REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

VISAYAS GEOTHERMAL POWER COMPANY,
Petitioner,

CTA EB No. 761
(CTA Case No. 7737)

- 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:
JUL 11 2012

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DECISION

COTANGCO-MANALASTAS, *J.*:

This is an appeal by way of a *Petition for Review*[1] of the *Amended Decision*[2] and *Resolution*[3] promulgated by the Former Second Division on January 31, 2011 and April 5, 2011, respectively, filed by petitioner Visayas Geothermal Power Company on May 9, 2011 pursuant to *Section 18 of Republic Act (R.A.) No. 1125, as amended*

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[1] *Rollo*, pp. 6 52.
[2] *Rollo*, pp. 60 69, Amended Decision dated January 31, 2011 penned by Associate Justice Juanito C. Castañeda, Jr., in the case entitled *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, docketed as CTA Case No. 7737.
[3] *Rollo*, pp. 70-76, Resolution dated April 5, 2011 penned by Associate Justice Juanito C. Castañeda, Jr., in the case entitled *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, CTA Case No. 7737.

by Section 11 of R.A. No. 9282, and Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA). Quoted hereunder are the pertinent portions of the challenged *Decision* and *Resolution*:

Amended Decision dated January 31, 2011:

> "WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby GRANTED. Accordingly, the assailed Decision is hereby SET ASIDE and REVERSED. Petitioner's claim for refund or issuance of tax credit certificate for its unutilized input VAT attributable to petitioner's zero-rated sales for the four quarters of taxable year 2006 is hereby DISMISSED for being filed out of time.
>
> SO ORDERED."

Resolution dated April 5, 2011:

> "WHEREFORE, premises considered, petitioner's Motion for Reconsideration is DENIED for lack of merit.
>
> SO ORDERED."

Petitioner seeks the reversal of the above-quoted *Amended Decision* and *Resolution* and the granting of its claim for refund or issuance of a tax credit certificate (TCC) in the total amount of Nineteen Million Five Hundred Sixty Nine Thousand Six Hundred Eighty Three and 63/100 (Php19,569,683.63) allegedly representing its unutilized input value-added tax (VAT) attributable to zero-rated sales for the four quarters of calendar year (CY) 2006.

ANTECEDENT FACTS

The facts of the case, as narrated by the Former Second Division of this Court in its original Decision[4] dated June 23, 2010, are as follows:

> "Visayas Geothermal Power Company (Petitioner) is a special purpose limited partnership duly organized and existing under Philippine laws, with principal office at Ormoc City, Leyte. Petitioner was established on November 4, 1994. The business purpose of petitioner is to "invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold that certain partially constructed power production geothermal electrical generating facility in Malitbog, Leyte Province, Philippines (the 'Project'), and other property incidental thereto, for the production and sale of electricity from geothermal resources, to sell or otherwise dispose of the Project and such other property," and to engage in any other related or incidental activities.
>
> Petitioner has been accredited and certified as such by the Department of Energy (DOE), as evidenced by its DOE Certificate of Accreditation (OSAC94-13) issued on June 15, 1994. Petitioner is also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. 003-832-538-VAT.
>
> Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> Petitioner filed with the BIR its Quarterly VAT Returns for the first to fourth quarters of taxable year 2006 on the following dates:
>
> Taxable Quarter Original Return Amended Return

[4] Original Decision dated June 23, 2010 penned by Associate Justice Juanito C. Castañeda, Jr., in the case entitled *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, docketed as CTA Case No. 7737.

First	April 20, 2006	
Second	July 25, 2006	
Third	October 25, 2006	June 21, 2007
Fourth	January 25, 2007	June 21, 2007

Petitioner's Original Quarterly VAT Returns for the first and second quarters of taxable year 2006 and Amended Quarterly VAT Returns for the third and fourth quarters of taxable year 2006 reflected the zero-rated sales, domestic purchases of non-capital goods and services, services rendered by non-resident, importation of non-capital goods, and the related excess or unutilized input VAT arising from the same transactions; which are detailed as follows:

