REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PROCTER & GAMBLE ASIA PTE. LTD.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. Case No. 8164

Members:

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

Promulgated:

JUL 25 2012
PBFernandez 3:11 p.m.

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DECISION

COTANGCO-MANALASTAS, J.:

The instant Petition for Review was filed by petitioner Procter & Gamble Asia Pte. Ltd. pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by Section 7 of RA No. 9282, and Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals. The instant Petition for Review filed on September 29, 2010 seeks the refund of petitioner's alleged excess and unutilized input value-added taxes (VAT) for the periods covering July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008 in the amount of Php115,242,046.55.

THE FACTS

Petitioner is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining its Regional Operating Headquarters in the Philippines at 18th Floor, Petron Megaplaza, 358 Sen. Gil Puyat Avenue, Makati City, in accordance with the Certificate of Registration and License No. A199913443 issued by the Securities and Exchange Commission. It provides management, marketing, technical and financial advisory and other qualified services to related companies. Petitioner is a VAT Registered Taxpayer and is covered by Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.[1]

Respondent is being sued in her official capacity as Commissioner of the Bureau of Internal Revenue and may be served with summons at her office at the BIR National Office Building, Diliman, Quezon City.

For the periods from July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008, petitioner electronically filed its Monthly VAT Declarations and Quarterly VAT Returns on the following dates[2]:

Month/Quarter Covered	**Return Filed**	**Date Filed**
July 2008	Monthly VAT Declaration	August 20, 2008
August 2008	Monthly VAT Declaration	September 19, 2008
3rd Quarter of 2008	Quarterly VAT Return	October 21, 2008
3rd Quarter of 2008	Amended Quarterly VAT Return	October 20, 2009
October 2008	Monthly VAT Declaration	November 17, 2008
November 2008	Monthly VAT Declaration	December 18, 2008
4th Quarter of 2008	Quarterly VAT Return	January 20, 2009
4th Quarter of 2008	Amended Quarterly VAT Return	April 27, 2009

Based on the afore-mentioned VAT Returns, petitioner accumulated input VAT from its domestic purchases of goods other than capital goods, services and others during the periods covering July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008 and other transactions in the aggregate amount of Php120,847,220.09, detailed as follows:

Period Covered	**Input VAT**			
	Goods	**Services**	**Others**	**Total**
July 1, 2008 to September 30, 2008	Php 740,654.75[3]	Php62,786,978.40[4]	Php 902,259.16[5]	Php 64,429,892.31

[1] Pars. 1 and 3, Admitted Facts by Petitioner and Respondent, Joint Stipulation of Facts and Issues, docket, pp. 160-161.
[2] Pars. 4 to 11, JSFI, docket, pp. 161-162.
[3] Line 21F, Exhibit "I".
[4] Line 21J, Exhibit "I".
[5] Line 21O, Exhibit "I".

October 1, 2008 to December 31, 2008	Php1,041,575.46[6]	Php54,334,907.14[7]	Php1,040,845.18[8]	Php 56,417,327.78
TOTAL				**Php120,847,220.09**

In the same periods, petitioner also reported sales subject to VAT in the aggregate amount of Php1,595,173,624.65[9], broken down as follow:

Period Covered	Amount of Sales
September 2008	Php 884,332,846.58[10]
December 2008	710,840,778.07[11]
TOTAL	**Php 1,595,173,624.65**

Out of the total sales of Php1,595,173,624.65 for the periods from July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008, sales in the amount of Php57,917,172.17[12] were subjected to twelve percent (12%) VAT and Php1,537,256,452.48[13] were subjected to zero percent (0%) VAT.[14] The sales subjected to 0% VAT allegedly pertain to services rendered by petitioner to its affiliates abroad, which were allegedly paid in foreign currency and accounted for in accordance with the rules of the *Bangko Sentral ng Pilipinas* (BSP).

Petitioner claims that pursuant to Section 108(B)(2) in relation to Sections 110(B) and 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, it is entitled to the refund of the total excess and unutilized input VAT in the amount of Php115,242,046.55 paid or incurred during the periods covering July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008, which are attributable to its zero-rated sales of services, broken down as follows:

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[6] Lines 21F, Exhibit "M".
[7] Lines 21J, Exhibit "M".
[8] Lines 21O, Exhibit "M".
[9] Statement of Facts, Petitioner's Memorandum, docket, p. 462.
[10] Line 19A, Exhibit "I".
[11] Line 19A, Exhibit "M".
[12] Line 15B, Exhibit "I"; Line 15B Exhibit "M".
[13] Line 17, Exhibit "I"; Line 17, Exhibit "M".
[14] Statement of Facts, Petitioner's Memorandum, docket, p. 462.

