REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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SAN ROQUE POWER CORPORATION, ***Petitioner,***	**C.T.A. EB NO. 789** (C.T.A. CASE NOS. 7744 & 7802) Present: ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
-versus-	
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** JUN 04 2012 CwApolinario 10:00 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by San Roque Power Corporation (hereinafter "petitioner") under *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to reverse the Decision dated January 10, 2011 and Resolution dated May 31, 2011 rendered by the First Division of this Court in C.T.A. Case Nos. 7744 and 7802, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, these consolidated Petitions for Review, CTA Case Nos. 7744 covering the first, third and fourth quarters and 7802 covering second quarter are hereby **DISMISSED** since the Court has no jurisdiction thereof.
>
> **SO ORDERED**."
>
> "**WHEREFORE**, finding no sound reason to reverse, amend or modify the Decision of the Court dated 10 January 2011, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at Barangay San Roque, San Manuel, Pangasinan. It is registered with the Board of Investment on a preferred pioneer status, as a new operator of hydroelectric power generating plant, under Certificate of Registration No. 97-356 dated February 11, 1998 and with the Bureau of Internal Revenue ("BIR"), as a VAT taxpayer with TIN 005-017-000.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue ("CIR") empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or

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tax credit as provided by law, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes.

THE FACTS

The facts, as found by the First Division, are as follows:

Petitioner filed its 1st, 2nd, 3rd and 4th quarterly VAT Returns for taxable year 2006 on April 21, 2006, July 15, 2006, October 19, 2006 and January 22, 2007, respectively, declaring the following:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Zero-Rated Sales/Receipts	1,554,920,044.72	1,577,881,624.63	2,125,662,300.00	1,716,385,780.31
Taxable Sales/Receipt				276,785.71
Output Tax				33,214.28
Input Tax Carried Over from Previous Quarter/Excess over 70% of Output VAT	40.966,799.34	44,095,090.28	59,624,658.87	48,360.233.27
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	271,115.79	504,599.69	860,073.41	1,288,178.98
Input Tax from current transactions	3,361,774.84	15,885,042.31	4,122,741.53	6,143,636.62
Total Available Input Tax	44,599,689.97	60,484,732.28	64,607,473.81	55,792,048.87
Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	504,599.69	860,073.41	1,306,153.61	2,248,016.10
Total Allowable Input Tax	44,095,090.28	59,624,658.87	63,301,320.20	53,544,032.77
Overpayment	P44,095,090.28	P59,624,658.87	P63,301,320.20	P53,510,818.49

On November 7, 2006, November 8, 2006, and February 5, 2007, petitioner filed its amended quarterly VAT returns for the 1st quarter, 2nd and 3rd quarters, and 4th quarter of 2006, respectively. Subsequently, on February 5, 2007 and May 12, 2007, petitioner filed for the second time its amended

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quarterly VAT returns for the 2nd and 3rd quarters, and 4th quarter of 2006, respectively.

Thereafter, on April 11, 2007, July 10, 2007, and August 31, 2007, petitioner filed separate administrative claims with the BIR covering its unutilized input taxes of P2,857,174.95, P15,044,030.82, P4,122,741.54, and P6,223,682.61, for the 1st, 2nd, 3rd and 4th quarters of 2006, respectively.

On September 21, 2007, petitioner subsequently filed amended administrative claims covering its unutilized input taxes of P3,675,574.21 and P5,311,012.39 for the 3rd and 4th quarters of 2006. Likewise, on March 10, 2008, petitioner filed amended administrative claims covering its unutilized input taxes of P3,128,290.74 and P15,548,630.55 for the 1st and 2nd quarters of 2006.

On March 28, 2008, petitioner filed a Petition for Review with this Court in Division, docketed as C.T.A. Case No. 7744 praying for the refund or tax credit of its alleged excess and unutilized creditable input taxes of P12,114,877.34 for the 1st, 3rd and 4th quarters of 2006.

On June 27, 2008, petitioner filed another Petition for Review with this Court in Division, docketed as C.T.A. Case No. 7802 praying for the refund or tax credit of its alleged excess and unutilized creditable input taxes of P15,548,630.55 for the 2nd quarter of 2006, with Motion to Consolidate with

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C.T.A. Case No. 7744. The Motion to Consolidate was granted in a Resolution dated July 28, 2008 and C.T.A. Case No. 7802 was ordered consolidated with C.T.A. Case No. 7744, the case bearing the lower docket number.