Current Transactions

2006 Taxable Quarter	Zero-rated Sales (P)	Domestic Purchases Goods Other Than Capital Goods (P)	Importation-Goods Other Than Capital Goods (P)	Domestic Purchases Services (P)	Services Rendered by Non Residents (P)
1st	764,291,788.03	3,742,603.17	2,614,946.67	39,791,995.85	0.00
2nd	801,953,056.76	5,881,345.67	588,975.00	14,894,431.83	154,758.75
3rd	802,549,369.65	13,868,445.00	2,605,446.67	15,860,128.75	291,001.08
4th	975,063,197.67	11,959,288.23	2,775,316.67	39,716,871.92	12,229,753.00
Total	3,343,857,412.11	35,451,682.07	8,584,685.01	110,263,428.35	12,675,512.83
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Excess/Unutilized VAT Credits

2006 Taxable Quarter	Domestic Purchases Goods Other Than Capital Goods (P)	Domestic Purchases Services (P)	Services Rendered by Non Residents (P)	Importation-Goods Other Than Capital Goods (P)	Total (P)
1st	389,618.41	4,438,595.97	0.00	264,950.00	5,093,164.38
2nd	696,598.04	1,779,261.71	18,571.05	70,677.00	2,565,107.80
3rd	1,663,801.11	1,903,215.45	34,920.13	309,325.00	3,911,261.69

4th	1,433,532.77	4,766,008.63	1,467,570.36	333,038.00	8,000,149.76
Total	4,183,550.33	12,887,081.76	1,521,061.54	977,990.00	19,569,683.63

On July 4, 2007, petitioner filed an administrative claim for refund of the above-mentioned unutilized input VAT with the BIR Revenue District Office No. 89.

Since petitioner has yet to receive a favorable response from respondent and before it could be barred by prescription, petitioner filed this instant Petition for Review on March 14, 2008, pursuant to Sections 112 and 229 of the National Internal Revenue Code (NIRC) of 1997.

In the Answer filed on May 30, 2008, respondent alleged the following Special and Affirmative Defense:

"PETITIONER'S JUDICIAL CLAIM WAS FILED BEYOND THE PERIOD PRESCRIBED BY LAW, HENCE, THE HONORABLE COURT HAS NO JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT CASE."

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On August 28, 2009, the case was ordered submitted for decision after petitioner and respondent filed their memoranda on August 24, 2009 and July 30, 2009, respectively.

The issues, as jointly stipulated by the parties, are the following:

"1. Whether or not the Honorable Court has jurisdiction over the instant petition.

2. Whether or not the alleged unutilized input VAT of the Petitioner for the 1st to 4th quarters of CY 2006 amounting to P19,569,683.63 is substantiated by documentary evidence in the form of invoices and official receipts.

3. Whether or not the alleged unutilized input VAT credits of the Petitioner for the 1st to 4th quarters of CY 2006 in the total amount of P19,569,683.63 was applied against any output VAT of the Petitioner in the subsequent quarters.

4. Whether or not such alleged input VAT were erroneously or illegally collected by Respondent.

5. Whether or not the Petitioner is entitled to a refund and/or issuance of tax credit certificate in the total amount of P19,569,683.63, representing its alleged unutilized input VAT from domestic purchases and importation of goods and services for the 1st to 4th quarters of CY 2006.

6. Whether or not Petitioner incurred the input VAT on its alleged domestic purchases and importation of goods and services for the 1st to 4th quarters of CY 2006.

7. Whether or not Petitioner's claim for refund of unutilized input VAT was filed within the period prescribed by law."

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of P19,569,683.63, representing unutilized input VAT from its domestic purchases of non-capital and capital goods and services, services rendered by non-residents, and importation of capital and non-capital goods for the four quarters of taxable year 2006."

In the original Decision dated June 23, 2010, the Court *a quo* partially granted petitioner its claim for refund or issuance of TCC in the reduced amount of P18,664,110.07.

On January 31, 2011 an *Amended Decision*[5] was issued by the Court *a quo* reversing and setting aside its original Decision dated June 23, 2010 and declaring petitioner's claim for refund or issuance of tax credit certificate for its unutilized input VAT attributable to petitioner's zero-rated sales for the four quarters of taxable year 2006 DISMISSED for being filed out of time. The Court *a quo* found merit in

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[5] *Supra*, Note 2.

respondent's contention that petitioner filed its judicial claim beyond the thirty (30)-day period following the 120 days given to respondent to decide on the claim for refund or issuance of tax credit certificate.

