Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

AEGIS PEOPLESUPPORT, INC.,
Respondent.

CTA EB CASE NO. 782
(CTA Case No. 7404)

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:

FEB 16 2012 2:00 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Section 18 of Republic Act 1125[1], as amended, and Rule 4,

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[1] An Act Creating the Court of Tax Appeals, as amended

Sec. 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc.* [as amended by Sec. 11, RA 9282]

Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended, assailing the Decision[3] dated December 3, 2010, rendered by the Special First Division[4] of this Court in CTA Case No. 7404, and its Resolution[5] dated April 13, 2011.

The dispositive portions thereof respectively, read as follows:

Decision dated December 3, 2010:

*"WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of P3,100,682.34 in favor of petitioner, representing its unutilized input VAT for the 4th quarter of calendar year 2003.*

SO ORDERED."

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[2] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-

(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[3] En banc Docket, pp. 11-47.
[4] Composed of Presiding Justice Ernesto D. Acosta, Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.
[5] En banc Docket, pp. 48-66.

Resolution dated April 13, 2011:

> *"WHEREFORE, premises considered, finding no cogent reason to disturb, reverse or modify the Decision dated December 03, 2010, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.*
>
> *SO ORDERED."*

The pertinent facts as narrated by this Court's Special Division are undisputed:

> "Respondent Aegis Peoplesupport, Inc.[6] (herein referred as the "Corporation") is a corporation duly organised and existing under and by virtue of the laws of the Republic of the Philippines. As stated in its Articles of Incorporation, petitioner is authorized '[T]o engage in the business of customer support services by providing information and database services on the Internet including web-based applications in the Philippines and providing or furnishing any and all forms or types of services, data and facilities relating to providing information or customer products and services through the internet; and otherwise, to carry on and conduct a general business relating to internet services.'"
>
> Petitioner[7], on the other hand, is the duly appointed Commissioner of Bureau of Internal Revenue(herein referred as the CIR) empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law.
>
> On January 26, 2004, the Corporation filed its original Quarterly VAT Return for the 4th quarter of CY 2003 with the Bureau of Internal Revenue (BIR). However, petitioner filed an amended Quarterly VAT Return for the 4th quarter of CY 2003 on May 31, 2004.
>
> On December 30, 2005, the Corporation filed with the BIR Revenue District Office (RDO) No. 47 its "Application for Tax Credits/Refund" (BIR Form No. 1914), requesting the refund or issuance of TCC for petitioner's excess and unutilized input VAT for the 4th quarter of CY 2003 in the amount of P5,465,244.43.
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> When its application for refund/tax credit remained unresolved by the BIR, the Corporation filed the Instant Petition for

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[6] Aegis Peoplesupport, Inc. was the petitioner while the Commissioner of Internal Revenue (CIR) was respondent in the Special First Division.
[7] Ibid.

Review before this Court on January 24, 2006, docketed as CTA Case No. 7404, praying for the issuance of TCC for excess and unutilized input VAT for the 4th quarter of CY 2003.

In his Answer filed on March 16, 2006, CIR interposed the following Special and Affirmative Defenses:

> '5) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable.
>
> 6) It is incumbent upon the Corporation to show that it has complied with the provisions of Section 112(A) and 204(C) in relation to Section 229 of the Tax Code, as amended.
>
> 7) The Corporations claim for refund has already prescribed as the two-year period for claiming creditable input tax due or paid attributable to such sales must be made within two years after the close of the taxable quarter when the sales were made (Section 112(A), 1997 Tax Code).
>
> 8) In the Corporation's case, its alleged zero-rated sales of services were made on the 4th quarter of 2003 (par. 7 of the Petition for Review before the Division), thus it has until the 4th quarter of 2005 within which to file its claim for refund, however, petitioner filed its claim for refund with this Honorable Court only on 24 January 2006.
>
> 9) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, it is over looked upon with disfavour. (Western Minolco Corp. vs Commissioner of Internal Revenue, 124 SCRA 121).
>
> 10) Further, the Corporation failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected.
>
> 11) In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim xxx.'

Subsequently, the Corporation filed a second Petition for Review on March 31, 2006, docketed as CTA Case No. 7430, praying for the issuance of TCC in the amount of P3,222,630.92, representing unutilized and/or unapplied input VAT for the first quarter of 2004.

On June 30, 2006, the Corporation filed a third Petition for Review docketed as CTA Case No. 7499, praying for the issuance of TCC in the amount of P4,574,133.45, representing unutilized and/or unapplied input VAT for the second quarter of 2004.

