REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

## *En Banc*

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| **B.W. SHIPPING PHILIPPINES INC.,** *Petitioner,* | **CTA EB NO. 1987** *(CTA Case No. 9115)* |
| | ***Present:*** |
| **- versus -** | **DEL ROSARIO, *PJ,* CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, *and* MODESTO-SAN PEDRO, *JJ.*** |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | **Promulgated:** |
| | **JUN 3 0 2020** 3:15 p.m. |

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# DECISION

**RINGPIS-LIBAN, *J.*:**

Before the Court *en banc* is a Petition for Review[1] filed by petitioner B.W. Shipping Philippines, Inc. (BWSPI) against the respondent Commissioner of Internal Revenue (CIR) within an extended period granted by the Court[2], seeking the reversal of the Decision dated May 7, 2018[3] (Assailed Decision) rendered by the First Division of this Court in CTA Case No. 9115, as well as the Resolution dated October 19, 2018[4] (Assailed Resolution) denying its motion for reconsideration.

In the Petition, BWSPI prays that both the Assailed Decision and Resolution be reversed and set aside; that judgment be rendered granting its claim

[1] *Rollo*, pp. 5-22, with Annexes "A" to "D", pp. 23-163.
[2] *Id.*, pp. 166-167.
[3] *Id.*, pp. 24-41.
[4] *Id.*, pp. 47-51.

for refund in the amount of ₱1,798,479.73, representing unutilized input Value-added Tax (VAT) paid on purchases of goods and services attributable to its zero-rated sales for the four quarters of taxable year (TY) 2013.

## The Parties

Petitioner BWSPI is a corporation duly organized and existing under the laws of the Philippines. It is registered as a VAT taxpayer with Taxpayer Identification No. (TIN) 000-160-779-000.[5] It is engaged in the general business of shipping, which includes the manning and crewing of vessels, the carriage of passengers, freight, mail, livestock, goods and other lawful merchandise.

On the other hand, respondent CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code of 1997, as amended, (Tax Code) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

## The Facts[6]

On various dates, BWSPI entered into Service Agreements with various international clients for the purpose of providing manpower services aboard the ships of its foreign clients and provisions to its personnel. For rendering said services to these foreign clients, the companies paid BWSPI in US Dollars, electronically remitted to its bank accounts.[7]

BWSPI submitted its Quarterly VAT Returns for taxable year 2013 on the following dates:

| PERIOD (2013) | DATE FILED |
|---|---|
| 1st Quarter | April 25, 2013 |
| 2nd Quarter (Amended) | November 20, 2013 |
| 3rd Quarter | October 21, 2013 |
| 4th Quarter (Amended) | May 21, 2014 |

On February 27, 2015, BWSPI filed its application for tax credits or

[5] *Docket*, p. 491.
[6] As found by the First Division and as culled from the records of the case.
[7] *Id.* at Note 5, pp. 370-379, Exhibit "P-1523", Judicial Affidavit of Carmencita S. Escalante.

refund (BIR Form No. 1914) for its unapplied input VAT for taxable year 2013.[8]

Subsequent to the filing of its application, the BIR instructed BWSPI to submit the schedule of vessel utilization on all vessels currently under its operation, giving it until June 19, 2015 to submit the said documents. On June 17, 2015, BWSPI was able to only partially submit schedules due to the volume of documents required by the BIR. On June 22, 2015, another set of schedule was submitted by BWSPI. However, on June 24, 2015, the BIR no longer allowed BWSPI to submit another set to complete the schedule of vessel utilization.[9]

On July 7, 2015, BWSPI received a letter[10] dated June 25, 2015 from Assistant Commissioner Erlinda A. Simple, denying its application for refund or tax credit for the following reasons:

> "Review of the bank credit memos for remittances revealed excess remittances of $16,015,696.00 on top of the declared export sales amounting to $2,623,744.00 for the taxable year 2013. Said remittances were identified as funding reimbursement received from principal abroad but were not substantiated to support such explanation. (Please refer to Annex 'A' for details).
>
> Due to lack of substation of the excess remittances, it cannot be established that the input VAT being claimed are not subsequently reimbursed to the principal and no income subject to VAT was included in the said remittances.
>
> Based on the foregoing, we regret to inform you that your claim for VAT Credit Certificate covering the period January 01, 2013 to December 31, 2013 is hereby **DENIED** for lack of factual and legal basis."