The Court *a quo* denied for lack of merit petitioner's motion for reconsideration of the above *Amended Decision*[6] in a resolution dated on April 5, 2011.

Hence, the filing of the instant *Petition for Review*[7] by petitioner Visayas Geothermal Power Company.

In a Resolution[8] dated June 3, 2011, respondent was ordered to comment on the subject petition. Respondent filed her *Comment*[9] on June 21, 2011.

On July 7, 2011, the Court *En Banc* resolved to give due course to the instant Petition for Review and required the parties to submit their respective Memoranda within thirty (30) days from notice. Respondent filed a *Manifestation*[10] stating that she is adopting the arguments in her *Comment* dated June 21, 2011 as her memorandum in this case; similarly, petitioner timely filed its *Memorandum*[11] on August 18, 2011. Considering the *Manifestation* filed by the respondent and the *Memorandum* of petitioner, the instant Petition for Review was submitted for decision on September 6, 2011.

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[6] *Supra.*
[7] *Supra* Note 1.
[8] *Rollo*, pp. 94-95.
[9] *Rollo*, pp. 96-102.
[10] *Rollo*, pp.107-108.
[11] *Rollo*, pp. 111 181.

ISSUES

Petitioner interposed the following issues:

A. THE CTA-DIVISION VALIDLY ACQUIRED JURISDICTION OF PETITIONER'S JUDICIAL CLAIM FOR REFUND.

B. AICHI[12] SHOULD NOT BE APPLIED INDISCRIMINATELY TO ALL CLAIMS FOR VAT REFUND.

C. THE PROSPECTIVE APPLICATION OF THE AICHI INTERPRETATION ON THE OBSERVANCE OF THE 120-DAY RULE IS LEGALLY EQUITABLY IMPERATIVE.

D. PETITIONER IS ENTITLED TO THE REFUND OF ITS CLAIMED INPUT VAT FOR THE FOUR QUARTERS OF CY 2006.

Arguments of Petitioner

Petitioner submits that the Court in Division validly acquired jurisdiction of petitioner's judicial claim for refund arguing that its administrative claim for refund with the BIR on July 4, 2007 and Petition for Review with this Court on March 14, 2008 were filed in accordance with the prevailing laws and rules relative to the filing of administrative and judicial claims for refund at the time of filing, *i.e., [i] the 30-day period to appeal to the Court of Tax Appeals (CTA) following the expiration of the 120-day period under Section 112 (C) of the 1997 Tax Code is neither mandatory nor*

[12] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

compulsory, and may be dispensed with as long as both are filed within the 2-year prescriptive period provided under Section 229 of the same code; [ii] Section 229 of the 1997 Tax Code, which provides that a taxpayer has two years from the date of payment of tax within which to file both the administrative and judicial claims for refund, applies to claims for input VAT refund; and [iii] the ruling of the Supreme Court in the case of Atlas Consolidated Mining and Development Corp., vs. CIR, G.R. No. 141104 & 148763, June 8, 2007, declaring that both administrative and judicial claims for input VAT refund must be filed within two years from the date of filing of the return and payment of the tax due.

Further, petitioner avers that: Section 112 (C) of the 1997 Tax Code is directory as it neither compels not demands the taxpayer to observe the periods provided therein; unlike Section 229 of the 1997 Tax Code, Section 112 (C) of the same code is silent on the legal consequences of the taxpayer's failure to comply with the stated periods; the mandatory language of Section 229 of the 1997 Tax Code indicates the legislative intent to apply this provision to all cases of recovery of erroneously, illegally and excessively collected internal revenue taxes, including VAT, which is an internal revenue tax. Petitioner argues that prior to *Aichi*[13], no jurisprudence mandated the application of the 120/30-day rule; numerous cases decided by the Supreme Court did not apply the 120/30-day rule.

