REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

TAGANITO MINING CORPORATION,
Petitioner,

CTA EB NO. 656
(CTA CASE NO. 7769)

Present:

ACOSTA, *PJ*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 19 2011 ArApolinario 9:00 a.m.

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DECISION

UY, J.:

This Petition for Review filed before the Court of Tax Appeals *En Banc* on July 20, 2010 seeks a review of the Decision and Resolution by the Second Division of this Court (Court in Division)[1] in CTA Case No. 7769, entitled "Taganito Mining Corporation, petitioner, vs. Commissioner of Internal Revenue, respondent"[2], to wit:

1) Decision promulgated on April 8, 2010[3] denying the Petition for Review and the Supplemental Petition for Review for failure of

[1] Chaired by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla as members.
[2] Ponencia of Associate Justice Cielito N. Mindaro-Grulla, concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.
[3] Docket, pp. 20-33.

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petitioner to prove that its actual payment of the claimed input VAT of P4,611,123.00 for taxable year 2006 complied with the substantiation requirements under Section 4.110-8(a)(1) of Revenue Regulations No. 16-05, and that the importations pertaining to the same input VAT are in the nature of "capital goods or properties" as defined under Section 4.110-3(b) of the same regulation, as amended by Revenue Regulations No. 4-2007; and

2) Resolution promulgated on June 3, 2010[4] denying herein petitioner's Motion for Reconsideration for lack of merit.

THE FACTS

The factual antecedents of the case are undisputed.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 4th Floor, Solid Mills (now BMMC) Building, Dela Rosa Street, Legaspi Village, Makati City. It is duly registered with the Securities and Exchange Commission (SEC), as evidenced by Certificate of Registration No. 138682 issued on March 4, 1987. It is primarily engaged in the business of exploring, extracting, mining, selling, and exporting precious metals and all kinds of ores, metals, and their by-products. It is a VAT-registered entity with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000017494 and a Board of Investments (BOI)-registered entity with BOI Certificate of Registration No. EP 88-306 dated April 14, 1988.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to exercise the functions of said office, including inter alia, the power to decide claims for refund of internal revenue taxes, fees and other charges, penalties imposed

[4] Ibid, at pp. 35-36.

in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed through the BIR's computerized filing system (EFPS) its Original Quarterly VAT Returns for the first to fourth quarters of taxable year 2006 on the following dates:

Exhibit	Taxable Quarter	Date of Filing
"X" to "X-3"	First	April 24, 2006
"Z" to "Z-3"	Second	July 19, 2006
"AA" to "AA-5"	Third	October 18, 2006
"CC" to "CC-2"	Fourth	January 25, 2007

Subsequently, petitioner filed its Amended Quarterly VAT Returns on October 18, 2006 for the first and second quarters of 2006, and on March 25, 2008 for the fourth quarter of 2006.

On March 26, 2008, petitioner filed with respondent, through the latter's Excise Taxpayers' Assistance Division under the Large Taxpayers Division or LTAID-II, a claim for credit/refund of input VAT paid on its domestic purchases of taxable goods and services and importation of goods amounting to P22,421,260.26, for the period covering January 1, 2006 to December 31, 2006.

Since respondent has not issued a final decision on petitioner's administrative claim, petitioner filed a Petition for Review before the Court in Division on April 17, 2008, in order to toll the running of the two-year period to judicially claim a tax refund/credit as provided in Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended. On the other hand, respondent filed an Answer thereto on June 4, 2008 interposing among others, as a Special and Affirmative defense, that "petitioner did not give respondent ample time to resolve its administrative claim for refund" in violation of Section 112 (C) of the NIRC of 1997, as amended.

During trial before the Court in Division, petitioner presented its witnesses Mr. Joseph Cedric V. Calica of AMC & Associates, the Court's duly appointed Independent Certified Public Accountant, and Mr. Reynaldo R. Vigilia, Vice President for Finance of petitioner. On the other hand, respondent submitted the case for decision without presenting any evidence.

On March 17, 2009, petitioner filed a Motion for Partial Withdrawal of Petition, to the extent of P17,810,137.26, in view of the approval by the BIR's Large Taxpayers Service-Excise Tax Division of the application for tax credit/refund of petitioner in the amount of P15,725,188.58 and the allowance of the previously disallowed amount of P2,084,948.68. The Court in Division, in the Resolution dated April 8, 2009, granted said Motion. Consequently, petitioner was ordered to file its Supplemental Petition for Review, limiting the issue of the case to the remaining amount of P4,611,123.00, representing petitioner's alleged excess input VAT paid on the importation of capital goods from January 1, 2006 to December 31, 2006.

