First Quarter of 2003. Pursuant to *Section 112(A) of the NIRC of 1997, as amended*, respondent has two years from March 31, 2003 or until March 31, 2005, within which to file its administrative claim for refund;

(2) On April 4, 2005, MIGP applied an administrative claim for refund of unutilized input VAT for the first quarter of taxable year 2003 with the BIR, which is beyond the two-year prescriptive period mentioned above.

C.T.A. Case No. 7286

(1) For calendar year 2003, MIGP filed with the BIR its Quarterly VAT Returns for the second quarter of 2003. Pursuant to *Section 112(A) of the NIRC of 1997, as amended*, MIGP, has two years from June 30, 2003, within which to file its administrative claim for refund for the second quarter of 2003, or until June 30, 2005;

(2) On April 4, 2005, MIGP applied an administrative claim for refund of unutilized input VAT for the second quarter of taxable year 2003 with the BIR, which is within the two-year prescriptive period, provided under *Section 112(A) of the NIRC of 1997, as amended*;

(3) The CIR has 120 days from April 4, 2005 (presumably the date MIGP submitted the supporting documents together with the application for refund) or until August 2, 2005, to decide the administrative claim for refund;

(4) Within 30 days from the lapse of the 120-day period or from August 3, 2005 to September 1, 2005, MIGP should have elevated its claim for refund to the CTA in Division;

(5) However, on July 7, 2005, MIGP filed its Petition for Review with this Court, docketed as CTA Case No. 7286, even before the 120-day period for the CIR to

decide the claim for refund had lapsed on August 2, 2005. The Petition for Review was, therefore, prematurely filed and there was failure to exhaust administrative remedies;

(6) In a number of decided cases, the Supreme Court held that:

> 'The doctrine of exhaustion of administrative remedies mandates that whenever there is an available administrative remedy provided by law, no judicial recourse can be made until all such remedies have been availed of and exhausted.[7]'

In Dagudag vs. Paderanga, 555 SCRA 217, the Supreme Court held that "the doctrine of exhaustion of administrative remedies is basic-courts, for reasons of law, comity and convenience, should not entertain suits unless the available administrative remedies have been resorted to and the proper authorities have been given an opportunity to act and correct their alleged errors, if any, committed in the administrative forum.

<u>C.T.A. Case No. 7318</u>

(1) For calendar year 2003, MIGP filed with the BIR its Quarterly VAT Returns for the third and fourth quarters of 2003. Pursuant to *Section 112(A) of the NIRC of 1997, as amended*, respondent therefore, has two years from September 30, 2003 and December 31, 2003, or until September 30, 2005 and December 31, 2005, respectively, within which to file its administrative claim for the third and fourth quarters of 2003;

(2) On April 4, 2005, MIGP applied an administrative claim for refund of unutilized input VAT for the third and fourth quarters of taxable year 2003 with the BIR, which is well within the two-year prescriptive period, provided under *Section 112(A) of the NIRC of 1997, as amended*;

(3) From April 4, 2005, which is also presumably the date MIGP submitted supporting documents, together

[7] Oporto vs. Members of the Board of Inquiry and Discipline of National Power Corporation, 569 SCRA 93

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> with the aforesaid application for refund, the CIR has 120 days or until August 2, 2005, to decide the claim;
>
> (4) Within thirty (30) days from the lapse of the 120-day period or from August 3, 2005 until September 1, 2005, MIGP should have elevated its claim for refund to the CTA;
>
> (5) However, MIGP filed its Petition for Review with the CTA in Division only on September 9, 2005, which is 8 days beyond the 30-day period to appeal to the CTA.
>
> Evidently, the Petition for Review was filed way beyond the 30-day prescribed period. Thus, the Petition for Review should have been dismissed for being filed late."

