REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHIL. GOLD PROCESSING AND REFINING CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8048

Present:

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

Promulgated:

APR 7 2011

11:02 a.m.

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RESOLUTION

COTANGCO-MANALASTAS, *J.*:

For resolution of this Court is the *Motion for Reconsideration*[1] filed by petitioner Phil. Gold Processing and Refining Corp. on January 21, 2011, with a prayer that the *Resolution*[2] of this Court dated December 23, 2010 be reconsidered and set aside, the Special and Affirmative Defense of respondent Commissioner of Internal Revenue be denied for lack of merit, and that the above-captioned case be calendared for continuation of Pre-Trial. The dispositive portion of the assailed *Resolution* reads:

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> **WHEREFORE**, premises(sic) respondent's prayer for the dismissal of the instant case is hereby **GRANTED**. Accordingly, the

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[1] *Rollo* pp. 206-217.
[2] *Rollo* pp. 195-199.

instant Petition for Review is hereby **DISMISSED** for having been prematurely filed.

SO ORDERED.

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In its Motion for Reconsideration, petitioner asseverates the following arguments to support its Motion, *viz:*[3]

(i) The *Decision* of the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[4](*Aichi*), is not yet final and executory as the same is still the subject of a Motion for Reconsideration, hence, the same cannot be considered established jurisprudence.

(ii) As of the time that the present Petition for Review was filed, the prevailing or controlling jurisprudence and Rule was that administrative and judicial claims for refund of all National Internal Revenue Code (NIRC) taxes should be filed within 2 years.

(iii) The *Aichi* case must be applied prospectively.

In support of the first argument, petitioner avers that only final and executory decisions of the Supreme Court can be considered controlling or established jurisprudence as to the proper interpretation or application of certain legal provisions. The *Aichi* case, which according to the petitioner is the sole basis of this Court in dismissing the petition, may still be reconsidered and set aside and the Supreme Court may rule that the 120-day period under Section 112 (C) of the NIRC, as amended, is not mandatory since the said *Decision* has not yet attained its finality.

[3] *Rollo*, p. 206.
[4] G.R. No. 184823, October 6, 2010.

Anent the second argument, petitioner maintains that at the time of the filing of petitioner's administrative claim on March 1, 2010, and the present Petition for Review on March 29, 2010, the prevailing jurisprudence is the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*[5], where the Supreme Court ruled that the reckoning of the 2-year prescriptive period is from the close of the taxable quarter when the relevant sales were made. Petitioner likewise mentioned several cases to buttress its view that at the time the instant petition was filed the prevailing rule dictates that petitioner need not wait for the lapse of the 120-day period before filing the judicial claim for refund, *i.e.*, *Commissioner of Internal Revenue vs. Hitachi Computer Products (Asia) Corporation*[6], *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc.*[7], the opinion of the Bureau of Internal Revenue in BIR Ruling [DA-489-03], etc.

Finally, petitioner adheres to the view that the *Aichi* case must be applied prospectively since the controlling jurisprudence at the time of filing of the petition was that stated in the *Mirant* case.

After a painstaking and thorough analysis of the arguments presented by the petitioner, We find no sufficient reason to deviate from our ruling dismissing the Petition for Review.

Petitioner's asseveration that the sole basis of this Court in dismissing the petition was the *Aichi* case is untenable. A careful perusal of the assailed ruling explicitly points out that it is fundamentally grounded on the provision of law governing the period within which refund or tax credit of input taxes shall be made, *i.e.*, Section 112 (C) of the NIRC, as amended.

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[5] G.R. No. 172129, September 12, 2008.
[6] CA-G.R. SP No. 63340, February 7, 2002.
[7] 22 SCRA 12.

In the assailed *Resolution*, emphasis was given on the mandatory tenor of Section 112 (C) of the NIRC of 1997, as amended, which provides the CIR a period of 120 days, from the date of the submission of the complete documents in support of the application for tax refund/credit of unutilized input VAT, within which to grant or deny the claim. Conversely, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period. The significance of adhering to the foregoing periods was confirmed by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[8], pertinent portion of which was quoted in detail in the assailed Decision.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[9] Considering that the law in this case is clear and unmistakable, there is no room for interpretation and the only thing left to be done by this Court is to apply the law.