Thereafter, on May 26, 2009, petitioner filed a Supplemental Petition for Review, which has reduced the amount of its claim for tax refund from the original claim of P22,421,260.26 to P4,611,123.00, representing petitioner's alleged excess input VAT paid on the importation of capital goods from January 1, 2006 to December 31, 2006.

In the Supplemental Answer filed on June 25, 2009, respondent repleaded all the Special and Affirmative Defenses enumerated in the Answer filed on June 4, 2008, and added that the "claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation."

On January 26, 2010, the case was submitted for decision before the Court in Division, considering petitioner's Memorandum filed on January 7, 2010, and the report of the Court's Records Division that respondent failed to file a memorandum.

On April 8, 2010, the Court in Division rendered its assailed Decision, denying petitioner's claim for refund of its alleged excess or unutilized input VAT paid on its importation of capital goods for taxable year 2006 in the amount of P4,611,123.00 for lack of merit. The Court *a quo* ruled that the Petition for Review and the Supplemental Petition for Review in CTA Case No. 7769 should be denied for failure of petitioner to prove that its actual payment of the claimed input VAT of P4,611,123.00 for taxable year 2006 complied with the substantiation requirements under Section 4.110-8(a)(1) of Revenue Regulations No. 16-05, and that the importations pertaining to the same input VAT are in the nature of "capital goods or properties" as defined under Section 4.110-3(b) of the same regulation, as amended by Revenue Regulations No. 4-2007.

Petitioner filed a Motion for Reconsideration of the assailed Decision before the Court *a quo* on April 28, 2010. Finding that the issues raised thereto are without merit and were already sufficiently passed upon and discussed in the assailed Decision, the Court in Division denied said Motion for Reconsideration in the Resolution dated June 3, 2010.

Thus, petitioner came before the Court *En Banc* praying that the assailed Decision dated April 8, 2010, and Resolution dated June 3, 2010 of the Court in Division, be reversed and set aside, and that a new decision be rendered ordering respondent to refund petitioner the amount of P4,611,123.00, allegedly pertaining to input taxes paid on importation of capital goods covering the taxable year 2006.

In the Resolution dated September 1, 2010[5], respondent was directed by the Court *En Banc* to file her Comment in this case. As no comment was filed by respondent within the given period despite notice, both parties were directed to file their respective memorandum in the Resolution dated March 1, 2011[6]. Thereafter, this case was considered submitted for decision on May 18, 2011, after petitioner filed its Memorandum on December 28, 2010[7], sans respondent's memorandum.

Hence, this Decision.

THE ISSUE

Petitioner submits the sole issue for the consideration of this Court, to wit: "whether or not petitioner is entitled to the refund of alleged excess VAT input taxes of Four Million Six Hundred Eleven Thousand One Hundred Twenty Three (Pesos) (P4,611,123.00) paid on importation of capital goods from January 1, 2006 to December 31, 2006.

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[5] Id., pp. 45-46.
[6] Id., pp. 49-51.
[7] Petitioner's Memorandum, Docket, pp. 52-67.

In support thereof, petitioner contends that it has substantially complied with the requisites under existing laws in order to be entitled to the claim for refund of its input VAT on purchases of capital goods, and therefore asserts the following assignments of error of fact and of law:

> 1. The Court in Division "should consider an official receipt issued by an accredited collection bank in the regular course of business, which document does not otherwise show any alteration or any sign of irregularity and which has neither been discredited by the Respondent as being anomalous, as the best evidence or proof of actual payment of input tax.
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> Failure to do so constitutes reversible error";
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> 2. The Court in Division "committed reversible error in not considering as proof of the fact that Petitioner's purchases are in the nature of capital goods, the report of the independent CPA taken in relation to Petitioner's Exhibit 'EE-1' and Exhibit 'QQ'.
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> The independent CPA, in his report, certified that Petitioner properly recorded in its books the purchases and input VAT paid/incurred while Petitioner's Exhibit 'EE-1' consists of Petitioner's Audited Financial Statements, specifically the Balance Sheet showing Petitioner's Property and Equipment under its non-current assets and the corresponding Note 7 found on page 19 of the Notes to Financial Statements. The Notes to Financial Statements, by itself, is a complete replication of Petitioner's Subsidiary Ledger.
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> Petitioner's Exhibit 'QQ' consists of the testimony of Petitioner's Vice-President for Finance wherein on pages 5 to 6 thereof, an explanation as to what consists of Petitioner's purchases of capital goods was made".