In her Answer, respondent CIR alleged by way of special and affirmative defense that the judicial claim was prematurely filed; hence the court has no jurisdiction to take cognizance of the case, and prayed for the dismissal of the petition.

After trial on the merits, on January 10, 2011, the First Division rendered the assailed Decision dismissing the consolidated Petitions for Review.

On February 7, 2011, petitioner filed a "Motion for Reconsideration", to which respondent CIR filed a "Comment Re: Motion for Reconsideration dated January 26, 2011" on March 15, 2011. In a Resolution dated May 31, 2011, the "Motion for Reconsideration" was denied for lack of merit.

Not satisfied, petitioner filed the instant Petition for Review raising the following:

ISSUES

I

PETITIONER SHOULD NOT BE FAULTED FOR RELYING IN GOOD FAITH ON THE THEN CONSISTENT RULINGS OF THIS HONORABLE COURT WHICH WERE THEN THE PREVAILING JURISPRUDENCE (IN THE ABSENCE THEN OF A SUPREME COURT RULING) AS REGARDS THE

INTERPRETATION OF THE 120-DAY AND 30-DAY PERIODS PROVIDED IN SECTION 112 OF THE 1997 TAX CODE, AS AMENDED.

II

THE RECENT RULING OF THE HONORABLE SUPREME COURT IN COMMISSIONER OF INTERNAL REVENUE VS. AICHI FORGING COMPANY OF ASIA, INC., G.R. NO. 184823, PROMULGATED ON OCTOBER 6, 2010 ESTABLISHING A NEW DOCTRINE AS REGARDS THE INTERPRETATION OF THE 120-DAY AND 30-DAY PERIODS PROVIDED IN SECTION 112 OF THE 1997 TAX CODE, AS AMENDED, SHOULD NOT BE APPLIED RETROACTIVELY IN LIGHT OF THE EXISTING LAW AND JURISPRUDENCE UPHOLDING THE PRINCIPLE OF PROSPECTIVITY.

III

THE RETROACTIVE APPLICATION OF AICHI RULING TO PETITIONER'S PENDING CLAIM WILL CERTAINLY PRODUCE SUBSTANTIAL INEQUITABLE RESULTS AND GRAVE INJUSTICE TO PETITIONER AND TO MANY OTHER TAXPAYERS.

IV

THE RETROACTIVE APPLICATION OF THE AICHI DOCTRINE TO PETITIONER'S PENDING CLAIM WILL DEFEAT THE BASIC POLICIES OF THE EPIRA LAW.

Without necessarily giving due course to the petition, on July 7, 2011, respondent CIR was ordered to file her comment, within ten (10) days from notice. Despite notice, respondent failed to file her comment.

On September 21, 2011, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; after which, the petition shall be deemed submitted for decision.

Both parties having filed their respective memorandum, within the prescribed period, the case was deemed submitted for decision on November 17, 2011.

Petitioner San Roque's Arguments

Petitioner argues that it should not be faulted for relying in good faith on the then consistent rulings of this Honorable Court which were then the prevailing jurisprudence (in the absence then of a Supreme Court ruling) as regards the interpretation of the 120-day and 30-day periods provided in *Section 112 of the Tax Code of 1997, as amended*; the recent ruling of the Honorable Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., 632 SCRA 422* ("Aichi ruling"), promulgated on October 6, 2010, establishing a new doctrine as regards the interpretation of the 120-day and 30-day periods provided in *Section 112 of the Tax Code of 1997, as amended*, should not be applied retroactively in the light of the existing law and jurisprudence upholding the principle of prospectivity; the retroactive application of the Aichi ruling to petitioner's pending claim will certainly produce substantial inequitable results and grave injustice to petitioner and to many other taxpayers; substantial justice, equity and fairplay, prevention of grave miscarriage of justice are strong compelling reasons to discard technicalities and legalisms in the present case; and the retroactive application of the Aichi doctrine to petitioner's pending claim will defeat the basic policies of the EPIRA Law.

Respondent CIR's Counter-Arguments

Respondent CIR, on the other hand, counter-argues that petitioner's judicial claim was filed beyond the period prescribed by law, hence, the Honorable Court has no jurisdiction to take cognizance of the instant case; the first and fundamental duty of the Court is to apply the law; when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation; the Aichi ruling cannot be considered a new doctrine, hence, may be retroactively applied to the instant case; and tax laws which are civil in nature may be applied retroactively.