Period Covered	Amount To Be Refunded / Tax Credit
Third Quarter of 2008	Php 60,873,226.15[15]
Fourth Quarter of 2008	54,368,820.40[16]
TOTAL	**Php 115,242,046.55**

Thus, on December 9, 2009, petitioner filed an application and letter request with the Revenue District Office (RDO) No. 49 of the BIR for the refund or issuance of tax credit certificate of the input VAT attributable to its zero-rated sales covering the periods of July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008.[17]

Petitioner's claim for refund or tax credit remains unresolved and still under investigation by the BIR.[18] In view thereof, petitioner filed with this Court the instant Petition for Review on September 29, 2010.

In her Answer[19] filed on November 19, 2010, respondent raised the following Special and Affirmative Defenses:

> "3. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> 4. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau.
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of **P115,242,046.55** as alleged unutilized input VAT attributable to its zero-rated sales of goods and services for the period covering July 1 to December 31, 2008 were not fully substantiated by proper documents, such (sic) sales invoices, official receipts and others.
>
> 7. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed (sic) refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

[15] Line 23D, Exhibit "I".
[16] Line 23D, Exhibit "M".
[17] Par. 12, Admitted Facts by Petitioner and Respondent, JSFI, docket, p. 162.
[18] Par. 13, *Id.*
[19] Docket, pp. 119-120.

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

9. The amount subject of the claim for refund of petitioner do not pertain in full to its input VAT attributable to its zero-rated sales of goods and services for the period covering July 1 to December 31, 2008.

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

11. Petitioner failed to comply with the conditions/requirements under Section 112(A)(B)(C) of the 1997 Tax Code.

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

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

Petitioner filed its Reply (Re: Respondent's Answer) [20] on December 2, 2010.

Meanwhile, on November 30, 2010, the Court issued a Notice of Pre-Trial Conference[21] requiring both parties and their counsels to be present at the pre-trial and to file with the Court and serve on the adverse party their pre-trial briefs. In compliance therewith, petitioner submitted its Pre-Trial Brief[22] on January 25, 2011; while respondent filed her Pre-Trial Brief[23] on January 26, 2011.

During the pre-trial conference held on January 28, 2011[24], upon joint motion of the counsels for both parties, the Court granted counsel for petitioner a period of

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[20] Docket, pp. 124-128.
[21] Docket, p. 123.
[22] Docket, pp. 134-145.
[23] Docket, pp. 146-147.
[24] Minutes of the Pre-Trial Conference, docket, p. 148.

fifteen (15) days from January 28, 2011 or until February 12, 2011 within which to submit their Joint Stipulation of Facts and Issues.

On February 11, 2011, the parties submitted their Joint Stipulation of Facts and Issues[25]. On March 7, 2011, the Court issued a Pre-trial Order[26] stating that the pre-trial is deemed terminated.

On July 6, 2011, due to the voluminous nature of the evidence to be presented, petitioner filed a Motion for Commissioning of Independent Certified Public Accountant (ICPA)[27] based on Rule 13 of the RRCTA. During the hearing on July 11, 2011, the Court granted petitioner's Motion for Commissioning of ICPA and consequently, Ms. Czarina R. Miranda was commissioned and appointed as ICPA.[28] On August 9, 2011, Ms. Miranda submitted her Report[29] of even date to the Court.

During trial, petitioner presented documentary and testimonial evidence to support its claim for refund. On December 26, 2011, petitioner formally offered documents marked as Exhibits "A" to "HHHH" inclusive of their sub-markings, as pieces of evidence for petitioner and as part of the testimony of petitioner's witnesses and the admissions made by respondent.[30] In a Resolution[31] dated February 9, 2012, the Court admitted the foregoing evidence.

During the hearing on March 5, 2012, respondent's counsel manifested that he will not present any evidence. In view thereof, the Court gave both parties thirty (30)

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[25] Docket, pp. 160-163.
[26] Docket, pp. 243-248.
[27] Docket, pp. 274-277.
[28] Minutes of the July 11, 2011 Hearing, docket, p. 283; Transcript of Stenographic Notes (TSN), July 11, 2011, pp. 10-12.
[29] Exhibits ""BB", "BB-1" to "BB-17".
[30] Docket, pp. 394-435.
[31] Docket, pp. 439-441.

days from March 5, 2012 or until April 4, 2012 within which to submit their respective Memorandum.[32]

The case was submitted for decision on April 24, 2012[33], taking into consideration respondent's Memorandum[34] filed on April 2, 2012 and petitioner's Memorandum[35] filed on April 13, 2012.