Upon receipt by BWSPI of the adverse decision on July 7, 2015, it filed a Petition for Review with the CTA on August 6, 2015.

The CIR filed his Answer[11] on October 1, 2015, interposing the Special and Affirmative Defenses that BWSPI failed to demonstrate that the tax was erroneously or illegally collected; that taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

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[8] *Id.*, p. 401, Exhibit "P-1501".
[9] *Id.*, pp. 18-19.
[10] *Id.*, p. 79, Exhibit "P-1520".
[11] *Id.*, pp. 287-290.

that BWSPI's claim for refund was not fully substantiated by proper documents, such as sales invoices, official receipts and others; that BWSPI failed to satisfactorily show all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit; and, lastly, claims for refund are construed strictly against the claimant, as the same partake the nature of exemption from taxation.

The Pre-Trial Conference[12] was scheduled on January 28, 2016 but was reset[13] to May 5, 2016. The CIR's Pre-Trial Brief[14] was filed through registered mail on November 9, 2015 and was received by the Court in Division on November 26, 2015; while BWSPI's Pre-Trial Brief[15] was filed on February 15, 2016.

On May 24, 2016, the parties filed their Joint Stipulation of Facts and Issues.[16] Subsequently, the Court in Division issued a Pre-Trial Order[17] on July 27, 2016.

On August 11, 2016, Mr. Enrico Pizarro was commissioned as the Independent Certified Public Accountant (ICPA) for the case and was given until September 10, 2016 within which to submit his report.[18]

On various hearing dates, BWSPI presented Ms. Carmencita S. Escalante[19], Ms. Herminia Dela Peña[20], and Mr. Enrico Pizarro as its witnesses.[21]

BWSPI filed its Formal Offer of Evidence[22] on February 20, 2017. The CIR filed his Comment To Petitioner's Formal Offer of Evidence with Very Urgent Manifestation[23] through registered mail on February 22, 2017 which the Court in Division received on March 8, 2017.

In the Resolution[24] dated March 31, 2017, the Court in Division admitted all the formally offered exhibits of BWSPI and noted the CIR's manifestation that he would no longer be presenting any evidence. Accordingly, the hearing set for the CIR's presentation of evidence was cancelled.

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[12] *Id.*, pp. 292-293.
[13] *Id.*, pp. 353-356.
[14] *Id.*, pp. 298-301.
[15] *Id.*, pp. 305-335.
[16] *Id.*, pp. 491-520.
[17] *Id.*, pp. 558-583.
[18] *Id.*, pp. 584-585.
[19] *Id.*, pp. 590-591.
[20] *Id.*, pp. 594-595.
[21] *Id.*, pp. 691-693.
[22] *Id.*, pp. 697-702.
[23] *Id.*, pp. 704-706.
[24] *Id.*, pp. 711-712.

BWSPI filed its Memorandum[25] on May 3, 2017; while the CIR filed his Memorandum[26] through registered mail on April 19, 2017 which was received by the Court in Division on May 9, 2017. The case was submitted for decision on May 24, 2017.[27]

On May 7, 2018, the Court in Division promulgated the Assailed Decision denying BWSPI's Petition for lack of jurisdiction. The dispositive portion of the Assailed Decision reads, as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED.**"[28]

On May 28, 2018, BWSPI filed his Motion for Reconsideration praying for the reversal of the Decision and the grant of its claim for refund. The CIR failed to file his Comment despite due notice.