Moreover, petitioner insists that: the *Aichi* case should not be applied indiscriminately to all claims for VAT refund as it did not provide sufficient legal basis

[13] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

for the CTA-Division to divest itself of jurisdiction over the case; *Aichi* did not overturn the Supreme Court's doctrinal ruling in *Atlas* and as all other Supreme Court cases adopting the same view and does not provide the legal basis for the courts to indiscriminately dismiss, for lack of jurisdiction, cases which failed to strictly comply with the 120-day period under Section 112 (C) of the 1997 Tax Code; reliance on the *Aichi* case is misplaced, said case was premised on the prematurity of the filing of the judicial claim unlike in this case where petitioner allowed the 120-day period to lapse and availed of the full two-year prescriptive period before it filed its judicial appeal; violation of the 120/30-day period cannot be equated to lack of jurisdiction, if at all, it is a mere violation of the doctrine of exhaustion of administrative remedies. Nonetheless, petitioner manifests that respondent is deemed to have waived her right to invoke petitioner's alleged violation of the 120/30-day rule when she issued regulations and circulars that demonstrated her acquiescence to the earlier decisions of this Court that the taxpayer need not wait for the lapse of the 120-day period before filing a petition for review with the CTA-Division, *i.e., Section 4.104-2, Revenue Regulations (RR) No. 7-95, Revenue Memorandum Circular (RMC) No. 42-99, RMC No. 42-2003 as amended by RMC No. 49-2003, RMC No. 29-2009*; and that respondent has actively taken part in all the stages of the proceedings by filing all the necessary pleadings and taking part in the trial of the case.

Finally, petitioner contends that the prospective application of the *Aichi* interpretation on the observance of the 120-day rule is legally equitably imperative. Petitioner submits that even assuming that the *Aichi* decision validly overruled the doctrine laid down in the *Atlas* case, the *Aichi* case should not be made to apply to judicial claims for refund that were filed before its promulgation, such as this case.

Arguments of Respondent

Respondent counters that the doctrine in the *Atlas* case only applies to the National Internal Revenue Code (NIRC) of 1977 and not to the NIRC of 1997. There have been significant changes from the 1977 to 1997 version of the NIRC; unlike in the NIRC of 1977, the 1997 version clearly shows that there are specific requirements in filing a judicial claim for refund.

Further, respondent maintains that the cause of action of petitioner had already prescribed, hence this Court never acquired jurisdiction over the case. Lastly, respondent stresses the supremacy of the decision of the Supreme Court in the *Aichi* case.

THE RULING OF THE COURT *EN BANC*

This Court holds that the disposition of the Court *a quo* dismissing petitioner's claim for refund or issuance of TCC for its unutilized input VAT is fully justified in law and in reason. No new matters or issues have been raised, and all the grounds relied upon by petitioner in this *Petition for Review* have been extensively discussed and passed upon in the *Amended Decision*[14] and *Resolution*[15]sought to be reconsidered.

Petitioner's statutory right to appeal has already prescribed, and thus, this Court has not acquired jurisdiction over the instant claim for the refund or issuance of TCC for unutilized input VAT for the four quarters of 2006

Petitioner's judicial claim for refund or issuance of TCC for its unutilized input VAT for the four quarters of 2006 was appropriately dismissed by the Court in Division on the ground that the same was filed beyond the 30-day period prescribed under Section 112(C) of the NIRC of 1997, as amended.

Under Section 112(C) of the NIRC of 1997, as amended, the Commissioner of Internal Revenue (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 the CTA within 30 days.[16]

[14] *Supra*, Note 2.
[15] *Supra*, Note 3.
[16] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

Records show that petitioner filed its administrative claim for refund for the four quarters of 2006 on **July 4, 2007**. Under Section 112 (C) of the NIRC of 1997, *as amended*, CIR had **120 days** or until November 1, 2007 within which to decide the claim for refund or issuance of TCC; however, since November 1 and 2 were declared holidays, the end of the 120-day fell on **November 5, 2007**, the next working day. Consequently, petitioner is given a period of **30 days** from November 5, 2007 or until **December 5, 2007** within which to appeal. Petitioner filed its Petition for Review on **March 14, 2008**, 100 days late or beyond the 30-day period provided under Section 112(C) of the NIRC of 1997, as amended.

Hence, petitioner's statutory right to appeal has already prescribed, and thus, this Court has not acquired jurisdiction over the instant claim for the refund or issuance of TCC for unutilized input VAT for the four quarters of 2006. Perfection of an appeal in the **manner and within the period** laid down by law is not only mandatory but also jurisdictional[17].