Moreover, petitioner argues that the applicable tax provision on tax credits is Section 110 of Republic Act No. 8424, as amended, which does not require that the right to refund input tax on capital goods should be subject to the rule on depreciation. Rather, subsection A.1 thereof merely states that any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the said Code on purchase or importation of goods for use in trade or business for which deduction for depreciation or amortization is allowed under the Code, except automobiles, aircraft and yachts shall be creditable against the output tax. In other words, petitioner believes that the Code pertains to depreciation or amortization only when such input tax is credited against the output tax, not when the input tax is being claimed for refund.

Lastly, petitioner submits that the denial of its claim for refund cannot be based on a finding that its purchases were not proven as capital goods. In making a ruling that its purchases are not in the nature of capital goods, the Court in Division cannot at the same time apply the rule on amortization of input tax on said purchases and must necessarily refund the entire input VAT on the said purchases.

THE COURT EN BANC'S RULING

Before considering the arguments raised by petitioner, and in the light of the decision of the Supreme Court in the case of ***Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010***, the Court finds it necessary to squarely determine whether or not this Court has jurisdiction to entertain the present appeal as allowed under paragraph 2 of Section 1 of Rule 14 of the Revised Rules of the Court of Tax Appeals, which states that "[i]n deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case".

Needless to state, to obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties.[8] As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[9] It should be recalled that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[10]

Consequently, the principal issue centers on whether or not this Court properly acquired jurisdiction over the instant claim taking into consideration the timeliness of the filing of the judicial claim with the Court of Tax Appeals as provided under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 7 of Republic Act (RA) No. 1125[11], as amended by RA No. 9282[12], defines the appellate jurisdiction of the Court of Tax Appeals. The said provision, in part, reads:

> "SEC. 7. *Jurisdiction*. - The CTA shall exercise:
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> a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
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> (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

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[8] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[9] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[10] Supra, see note 8.
[11] AN ACT CREATING THE COURT OF TAX APPEALS.
[12] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO.1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (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**; xxx" *(Emphasis Ours)*

Furthermore, Section 11 of the same law prescribes how the said appeal should be taken, to wit:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**.
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> **Appeal should be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. xxx" *(Emphases Ours).*

One of the "inactions" contemplated in the above-quoted provisions, pertinent to the instant case, is found in Section 112 of the NIRC of 1997, as amended, the pertinent provisions of which state:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
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> (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**

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> **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: xxx
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> xxx xxx xxx
>
> (C)[13] *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.**
>
> 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)*

Based on the foregoing provisions, 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 taxable quarter when the sales or purchases were made**.

Thus, contrary to the pronouncements of the Court in Division in its assailed Decision dated April 8, 2010, 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

[13] Previously Section 112(D) before Republic Act No. 9337 took effect on November 1, 2005.

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whether said tax was paid or not, as held in the case of ***Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc)***,[14] which is the applicable ruling in the instant case. In said case, 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)*

Additionally, a further reading of the provisions of Section 112 shows that under paragraph (C) thereof, the Commissioner of Internal Revenue is granted a **120-day period**, from submission of complete documents in support of the administrative claim within which to act on claims for refund/applications for issuance of the tax credit certificate. Upon denial of the claim or application, or upon expiration of the **120-day period**, the taxpayer only has a **30-day period** within which to appeal said adverse decision or unacted claim before the Court of Tax Appeals.

[14] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

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Moreover, in ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***,[15] the Supreme Court elaborated on the significance of the **120-day** and **30-day** periods as follows:

> "Section 112(D)[16] 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 xxx xxx
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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 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.**
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> xxx xxx xxx." *(Emphasis and underscoring Ours)*

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

[16] Changed to Section 112(C) upon effectivity of Republic Act No. 9337 in November 1, 2005.

In light of the foregoing jurisprudential pronouncements, it is clear that Section 112(C) of the NIRC of 1997, as amended, directs the Commissioner of Internal Revenue to act on administrative claims for refund/applications for issuance of the tax credit certificate within a period of one hundred twenty (120) days from submission of complete supporting documents. Upon partial or full denial of such claim, or the expiration thereof without any action by the Commissioner on said claim, the taxpayer only has a period of thirty (30) days within which to seek judicial recourse from the adverse decision or inaction of the Commissioner before the Court of Tax Appeals.