ISSUES

The issues stipulated by the parties for this Court's resolution are as follows:

"1. Whether or not petitioner's sales of services to affiliates abroad which are paid for in acceptable foreign currency and accounted for in accordance with the rules of the BSP are zero-rated for VAT purposes under Section 108(B)(2) of the 1997 NIRC, as amended;

2. Whether or not the refundable input VAT in the amount of Php115,242,046.55 for the periods July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008 was carried over or applied to any output tax liability for the said period or in the succeeding taxable months or quarters;

3. Whether or not the refundable input VAT in the amount of Php115,242,046.55 for the periods July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008 being claimed by petitioner as unutilized input VAT for said periods pertains in full to its zero-rated sales of services for said periods;

4. Whether or not petitioner complied with the substantiation requirements prescribed under Revenue Regulations No. 16-2005 in relation to Section 113 and 237 of the 1997 Tax Code, as amended;

5. Whether or not petitioner is entitled to its claim for refund or tax credit in the amount of Php115,242,046.55 for the periods July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008 as alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales for said periods."[36]

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[32] Minutes of the March 5, 2012 Hearing, docket, p. 443; Resolution dated March 12, 2012, docket, p. 445.
[33] Resolution dated April 24, 2012, docket, p. 492.
[34] Docket, pp. 449-456.
[35] Docket, pp. 460-490.
[36] Issues to be Resolved, JSFI, docket pp. 162-163.

DISCUSSION/RULING

Petitioner invokes Section 108(B)(2) in relation to Sections 110(B) and 112(A) of the NIRC of 1997, as amended, as legal bases for its entitlement to the claim for refund or tax credit of its excess and unutilized input VAT for the periods July 1, 2008 to September 31, 2008 and October 1, 2008 to December 31, 2008 which are attributable to its zero-rated sales of services to its affiliates abroad.

Sections 108(B)(2), 110(B) and 112(A) of the NIRC of 1997, as amended, are quoted hereunder, to wit:

> "SEC. 108. – *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) xxx xxx xxx
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."
>
> "SEC. 110. – *Tax Credits.* –
>
> (A) xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."
>
> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may,

> within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx "

Accordingly, a taxpayer-claimant must comply with the following requisites to be entitled to a refund or tax credit of unutilized input VAT attributable to its zero-rated or effectively zero-rated sales:

1. that there must be zero-rated sales or effectively zero-rated sales;
2. that input VAT were incurred or paid;
3. that such input VAT are attributable to zero-rated sales or effectively zero-rated sales;
4. that the input VAT were not applied against any output VAT liability during and in the succeeding quarters; and,
5. that the administrative and judicial claims for refund were filed within the prescribed period.

Before discussing petitioner's compliance with the first four requisites outlined above, the Court finds it appropriate to initially resolve petitioner's compliance with the fifth requirement pertaining to prescription.

Section 112(A) of the NIRC of 1997, as amended, specifically requires that a taxpayer's application for refund or tax credit of unutilized or excess creditable input VAT arising from its domestic purchases of goods and services and importations, which are attributable to its zero-rated or effectively zero-rated sales, must be made within two (2) years after the close of the taxable quarter when such sales were made.

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*[37], the Supreme Court elucidated that:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
> > (A) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: . . . (*Emphasis ours*)
>
> The above proviso 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**. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed." (*Emphasis supplied*)

In view of the foregoing, it is clear that the two-year prescriptive period for the filing of an administrative claim for refund or tax credit of input VAT attributable to zero-rated sales shall be reckoned from the close of the taxable quarter when the pertinent sales or transaction was made.

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

Petitioner's claim for refund or tax credit pertains to input VAT generated for the periods covering July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008. As borne by the records of the case, petitioner's administrative claim for refund was timely filed, to wit:

<table>
<tr><th>Period /Quarter Covered</th><th>Close of Taxable Quarter</th><th>Last Day for Filing of Administrative Claim for Refund or Tax Credit</th><th>Date of Filing of Administrative Claim for Refund or Tax Credit</th></tr>
<tr><td>Third Quarter of 2008 (July 1, 2008 to September 30, 2008)</td><td>September 30, 2008</td><td>September 30, 2010</td><td rowspan="2">December 9, 2009</td></tr>
<tr><td>Fourth Quarter of 2008 (October 1, 2008 to December 31, 2008)</td><td>December 31, 2008</td><td>December 31, 2010</td></tr>
</table>

Having established that petitioner's administrative claim for refund or tax credit was filed within the two-year prescriptive period, the Court will now proceed to determine whether petitioner's judicial claim for refund of input VAT generated for the periods covering July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008 was timely filed pursuant to Section 112(C) of the NIRC of 1997, as amended, which provides that:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> 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."