THE COURT *EN BANC'S* RULING

We deny the petition.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., supra,* the Supreme Court settled the issue regarding the interpretation of the 2-year prescriptive period under *Section 112 (A) of the*

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NIRC of 1997, as amended, and the 120 and 30-day periods under *Section 112 (C) of the same Code*, as follows:

> "The filing of the judicial claim was premature.
>
> However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:
>
> SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> x x x x
>
> (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.
>
> 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.

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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 x x x apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides 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.* *(130 Phil. 12 (1968)* 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."

Pursuant to the above-quoted Aichi ruling, *Section 112 (A) of the NIRC of 1997, as amended*, provides a 2-year prescriptive period to file an application for refund/credit with the CIR (administrative claim), while *Section 112 (D) of the same Code* provides a period within which to file a judicial claim for refund/credit with the CTA, which is, 30 days from receipt of the decision of the CIR, or from the lapse of the 120-day period when no decision was made by the CIR within the 120-day period. The premature filing of the claim for refund or credit with the CTA warrants a dismissal, inasmuch as no jurisdiction was acquired by the CTA.

In the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 522 SCRA 152 ("RCBC case"),* the Supreme Court ruled that the 30-day period within which to file an appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction. The said ruling likewise applies to claims for refund or issuance of tax credit under *Section 112 of the NIRC of 1997, as*

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amended, where the taxpayer may, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim to the CTA.

In the instant case, records show that although petitioner's administrative claims for refund were filed within the two-year prescriptive period, the judicial claims for refund were filed beyond the 30-day period to appeal to the CTA, thus:

<table>
<tr><th>Taxable Quarter</th><th>Date of Filing of Administrative Claims</th><th>Last day of CIR's 120-day period to decide</th><th>Last day of petitioner's 30-day period to appeal</th><th>Date of Filing of Judicial Claims</th></tr>
<tr><td>1st quarter</td><td>April 11, 2007</td><td>August 9, 2007</td><td>September 8, 2007</td><td>March 28, 2008 (CTA Case No. 7744)</td></tr>
<tr><td>2nd quarter</td><td>July 10, 2007</td><td>November 7, 2007</td><td>December 7, 2007</td><td>June 27, 2008 (CTA Case No. 7802)</td></tr>
<tr><td>3rd quarter</td><td rowspan="2">August 31, 2007</td><td rowspan="2">December 29, 2007</td><td rowspan="2">January 28, 2008</td><td rowspan="2">March 28, 2008 (CTA Case No. 7744)</td></tr>
<tr><td>4th quarter</td></tr>
</table>

Clearly, petitioner filed its Petition for Review in C.T.A. Case No. 7744 for the 1st, 3rd, and 4th quarters of taxable year 2006, only on March 28, 2008, which is way beyond the 30-day period to appeal. Likewise, petitioner filed its Petition for Review in C.T.A. Case No. 7802 for the 2nd quarter claim only on June 27, 2008, which is also way beyond the 30-day period to appeal to the CTA. The CTA, therefore, has not acquired jurisdiction over the Petitions for Review in C.T.A. Case Nos. 7744 and 7802 for having been filed late.

Even if we reckon the 120-day period from the date of filing of the amended administrative claims for refund on March 10, 2008 for the 1st and 2nd quarter claims, and on September 21, 2007 for the 3rd and 4th quarter claims, still the CTA did not acquire jurisdiction over C.T.A. Case No. 7744.

Thus:

Taxable Quarter	Amended Administrative Claims	Last day of CIR's 120-day period to decide	Last day of petitioner's 30-day period to appeal	Date of Filing of Judicial Claims
1st quarter	March 10, 2008	July 8, 2008	August 7, 2008	March 28, 2008 (CTA Case No. 7744)
2nd quarter				June 27, 2008 (CTA Case No. 7802)
3rd quarter	September 21, 2007	January 19, 2008	February 18, 2008	March 28, 2008 (CTA Case No. 7744)
4th quarter				

Therefore, even if we consider the date of filing of the amended administrative claims as the reckoning point, still pursuant to *Section 112 (A) and (C) of the NIRC of 1997, as amended,* petitioner's judicial claims for the 1st and 2nd quarters were prematurely filed; while the judicial claims for the 3rd and 4th quarters were filed late.