Moreover, it is a fundamental principle that the validity and obligatory force of a law proceed from the fact that it has first been promulgated. A law that is not yet

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[8] G.R. No. 184823, October 6, 2010.
[9] *Amores v. House of Representatives Electoral Tribunal*, G.R. No. 189600, June 29,2010, citing *Twin Ace Holdings Corporation v. Rufina and Company*, G.R. No. 160191, June 8, 2006, 490 SCRA 368, 376; *Padua v. People*, G.R. No. 168546, July 23, 2008, 559 SCRA 519, 531, citing R. Agpalo, Statutory Construction 124 (5th ed., 2003).

effective cannot be considered as conclusively known by the populace. To make a law binding even before it takes effect may lead to the arbitrary exercise of the legislative power. *Nova constitutio futuris formam imponere debet non praeteritis.*[10] Since the claim for refund/tax credit of unutilized input VAT for the 1st quarter of 2008 involve sales made after the effectivity of Section 112 (C) of the NIRC 1997, as amended, petitioner's claim for refund/ tax credit are clearly covered by the said provisions.

To fortify the disposition made by this Court in the assailed *Resolution*, We would like to emphasize that non-observance of the 120 and 30 days required under Section 112(C) of the NIRC, as amended, or the premature invocation of the court's jurisdiction, is a violation of the doctrine of exhaustion of administrative remedies. This failure to observe the doctrine of exhaustion of administrative remedies is fatal to one's cause of action, thus, absent any waiver or estoppel, the case is susceptible of dismissal for *lack of cause of action.*[11]

This failure to exhaust administrative remedies, however, does not affect the jurisdiction of the court. Non-exhaustion of administrative remedies only renders the action premature, that the claimed cause of action is not ripe for judicial determination.[12]

Consequentially, since the premature filing of claim for refund and/or tax credit or failure to exhaust administrative remedies is not jurisdictional and, at the most, only renders the case susceptible of dismissal for lack of cause of action, such defense of premature filing is waivable or may be considered waived pursuant to

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[10] *Mighty Corporation and La Campana Fabrica De Tobacco, Inc. vs. E. & J. Gallo Winery and the Andresons Group, Inc.*, G.R. No. 154342, July 14, 2004.
[11] *Montanez vs. PARAD, et al.*, G.R. No. 183142, September 17, 2009.
[12] Merida Water District, et al. vs. Francisco Bacarro, et al., G.R. No. 165993, September 30, 2008 citing *Rosario v. Court of Appeals*, G.R. No. 89554, July 10, 1992, 211 SCRA 384, 387; *Carale v. Abarintos*, G.R. No. 120704, March 3, 1997, 269 SCRA 132, 141.

Section 1, Rule 9 of the Rules of Court. Section 1, Rule 9 of the Rules of Court provides that, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except if dismissal is based on the ff. grounds, to wit: lack of jurisdiction, litis pendentia, res judicata, and prescription. Consequently, if respondent fails to allege in his Answer the defense of premature filing of petitioner's claim for refund as one of his special and affirmative defenses, respondent is deemed to have waived said ground for dismissal.

Inasmuch as respondent CIR alleged in his *Answer* the premature filing of petitioner's claim for refund/tax credit as one of his special and affirmative defenses, it cannot be said that respondent CIR waived his defense of premature filing of the petition as a ground for dismissal. For this reason, this Court firmly believes that it has fittingly appreciated the defense of premature filing in dismissing petitioner's claim for refund/tax credit.

In view of our foregoing disquisitions, the Court no longer deems it necessary to resolve other issues posed by petitioner.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

(I maintain my *Dissenting Opinion* as promulgated in Resolution dated December 23, 2010.)
LOVELL R. BAUTISTA
Associate Justice

I concur with the result only.
OLGA PALANCA-ENRIQUEZ
Associate Justice