Based on the above-quoted provision of law, the taxpayer has 30 days from its receipt of the decision denying the claim for refund or issuance of tax credit certificate or after the expiration of the 120-day period from the date of submission of complete documents to appeal the decision or the inaction of respondent with this Court.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[38] (*Aichi case*), the Supreme Court applied the provision of Section 112(C) of the NIRC of 1997, as amended, which was formerly Section 112(D) prior to its amendment by RA No. 9337, and ruled that:

> "Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, **if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.**
>
> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
>
> Respondent's assertion that 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.
>
> 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 . . . 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.

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

> 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." (*Emphasis supplied*)

Based on the *Aichi case*, the second paragraph of Section 112(C) of the NIRC of 1997, as amended, envisions two scenarios: (1) when a decision is issued by the BIR Commissioner 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. Likewise, the *Aichi case* emphasized that the 120-day period mentioned in Section 112(C) of the NIRC of 1997, as amended, is crucial in filing an appeal with this Court.

As discussed above, petitioner filed its administrative claim for refund or tax credit with the RDO No. 49 of the BIR on December 9, 2009. Petitioner alleges that the supporting documents for said claim for refund or tax credit were likewise filed on the same date.[39] Hence, the Court shall reckon the 120-day period from the filing of petitioner's administrative claim for refund or tax credit on December 9, 2009. Consequently, respondent had until **April 8, 2010** within which to act on the

[39] Exhibit "X"; TSN, March 9, 2011, p. 14.

administrative claim for refund or tax credit. In case of inaction on the part of respondent, which was what actually transpired in this case, petitioner had 30 days from **April 8, 2010** or until **May 8, 2010** within which to seek judicial relief. Thus, the instant Petition for Review, which was filed only on **September 29, 2010**, was filed out of time.

Petitioner avers that while jurisdiction, as a general rule, may be questioned at any stage of the proceedings, a party may still be barred from raising it on the ground of estoppel. Citing a number of cases[40] decided by the Supreme Court, petitioner argues that since respondent actively participated in all stages of the proceedings without questioning the issue on jurisdiction, respondent is deemed to have waived her right in questioning the jurisdiction of the Court to hear on the merits of the case.

The Court is not convinced.

The issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel.[41] Pursuant to Section 1, Rule 9 of the Rules of Court, as amended, courts are allowed to *motu propio* dismiss a case when it appears from the pleadings or evidence on record that the court has no jurisdiction. Section 1, Rule 9 of the Rules of Court, as amended, is quoted hereunder:

> **"RULE 9**
>
> **EFFECT OF FAILURE TO PLEAD**
>
> SECTION 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter**, that there is another action pending between the same

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[40] *Serafin Tijam, et. al. vs. Magdaleno Sibonghanoy*, G.R. No. L-21450, April 15, 1968; *Emilio Gonzales La'o vs. Republic of the Philippines*, G.R. No. 160719, January 23, 2006; *Honorio Bernardo vs. Heirs of Eusebio Villegas*, G.R. No. 183357, March 15, 2010.

[41] *Venancio Figueroa y Cervantes vs. People of the Philippines*, G.R. No. 147406, July 14, 2008.

> parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, **the court shall dismiss the same**." (*Emphasis supplied*)

Clearly, the Court has the power to *motu propio* dismiss a case on the ground of lack of jurisdiction. Courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[42]

Anent the application of the Supreme Court decisions invoked by petitioner, well settled is the rule that before the Court can apply the doctrine enunciated in said cases, it must be shown that the facts therein are substantially similar in the case involved. A close perusal of said cases reveals that they involve a party, who after having actively participated in the proceedings before a court, seeks the reversal of that court's unfavorable decision on the ground of lack of jurisdiction.