It is significant to note that in the recent case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,*[18] although it does not mainly pertain to the 30-day period to file petition or appeal under Sec. 112(C) of the NIRC of 1997, *as amended by RA 9337*, the Supreme Court reaffirmed the principle that the right to appeal is not a natural right, but merely a statutory privilege exercised

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[17] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.

[18] G.R. No. 167606, August 11, 2010 citing *Neypes v. Court of Appeals*, 506 Phil. 613, 621 (2005); *Nuñez v. GSIS Family Bank*, G.R. No. 163988, November 17, 2005, 475 SCRA 305, 320; *Republic v. Court of Appeals*, 379 Phil. 92, 100-101 (2000); *In the matter of the Heirship (Intestate Estates) of the late Hermogenes Rodriquez v. Robles*, G.R. No. 182645, December 4, 2009, 607 SCRA 770.

only in the manner and in accordance with the provisions of law. In varying but consistent language, the Supreme Court has emphasized that "the right to appeal is not a natural right or 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 the law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost. xxx "[R]ules of procedure, especially those prescribing the time within which certain acts must be done, have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. xxx Thus, we have held that the failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional".[19]

Neither could petitioner plead leniency in the application of the rules prescribing the period to appeal considering that the same is prescribed not only by the RRCTA but also by statute, particularly Section 112(C) of the NIRC of 1997, as amended.

"The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal has the effect of rendering the judgment final and executory. Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite date fixed by law."[20]

[19] *Producers Bank of the Philippines vs. CA,* G.R. No. 126620, April 17, 2002 citing Ortiz *vs.* Court of Appeals, 299 SCRA 708 (1998).
[20] *Supra,* Note 18.

As to petitioner's argument that the 120/30-day rule is not mandatory and may be dispensed with as long as both the administrative and judicial claims are filed within the two-year prescriptive period under Section 229 of the NIRC of 1997, as amended, the Supreme Court, in the *Aichi* case, ratiocinated in this wise:

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"**Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.**

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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.**

The Aichi case is a 'to the letter' application of Section 112 (A) and (C) of the NIRC of 1997, hence their applications must be from the time the 1997 NIRC took effect and not from the promulgation of the cases.

We find apropos the ruling of the Court in Division as to the outright application of the literal terms of Section 112 (A) and (C) of the NIRC of 1997. Quoted hereunder is the pertinent portion of the challenged *Resolution*[21]:

> "The law takes effect from the time of its effectivity and not from the time of the promulgation of the decision applying the law. As held by the Supreme Court in the case of Philippine Constitution Association vs. Enriquez:
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> > "The Court's interpretation of the law is part of that law as of the date of its enactment since the court's interpretation merely establishes the contemporary legislative intent that the construed law purports to carry into effect."
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> The Aichi case merely made an outright application of the literal terms of Section 112 (A) and (D) of the National Internal Revenue Code (NIRC) of 1997, as amended, and considering that the applicable law here is the National Internal Revenue Code (NIRC) of 1997, which took effect on January 1, 1998, then, there is no reason not to apply the ruling of the Supreme Court in the Aichi case."

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[21] *Supra,* Note 3.

It is well to remember 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."[22]

"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 1 January 1998, petitioner's claim falls within its coverage. Notably, it is only upon the effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. The validity and obligatory force of a law proceed from the fact that it has first been promulgated."[23]

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[22] *Air Liquide Philippines, Inc., vs. Commissioner of Internal Revenue*, CTA EB Case No. 704, February 27, 2012

[23] *Air Liquide Philippines, Inc., vs. Commissioner of Internal Revenue*, CTA EB Case No. 704, February 27, 2012 citing *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); *Abakada Guro Party List vs. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251; *Mighty Corporation vs. E & J Gallo Winery*, G.R. No. 154342, July 14, 2004, 434 SCRA 473.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED**. Accordingly, the *Amended Decision*[24] and *Resolution*[25] dated January 31, 2011 and April 5, 2011, respectively, of the Court in Division are hereby AFFIRMED. Petitioner's claim for refund in the amount of P19,569,683.63 is DENIED on the ground that the judicial claim for the four quarters 2006 was filed beyond the 30-day period prescribed under Section 112(C) of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

[24] *Supra*, Note 2.
[25] *Supra*, Note 3.

