Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

VISAYAS GEOTHERMAL POWER COMPANY, Petitioner,	CTA EB Case No. 864 (CTA Case No. 7889)
	Members: 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 03 2012

x- -x

DECISION

CASANOVA, J.:

This is a Petition for Review,[1] filed by petitioner-Visayas Geothermal Power Company on February 20, 2012, which seeks to reverse and set aside the Decision[2] (*Assailed Decision*) dated October 19, 2011 and the Resolution[3] (*Assailed Resolution*) dated January 16, 2012, denying its Motion for Reconsideration for lack of merit, rendered by the Court of Tax Appeals First Division in CTA Case No. 7889 entitled, *"Visayas Geothermal Power Company vs. Commissioner of Internal Revenue,"* the dispositive portion thereof, respectively, reads as follows:

---

[1] CTA En Banc Rollo, pp. 7-71.
[2] Annex "A" to the Petition for Review, Ibid, pp. 72-91.
[3] Annex "B" to the Petition for Review, Ibid, pp. 92-99.

Decision dated October 19, 2011

> "**WHEREFORE,** the instant Petition for Review is hereby **DENIED** for being prematurely filed.
>
> **SO ORDERED.**"

Resolution dated January 16, 2012

> "**WHEREFORE,** there being no compelling reason to disturb Court's ruling in the assailed Decision of October 19, 2011, the *Motion for Reconsideration* dated November 10, 2011, filed by petitioner is hereby **DENIED,** for lack of merit.
>
> **SO ORDERED.**"

The antecedent facts, as summarized by the CTA First Division, are hereunder adopted, to wit:

> "Visayas Geothermal Power Company (Petitioner) is a special purpose limited partnership duly organized and existing under Philippine laws, with principal office at 24th Floor, 6750 Building, Ayala Avenue, Makati City. It was established on November 4, 1994, 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 is a registered VAT taxpayer with the Bureau of Internal Revenue (BIR) with Taxpayer Identification No. 003-832-538-000.
>
> Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) empowered, among others, to decide, approve, and grant refunds or tax credits of erroneously or

excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On February 13, 2009, petitioner filed with the BIR Revenue District Office (RDO) No. 47 an administrative claim for refund of its unutilized input VAT for the period covering the first (1^{st}) quarter to the fourth (4^{th}) quarter of taxable year 2007 amounting to P11,902,576.07.

On March 30, 2009, petitioner filed the present action claiming inaction on the part of respondent on its claim for refund.

In her Answer, respondent states by way of defense the following:

> '4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P11,902,576.07 being claimed by petitioner as alleged unutilized input VAT from its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods and domestic purchases of capital goods for the first to fourth quarters of calendar year 2007 was not properly documented;
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. To support its claim, it is imperative for petitioner to prove the following, viz:
>
> a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the NIRC of 1997. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P20,546,004.87 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of taxable year 2005 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) year after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the NIRC of 1997;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits).

8. The petition for review is premature. Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period starts to run on 13 February 2009, the date when it filed its administrative claim for refund. The said period is yet to expire on 12 June 2009. Hence, the 30-day period within which to file the petition for review before this Honorable Court is yet to expire on 12 June 2009. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.

9. 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 such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).'*

During the pre-trial conference, the parties agreed and pursuant thereto filed their Joint Stipulation of Facts and Issues (JSFI) on June 04, 2009. It was approved by the Court on June 08, 2009.

Trial ensued during which petitioner presented two (2) witnesses, namely: (1) Ms. Leilah Yasmin E. Alpad, its head of Tax Services Division; and (2) Ms. Katherine O. Constantino, the Court-commissioned Independent Certified Public Accountant (ICPA).

Leilah Yasmin E. Alpad, by way of Judicial Affidavit, testified that as petitioner's head of Tax Services Division, she is responsible for all the financial and statutory reporting and regulatory compliance of petitioner. The latter is engaged in the business of power generation and the powers generated are sold to the Energy Development Corporation (EDC) pursuant to the Energy Conversion Agreement it executed with EDC. Its 216 Megawatt geothermal power plant has been accredited by the Department of Energy (DOE) as a Block Power Production Facility under Part IV of the Implementing Rules and Regulations of Executive Order No. 215, as evidenced by its DOE Certificate of Accreditation No. OSAC 94-13 issued on June 15, 1994.