Stating that CTA Case Nos. 7404, 7430 and 7499 involve the same parties and that the cases concern similar or common questions of fact and law since they all involve the Corporation's claim for issuance of TCC for its unutilized input Vat, the Corporation filed a "Motion to Consolidate" the three cases; which was subsequently granted by this Court.

Trial ensued.

On separate occasions during the trial of CTA Case Nos. 7430 and 7499, counsel for the Corporation manifested his intention to withdraw said cases on the ground that the Corporation's claims for refund have been granted albeit at reduced amounts. Accordingly, the Court granted the Corporation's "Motion to Withdraw" CTA Case Nos. 7430 and 7499.

During the scheduled hearing on September 1, 2009, the Corporation's counsel moved that CIR be declared to have waived the right to present evidence in view of the absence of CIR's counsel despite notice. Said motion was granted in open court."

On December 3, 2010, this Court's Special First Division rendered a Decision[8] partially granting the Corporation's petition and ordering the CIR to issue a tax credit certificate in the reduced amount of P3,100,682.34, representing the unutilized input VAT for the 4th quarter of the calendar year 2003. The CIR filed a Motion for Reconsideration on the ground that the Special First Division erred in applying the Atlas Case[9] instead of the Mirant Case[10] and Aichi Case[11],

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[8] Penned by Associate Justice Lovell R. Bautista, with separate and concurring opinion by Presiding Justice Ernesto D. Acosta and a dissenting opinion by Associate Justice Caesar A. Casanova.
[9] Atlas Consolidated Mining & Development Corp vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 1487636, June 8, 2007.
[10] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2008.

but to no avail. It was denied in a Resolution[12] dated April 13, 2011, the pertinent portion of which reads as follows:

> "Section 112 of the 1997 National Internal Revenue Code (NIRC), as amended, must be read in accordance with Section 229 of the same Code. In other words, a taxpayer claimant may file an appeal within thirty (30) days, either from the lapse of the one hundred twenty (120)-day period within which the Commissioner of Internal Revenue (CIR) shall decide on the claim, or after the receipt of the decision denying the same, so long as it is within the two (2)-year period
>
> Furthermore, the judicial remedy to file an appeal before this Court under Section 112(C) of the 1997 NIRC, as amended, is merely permissive or directory. Such issue had been thoroughly addressed in the case of Commissioner of Internal Revenue v. San Roque Power Corporation [CTA EB No. 408 (CTA Case No. 6647), March 25 2009][13],xxx.
>
> Based on the foregoing, there is no need to wait for the denial of the claim by the CIR or even his inaction after the expiration of the 120-day period, before the taxpayer can lodge its appeal with this Court, provided that the same is done within the 2-year period, for beyond such period, the taxpayer can no longer appeal to this Court.
>
> Likewise, it is noteworthy to reiterate that claims for refund or tax credit of VAT on zero-rated sales transactions filed prior to the promulgation of the case of Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.), on September 12, 2008, should follow the doctrine set in the Case of Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, which was then the prevailing doctrine."

Consequently, the CIR filed a Petition for Review[14] before this Court En Banc and raised the issues of whether the Special First

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[11] Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.
[12] Supra Note 4.
[13] Citation supplied.
[14] Ibid., pp. 7-51.

Division of this Court erred in partially granting the Corporation's Petition for Review and in denying the CIR's Motion for Reconsideration.

The CIR argues that this Court's Division committed a reversible error when she relied in the San Roque Case previously decided by this Court notwithstanding the decision of the Supreme Court in the Aichi Case which unequivocally stated that the premature filing of the claim warrants the dismissal of the case for lack of jurisdiction.

On June 2, 2011, this Court directed respondent Corporation to file its Comment within ten (10) days from receipt thereof and upon its submission or expiration of the period in filing the same, the petition shall be deemed submitted for resolution. Respondent Corporation filed a motion for additional time within to file its comment, which was granted until June 30, 2011. Thereafter, verification[15] of the records showed that respondent failed to file its comment, thus, this case was considered submitted for decision. However, respondent corporation alleged that it filed a Comment by registered mail on June 30, 2011 and moved that the same be taken into consideration in deciding the petition.

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[15] Ibid., pp. 100-A.

Verily, respondent Corporation filed by registered mail its Comment within the additional period to file the same, hence, said Comment shall be considered in resolving the petition.