In recapitulation:

(1) C.T.A. Case No. 7228

Claim for the first quarter of 2003 **had already prescribed** for having been filed beyond the two-year prescriptive period;

(2) **C.T.A. Case No. 7286**

Claim for the second quarter of 2003 should be dismissed for MIGP's failure to comply with a condition precedent when it failed to exhaust administrative remedies by filing its Petition for Review even before the lapse of the 120-day period for the CIR to decide the administrative claim;

(3) **C.T.A. Case No. 7318**

Petition for Review was filed beyond the 30-day prescribed period to appeal to the C.T.A.

Anent MIGP's Motion for Partial Reconsideration, suffice it to state that with the above discussion and ruling, this Court no longer finds it necessary to resolve the second issue raised in the Motion.

With regard to the first issue on the failure of this Court to furnish MIGP with Annexes "A" to "J" and "K" of the Decision dated October 24, 2008, the Clerk of Court is hereby ordered to furnish MIGP with copies of Annexes "A" to "J" and "K" of the October 24, 2008 Decision of the Former Second Division.

IN VIEW OF THE FOREGOING, the Commissioner of Internal Revenue's Motion for Reconsideration is hereby **GRANTED**; MIGP's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.

The May 31, 2010 Decision of this Court *En Banc* is hereby **REVERSED**.

Accordingly, the Petition for Review of the Commissioner of Internal Revenue in CTA EB No. 476 is hereby **GRANTED** and the entire claim of Mindanao I Geothermal Partnership for the first, second, third and fourth quarters of 2003 is hereby **DENIED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO GRULLA
Associate Justice

AMELIA C. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 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

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MINDANAO I GEOTHERMAL PARTNERSHIP,
Respondent.

CTA EB NO. 476
(CTA Case Nos. 7228, 7286 & 7318)

x--x

MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 483
(CTA Case Nos. 7228, 7286 & 7318)

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
NOV 24 2010 [illegible] 1:30 p.m.

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CONCURRING AND DISSENTING OPINION

BAUTISTA, J.:

While I agree with the denial by the Court *En Banc* of the Motion for Partial Reconsideration filed by Mindanao I Geothermal Partnership, I stand firm by my view that both the administrative and judicial claims must be made within the two

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(2)-year prescriptive period provided under Sections 112 and 229 of the 1997 National Internal Revenue Code ("NIRC"), as amended.

With all due respect to the Court *En Banc*, I maintain that the period provided under Section 112(C)[1] of the 1997 NIRC, as amended, is directory and permissive, and not mandatory nor jurisdictional, as long as it is made within the 2-year prescriptive period.[2] The said provision, using the word "*may,*" does not suggest a compulsory recourse to this Court within thirty (30) days after the receipt of the adverse decision or after the lapse of the one hundred twenty (120)-day period without any action from the Commissioner. It merely indicates a matter of option which the taxpayer may pursue, provided that the judicial claim is filed pursuant to the settled 2-year prescriptive period.

Thus, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or even the inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court,[3] for beyond the 2 year prescriptive period, the taxpayer can no longer appeal to this Court.[4]

The same issue had been thoroughly addressed in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[5] to wit:

> **It bears stressing that the use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Section 229 of the NIRC**. It is a well-settled doctrine in statutory construction that the word "may" when used

[1] As amended by Republic Act No. 9337.
[2] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB No. 416, February 4, 2009.
[3] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.
[4] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.
[5] CTA EB No. 408 (CTA Case No. 6647), March 25, 2009.

in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.

Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year prescriptive period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated in this wise:

> "It appears therefore, **that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case**. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
>
> Incidentally, **the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal.** The law fixed the same period – two years – for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court. Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Boldfacing supplied*)

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Also, once the petition is filed, the Court has already acquired jurisdiction over the claims and the Court is not bound to wait indefinitely for no reason for whatever action the Commissioner may take. At stake are claims for refund and unlike disputed assessments, no decision of the Commissioner is required before one can go to this Court.[6]

I must likewise point out that the reckoning of the 2-year prescriptive period provided under Section 112(A) of the 1997 NIRC within which to file a claim for refund or tax credit must be counted not from the close of the pertinent quarter when the sales were made as pronounced in the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*[7] ("*Mirant case*"), but from the date of filing of the relevant return as enunciated in the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[8] *("Atlas case").*

When Mindanao I Geothermal Partnership filed its administrative claims with the BIR on April 4, 2005, and the subsequent Petitions for Review before the Court on April 22, 2005, July 7, 2005 and September 9, 2005, the well-established ruling then is that embodied in the case of *Atlas case*.