The witness further testified that the instant case involves petitioner's claim for refund of its unutilized input VAT for the four (4) quarters of taxable year 2007 in the sum of Php11,902,576.07. The unutilized input VAT were paid and incurred by petitioner on its domestic purchases of goods and services, purchases of services rendered by non-residents, and importations of goods during the taxable year 2007. Allegedly, all these purchases and importations were attributable to petitioner's zero-rated sales of power generation services to EDC.

On February 13, 2009, petitioner filed with the BIR its administrative claim for refund of its unutilized input VAT for the four (4) quarters of taxable year 2007. To prove its unutilized input VAT for the quarters covered, petitioner presented the originally filed as well as the amended Quarterly VAT Returns for the four (4) quarters of taxable year 2007. Petitioner filed amended returns to make the necessary adjustments reflecting the properly claimable unutilized input VAT based on their review of existing documents. Petitioner paid and incurred input VAT in the sum of Php11,902,576.07 on its domestic purchases of taxable goods and services, purchases of services rendered by non-residents, and importation of goods other than capital goods during the taxable year 2007, which amounted to Php99,188,133.91. During the same period, petitioner generated and recorded zero-rated sales to EDC in the total amount of Php1,983,995,474.94. This amount represents all the sales of petitioner for the year 2007.

The witness explained that based on Section 6 of Republic Act (RA) No. 9136, otherwise known as the 'Electric Power Industry Reform Act of 2001', and the NIRC of 1997, as amended, sales of generated power by generation companies are VAT zero-rated. Moreover, under RA No. 9337, which took effect on November 01, 2005, sales of electricity by power-generating companies generated through renewable sources of energy, such as hydropower, will continue to be zero-rated under Section 108 (B) (7) of the NIRC of 1997, as amended.

To prove its claim, petitioner presented its Amended Articles of Partnership as approved by the Securities and Exchange Commission on November 14, 1994, Certificate of Accreditation issued by the DOE on June 15, 1994, Certificate of Registration with the BIR, and Certificate of Compliance issued by the Energy Regulatory Commission on October 05, 2005.

Petitioner's other witness Katherine O. Constantino testified that she was commissioned by the Court to perform the duties and responsibilities of an Independent Certified Public Accountant pursuant to Rule 13 of the Revised Rules of the Court of Tax Appeals.

As required by her commission, she examined petitioner's VAT returns, suppliers' official receipts and invoices, and other voluminous records and documents supporting petitioner's claim for refund or issuance of tax credit certificate for its unutilized input VAT for the taxable year 2007 in the total amount of Php11,902,576.07. In relation thereto, she submitted to the Court her written report of examination on September 09, 2009.

With the termination of its presentation of evidence, petitioner rested and formally offered its documentary evidence marked as Exhibits 'A' to 'AA-1', inclusive of sub-markings, to which respondent registered no objection to their admission.

In its Resolution of September 09, 2010, the Court admitted into evidence the formally offered documents except Exhibits 'T-6-

> V-2Q-00206-00208', 'T-6-V-2Q-00210', 'T-6-V-2Q-00213-00214', 'T-6-V-2Q-00598-00599', 'T-6-V-3Q-000067', 'T-6-V-3Q-000071', and 'T-6-V-3Q-000074-000078' for petitioner's failure to authenticate them.
>
> During the scheduled presentation of evidence by respondent on October 12, 2010, her counsel submitted the case for decision *sans* presentation of evidence alleging that no report of investigation was forwarded to her.
>
> In compliance with the Court's directive of October 12, 2011, respondent filed her Memorandum on November 11, 2010 while petitioner, on November 26, 2010.[4]

In a Resolution[5] dated December 7, 2010, the case was submitted for decision, taking into consideration both parties' respective memorandum.

On October 19, 2011, the CTA First Division promulgated its Decision, dismissing the instant Petition for Review for being prematurely filed.

Not satisfied with the said Decision, petitioner filed a Motion for Reconsideration (Re: Resolution (sic) dated October 19, 2011)[6] on November 10, 2011, with respondent's Opposition (Re: Motion for Reconsideration)[7] filed on November 14, 2011. Petitioner filed its Reply (Re: Respondent's Opposition dated November 14, 2011)[8] on December 12, 2011.

Thereafter, on January 16, 2012, a Resolution[9] was promulgated by the CTA First Division denying the aforementioned Motion for Reconsideration for lack of merit.

On February 3, 2012, petitioner filed a Motion for Extension of Time to File Petition for Review[10] before the Court *En Banc* which was granted by this Court on

---

4 Annex "A" to the Petition for Review, Ibid, pp. 73-82.
5 Division Docket, p. 591.
6 Ibid, pp. 649-693.
7 Ibid, pp. 694-700.
8 Ibid, pp. 710-721.
9 Ibid, pp. 722-729.
10 CTA En Banc Rollo, pp. 1-5.

February 7, 2012. Petitioner filed its Petition for Review on February 20, 2012, with respondent's Comment/Opposition (Re: Petition for Review)[11] filed on April 2, 2012.

Subsequently, the Court *En Banc* issued a Resolution[12] on April 23, 2012, ordering both parties to submit their respective memorandum within thirty (30) days from receipt thereof. In compliance therewith, respondent filed a Manifestation[13] on May 17, 2012, stating that she is adopting the Comment/ Opposition to the Petition for Review as her Memorandum while petitioner's Memorandum[14] was filed on June 18, 2012.

In a Resolution promulgated on July 4, 2012, the instant case was submitted for decision.

Petitioner raised the following grounds in support of the instant Petition, to wit:

1. The Petition was filed within the period prescribed by law. Petitioner has basis to rely on the law as it has been legally and jurisprudentially understood at the time of the filing of its claim for refund.

2. The case of Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. ('Aichi' case) effectively grants respondent unbridled discretion to deprive a taxpayer of the right to seek judicial redress.

3. The Aichi case could not have validly overturned the well-settled rule on periods for filing VAT claims set forth in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue ('Atlas' case) without violating the constitutional mandate that no doctrine or principle laid down by the Supreme Court may be reversed or modified except by the Supreme Court sitting *En Banc.*

4. The mandatory observance of the 120-day rule should only be applied prospectively.

[11] Ibid, pp. 103-110.
[12] Ibid, pp. 112-113.
[13] Ibid, pp. 114-116.
[14] Ibid, pp. 122-182.

5. The CTA-Division erred in disregarding the mandated applicability of the two-year prescriptive period to petitioner's claim for VAT refund in light of the clear legislative policy and history as well judicial pronouncements that effectively show that such period prevails over the 120/30-day period stated under Section 112(D) of the 1997 Tax Code.

6. The CTA-Division likewise erred in dismissing the Petition for Review in CTA Case No. 7889 considering that the grant of the full amount of petitioner's claim for refund is warranted by petitioner's sufficient and uncontroverted evidence properly substantiating the claim for refund of unutilized input VAT amounting to P11,902,576.07 incurred during the four quarters of CY 2007 and attributable to zero-rated sales. Hence, it is respectfully submitted that this Court *En Banc* should grant the present claim for refund.

This Court cannot countenance petitioner's arguments.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En* Banc finds no new matters which have not yet been considered and passed upon by the CTA First Division in its Assailed Decision and Resolution. *We* observed that the arguments that petitioner relied upon for review of the instant Petition, are mere reiteration, if not repetition of the very same arguments it had already raised in its Motion for Reconsideration (Re: Resolution (sic) dated October 19, 2011)[15] filed on November 10, 2011.

As correctly held by the CTA First Division, and *We* agree:

> "Note that the doctrine in Aichi case was laid down by the Supreme Court more than thirteen months ago, to be exact on October 6, 2010, decreeing that the two-year period prescribe under Section 112 of the NIRC, as amended, refers to the application for refund or tax credit of input tax before respondent. This jurisprudence has been applied in a string of similar cases subsequently decided by the Supreme Court and has not been overturned by any.

[15] Division Docket, pp. 649-693.

By tradition in our system of judicial administration, the Supreme Court, as the Final Arbiter of any justiciable controversy, has the last word on what the law is and how it should be applied. There is only one Final Arbiter-Supreme Court- from whose decisions all other courts should take bearings.

In the Aichi case, the Supreme Court held that '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.' Accordingly, 'in both instances, the taxpayer has 30 days within which to file an appeal with the CTA.'

The foregoing interpretation of Section 112 (D) of the NIRC in the Aichi case retroacts to the date of the enactment of the law on January 1, 1998 given the well-settled rule that 'the Court's interpretation of the law is part of the 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.' Such doctrine does not amount to a passage of a new law, but it consists merely a construction or interpretation of a pre-existing one, and that is precisely the situation in this case.

Anent petitioner's reliance on the ruling of the Atlas case, which harmonized Sections 112 and 229 of the 1997 NIRC, suffice it to say that it is no longer controlling and applicable due to the amendments by the Legislature specifically providing the manner and the period for claiming refund which is entirely different and distinct from recovery of taxes erroneously or illegally assessed or collected. Further, the Aichi case being the interpretation of the prevailing and applicable law, i.e., R.A. 7716 and R.A. 8424 must be read in conjunction with the prospective principle of statutes. Concomitantly, the amendments made by R.A. 7716 and R.A. 8424 in the Tax Code must be given effect.

It must also be noted that the Atlas case was decided under the 1977 Tax Code; hence should not be applied in the present case. This principle was highlighted in *Deutsche Knowledge Services Pte., Ltd. vs. Commissioner of Internal Revenue*, where Court's Second Division ruled, thus:

> 'Regarding petitioner's arguments (sic) on the applicability of the Atlas ruling, the same is likewise untenable. Suffice it to say that **in the Atlas case, the**

Supreme Court applied the 1977 Tax Code and notwithstanding that the said case involved a refund of input taxes, the Supreme Court applied therein the limitation in Section 230 (now, 229) of said Code that 'no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment.

However, it is noteworthy that the application of the above limitation in the Atlas case was because of the absence in Section 106 (now 112) of the 1977 Tax Code, of a similar limitation or a prescriptive period on the right of a claimant to file a judicial recourse. Thus, the ruling as follows:

> 'It is already well-settled that the two-year prescriptive period for instituting a suit or proceeding for recovery of corporate income tax erroneously or illegally paid under Section 230 of the Tax Code of 1977, as amended, was to be counted from the filing of the final adjustment return. This Court already set out in ACCRA Investments Corporation v. Court of Appeals, the rationale for such rule, thus — . . .
>
> The very same reasons set forth in the afore-cited cases concerning the two-year prescriptive period for claims for refund of illegally or erroneously collected income tax may also apply to the Petitions at bar involving the same prescriptive period for claims for refund/credit of input VAT on zero-rated sales.'

Conversely, the instant case involves the NIRC of 1997, as amended and Section 112(C) now provides a limitation or a prescriptive period of 30 days within which a taxpayer may file the judicial remedy. Therefore, because of the notable differences of the two cases, there is no cogency on the application of the Atlas ruling to the instant case.'

> Finally, under the doctrine of *stare decisis et non quieta movere,* the doctrine that enjoins adherence by all courts to judicial precedents laid down by the Supreme Court. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument."

In the case at bench, the CTA First Division is correct in its findings that petitioner's administrative claim for refund/credit of its unutilized input VAT was timely filed on February 13, 2009. Applying subsections (A) and (C) of Section 112 of the 1997 NIRC, as amended, the Commissioner of Internal Revenue has one hundred twenty (120)-days or until June 13, 2009 to act on the said application. However, as can be gleaned from the records, its judicial claim was prematurely filed on March 30, 2009 or barely forty-five (45) days after it filed its application for refund with the Bureau of Internal Revenue. For this reason, applying the ruling in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[16] *(Aichi case),* this Court acquires no jurisdiction to act on the said claim in view of the premature filing of the instant Petition for Review.

Well-settled is the rule that 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.[17]

To reiterate, the Aichi case is the prevailing doctrine on the mandatory observance of the 120-30 day period under Section 112 of the 1997 NIRC, as amended, before filing an appeal with the Court of Tax Appeals. Thus, this Court has no option but to uphold and apply the ruling of the Supreme Court in the said case, it being the

---

[16] G.R. No. 184823, October 6, 2010.
[17] Ace Publications, Inc. vs. Commissioner of Customs, G.R. No. L-18808, May 29, 1964.

final arbiter of justifiable controversy.[18] Moreover, the interpretation placed upon Section 112(C) of the 1997 NIRC, as amended, retroacts to the date of the enactment of the said code on January 1, 1998, following the well-settled rule 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."[19]

Anent petitioner's last argument that "the CTA erred in dismissing the Petition for Review in CTA Case No. 7889 considering the grant of the full amount of petitioner's claim for refund is warranted by petitioner's sufficient and uncontroverted evidence properly substantiating the claim for refund of its unutilized input VAT", this Court holds that the resolution of the same becomes inconsequential in view of *Our* stand that this Court is bereft of jurisdiction to try the instant case on account of the premature filing of petitioner's judicial claim.

Based on the foregoing, there is no cogent reason or justification to disturb the findings and conclusion spelled out in the Decision dated October 19, 2011 and Resolution dated January 16, 2012.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the October 19, 2011 Decision and the January 16, 2012 Resolution of the CTA First Division in CTA Case No. 7889 entitled, *"Visayas Geothermal Power Company vs. Commissioner of Internal Revenue",* are hereby **AFFIRMED** ***in toto.***

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

---

[18]Commissioner of Internal Revenue vs. Michael J. Lhuiller Pawnshop, Inc., G.R. No. 150947, July 15, 2003, citing the case of GSIS vs. Court of Appeals, 334 Phil. 163, 175; 266 SCRA 187 (1997).
[19] Eagle Realty vs. Republic of the Philippines, G.R. No. 151424, July 31, 2009.

WE CONCUR:

(With Concurring & Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Separate Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(Concurs with the Concurring & Dissenting Opinion of Presiding Justice Acosta)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On-Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

VISAYAS GEOTHERMAL POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 864
(CTA CASE NO. 7889)

Members:

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

Promulgated:

OCT 0 8 2012

x- x

CONCURRING AND DISSENTING OPINION

The present claim pertains to input VAT on zero-rated sales incurred for the period of 1st to 4th quarters of 2007, in the aggregate amount of Php11,902,576.07. The pertinent dates are as follows:

Period Covered	Date of Filing of Original return	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim	End of the 120-day period under Section 112 (D), NIRC	End of the 30-day period under Section 112 (D), NIRC
1ST Quarter, 2007	April 25, 2007	February 13, 2009	March 30 , 2009	June 12, 2009	July 12, 2009
2ND Quarter, 2007	July 25, 2007	February 13, 2009	March 30 , 2009	June 12, 2009	July 12, 2009
3RD Quarter, 2007	October 25, 2007	February 13, 2009	March 30 , 2009	June 12, 2009	July 12, 2009
4th Quarter, 2007	January 24, 2008	February 13, 2009	March 30 , 2009	June 12, 2009	July 12, 2009

[initials]

As correctly applied by the majority, an application for refund or tax credit over input taxes arising from zero-rated sales or effectively zero-rated sales is governed by Section 112(A) and (D) [now section (C)] of the 1997 NIRC which provides:

> **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 of 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 xxx xxx
>
> **(D)** ***Period within which Refund or Tax Credit of Input Taxes shall be Made.*** - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis Ours)

The foregoing provisions require that a claim for refund over excess input VAT arising from zero-rated or effectively zero-rated sales must be administratively filed within two (2) years from the close of the taxable quarter when the sales were made. There is also an indispensable requirement for the taxpayer to await the action or inaction of the Commissioner within a period of one hundred twenty (120) days before it can appeal to this Court its claim for refund on excess or unutilized input VAT arising from zero-rated or effectively zero-rated sales. The application of Sections 112(A) and (D) [now section 112 (C)] of the 1997 NIRC has already been established in the cases of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[1] and *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[2]

Following the provisions of Sections 112(A) and (D) [now section 112 (C)] of the 1997 NIRC, it appears that the claim for refund or issuance of a tax credit certificate of input VAT was administratively filed within the two (2) year period, hence, compliant with Section 112(A) of the 1997 NIRC. The petitioner, however, failed to comply with the one hundred twenty (120) day period required to await the decision of the respondent as prescribed in Section 112(D) [now section 112 (C)] of the 1997 NIRC. Thus, petitioner prematurely filed the judicial claim of excess input VAT for all the four quarters of taxable year 2007.

However, I beg to differ from the view of the majority that the premature filing of a refund claim involving unutilized input VAT is jurisdictional. With all due respect, the premature filing of said claim is a violation of the doctrine of exhaustion of administrative remedies. It is well settled that non-exhaustion of administrative remedies is not jurisdictional. It only renders the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[3] The premature

---

[1] G.R. No. 172129, September 12, 2008.
[2] G.R. No. 184823, October 6, 2010.
[3] *Carale vs. Abarintos,* G.R. No. 120704, March 3, 1997.

Ecn

invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel,* the case is susceptible of dismissal for lack of cause of action.[4] Based on the records, it appears that respondent alleged in his answer the premature filing of the case in Court. Thus, respondent is considered not to have waived the said defense. Therefore, the Court must dismiss petitioner's judicial claim for lack of cause of action.

In view of the foregoing, I respectfully dissent on the Honorable Ponente's dismissal of petitioner's claim on the basis of lack of jurisdiction to try the instant case on account of the premature filing of petitioner's judicial claim. It is my stand that this Honorable Court has acquired jurisdiction to determine petitioner's claim. However, due to the premature filing of the judicial claim, the instant petition should be **DENIED** for lack of cause of action. Conversely, I concur with the Honorable Ponente in **AFFIRMING IN TOTO** the October 19, 2011 Decision and the January 16, 2012 Resolution of the CTA First Division in CTA Case No. 7889 entitled, "Visayas geothermal Power Company vs. Commissioner of Internal Revenue".

ERNESTO D. ACOSTA
Presiding Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[4] *Paat vs. Court of Appeals,* G.R. No. 111107, January 10, 1997.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

VISAYAS GEOTHERMAL POWER COMPANY, Petitioner,	**CTA EB CASE NO. 864** (CTA Case No. 7889)
- *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 0 9 2012

x---x

DISSENTING OPINION

BAUTISTA, J.

The Court *En Banc* ruled that pursuant to Section 112 of the 1997 National Internal Revenue Code, as amended, a taxpayer-claimant has two (2) years after the close of the taxable quarter when the pertinent sales were made, within which to apply with the Commissioner of Internal Revenue a claim for refund or tax credit of creditable input tax. The latter, on the other hand, has one hundred and twenty (120) days from the filing of such administrative claim to grant or deny the same pursuant to Section 112(C) of the same Code.[1] Upon denial or expiration of the allowable period of one hundred twenty (120) days without any action on the part of the Commissioner, the taxpayer-claimant has only thirty (30) days to challenge the adverse decision or elevate its claim with this Court. Otherwise, the Court will be deprived of jurisdiction to entertain the case.

However, it is my considered view to adhere to the prospectivity principle of judicial decisions.

In the landmark case of *Albino S. Co, v. Court of Appeals, et al.*,[2] the Supreme Court made the following disquisitions, to wit:

> The principle of prospectivity of statutes, original or amendatory, has been applied in many cases. These include: *Buyco v. PNB, 961 2 SCRA 682 (June 30, 1961)*, holding that Republic Act No. 1576 which divested the Philippine National Bank of authority to accept back pay certificates in payment of loans, does not apply to an offer of payment made before effectivity of the act; *Largado v. Masaganda, et al., 5 SCRA 522 (June 30, 1962)*, ruling that RA 2613, as amended by RA 3090 on June, 1961, granting to inferior courts jurisdiction over guardianship cases, could not be given retroactive effect, in the absence of a saving clause; *Larga v. Ranada, Jr., 64 SCRA 18*, to the effect that Sections 9 and 10 of Executive Order No. 90, amending Section 4 of PD 1752, could have no retroactive application; *People v. Que Po Lay, 94 Phil. 640*, holding that a person cannot be convicted of violating Circular No. 20 of the Central, when the alleged violation occurred before publication of the Circular in the Official Gazette; *Baltazar v. C.A., 104 SCRA 619*, denying retroactive application to P.D. No. 27 decreeing the emancipation of tenants from the bondage of the soil, and P.D. No. 316 prohibiting ejectment of tenants from rice and corn farmholdings, pending the promulgation of rules and regulations implementing P.D. No. 27; *Nilo v. Court of Appeals, 128 SCRA 519*, adjudging that RA 6389 which removed "personal cultivation" as a ground for the ejectment of a tenant cannot be given retroactive effect in the absence of a statutory statement for retroactivity; *Tac-An v. CA, 129 SCRA 319*, ruling that the repeal of the old Administrative Code by RA

---

[1] As amendment by Republic Act No. 9337.
[2] G.R. No. 100776, October 28, 1993, 277 SCRA 444.

> 4252 could not be accorded retroactive effect; *Ballardo v. Borromeo, 161 SCRA 500,* holding that RA 6389 should have only prospective application; (*see also Bonifacio v. Dizon, 177 SCRA 294 and Balatbat v. CA, 205 SCRA 419*).
>
> The prospectivity principle has also been made to apply to administrative rulings and circulars, to wit: *ABS-CBN Broadcasting Corporation v. CTA, Oct. 12, 1981, 108 SCRA 142,* holding that a circular or ruling of the Commissioner of Internal Revenue may not be given retroactive effect adversely to a taxpayer; *Sanchez v. COMELEC, 193 SCRA 317,* ruling that Resolution No. 90-0590 of the Commission on Elections, which directed the holding of recall proceedings, had no retroactive application; *Romualdez v. CSC, 197 SCRA 168,* where it was ruled that CSC Memorandum Circular No. 29, s. 1989 cannot be given retrospective effect so as to entitle to permanent appointment an employee whose temporary appointment had expired before the Circular was issued.
>
> **The principle of prospectivity has also been applied to judicial decisions which, "although in themselves not laws, are nevertheless evidence of what the laws mean, . . . (this being) the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . .'"** *(Boldfacing supplied.)*

Also, a compelling rationalization of the prospectivity principle of judicial decisions is well set forth in the oft-cited case of *Chicot County Drainage District v. Baxter States Bank.*[3] The said case advocates the imperative necessity to take account of the actual existence of a statute prior to its nullification, as an operative fact negating the acceptance of "a principle of absolute retroactive invalidity."[4]

Applying therefore in the case at bench, while rulings of the Supreme Court are laws in their own right for they interpret what the law says or mean,[5] and that pursuant to Article 8 of the Civil Code which expressly provides that "judicial

---

[3] 308 US 371, 374 [1940].
[4] *Supra,* note 2. See also Felicisimo Rieta *v.* People, G.R. No. 147817, August 12, 2004, 436 SCRA 273.
[5] Philippine Veterans Affairs Office *v.* Segundo, G.R. No. L-51570, August 15, 1988, 164 SCRA 365.

decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines," it is still subject to Article 4 of the same Code which states that "laws shall have no retroactive effect unless the contrary is provided." It follows then that the principle of prospectivity of statutes, original or amendatory, shall also apply to judicial decisions, which although in themselves are not laws are nevertheless evidence of what the law means.[6]

Guided by the doctrine that rulings of the court modifying or reversing a doctrine or principle, operates prospectively, and rights acquired under such doctrine or principle prior to its modification or reversal may not be affected thereby,[7] I hereby find the administrative and judicial claims filed on February 13, 2009, and March 30, 2009, respectively, made within the required period at the time the actions were performed.

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

LOVELL R. BAUTISTA
Associate Justice

---

[6] Filoteo, Jr. *v.* Sandiganbayan, G.R. No. 79543, October 16, 1996, 263 SCRA 222.
[7] People *v.* Jabinal, G.R. No. 30061, February 27, 1974, 55 SCRA 607.