Thus, it becomes incumbent upon the taxpayer-claimant to comply, not only with the two-year period within which to file a refund/tax credit claim with the Bureau of Internal Revenue, but must also give the Commissioner of Internal Revenue a period of one hundred twenty (120) days to either partially or fully deny the claim.

Subsequently, upon denial of the claim, or after the expiration of the 120-day period without any action by the Commissioner thereon, only then may the taxpayer-claimant seek judicial recourse to appeal the Commissioner's action or inaction on a refund/tax credit claim, within a period of 30 days therefrom.

At this point, it is worthy of emphasis that judicial interpretation of a statute constitutes a 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.[17] As the Supreme Court is merely interpreting a law (Section 112 of the NIRC of 1997) which had long been effective, and not modifying or reversing any existing jurisprudence, the pronouncements made in the ***Mirant case*** and ***Aichi case*** (although promulgated only on September 12, 2008 and October 6, 2010, respectively) must be applied herein. Consequently, neither the doctrine of *stare decisis* nor any vested right was violated in applying the said rulings in the present case.

Applying the foregoing discussion in the case at bench, it appears 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 26, 2008 (all within the period from the close of the taxable quarters when the relevant sales or purchases were made). However, petitioner's corresponding judicial claim before the Court in Division through the Petition for Review filed on April 17, 2008[18] was prematurely filed as the same was done before the lapse of the 120-day period, detailed hereunder as follows:

Taxable year 2006	***Filing date of the administrative claim***	***Last day of the 120-day period under Section 112(D) from the filing of the administrative claim in case of inaction***	***Filing date of the Petition for Review***
1st Quarter	March 26, 2008	**July 24, 2008**	**April 17, 2008**
2nd Quarter			
3rd Quarter			
4th Quarter			

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[17] *Eagle Realty vs. Republic of the Philippines,* G.R. No. 151424, July 31, 2009.

[18] This Court notes that although a Supplemental Petition for Review was subsequently filed by petitioner on May 26, 2009, the same merely averred facts occurring after the filing of the original Petition for Review on April 17, 2008, the actual period of which the instant judicial claim was made before the Court in Division in CTA Case No. 7769.

Based on the above undisputed factual findings, the reckoning date of the 120-day period under Section 112(C) of the NIRC of 1997, as amended, commenced simultaneously with the filing of petitioner's administrative claim since no subsequent supporting documents was submitted by petitioner, absent any evidence contrary thereto.

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 the Court in Division in CTA Case No. 7769 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***[19], the prevailing jurisprudence on the matter.

In the ***Aichi*** case, the Supreme Court categorically ruled that the premature filing of claim for refund/credit of input VAT before this Court warrants its dismissal as no jurisdiction was acquired therein. The High Court said thus:

> **"In this case, the administrative and the judicial claims were <u>simultaneously filed</u> on September 30, 2004. <u>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</u>.**
>
> 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

[19] Supra, see note 15.

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**." *(Emphasis and underscoring supplied).*

Clearly therefore, the premature filing of the judicial claim before the Court of Tax Appeals makes the Petition for Review dismissible as no jurisdiction was acquired by the Court to entertain the case. And being jurisdictional in nature, this defense is not waivable. Otherwise, We run the risk of favoring a non-complying taxpayer-claimant, at the mere expedient of failing to invoke the defense of prematurity before this Court at the first instance.

It must also be noted that the right to appeal is a mere statutory privilege and not an inherent constitutional right as aptly held in the case of ***Yao vs. Court of Appeals, et al.***[20], to wit:

> "The right to appeal is **not** a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. Since the right to appeal is not a natural right nor a part of due process, **it may be exercised only in the manner and in accordance with the provisions of law**. Corollary, **its requirements must be strictly complied with**.
>
> **That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional**. Non-compliance with such legal requirements is fatal, for it renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision." *(Emphases Ours)*

Parenthetically, 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

[20] G.R. No. 132428, October 24, 2000.

controversy,[21] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[22] 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.[23]

Furthermore, the right of petitioner to refund unutilized input VAT is a mere statutory privilege and not a vested right. It bears emphasis that recovery of excess input VAT is a refund which is in the nature of an exemption. There is parity between tax refund and tax exemption when the former is based either on a tax exemption statute or a tax refund statute. Evidently, a claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.[24]

In this case, input VAT is taxes legally due to the government from the taxpayer and is not a kind of an erroneously or illegally collected tax.