On October 19, 2018, the Court in Division issued the Assailed Resolution denying the motion for lack of merit.[29] The dispositive portion of the Assailed Resolution reads, as follows:

> "**WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[30]

Within an extended period granted by the Court, BWSPI timely posted its appeal via Petition for Review on December 6, 2018, which the Court *en banc* received on January 3, 2019.[31]

On January 23, 2019, the CIR was directed to file Comment thereto.[32]

On March 22, 2019, the Judicial Records Division issued a records

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[25] *Id.*, pp. 713-725.
[26] *Id.*, pp. 726-730.
[27] *Id.*, p. 733.
[28] *Id.* at Note 3, pp. 40-41.
[29] *Id.* at Note 4.
[30] *Id.*, p. 51.
[31] *Id.* at Note 1.
[32] *Id.*, pp. 166-167.

Verification Report stating that the CIR failed to file Comment within the given period.[33]

On May 9, 2019, the Court *en banc* issued a Resolution submitting the case for decision.[34]

## The Assignments of Errors

BWSPI did not enumerate an assignment of errors in the Assailed Decision and Resolution. Instead, BWSPI categorized the errors it appeals as "Issues" which is incorrect since the Court *en banc* is not a trier of facts.

Correctly stated, BWSPI ascribes a lone error in the Assailed Decision and Resolution in that the Court in Division erred in ruling that it had no jurisdiction over the Petition for Review as it was timely filed and, consequently, BWSPI is entitled to the VAT refund being claimed.

## The Arguments of the Parties

BWSPI argues that the *Pilipinas Total* case[35] was not yet promulgated when filed its Petition for Review on August 6, 2015, and hence, its rulings are inapplicable to it. Notwithstanding the *Pilipinas Total* case, BWSPI contends that it has fully complied with Revenue Memorandum Circular (RMC) No. 54-2014 and has submitted all the documents necessary for the CIR to evaluate its claim, and the documents it submitted belatedly were submitted at the request of the BIR. Consequently, the reckoning point for the start of the 120-day period for the CIR to decide on the claim should begin on April 8, 2015, the period set by the BIR to submit the additional documents.

Furthermore, BWSPI claims that it is entitled to a VAT refund because it has established that it is VAT-registered; it has unapplied input VAT; and it filed its application for refund/credit within the two (2) year period required.

On the other hand, the CIR, in failing to file his Comment to the Petition, failed to argue his case.

## The Ruling of the Court

[33] *Id.*, p. 168
[34] *Id.*, pp. 170-171.
[35] *Pilipinos Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

*We* deny the Petition for lack of compelling ground to merit the reversal of the assailed Decision and Resolution.

At the outset, BWSPI presents no new argument to persuade this Court that it has a meritorious case. It merely reiterates the arguments it raised in its Motion for Reconsideration which have been extensively addressed by the Court in Division in the Assailed Resolution. Needless to state, the issue of jurisdiction over BWSPI's judicial claim for input VAT refund has already been laid to rest in the Assailed Decision and Assailed Resolution. Nevertheless, we will discuss at length, once again, the demerits of its arguments which may serve as a guidepost in deciding issues of similar nature in the future.

Under the law, a taxpayer is given the remedy of refund in case of unutilized input VAT. The filing of a claim however, is subject to two (2) time requirements: (a) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT *(i.e.,* administrative claim); and (b) the 30-day period for filing an appeal with this Court *(i.e.,* judicial claim).

For clarity and reference, Sections 112(A) and (C) of the National Internal Revenue Code ("NIRC") of 1997, as amended, are reproduced below:

> "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, **<u>within two (2) years after the close of the taxable quarter when the sales were made</u>, 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 <u>output tax:</u>** *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(l) 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. *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-

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zero-rated sales.

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(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 <u>from the date of submission of complete documents</u> in support of the application filed in** accordance with Subsections (A) hereof.