Respondent Corporation by way of Comment, opposes the petition and asserts that the issue raised in the petition was exhaustively addressed by the Special First Division in its Decision and Resolution, that is, the reckoning of the two-year prescriptive period from the filing of the 4th quarter VAT return and the premature filing of the judicial claim for refund. Respondent maintains that:

A. Petitioner is estopped from questioning this Court's jurisdiction. Furthermore, non-compliance with the Aichi case does not divest this Court of its jurisdiction. At most, it renders the case premature for the non-exhaustion of administrative remedies.

B. The two-year prescriptive period in this case should be reckoned from the date of filing of the quarterly VAT return and the payment of the output VAT.

C. Assuming for the sake of argument that the Mirant decision validly overturned the doctrine laid down in the Atlas case, the Mirant decision should only be applied prospectively, and should not be made to apply to pending judicial claims for refund of excess input VAT.

D. Respondent's judicial claim for refund was not prematurely filed.

E. The prospective application of the Aichi case is legally and equitably imperative. It is founded in law and prevailing jurisprudence.

Respondent Corporation argued that the petitioner CIR is estopped from questioning this Court's jurisdiction when it actively participated in the proceedings of the case. Likewise, respondent avers that the petitioner CIR's own issuances acquiescence to the interpretation that a taxpayer need not wait for the lapse of the 120-day period as long as it complies with the two-year prescriptive period under Section 229 of the Tax Code, to wit:

1. Section 4.104-2, Revenue Regulations No. 7-95;
2. Revenue Memorandum Circular (RMC) No. 42-99;
3. RMC No. 42-2003, as amended by RMC No. 49-2003; and
4. RMC No. 29-2009.

Moreover, respondent maintains that the two-year prescriptive period should be reckoned from the filing of the quarterly VAT return and the payment of the output VAT. Banking on the Atlas Case, respondent argued that the Mirant Case, which stated that the two-year prescriptive period should be reckoned from the close of the taxable quarter when the sales were made, did not reverse the Atlas Case as no doctrine or principle laid down by the Supreme Court may be modified except by the Supreme Court sitting en banc. Further, respondent argued that assuming that the Atlas Case was correctly overturned, the Mirant Case should be applied prospectively.

The principal issues to be resolved can be summed up as - whether the Atlas Case is the applicable and controlling jurisprudence in the instant case and whether the CIR is estopped in questioning the premature appeal to this Court's Division.

The issues are discussed hereunder.

On June 8, 2007, the Supreme Court promulgated its Decision in Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue [16]. This involved a claim for refund/credit of the input Value Added Tax (VAT) on purchases of capital goods and zero-rated sales for the taxable quarters of the years 1990 and 1992. The Supreme Court harmonized Sections 106, 110 and 230 of the Tax Code of 1977 and held that it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due.

On September 12, 2008, the Supreme Court promulgated its Decision in Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.) [17] involving a claim for refund on the belated payment of input VAT corresponding to

[16] G.R. Nos. 141104 & 1487636, June 8, 2007
[17] G.R. No. 172129, September 12, 2008

the progress billings for the period covering April 7, 1993 to September 6, 1996 that was reflected in the VAT return for the second quarter of 1998. The Supreme Court therein held that Section 112(A) of the NIRC of 1997 "clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made, regardless of whether said tax was paid or not." Further, the Supreme Court emphasized that the two-year prescriptive period for filing a claim for tax refund under Section 229 of the Tax Code applies only to erroneous payments while Section 112(A) governs a claim for tax refund of unutilized input value-added tax (VAT) payments arising from zero-rated sales.

On October 6, 2010, the Supreme Court promulgated its Decision in the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.[18] This involved a claim for refund/credit of input VAT for the period July 1, 2002 to September 30, 2002 in the total amount of P3,891,123.82. The Supreme Court categorically held that the two-year period should be reckoned from the close of the taxable quarter when the

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

sales were made. The Supreme Court, citing the Mirant Case, reiterated that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes".

The Supreme Court held that under Section 112(D) of the 1997 NIRC as amended (now subsection (C) of Section 112, as amended), the 120-day period is crucial in filing an appeal with this Court and that the premature filing of respondent's claim for refund/credit of input VAT before this Court warrants a dismissal inasmuch as no jurisdiction was acquired.

Apparently, there is a shift in the interpretation of the reckoning of the two-year prescriptive period involving claim for refund or tax credit of input VAT. There is the point of view that the filing of a claim for refund in both administrative and judicial cases should be made within the two year period, which should be reckoned from the date of filing of VAT return and payment of the tax due (Atlas Case). There is the other point of view that the two-year prescriptive period be reckoned from the close of the taxable quarter when the relevant sales were made, regardless of whether said tax was paid or not and that section 229 of the Tax Code is inapplicable to a claim for tax refund of unutilized input value-added tax.

However, the variance of interpretation and application of the Tax Code in the Atlas Case to the Mirant Case, or the Aichi Case, was not brought about by the reversal of doctrines but rather due to the amendatory provisions introduced to the old (1977) Tax Code. Suffice it to say that a Court's interpretation of the law is part of the law as of the date of its enactment since the Court's interpretation merely establishes contemporary legislative intent that construed the law which purports to carry into effect.[19] In the case of Marubeni Philippines Corporation vs. Commissioner of Internal Revenue[20] we explained as follows:

> "A careful analysis of the above-mentioned cases Atlas, Mirant and Aichi clearly shows that the Atlas Case was an interpretation by the Supreme Court of the 1977 NIRC, prior to its amendment by R.A. 7716; while the Mirant and Aichi cases was an interpretation of the 1997 NIRC or the application and interpretation of the amendatory provisions of the Tax Reform Act of 1997.
>
> Significantly, it is emphasized that the premise of the Supreme Court's ruling in the Atlas Case was anchored on the need to harmonize the provisions on Refund or Tax Credits of Input Tax under Section 106(now Section 112) with the two-year prescriptive period for instituting a suit or proceeding for the Recovery of Tax Erroneously or Illegally paid under Section 230(now Section 229) of the Tax Code of 1977, as amended, citing the cases of ACCRA Investments Corporation v. Court of Appeals and Commissioner of Internal Revenue v. TMX Sales, Inc. xxx.
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> It was the advent of R.A. No. 7716 and R.A. 8424 when the legislature specifically provided for a judicial recourse with the Court of Tax Appeals in claiming unutilized input VAT refund/credit

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[19] National Amnesty Commission vs. COA, G.R. No. 113105, August 19, 1994, citing People vs. Licera, 65 SCRA 270.
[20] CTA EB Case No. 557 (CTA Case No. 6469), March 23, 2011.

> under Section 106(D) of the NIRC of 1977(now Section 112 of the NIRC of 1997) within which the period of thirty (30) days reckoned from the receipt of the decision of the CIR denying the claim or after the expiration of a given period (now 120 days).
>
> Accordingly, petitioner cannot blindly invoke the doctrine enunciated in Atlas case in the instant case. As discussed above, the need to harmonize the provisions of Section 106 and Section 230 of the Tax Code of 1977 is no longer necessary nor applicable due to the clear legislative intent embodied in the provisions of R.A. No. 7716 and R.A. 8424, which delineated specific amendatory provision for the prescriptive period in claiming and judicial claims for unutilized input VAT refund/credit.

Thus, it is very clear that in claiming refunds/ tax credits of input tax, Section 112 of the 1997 is the applicable law and not Section 229 of the NIRC of 1997. Likewise, Atlas Case which harmonized Section 112 and 229 of the 1977 NIRC is no longer controlling and applicable due to the amendments made by the legislature intentionally providing the manner and the period in claiming refunds/ tax credits of input tax which is entirely distinct and different from the recovery of tax erroneously or illegally collected.

Respondent Corporation states that petitioner failed to raise the issue of lack of jurisdiction or non-compliance of Section 112(D) of the 1997 NIRC as amended (now subsection (C) of Section 112, as amended), until her Motion for Reconsideration of the Decision of this Court's Special Division. Moreover, petitioner had taken the position that all administrative and judicial claims for refund must be filed within two (2) years pursuant to Section 229 and there is no need to wait for the lapse of the 120-day period which is even supported by revenue regulations and circulars the CIR issued.

However, the erroneous application of tax laws by public officers does not preclude the subsequent correct application thereof. Withal, the errors of certain administrative officers, if that be the case, should never be allowed to jeopardize the government's financial position.[21] Understandably, this is brought about by the pronouncement of the Supreme Court in the Aichi Case interpreting the 120-30 day period provided by Section 112 of the 1997 NIRC. Concomitantly, the 120-30 day period under Section 112(D) of the 1997 NIRC as amended (now subsection (C) of Section 112, as amended), cannot be brushed aside by the petitioner CIR and neither should we.

In the instant case, Section 112 of the 1997 NIRC, as amended, shall be applied. Respondent's claim for refund of unutilized input vat is for the 4th quarter of 2003. Hence, the two-year prescriptive period for the application for refund before the CIR must be reckoned from the close of the taxable quarter when the relevant sales were made, or until December 31, 2005. Records show that respondent filed its application for tax refund/credit on December 30, 2005, which is still within the two-year period.

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[21] CIR vs. PLDT, G.R. No. 140230, December 15, 2005.

Concomitantly, respondent has 30 days from receipt of the decision denying its claim or 30 days from the lapse of the 120-day period for the CIR to act on the claim, to appeal before this Court.

Stated differently, from December 30, 2005 the CIR has one hundred twenty (120) days or until April 29, 2006 within which to render a decision. Respondent has thirty (30) days from April 30, 2006 or until May 29, 2006 within which to elevate the case before the CTA in Division. However, without waiting for the lapse of the 120 day period, respondent filed its appeal before this Court by way of a petition for Review on January 24, 2006. Obviously, respondent's appeal or Petition for Review before this Court is premature and a clear contravention of Section 112 (D) of the 1997 NIRC, as amended (now subsection (C) of Section 112, as amended), and of the doctrine laid down in the Aichi Case. The Supreme Court held 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. – xxxx
>
> (D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied.)

Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

xxx xxx xxx.

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.

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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.

> WHEREFORE, the Petition is hereby **GRANTED**. The assailed July 30, 2008 Decision and the October 6, 2008 Resolution of the Court of Tax Appeals are hereby **REVERSED** and **SET ASIDE**. The Court of Tax Appeals Second Division is DIRECTED to dismiss CTA Case No. 7065 for having been prematurely filed.
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> SO ORDERED."

Under the doctrine of *stare decisis et non quieta movere,* a point of law already established will, generally, be followed by the same determining court and by all courts of lower rank in subsequent cases where the same legal issue is raised[22]. In the Aichi Case, violation of the Section 112(D) of the 1997 NIRC as amended (now subsection (C) of Section 112, as amended), resulted to the denial of the claim for refund.

In fine, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim[23]. It is an established principle that a tax a refund, like tax exemption, is strictly construed against the taxpayer. Respondent has the burden of proving that it complied with Section 112 of the 1997 NIRC. Respondent failed to do so.

WHEREFORE premises considered, the petition for review docketed as CTA EB No. 782 is **GRANTED**. The Decision of the

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[22] *Ayala Corporation vs. Rosa-Diana Realty and Development Corp.,* 346 SCRA 663 [2000].

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

Special First Division of this Court in CTA Case No. 7404, dated December 3, 2010 and Resolution, dated April 13, 2011, are hereby **REVERSED** and **SET ASIDE.** Accordingly, CTA Case No. 7404 is hereby **DISMISSED** for having been prematurely filed. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(with Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(concurs with PJ Acosta and AJ Manalastas)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(concurs with the Concurring and Dissenting Opinion of PJ Acosta)
AMELIA R. COTANGCO-MANALASTAS
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
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- versus -

AEGIS PEOPLESUPPORT, INC.,
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EB CASE NO. 782
(C.T.A. CASE NO. 7404)

Members:

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

Promulgated:

FEB 16 2012 [handwritten signature] 2:00 p.m.

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CONCURRING AND DISSENTING OPINION

I am in conformity with the majority as to the proper application of the *Mirant*[1] and *Aichi*[2] Cases which eventually ruled that herein respondent's Petition for Review before the Court *a quo* was prematurely filed and is in clear contravention of Section 112(D)[3] of the 1997 NIRC, as amended.

I, however, do not proscribe to the majority's determination that respondent's violation of Section 112(D) of the 1997 NIRC, as amended, leads to

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[1] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation,* GR No. 172129, September 12, 2008.
[2] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,* GR No. 184823, October 6, 2010.
[3] Now, Section 112(C).

[initials]

the ultimate denial of respondent's claim for refund. Instead, it is my consistent stand that the prematurity of a claim, such as that of the respondent's, due to a violation of Section 112(D) of the 1997 NIRC, as amended, in particular the failure to respect the 120-day period to await the decision of the Commissioner of the Internal Revenue (CIR), is tantamount to a violation of the doctrine of exhaustion of administrative remedies.

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[4]

Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action.[5]

Conversely, it is already well settled that non-exhaustion of administrative remedies is not jurisdictional. It only renders the action premature, i.e., the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[6]

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[4] *Universal Robina Corp. (Corn Division) vs. Laguna Lake Development Authority*, GR No. 191427, May 30, 2011 citing *Caballes vs. Perez-Sison*, G.R. No. 131759, March 23, 2004 and *Estrada vs. Court of Appeals*, G.R. No. 137862, November 11, 2004.

[5] *Public Hearing Committee of the LLDA and Cataquiz vs. SM Prime Holdings, Inc.*, GR No. 170599, September 22, 2010 citing *Ongsuco vs. Malones*, G.R. No. 182065, October 27, 2009.

[6] *Carale vs. Abarintos*, GR No. 120704, March 3, 1997.

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The pronouncement of the Supreme Court in the case of *Soto vs. Janero*[7] is forthcoming, *to wit*:

> "Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the Court. We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can take cognizance of the case and try it."

Noteworthy in the foregoing is the proviso which states that if the non-compliance with the doctrine of exhaustion of administrative remedy is not invoked at the proper time, said defense can be waived and the Court can take cognizance of the case and try it.

In the case at bar, there is an obvious violation of the doctrine of exhaustion of administrative remedies when the respondent failed to respect the 120-day period given to the CIR to rule on respondent's claim for refund. Corollary, respondent's failure to exhaust administrative remedies deprives it of a cause of action; hence, respondent has a ground for a motion to dismiss.

Unfortunately, the petitioner failed to allege the violation of the doctrine in the special and affirmative defenses of her Answer. Petitioner is, therefore, considered to have waived said defense. The ultimate effect of petitioner's waiver is for the Court to take cognizance of this case and rule on the merits which the Court did in the assailed Decision.

In sum, I concur with the *ponente* in the application of the Mirant and Aichi case and declaring the respondent's claim for refund as premature. I, however, dissent from the majority's decision granting the respondent's Petition for Review before the Court *En Banc* since respondent failed to raise the defense of non-compliance with the doctrine of exhaustion of administrative remedies, thus

[7] GR No. L-38962. September 15, 1986.

considered to have waived said defense. Consequently, I hold that the Court may take cognizance of the case and rule on the merits.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

AEGIS PEOPLESUPPORT, INC.,
Respondent.

CTA EB CASE NO. 782
(CTA Case No. 7404)

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

Promulgated:

FEB 16 2012 2:00 p.m.

x---x

DISSENTING OPINION

BAUTISTA, J.:

Being one of the members of the Special First Division of the Court, the assailed Decision dated December 3, 2010, and Resolution dated April 13, 2011, which partially granted the claim for tax credit of unutilized input tax, now before this Court sitting *En Banc*, I maintain that the factual circumstances present in the case at bench supports the application of the then prevailing jurisprudence at the time the claim was made.

Basic is the rule that "where there has been justifiable reliance on Our decisions, and those who have so relied may be substantially harmed if retroactive effect is given, where the purpose of the new rule can be adequately effectuated without giving it retroactive operation, or where retroactive operation might greatly burden the administration of justice, then it is Our duty to apply the new rule prospectively."[1]

And in not a few instances did this Court rule that the date of filing of the relevant return is the determinative factor. Albeit I agree that the rulings of the Supreme Court in the cases of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]*,[2] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[3] are more in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code, as amended, it would be the height of injustice to impose a new ruling 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."

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.[4] Nonetheless, this Court should not decide a case by merely adhering to precedence;

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[1] Magtoto *v.* Manguera, *et al.*, G.R. Nos. L-37201-02, L-37424, and L-38929, March 3, 1975, 63 SCRA 4, Concurring Opinion penned by Justice Felix Q. Antonio, with Justices Antonio P. Barredo and Cecilia Muñoz-Palma, concurring.
[2] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] G.R. No. 184823, October 6, 2010.
[4] 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.*

idolatrous reverence for precedent, simply as precedent, no longer holds true.[5] Therefore, this Court cannot merely impose a ruling that was yet to be enunciated at the time a claim was lodged in Our forum. 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."[6]

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.[7] 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.

Therefore, when respondent filed its administrative claim on December 30, 2005, and the subsequent judicial claim on January 24, 2006, the then prevailing doctrine, is that the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return,[8] and not from the close of the quarter.[9]

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[5] Philippine Trust Company and Smith, Bell and Co. *v.* Mitchell, 59 Phil. 30, 36.
[6] *Supra*, note 1.
[7] 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].*
[8] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[9] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.

In sum, I maintain my vote to apply the ruling in force at the time the action was made.

Accordingly, I vote that the Petition for Review be **DENIED** for lack of merit.

LOVELL R. BAUTISTA
Associate Justice