As regards the decisions relied upon by petitioner, it must be emphasized that only decisions of the Supreme Court form part of the legal system of the Philippines. While a ruling of the Court of Appeals or the Court of Tax Appeals on any question of law is not conclusive on the Supreme Court, all rulings of the Supreme Court on questions of law are conclusive and binding on all courts. All

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courts must take their bearings from the decisions of the Supreme Court *(Systra Philippines, Inc. vs. Commissioner of Internal Revenue, 533 SCRA 781)*. It should be noted that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiceable controversy. Indeed, there is only one Supreme Court from whose decisions all other courts should take bearings *(Commissioner of Internal Revenue vs. Michel J. Lhuiller Pawnshop, Inc., 406 SCRA 189)*. Accordingly, only decisions of the Supreme Court, like the Aichi case and the RCBC case, can be considered as binding judicial precedents.

The Court did not retroactively apply the Aichi ruling

Petitioner's contention that the Aichi ruling has been applied retroactively in the instant case is likewise bereft of merit. As heretofore discussed, the 120-day and 30-day periods had already been provided in the *NIRC of 1997, as amended*, even before the promulgation of the Aichi decision. The Aichi case merely interpreted the provisions of *Section 112 of the NIRC of 1997, as amended.*

Settled is the rule that once the Supreme Court has interpreted a law, such interpretation becomes a part of the law itself. Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one, which is the situation in this case *(Eagle Realty Corporation vs. Republic of the Philippines, 594 SCRA 558)*. Considering that *Section 112 (A)* prescribing the period to apply the claim for refund/credit within two years after the close of the taxable quarter when the sales were made, and *Section 112 (D)* prescribing the period to appeal to the CTA the decision or the unacted claim, are provisions in the *NIRC of 1997*, which were interpreted by the Supreme Court in the Aichi case, then such judicial interpretation constitutes part of the *NIRC of 1997* as of the date it took effect on January 1, 1998.

Assuming without conceding that the observance of the 120-day and 30-day periods, enunciated in the Aichi case, is a new doctrine, we cannot agree to petitioner's contention that the same shall be applied prospectively.

In the case of *Zulueta vs. Asia Brewery, Inc., 354 SCRA 106*, the Supreme Court ruled that though "as a general rule, laws have no retroactive effect, there are certain recognized exceptions, such as when they are remedial or procedural in nature." Thus, procedural laws may operate retroactively as to pending proceedings even without express provision to that effect.

In the recent case of *Go vs. Sunbanun, 642 SCRA 383*, the Supreme Court reiterated the ruling that "Procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure."

Considering, further, that the Aichi case dealt on a procedural law; then, it can be applied retroactively to cases pending at the time of its promulgation, such as the instant case.

Petitioner cannot invoke the ruling of the Supreme Court in the case of San Roque Power Corporation vs. Commissioner of Internal Revenue, 605 SCRA 536, to its claim for refund or issuance of tax credit certificate for taxable year 2006

Finally, petitioner cannot invoke the ruling of the Supreme Court in the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra* ("former San Roque case"), where the Supreme Court granted petitioner's claim for refund for the periods covering January to December 2002, for the following reasons:

1) The main issue in the former San Roque case is whether or not petitioner complied with the sixth requirement – the existence of zero-rated or effectively zero-rated sales, to which creditable input taxes may be attributed. In the instant case, the crux of controversy is whether

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or not petitioner complied with the provision of *Section 112(C) of the NIRC of 1997, as amended*, which is a jurisdictional issue as failure to comply therewith will divest the CTA of its jurisdiction over petitioner's judicial claim for refund. This issue was never raised in the former San Roque case;

2) In the former San Roque case, the claim for refund covered the period January to December 2002, as such the governing law at that time was *RA 9136*, otherwise known as the EPIRA law. *Section 6 of the EPIRA* law provides: "pursuant to the objective of lowering electricity rates to end users sales of generated power by generation companies shall be value-added tax zero-rated." While *Section 75* of the same law provides: "This Act shall, unless the context indicates otherwise, be construed in favor of the establishment, promotion, preservation of competition and people empowerment so that the widest participation of the people, whether direct or indirect, is ensured". Thus, the Supreme Court ruled, as follows: "The objectives as set forth in the EPIRA Law can only be achieved if government were to allow petitioner and others similarly situated to the input tax credits available under the law. Denying petitioner such credits would go against the basic policies of the EPIRA Law." Accordingly, the Supreme Court relaxed the application of

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the law on claims for refund and granted petitioner's claim for taxable year 2002.