In the instant case, however, the facts are entirely different. The Court notes that respondent already raised in her Answer petitioner's non-compliance with the conditions and requirements under Section 112 of the NIRC of 1997, as amended. This prompted petitioner to file its Reply where it argued that its administrative and judicial claims were filed within the two-year period prescribed under Section 112 of the NIRC of 1997, as amended, in accordance with the doctrine laid down by the High Tribunal in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[43] (*Atlas case*). Moreover, in respondent's Memorandum, respondent categorically stated that since petitioner's

[42] *Ace Publications, Inc. vs. Commissioner of Internal Revenue*, G.R. No. L-18808, May 29, 1964.
[43] G.R. Nos. 141104 and 148763, June 8, 2007.

Petition for Review was filed beyond the 30-day period provided by law, the Court has no competence to entertain the same. In view thereof, the Court finds no cogent reason to apply the doctrine in the Supreme Court cases invoked by petitioner.

Petitioner also claims that the *Aichi case* does not constitute a valid precedent as it violated Article VIII, Section 4(3) of the 1987 Philippine Constitution, which provides that no doctrine or principle of law laid down by the Supreme Court in a decision rendered *en banc* or in division may be modified or reversed except by the Supreme Court sitting *en banc*.

The Court is not persuaded.

It bears stressing that for Article VIII, Section 4(3) of the 1987 Philippine Constitution to apply, there must be an existing doctrine or principle of law laid down by the Supreme Court in a decision rendered *en banc* or in division which the Supreme Court sitting *en banc*, modifies or reverses. Prior to the promulgation of the *Aichi case*, there was no Supreme Court decision construing or interpreting the pertinent provisions of Section 112 of the NIRC of 1997, as amended. Petitioner erroneously relies on the ruling of the Supreme Court in the *Atlas case* which held that claims for refund or credit of input VAT, both in the administrative and judicial levels, must be filed within two years reckoned from the date of filing of the corresponding VAT returns. However, the *Atlas case* relied on by petitioner involved a claim for refund of unutilized input VAT derived on purchases of capital goods which were attributable to zero-rated sales covering the taxable years 1990 and 1992. Clearly, the law applied and interpreted by the Supreme Court in the *Atlas case* is the 1977 Tax Code, as amended by Executive Order (EO) No. 273, and not the NIRC of 1997, as amended.

A plain reading of the pertinent provisions of the 1977 Tax Code[44], as amended by EO No. 273, shows that no period was provided within which to file the judicial claim for refund. On the contrary, Section 112(C) of the present NIRC of 1997, as amended, explicitly provides for a period of 30 days from the expiration of the 120-day period for the Revenue Commissioner to decide or 30 days from the receipt of the decision denying the claim within which to appeal the decision or unacted claim with this Court.

Accordingly, there being no existing doctrine or principle of law laid down by the Supreme Court in a decision rendered *en banc* or in division that was reversed or modified, Article VIII, Section 4(3) of the 1987 Philippine Constitution will not apply.

Petitioner argues that the Court has jurisdiction to decide on the case taking into consideration the decisions of the Supreme Court in the cases of *Hitachi Global*

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[44] Sec. 106. *Refunds or tax credits of input tax.* (a) Export Sales. An exporter who is a VAT-registered person may, within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.
(b) *Zero-rated or effectively zero-rated sales.* Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
(c) *Capital goods.* A VAT-registered person may apply for the issuance of the tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input tax has not been applied against output taxes. The application for refund may be made only after the expiration of two succeeding quarters following the quarter in which the importation or local purchase was made: Provided, That a VAT- registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later: Provided, however, That the application is filed not later than two (2) years from the date herein prescribed.
(d) *Cancellation of VAT registration.* xxx.
(e) *Period within which refund or input taxes may be made by the Commissioner.* The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duty authorized representative. No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.

Storage Technologies Phils. Corp vs. Commissioner of Internal Revenue[45], *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*[46], *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*[47], *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*[48], *and Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*[49]. A careful reading of the decisions of the High Court in these cases shows that the Supreme Court did not categorically abandon the doctrine laid down in the *Aichi case*. Moreover, as these cases were decided by the Supreme Court sitting in Division, the Court finds Article VIII, Section 4(3) of the 1987 Philippines Constitution applicable. These cases, therefore, could not modify or reverse the doctrine laid down in the *Aichi case*.