In the case of *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*,[9] the following disquisition was made:

> The CTA has been consistent with the foregoing rule that even after petitioner filed its Petitions for Review with the Court in Division in

[6] Commissioner of Internal Revenue *v.* Toledo Power, Inc., CTA EB No. 321 (CTA Case Nos. 6805 & 6851), May 7, 2008.
[7] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[8] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[9] CTA EB No. 513 (CTA Case Nos. 7227, 7287 and 7317), March 10, 2010, Concurring and Dissenting Opinion penned by Associate Justice Lovell R. Bautista, with Associate Justice Caesar A. Casanova, concurring.

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> 2005, the CTA has continued to invoke the rule that the reckoning of the two-year prescriptive period for the filing of claims for VAT refund/tax credit certificate starts from the date of filing of the corresponding quarterly VAT returns, in similar cases such as *Takenaka Corp. Phil. Branch v. CIR, CTA Case No. 6762, March 20, 2006, Mirant (Navotas 11) Corporation v. CIR, CTA Case Nos. 7234 & 7295, October 2, 2008, CE Luzon Geothermal Power Co. v. CIR, CTA Case Nos. 6792 & 6837, November 25, 2008.*
>
> Moreover, even after the promulgation of the *Mirant SC Case*, the CTA has continued to apply the rule that the reckoning of the two-year prescriptive period for the filing of claims for VAT refund/tax credit certificate starts from the date of filing of the corresponding quarterly VAT returns, citing as basis the ruling of the Supreme Court in the *Atlas SC case*.
>
> Thus, the rule that the reckoning of the 2-year period is the date of filing of the quarterly VAT return has become a well-established doctrine and adopted in numerous decisions of the CTA, the Court of Appeals and even the Supreme Court until the Supreme Court rendered its decision in the *Mirant SC Case* on September 12, 2008.
>
> Consequently, taxpayers and litigants relied in good faith on such prevailing CTA jurisprudence.

The afore-quoted is in conformity with the Supreme Court's ruling in the case of *Albino S. Co v. Court of Appeals*,[10] wherein it ruled that when a doctrine is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

The same consideration underlies the ruling of the Court in the case of *Team Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*,[11] to quote:

> Although there is a recent case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly SOUTHERN ENERGY QUEZON, INC.)*, wherein the Supreme Court held that the reckoning of

[10] G.R. No. 100776, October 28, 1993, 277 SCRA 444.
[11] CTA Case Nos. 7229 and 7298, October 5, 2009.

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> the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the *Mirant Case.* **To apply said ruling in the present case will in effect be giving the new doctrine retroactive application thereby impairing vested rights.** *(Boldfacing supplied)*

In light of the foregoing, the ruling in the *Mirant case* that the reckoning of the 2-year prescriptive period is from the close of the taxable quarter should be applied prospectively, *i.e.*, to administrative and judicial claims filed after September 12, 2008.

Based on the records of the case, I find the administrative claims filed on April 4, 2005, and the subsequent judicial claims filed before this Court on April 22, 2005, July 7, 2005 and September 9, 2005, were made within the 2-year prescriptive period. With this, the Motion for Reconsideration filed by the Commissioner of Internal Revenue should be denied for lack of merit.

Accordingly, I vote for the **DENIAL** of the Motion for Reconsideration filed by the Commissioner of Internal Revenue.

LOVELL R. BAUTISTA
Associate Justice

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