**In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, <u>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</u> ."**[36]

Pursuant to the above-quoted Section 112(A), the administrative claim for the issuance of TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. As the records of the case show, BWSPI filed its administrative claims for refund within two years from the close of the taxable quarter when the zero-rated sales were made, thus:

| Quarter | Quarter End | Date of Filing of Quarterly VAT Return | Last Day to File Administrative Claim | Date Administrative Claim Filed |
|---|---|---|---|---|
| 1st | March 31, 2013 | April 25, 2013 | March 31, 2015 | February 27, 2015 |
| 2nd (Amended) | June 30, 2013 | November 20, 2013 | June 30, 2015 | |
| 3rd | September 30, 2013 | October 21, 2013 | September 30, 2015 | |
| 4th (Amended) | December 31, 2013 | May 21, 2014 | December 31, 2015 | |

Anent the timeliness of the judicial appeal, the rule is that the taxpayer can file the appeal in one of two (2) ways:

1) file the judicial claim within thirty days after the

[36] Emphasis and underscoring supplied.

> Commissioner denies the claim within the one hundred twenty-day period (120-day period), counted from the date of submission of complete documents, or
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> 2) file the judicial claim within thirty (30) days from the expiration of the 120-day period (120 + 30 days) if the Commissioner does not act within the one hundred twenty-day period.[37]

The 120-day period is said to be crucial in filing a judicial appeal. In order for the Court to conclude that there is an administrative "denial due to inaction" of the CIR during the 120-day period, the correct reckoning point of the 120-day period is imperative. In this regard, the pronouncement of the Supreme Court in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[38] *(Pilipinas Total Gas)* is relevant for purposes of determining when the running of the 120-day period commences and when it ends for purposes of counting the thirty (30) days within which to appeal to this Court.

In *Pilipinas Total Gas*, the Supreme Court emphatically ruled as follows:

> "Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: ***Under present law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?***
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> xxx xxx xxx
>
> If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential.** It is only upon the submission of these documents that the 120-day period would begin to run.

[37] *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[38] G.R. No. 207112, December 29, 2015.

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Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

Moreover, under Section 112 (A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. **Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed.** This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.

To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other additional documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two- year period under Section 112 (A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120- day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

It bears mentioning at this point that the foregoing summation of the rules ***should only be made applicable to those claims for tax***

/v

<u>*credit or refund filed prior to June 11, 2014. such as the claim at bench*</u> ..."[39]

Pursuant to *Pilipinas Total Gas* above, for claims filed before June 11, 2014, or prior to the effectivity of Revenue Memorandum Circular (RMC) No. 54-2014, the rules provided under RMC No. 49-2003 in relation to Section 112 of the NIRC of 1997, as amended, shall apply.

RMC No. 54-2014, issued on June 11, 2014, clarified issues relative to the application for VAT refund or tax credit under Section 112 of the NIRC of 1997, as amended. As observed by the Court in Division, the RMC requires that the application for VAT refund or tax credit must be accompanied by complete supporting documents. A statement under oath attesting to the completeness of the submitted documents and stating that the said documents are the only documents which the taxpayer will present to support the claim must be attached to the application as well. RMC No. 54-2014 also mandates that upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted or required from the taxpayer in the course of its evaluation.

At the time BWSPI filed its claim for refund on February 27, 2015, RMC No. 54-2014, was already in force. Its application was accompanied with an affidavit under oath attesting to the completeness of the documents submitted in compliance with the mandate of RMC No. 54-2014.[40] In fact, BWSPI does not dispute that it submitted all the documents applicable to them based on the "Checklist of Mandatory Requirements for Claims of VAT Credit/Refund" (Checklist).[41] Any additional documents submitted were only because the CIR's agent, Ms. Tumbagahan, required them to be submitted despite the fact that these documents were not listed in the Checklist. Due to this circumstance, BWSPI claims that this operates as an exception to the rule laid down in RMC No. 54-2014 that no other documents shall be accepted or required from the time the claim was filed. Consequently, the reckoning point for the start of the 120-day period should begin on April 8, 2015, the deadline set by the BIR for BWSPI to submit the additional documents. Since the ruling in *Pilipinas Total Gas* was promulgated on December 5, 2015, subsequent to BWSPI's filing of its judicial claim, it cannot be applied.

BWSPI's arguments fail to persuade.