On the other case, the instant case involves a claim for refund of petitioner covering the period January to December 2006; hence, the governing law is no longer the EPIRA law, but *RA 9337*, which took effect on November 1, 2005. *Section 24 of RA 9337* expressly repealed *Section 6 of the EPIRA Law*, to wit:

> "**SEC. 24.** *Repealing Clause.* - The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> (A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of National Power Corporation (NPC);
>
> **(B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies**; and
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly" *(Emphasis supplied)*.

Since *Section 6 of the EPIRA Law* has already been expressly repealed by RA 9337, petitioner cannot rely on the former San Roque case in order that its claim for refund for taxable year 2006 in the instant case be decided in the same manner that the former San Roque case was decided;

3) In the former San Roque case, the Supreme Court ruled that effective zero-rating is not intended as a benefit to the person legally liable to pay the tax, such as petitioner, but to relieve certain exempt entities, such as the NPC, from the burden of indirect tax so as to encourage the development of particular industries. It was because at that time NPC was still exempt from VAT.

However, *Section 13 of RA 6395* on the exemption from value-added tax of NPC was also repealed by *RA 9337*, as mentioned above. Hence, the underlying reason in granting petitioner's claim for refund for taxable year 2002 in the former San Roque case cannot be applied to its claim for refund for taxable year 2006 in the instant case, as NPC's exemption from VAT had already been removed by *RA 9337*;

4) Lastly, what was prematurely filed in the former San Roque case was petitioner's administrative claim for refund for the periods April 2002 to May 2002, which was filed with the BIR before the last quarter closed on December 31, 2002, in violation of *Section 112(A) of the NIRC of 1997, as amended.*

In this case, what petitioner failed to comply is the 120-day and 30-day periods provision for the filing of the judicial claim for refund, which is a jurisdictional requirement.

Finding no reversible error, we affirm the assailed Decision dated January 10, 2011 and Resolution dated May 31, 2011 rendered by the First Division in C.T.A. Case Nos. 7744 and 7802.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED,** and, accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Associate Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the 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

SAN ROQUE POWER CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 789
(CTA Case Nos. 7744 & 7802)

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

Promulgated:
JUN 04 2012 10:00 a.m.

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DISSENTING OPINION

BAUTISTA, J.:

It was merely unfortunate that during the pendency of the case at bench that the Supreme Court issued a ruling wherein the two (2)-year prescriptive period is reckoned, not from the filing of the return, but from the close of the taxable quarter when the sales were made; yet, another one was issued stating that the two (2)-year period pertains only to administrative claim, and that the taxpayer is merely given a thirty (30)-day period to elevate its claim before this Court either from the receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.

It is true that this Court has the duty to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[1] Nonetheless, this Court should not decide a case by merely adhering to precedence; idolatrous reverence for precedent, simply as precedent, no longer holds true.[2]

This Court cannot simply impose a ruling that was yet to be enunciated.

And in not a few instances did this Court rule that the date of filing of the relevant return is the determinative factor. It was merely during the pendency of the case at bench that the Supreme Court issued a ruling which substantially reversed and modified the reckoning of the prescribed period within which a claim for refund or tax credit is to be made.

Albeit I agree that the latter-issued ruling is 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 wherein after a taxpayer-claimant had faithfully relied and complied therein, this Court will only nullify the same on the basis of the so-called "adherence to precedence."

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

As the Supreme Court aptly ruled, "the final authority of this Court rests upon public respect for its decisions; that public respect is based upon an image which represents this Court as declaring legal principles with an authority and certainty that the people may place upon it their *bona fide* reliance and reasonable expectations."[3]

With this, 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]

And when petitioner filed its claims on the following dates: original administrative claims on April 11, 2007, July 10, 2007, and August 31, 2007; amended administrative claims on September 21, 2007 and March 10, 2008; and Petitions for Review, on March 28, 2008, and June 27, 2008, docketed as CTA Case No. 7744, and CTA Case No. 7802, respectively, the then prevailing doctrine, is that the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return,[5] and not from the close of the quarter;[6] not even within thirty (30) days from receipt of the

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[3] 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.

[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].*

[5] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

[6] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.

decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.[7]

Counting two (2) years from the filing of the pertinent returns on April 21, 2006, July 15, 2006, October 19, 2006, and January 22, 2007, I find the administrative and judicial claims made within the prescribed period in force at the time the action was made.

Accordingly, I vote that the Petition for Review be **GRANTED**.

LOVELL R. BAUTISTA
Associate Justice

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