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 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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Petitioner,

-*versus*-

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Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
JUL 11 2012 1:30 p.m.

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DISSENTING OPINION

BAUTISTA, J.:

Where there has been justifiable reliance on Our decisions, and those who have so relied may be substantially harmed if retroactive effect is given, where the purpose of the new rule can be adequately effectuated without giving it retroactive operation, or where retroactive operation might greatly burden the administration of justice, then it is Our duty to apply the new rule prospectively.[1]

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[1] Magtoto *v.* Manguera, *et al.*, G.R. Nos. L-37201-02, L-37424, and L-38929, March 3, 1975, 63 SCRA 4, Concurring Opinion penned by Justice Felix Q. Antonio, with Justices Antonio P. Barredo and Cecilia Muñoz-Palma, concurring.

With the foregoing principle in mind, the factual circumstances present in the case at bench should support the application of the ***then prevailing jurisprudence at the time the claim was made.***

The rulings in the cases of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.],*[2] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*[3] are more in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code, as amended; nonetheless, it would be the height of injustice to impose a new ruling wherein after a taxpayer-claimant had faithfully relied and complied therein, this Court will only nullify the same on the basis of the so-called "adherence to precedence."

It is true that this Court has the duty to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[4] Still, this Court should not decide a case by merely adhering to precedence; idolatrous reverence for precedent, simply as precedent, no longer holds true.[5]

Therefore, this Court cannot merely impose a ruling that was yet to be enunciated at the time a claim was lodged in Our forum. As the Supreme Court aptly ruled, "the final authority of this Court rests upon public respect for its decisions; that public respect is based upon an image which represents this Court as

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[2] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] G.R. No. 184823, October 6, 2010.
[4] Commission on Higher Education *v.* Atty. Felina S. Dasig, G.R. No. 172776, December 17, 2008, 574 SCRA 227, *citing Albert v. Court of First Instance of Manila, No. L-26364, May 29, 1968, 23 SCRA 948, 961.*
[5] Philippine Trust Company and Smith, Bell and Co. *v.* Mitchell, 59 Phil. 30, 36.

declaring legal principles with an authority and certainty that the people may place upon it their *bona fide* reliance and reasonable expectations."[6]

Hence, prior determinations deemed to have finality and acted upon accordingly, demands examination. The effect of a subsequent ruling as to invalidity may have to be considered in various aspects. It may have consequences which cannot just be ignored.[7]

Even the taxpayer-claimant itself could not have foreseen that after it had filed its claims before the administrative and judicial *fora*, a subsequent ruling, either modifying or overruling a previous one, would be issued that would put to naught its claims.

Therefore, when petitioner filed its administrative claim on July 4, 2007, and the subsequent judicial claim before this Court on March 14, 2008, the then prevailing doctrine, is that the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return;[8] not from the close of the quarter;[9] and not even within thirty (30) days from receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.[10]

Based on the records of the case, petitioner filed its relevant returns for the taxable year 2006 on the following dates: April 20, 2006, July 25, 2006, October 25,

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[6] *Supra*, note 1.
[7] Albino S. Co *v.* Court of Appeals, *et al.*, G.R. No. 100776, October 28, 1993, 277 SCRA 444, *citing Chicot County Drainage District v. Baxter States Bank, 308 US 371, 374 [1940].*
[8] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[9] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[10] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.

2006, and January 25, 2007. Petitioner, thus, had until two (2) years from the aforementioned dates, within which to file *both* its administrative and judicial claims.

Albeit in the Decision dated June 23, 2010, the Former Second Division of the Court found that the claims were filed in accordance with the two (2)-year prescriptive period from the close of the relevant taxable quarter, I still vote to apply the ruling in force at the time the action was made.

In sum, I find the administrative and judicial claims filed within the prescribed two (2)-year period.

Accordingly, I vote that the Petition for Review be **GRANTED**. The Decision dated June 23, 2010 of the Former Second Division of the Court should be **REINSTATED**.

LOVELL R. BAUTISTA
Associate Justice