*We* uphold the finding in the Assailed Resolution that while taxpayers have every right to pursue their claims, it must be done in the manner provided by existing regulations at the time it was filed. Since RMC No. 54-2014 was already

[39] Emphasis supplied in the original.
[40] Item 2.12, Checklist of Mandatory Requirements for Claims of VAT Credit/Refund received by the BIR on February 27, 2015, Docket, vol. I, p. 402.
[41] *Id.* at Note 1, p. 7.

operative at the time BWSPI filed its claim, any subsequent submission of supporting documents will not move the commencement of the 120-day period. The 120-day period is reckoned from the date of the filing of the application, which is also the date of submission of complete documents.

A word on the effectivity of *Pilipinas Total Gas* to judicial claims filed prior to its promulgation.

The doctrine on effectivity of the judicial interpretation of statutes has been clarified by the Supreme Court in *Philippine International Trading Corporation vs. Commission on Audit*[42], thus:

> "It was in the 1956 case of *Senarillos v. Hermosisima*[43] that the above pronouncement first came to light. In said case, Senarillos was the Chief of Police of Sibonga, Cebu and he served as such until his suspension by the municipal mayor on January 2, 1952. Senarillos was investigated and tried by a 'police committee' composed of three councilors of the municipal council. The committee then rendered an adverse decision on April 15, 1952 that was approved by the municipal council. Upon Senarillos's petition, the Court of First Instance of Cebu ordered his reinstatement. The Court affirmed the judgment of the trial court, ruling that the committee had no jurisdiction to investigate Senarillos as the investigation of police officers under Republic Act No. 557[44] must be conducted by the municipal council itself as laid down in *Festejo v. Mayor of Nabua*[45] that was promulgated on December 22, 1954.
>
> The Court declared in *Senarillos:*
>
>> That the decision of the Municipal Council of Sibonga was issued before the decision in *Festejo v. Mayor of Nabua* was rendered, would be, at the most, proof of good faith on the part of the police committee, but can not sustain the validity of their action. It is elementary that **the interpretation placed by this Court upon Republic Act [No.] 557 constitutes part of the law as of the date it was originally passed, since this Court's construction merely establishes the contemporaneous**

[42] G.R. No. 205837, November 21, 2017.
[43] 100 Phil. 501 (1956).
[44] Entitled "An Act Providing for the Suspension or Removal of Members of the Provincial Guards, City Police and Municipal Police by the Provincial Governor, City Mayor or Municipal Mayor." Approved on June 17, 1950.
[45] 96 Phil. 286 (1954).

> **legislative intent that the interpreted law carried into effect.**[46] (Emphasis supplied.)

The above ruling had since become the established doctrine on the matter of the effectivity of judicial interpretations of statutes.

In *Columbia Pictures, Inc. v. Court of Appeals,*[47] we expounded on the import of our ruling in *Senarillos* in relation to the rule of nonretroactivity of laws. Thus:

> Article 4 of the Civil Code provides that '(l)aws shall have no retroactive effect, unless the contrary is provided.' Correlatively, Article 8 of the same Code declares that '(j)udicial decisions applying the laws or the Constitution shall form part of the legal system of the Philippines.'

Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law. While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines. Judicial decisions of the Supreme Court assume the same authority as the statute itself.

Interpreting the aforequoted correlated provisions of the Civil Code and in light of the above disquisition, this Court emphatically declared in *Co vs. Court of Appeals, et al.* that **the principle of prospectivity applies not only to original amendatory statutes and administrative rulings and circulars, but also, and properly so, to judicial decisions.** x x x.

x x x x

The reasoning behind *Senarillos vs. Hermosisima* 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, is all too familiar. Such judicial doctrine does not amount to the passage of a new law but consists

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[46] *Senarillos v. Hermosisima*, supra note 43.
[47] 329 Phil. 875, 905-908 (1996).

> merely of a construction or interpretation of a pre-existing one, x x x.
>
> It is consequently clear that **a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.** To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication." *(Emphasis supplied)*

The question to be answered at this juncture is: Did *Pilipinas Total Gas* overrule or overturn an old doctrine relied upon by BWSPI to necessitate prospective application thereof?