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[21] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[22] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[23] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.
[24] *CIR vs. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008; *Commissioner of Internal Revenue vs. SC Johnson & Son, Inc.*, 368 Phil. 388, 411, June 25, 1999; *Magsaysay Lines, Inc., vs. Court of Appeals*, 329 Phil. 310, 324, August 12, 1996; *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 314 Phil. 220, 228, May 26, 1995.

However, under certain exceptional circumstances (such as for sales or purchases that are zero-rated), the legislature provided a tax refund statute under Section 112 from which the taxpayer is given the benefit to refund such input VAT as a mere privilege granted by the government for having such kind of sales or transactions. Hence, it being a mere liberality granted to the taxpayer, it is with more reason that the Court must be cautious in interpreting the law governing the claim for such privilege.

Moreover, granting *arguendo* that the premature filing of the Petition before the Court in Division did not divest Itself of the jurisdiction to hear on the instant claim as it is merely considered a violation of the doctrine of exhaustion of administrative remedies, which may be waived if not raised as a defense, it bears mentioning that records of the case shows that respondent has in fact raised the same before the Court in Division in CTA Case No. 7769, as part of the Special and Affirmative Defenses contained in the Answer filed on June 4, 2008, to wit:

> "9. Moreover, petitioner did not give respondent ample time to resolve its administrative claim for refund based on Section 112 (C) of the NIRC of 1997, which states:
>
> 'Section 112. Refunds or Tax Credits of Input Tax. —
>
> (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.
>
> 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.' (Italics ours)

10. Hence, when petitioner filed its administrative claim for tax refund with respondent's Excise Taxpayers' Assistance Division on 26 March 2008, respondent had 120 days within which to decide on petitioner's claim for tax refund. And in case of full or partial denial of the claim or failure of respondent to act on the application within the 120 day period, petitioner has 30 days to appeal the decision or inaction with the Court of Tax Appeals. Thus, respondent had to render a decision within 120 days from 26 March 2008 or until 22 July 2008. In the event that respondent failed to act upon petitioner's claim for tax refund, petitioner has 30 days from 22 July 2008 or until 21 August 2008 to appeal the unacted claim with the Court of Tax Appeals.

11. The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions (Agpalo, Statutory Construction, Third Edition 1995, pa. 266). For this reason, the courts construe these provisions of statutes as mandatory (Ibid, citing Alvero vs. De La Rosa, 76 Phil. 428, 434).

12. Petitioner filed the instant petition for review with the Court of Tax Appeals only on 26 March 2008. Clearly, the instant petition for review was filed prematurely. The period provided by Section 112(c) of the NIRC of 1997 gives respondent the opportunity to act on administrative claims for refund. Petitioner denied this opportunity to respondent. Also, it recognizes the fact that our courts' dockets, in this case the Honorable Court of Tax Appeals, are clogged with cases. Hence, indiscriminate filing of judicial claims for tax refund, like the instant petition, is not favorable to this Honorable Court."[25]

Categorically, the foregoing special and affirmative defenses emphasized the necessity of complying with the pertinent provisions of

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[25] Paragraphs 9-12, Answer dated June 1, 2008, pp. 5-6, CTA Case No. 7769, Records, pp. 29-30.

Section 112 of the NIRC of 1997, as amended, pertaining to the prescriptive periods of 120 days and 30 days. Thus, even on the ground of lack of cause of action, the instant case is likewise dismissible.

Lastly, in the exercise of its judicial prerogative to inquire further by looking into the merits of the case, this Court agrees with the findings of the Court in Division that petitioner failed to prove that its actual payment of the claimed input VAT of P4,611,123.00 for taxable year 2006 complied with the substantiation requirements under existing applicable tax provisions and administrative regulations, considering that the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to the refund of the amount being claimed.

To reiterate, the premature filing of the judicial claim before the Court of Tax Appeals makes the petition dismissible as no jurisdiction was acquired by the Court to entertain the case. Consequently, this Court has no alternative but to deny the instant Petition and dismiss the case for lack of jurisdiction.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is hereby **DENIED** for lack of merit. The instant Petition for Review filed thereto is **DISMISSED** for lack of jurisdiction.