The Court likewise finds no merit on petitioner's contention that the *Aichi case* should be given prospective application as its retroactive application will violate Article 4 in relation to Article 8 of the Civil Code. It bears stressing that the Court did not apply the *Aichi case* retroactively. The Aichi case merely clarified Section 112 of the NIRC of 1997, which had been in existence as early as January 1, 1998, the effectivity of the NIRC of 1997. Since this case covers petitioner's judicial claim for refund or tax credit of its excess and unutilized input VAT for the periods of July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008, which was filed before this Court on September 29, 2010, the Court should apply the law in force at the time petitioner filed its claim for refund or tax credit, that is, Section 112 of the NIRC of 1997, as amended. Consequently, the 120-day and 30-day periods prescribed

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[45] G.R. No. 174212, October 20, 2010.
[46] G.R. No. 172378, January 17, 2011.
[47] G.R. No. 179961, January 31, 2011.
[48] G.R. No. 180173, April 6, 2011.
[49] G.R. No. 179632, October 19, 2011.

under Section 112 of the 1997 NIRC, as amended, should have been observed by petitioner.

Finally, petitioner claims that the retroactive application of the *Aichi case* will impair petitioner's vested right to property without due process of law. Petitioner contends that since it has already acquired a right by relying in good faith on the ruling of the Supreme Court prior to the *Aichi case* that the 120-30 day rule is permissive, this right cannot be taken back without due process of law; otherwise, petitioner will be denied equal protection of the laws as enshrined under Article III of the 1987 Philippine Constitution. Well-settled is the rule that one does not have a vested right in procedural rules.[50] Furthermore, the right to appeal is not a natural right or a part of due process. It is merely a statutory privilege and must be exercised in accordance with the law. Thus, in the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*[51], the Supreme Court reiterated the following:

> "It has been ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law."

A taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in

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[50] *Teotimo Billones, Celso Vallecer, et.al vs. The Court of Industrial Relations*, G.R. No. L-17566, July 30, 1965 and *Salvador Villardo, Eulogio V. Mata, et. al. vs. The Court of Industrial Relations*, G.R. No. L-17567, July 30, 1965.
[51] G.R. No. 167606, August 11, 2010.

the denial of his claim.[52] As applied in this case, petitioner filed its administrative claim for refund or tax credit for unutilized input VAT for the periods of July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008 on December 9, 2009. Consequently, respondent had 120 days from December 9, 2009 within which to act on the claim of petitioner or only until April 8, 2010. Thereafter, petitioner had 30 days from April 8, 2010 or until May 8, 2010 to file its judicial claim for refund. However, petitioner only filed its corresponding judicial claim before this Court on September 29, 2010. Clearly, since petitioner's judicial claim was filed beyond the 30-day period, the Court no longer has jurisdiction to entertain the same. Hence, petitioner's judicial claim must be denied for being filed out of time.

In view of the foregoing, this Court finds it unnecessary to determine petitioner's compliance with the other requisites.

WHEREFORE, the instant Petition for Review is hereby **DENIED** on the ground that the judicial claim for refund of excess and unutilized input VAT in the amount of Php115,242,046.55, covering the periods of July 1, 2008 to September 31, 2008 and October 1, 2008 to December 31, 2008, was filed out of time.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[52] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, supra, note 38.

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PROCTER & GAMBLE ASIA, PTE., LTD.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8164

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUL 25 2012
3:11 p.m.

x---x

DISSENTING OPINION

BAUTISTA, J.:

The factual circumstances present in the case at bench supports the application of ***the then prevailing jurisprudence at the time the claim was made***; for 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.

When petitioner filed its claim for refund/tax credit with respondent on December 9, 2009, and the consequent Petition for Review on September 29, 2010, the then controlling doctrine in this forum is that of the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]*.[2]

It was merely unfortunate that during the pendency of the case at bench that the Supreme Court issued the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[3]

Albeit the latter ruling is more in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code, as amended, it would be the height of injustice to impose a new ruling, on the basis of the so-called "adherence to precedence," for the latter doctrine is clearly promulgated *after* the taxpayer-claimant had faithfully relied and complied with the Court's former ruling.

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.[4] 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.

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[2] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] G.R. No. 184823, October 6, 2010.
[4] 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].*

Applying the above disquisitions, petitioner had until two (2) years from the close of the third and last taxable quarters of the year 2008, within which to file *both* its administrative and judicial claims.

Based on the records of the case, petitioner filed the relevant returns for the taxable year 2008 on the following dates: October 21, 2008, and January 20, 2009. Therefore, petitioner had the following dates within which to file both its administrative and judicial claims, *viz*: September 30, 2010, and December 30, 2010.

Thus, I find the administrative and judicial claims filed within the prescribed period.

Accordingly, I vote that the Petition for Review be **GRANTED**, subject to the verification of the subject claim.

LOVELL R. BAUTISTA
Associate Justice