The answer is, no.

At the time that BWSPI filed its administrative claim for refund, *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,*[48] promulgated on January 14, 2015, was already in existence. In the *Rohm Apollo* case, the Supreme Court already exhorted taxpayers to be doubly vigilant in discerning the periods within which it could appeal the denial of its administrative claims before this court, thus:

> "In fine, our finding is that the judicial claim for the refund or credit of unutilized input VAT was belatedly filed. Hence, the CTA lost jurisdiction over Rohm Apollo's claim for a refund or credit.
>
> The foregoing considered, there is no need to go into the merits of this case.
>
> **A final note, the taxpayers are reminded that that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-**

[48] G.R. No. 168950, January 14, 2015.

**day waiting period."** *(Emphasis and underscoring supplied)*

Since BWSPI filed its administrative claim for refund on February 27, 2015, the 120-day period ended on June 27, 2015. BWSPI only had until July 27, 2015 to file its judicial claim considering that the CIR had not acted on the application within the said period. Evidently, BWSPI belatedly filed its Petition for Review with the Court in Division on August 6, 2015. The Court in Division did not acquire jurisdiction.

As earlier stated, the 30-day period within which to file an appeal of the denial of the claim or inaction on the part of the BIR Commissioner is both mandatory and jurisdictional and non-compliance therewith precludes the CTA from acquiring jurisdiction over the case.

Time and again, it has been held that decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[49] In this regard, this Court can only apply the law as ruled upon and/or interpreted by the High Court. *We* have no other option but to abide by the ruling of the Supreme Court in the cases above-mentioned regarding the interpretation of Section 112(C) of the NIRC of 1997, as amended.[50]

Jurisdiction over the subject matter is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.[51] Consequently, questions of jurisdiction may be raised at any stage of the proceedings, even for the first time on appeal.[52]

Considering all these pronouncements, BWSPI's judicial claim for refund was filed way beyond the mandatory 120 + 30 days to seek judicial recourse. A claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. Strict compliance with the 120 + 30 day periods is necessary for such a claim to prosper.[53]

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[49] *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014.
[50] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013 citing *The Philippine Veterans Affairs Office v. Brigida V. Segundo*, G.R. No. L-51570, August 15, 1988.
[51] *Mitsubishi Motors Philippines Corporotion v. Bureou of Customs*, G.R. No. 209830, June 17, 2015, 759 SCRA 311, 312.
[52] *Republic v. Bantigue Point Development Corporation*, G.R. No. 162322, March 14, 2012, 668 SCRA 163, 164.
[53] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

Such non-compliance with the said mandatory period of 120 + 30 days is fatal to BWSPI claim for refund resulting in the First Division's lack of jurisdiction over the said judicial claim. With the foregoing findings, the Court deems it unnecessary to resolve other matters raised.

Accordingly, the Court *en banc* upholds the assailed Decision and Resolution.

**WHEREFORE,** premises considered, the Petition for Review is **DENIED**. The assailed Decision dated May 7, 2018 and the Resolution dated October 19, 2018 of the First Division in CTA Case No. 9115 are **AFFIRMED.**

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**WE CONCUR:**

*(I reiterate my Concurring Opinion in the Assailed Decision)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

*With due respect, please see my Dissenting Opinion*
**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO- SAN PEDRO**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of this Court.

**ROMAN G. DEL ROSARIO**
*Presiding Justice*

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## *EN BANC*

**B.W. SHIPPING PHILIPPINES INC.,**
*Petitioner,*

-*versus*-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA *EB* No. 1987**
(CTA Case No. 9115)

Members :

**DEL ROSARIO**, *P.J.*
**CASTAÑEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA, *and***
**MODESTO-SAN PEDRO, JJ.**

Promulgated:
JUN 3 0 2020 3:15p.m.

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**MANAHAN, J.:**

## DISSENTING OPINION

The ponencia holds that the Court has no jurisdiction to take cognizance of the claim for refund for failure of petitioner to abide by the 120 + 30 days to seek judicial recourse pursuant to Section 112 (C) of the 1997 National Internal Revenue Code (NIRC), as amended, and their conclusion that the reckoning period of the 120-day period should always be counted from the filing of the administrative claim for refund.