The Decision dated April 8, 2010 and the Resolution dated June 3, 2010 of the Court in Division in CTA Case Nos. 7769 are hereby **AFFIRMED** as to result only.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Separate Opinion)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

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 conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

TAGANITO MINING CORPORATION,
Petitioner,

CTA EB CASE No. 656
(CTA Case No. 7769)

-*versus*-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 19 2011 [signature] 9:00 a.m.

x---x

Separate Opinion

BAUTISTA, J.

I am in unison with the Court *En Banc* in dismissing the present Petition for Review, however, not on the ground of premature filing of the judicial claim as enunciated by the majority, but for lack of merit as found by the Second Division of this Court in its Decision dated April 8, 2010, to wit:

> This Court finds however that the supporting official receipts do not prove petitioner's actual payment of the claimed input VAT in the amount of ₱4,611,123.00. Also, there is no year indicated in the official receipt supporting the January 2006 claim of ₱1,131,431.00. Hence, the input VAT claim of ₱4,611,123.00 should be denied for failure to meet the substantiation requirements under Section 4.110-8(a)(1) of Revenue Regulations No. 16-05, which reads:

xxx xxx xxx

> Applying the foregoing, petitioner failed to prove that the importations pertaining to the input VAT claim of ₱4,611,123.00 are in the nature of "capital goods or properties" as defined under Section 4.110-8(a)(1) of Revenue Regulations No. 16-05. Assuming arguendo that the subject importations qualify as capital goods or properties, the related input VAT of ₱4,611,123.00 shall be spread/amortized over the estimated useful life of the capital goods or properties, which will mean that the same amount would not be entirely refundable. Since there was no evidence presented for this purpose, petitioner's claim for refund must fail.[1]

Consequently, the Second Division of this Court denied the Petition for Review and the Supplemental Petition for Review filed before it.

Significantly, it found that the administrative claim filed before the respondent on March 26, 2008, and the consequent judicial claim before this Court filed on April, 17, 2008, were filed within the two (2)-year prescriptive period. This is in accord with the Court *En Banc*'s ruling in the case of *Commissioner of Internal Revenue v. Toledo Power, Inc.*,[2] to wit:

> **It is true that Section 112(D) [now Section 112(C)] of the abovementioned provision applies to the present case. However, what the petitioner failed to consider is Section 112(A) of the same provision. The respondent is also covered by the two (2) year prescriptive period. We have repeatedly held that the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period.**
>
> Accordingly, the Supreme Court held in the case of Atlas *Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* that the two-year prescriptive period for filing a claim for input tax is reckoned from the date of the filing of the quarterly VAT return and payment of the tax due. **If the said period is about to expire but the BIR has not yet acted on the application for refund, the taxpayer**

[1] *Rollo*, pp. 30-32.
[2] CTA EB Case No. 321 (CTA Case Nos. 6805 & 6851), May 7, 2008.

> **may interpose a petition for review with this Court within the two year period.**
>
> In the case of *Gibbs vs. Collector*, the Supreme Court held that if, however, the Collector (now Commissioner) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.
>
> Furthermore, in the case of *Commissioner of Customs and Commissioner of Internal Revenue vs. The Honorable Court of Tax Appeals and Planters Products, Inc.*, the Supreme Court held that the taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect. It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector (now Commissioner) of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Collector (now Commissioner) of Internal Revenue, would have, at his personal convenience, given his go signal.
>
> This Court ruled in several cases that 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 respondent (herein petitioner) may take. At stake are claims for refund and unlike disputed assessments, no decision of respondent (herein petitioner) is required before one can go to this Court. *(Boldfacing supplied)*

And in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[3] the same was further bolstered as follows:

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

[3] CTA EB Case No. 408 (CTA Case No. 6647), March 25, 2009.

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.*)

Therefore, I must stress that 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 one hundred twenty (120)-day period before the taxpayer can lodge its appeal with this Court,[4] for claims for refund or tax credit, both in the administrative and judicial fora must be filed within the 2-year period;[5] for beyond that period, the taxpayer can no longer appeal to this Court.[6]

With the foregoing disquisitions, I maintain the ruling as promulgated by the Second Division of this Court in its Decision dated April 8, 2010.

Accordingly, I vote for the **DISMISSAL** of the Petition for Review for lack of merit.

LOVELL R. BAUTISTA
Associate Justice

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[4] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB Case No. 426, May 29, 2009.
[5] Commissioner of Internal Revenue *v.* Victorias Milling Co., Inc., No. L-24108, January 3, 1968, 22 SCRA 12.
[6] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB Case No. 410 (CTA Case No. 7387), March 18, 2009.