Contrary to the decision reached by my esteemed colleagues, it is my humble view that the Court has jurisdiction to take cognizance of the Petition for Review filed by petitioner (with the Court in Division) on August 6, 2015.

Under the legal mileu prevailing prior to the enactment of Republic Act (RA) 10963 otherwise known as the "TRAIN Law", claims for refund of alleged excess or unutilized input value-added tax (VAT) was governed by Section 112 (A) and (C) of the 1997 NIRC as amended, and I quote:

> "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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> 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." (emphasis supplied)**

Based on the above provisions, a taxpayer may file an appeal in one of two ways:

1. File the judicial claim within thirty (30) days after the Commissioner denies the claim within the 120-day period; or
2. File the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.[1]

The facts as narrated in the *En Banc* Decision show that petitioner filed an administrative claim for refund on **February 27, 2015** for its alleged excess or unutilized input value-added taxes (VAT) for taxable year 2013. Assuming that the 120-day period is reckoned from **February 27, 2015,** the 120-day period would lapse on **June 27, 2015.** Facts also reveal that a decision was rendered by the representative of the Commissioner of Internal Revenue on **June 25, 2015.** We quote the portion of the *En Banc* decision, thus:

> "On July 7, 2015, BWSPI received a letter dated **June 25, 2015** from Assistant Commissioner Erlinda A. Simple, **denying the application for refund or tax credit xxx xxx"** (emphasis ours)

Applying the aforequoted Section 112 (C) and relevant jurisprudence, petitioner had thirty (30) days **from receipt** of the letter denial or from **July 7, 2015** to appeal or file a judicial claim for refund with the Court. The Petition for Review was filed with this Court on **August 6, 2015,** which is well-within the thirty day period. We quote the *En Banc* decision:

> " Upon receipt by BWSPI of the adverse decision on July 7, 2015, **it filed a Petition for Review with the CTA on August 6, 2015.** (emphasis supplied)

The 120 + 30 day mandatory period to seek judicial recourse is on the assumption that no decision was rendered by the Commissioner or his representative, within the 120-day period. This is because inaction is "deemed a denial" which is appealable to this Court. Such principle does not apply if a decision is rendered on the claim for refund within the 120-day period as in the instant case. It is therefore insignificant if the judicial recourse was sought outside the 120-day period because the latter is the time frame directed to the CIR or his representative to render a decision and not the period to appeal to the Court (directed to the taxpayer).

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[1] CIR vs. Mindanao II Geothermal Partnership,

It would be unjust if the taxpayer will also be limited to file an appeal within the 120-day period when the law clearly grants him a 30-day period to appeal from a decision partially or totally denying its claim. What if the CIR or his representative renders a decision on the 120th day? Will the taxpayer lose its recourse to file an appeal the next day or within the thirty day period from receipt of said decision because it fell outside the 120-day period? The answer is provided in Section 112 (C) of the 1997 NIRC, as amended, which clearly states that an appeal may be made "within 30 days from receipt of the decision" and that is what petitioner did. Where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[2]

My second point of dissent is on the majority's conclusion that the reckoning of the 120 days provided under Section 112 (C) must *always* be from the date of filing of the administrative claim for refund because it is at that time that the taxpayer/claimant is assumed to have submitted complete documents in compliance with the provisions of Revenue Memorandum Circular (RMC) No. 54-2014 which requires that the application for VAT refund or tax credit must be accompanied by complete supporting documents. RMC No. 54-2014 also requires that the application for VAT refund must be accompanied by a statement under oath to be signed by the taxpayer/claimant stating that said documents are the only documents which the taxpayer will present to support the claim. I do not have qualms about such a requirement (as prescribed in said RMC) in the perspective of a taxpayer because at the time of filing the claim for refund, it is required to attach or submit or will try to submit the documents which are listed in the Checkliust of Mandatory Requirements for Claims of VAT Credit/Refund" (Checklist) as petitioner did in this case.

RMC No 54-2014 obviously does not contemplate of a situation where the revenue officer assigned to evaluate the claim will request or ask for additional documents (outside of the Checklist) to enable him or her to come up with a final conclusion on whether to deny or grant the claim. This is entirely possible as claims of this nature entail a intensive study of the documents, not limited to those provided in the checklist, but also of other documents which in the discretion of the

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[2] *CIR vs. Central Luzon Drug Corporation,* G.R. No. 159647, April 15, 2005.

revenue examiner, may request to complete the evaluation. The *En Banc* Decision recognized this fact when it narrated, thus:

> "Any additional documents submitted were only because the CIR's agent, Ms. Tumbagahan, required them to be submitted despite the fact that these documents were not listed in the Checklist."

Under normal circumstances, petitioner as the claimant/taxpayer, in its effort to assist the revenue officer to promptly grant its claim for refund, would naturally comply with the request for these additional documents lest its claim be denied. The requirements provided under RMC No. 54-2014 should be taken as a general rule to prevent the taxpayers from delaying the evaluation of their VAT applications by their constant submissions of documents and requests for postponements on account of lack of time to retrieve documents provided in the Checklist. The exception, however, is when the request emanates from the investigating revenue officer himself.

We agree with petitioner's submission that the reckoning point of the start of the 120-day period should begin on April 8, 2015, the deadline set by the BIR to submit the "additional documents" and not on the date of filing of the administrative claim for refund.

Allow me to quote a portion of my Dissenting Opinion in the case of *Zuellig Pharma Asia Pacific LTD. Phils., ROHQ vs. CIR*, CTA Case No. 9025 promulgated on May 23, 2018, to wit:

> "The *Pilipinas Total* case in the course of its resolution of the issue stated that "it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120 day period" but then in another statement, it goes on to say that "whether these documents are actually complete as required by law – is for the CIR and the courts to determine.
>
> There are various stages of submission of supporting documents in the administrative level to support a claim for refund of unutilized or excess input VAT. It is clear that the taxpayer at the time of filing its application for refund, is guided by the law and its implementing revenue issuances as to the documents that must be submitted to the BIR in support of its claim for refund. At this stage, taxpayer has no idea on how the assigned revenue examiner will appreciate the sufficiency of the documentation submitted. This is the first

stage. Upon assignment of the refund claim to an examiner, the latter will now study the application and thereby communicate his or her findings to the taxpayer. The assigned examiner may or may not ask for additional documents or may not even communicate with the taxpayer at all. This is the second stage.

xxx xxx xxx

The cited ruling in the *Pilipinas Total* case that the submission of the complete documents must be within the two-year period is true only in the first stage, that is, upon the filing of the application for the issuance of a tax credit certificate (TCC) or refund of unutilized input taxes. This is consistent with the two-year prescriptive period to file the claim for refund because certainly the claimant has to file documents in support of said claim as directed under Section 112 (C) of the NIRC which clearly specifies that the documents are in support of the application filed in accordance with Section 112 (A). At this stage, it is really the taxpayer who will determine if the documents submitted in support of the application for refund or TCC are sufficient to warrant a favorable grant.

In the instant case, the revenue examiner continued to request for documents even beyond the two-year period so the exception to the two-year period should apply. The case of *Pilipinas Total* seems to recognize and confirm this conclusion when it ruled thus:

> "xxx Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms of what additional documents must be presented in support of a claim for tax credit or refund- it is the taxpayer who has the right and burden of providing any and all documents that would support his claim for tax credit or refund." (italics ours)."

I remain consistent with the foregoing position as regards the counting of the 120 + 30 day period.

**WHEREFORE,** in view of the foregoing premises, I vote in favor of acquiring jurisdiction over the case and consequently determining the substantive merits of the claim for refund of petitioner, i.e., whether or not the petitioner satisfied the requirements for the grant of the claim for refund of alleged excess or unutilized input VAT for taxable year 2013.

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice