Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

PROCTER & GAMBLE ASIA, PTE. LTD.,
Petitioner,

CTA EB CASE NO. 740
(CTA Case No. 7683)

For: Refund or Issuance of a Tax Credit Certificate

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 1 8 2012 [illegible]
1:00 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 *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005*

[1] An Act Creating the Court of Tax Appeals

Revised Rules of the Court of Tax Appeals (RRCTA)[2], *as amended*, of the Decision[3] and Resolution[4] rendered by the Second Division of this Court on November 9, 2010 and March 7, 2011, respectively, the dispositive portions of which read as follows:

Decision dated November 9, 2010:

> "WHEREFORE, premises considered, the Petition for Review is hereby DISMISSED for being prematurely filed.
>
> SO ORDERED."[5]

Resolution dated March 7, 2011:

> "WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is DENIED for lack of merit.
>
> SO ORDERED."[6]

The antecedent facts as culled from the records of the case are as follows:

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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] Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Caesar A. Casanova and Cielito N. Mindaro-Grulla. *En Banc* Docket, pp. 40-49.

[4] *Id.*, *En Banc* Docket, pp. 34-38.

[5] *Id.* at 49.

[6] *Id.* at 38.

Petitioner, Procter and Gamble Asia, Pte., Ltd., is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarters in the Philippines, with office address at the 18/F Petron Megaplaza, 358 Sen. Gil Puyat Ave., Makati City. It provides management, marketing, technical and financial advisory, and other qualified services to related companies as specified in its Certificate of Registration and License issued by the Securities and Exchange Commission.[7] Petitioner is a VAT-registered taxpayer with Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.[8]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the duty to act upon and approve claims for refunds or tax credits as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Monthly and Quarterly VAT Declarations/Returns on the following dates:

[7] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 219.
[8] Par. 3, JSFI, Division Docket, p. 220.

VAT Declaration/Return	Date Filed (Original)	Date Filed (Amended)
July (Monthly)	22 August 2005[9]	
August (Monthly)	19 September 2005[10]	
Ending September (Quarterly)	24 October 2005[11]	04 April 2007[12]
October (Monthly)	18 November 2005[13]	
November (Monthly)	20 December 2005[14]	
Ending December (Quarterly)	26 January 2006[15]	04 April 2007[16]

Based on the foregoing VAT Returns, petitioner accounted an accumulated input taxes from its domestic purchases of goods and services during the period covering July 1 to December 31, 2005 in the aggregate amount of ₱87,341,820.13.[17] Similarly, it reported sales subject to ten percent (10%) VAT in the aggregate amount of ₱383,336,027.70 and sales subject to zero percent (0%) VAT in the aggregate amount of ₱1,132,160,726.03 during the same period.[18] Moreover, petitioner claims that the Amended Quarterly VAT Returns reflected refundable input VAT in the total amount of ₱53,624,427.14

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[9] Exhibit "W", Petitioner's Formal Offer of Evidence (FOE), Division Docket, p. 1581.
[10] Exhibit "X", Petitioner's FOE, Division Docket, p. 1581.
[11] Exhibits "M" to "M-2", Petitioner's FOE, Division Docket, p. 1578.
[12] Exhibits "D" to "D-2", Petitioner's FOE, Division Docket, p. 1576.
[13] Exhibit "O", Petitioner's FOE, Division Docket, p. 1578.
[14] Exhibit "P", Petitioner's FOE, Division Docket, p. 1579.
[15] Exhibits "N" to "N-2", Petitioner's FOE, Division Docket, p. 1578.
[16] Exhibits "F" to "F-3", Petitioner's FOE, Division Docket, p. 1577.
[17] Division Docket, p. 1616.
[18] *Id.*

(₱19,496,365.57 for the quarter ended September 30, 2005 and ₱34,128,061.57 for the quarter ended December 31, 2005).[19]

On August 21, 2007, petitioner filed an application and letter request with the BIR Revenue District Office (RDO) No. 49 for the refund of or issuance of a tax credit certificate for the input VAT attributable to its zero-rated sales covering the periods of July 2005 to September 2005 and October 2005 to December 2005.[20]

On September 27, 2007, petitioner filed the instant Petition for Review before this Court.

Respondent, in turn, asserted the following Special and Affirmative Defenses in the Answer[21] filed on December 3, 2007:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 4. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
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> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 6. Petitioner's claim for refund or issuance of tax credit certificate in the aggregate amount of Php **53,624,427.14**, as alleged unutilized input VAT paid attributable to its zero-rated sales of goods and services for the period covering July to September 2005 and October to December 2005 were not fully substantiated by proper documents, such as sales invoices, official receipts and others.

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[19] *Id.* at 1616-1617.
[20] Par. 12, JSFI, Division Docket, p. 220.
[21] Division Docket, pp. 195-196.

7. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim.

8. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rated VAT.

9. The amount subject of the claim for refund of petitioner do not pertain in full to its input VAT attributable to its zero-rated sales of goods and services for the period covering July to September 2005 and October to December 2005.

10. Petitioner failed to comply with the substantiation requirements under the BIR Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the Tax Code.

11. It is incumbent upon the petitioner to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

12. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation, *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"[22]

On November 9, 2010, the Second Division of this Court rendered a Decision[23] dismissing the Petition for Review for being prematurely filed. The Court *a quo* ratiocinated that the filing of the judicial claim before this Court is premature as petitioner did not wait for respondent's decision on its claim for tax refund or credit of input VAT or the lapse of the 120-day period under Section 112 (D) of the NIRC of 1997 before

[22] *Id.*

[23] *Supra* note 1.

filing the appeal before this Court. The Court *a quo* further emphasized the doctrine laid down by the Supreme Court in ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***[24] (the "*Aichi* Case") that compliance with the 120 and 30 day period under Section 112(D) of the NIRC of 1997 is crucial in filing an appeal before this Court.

Petitioner moved for a reconsideration of the above-cited Decision, which was subsequently denied in a Resolution[25] dated March 7, 2011.

Hence, petitioner filed the instant Petition for Review before the Court En Banc.

Petitioner raised the following arguments:

> "1. The Second Division failed to appreciate Article VIII, Section 4(3) of the Constitution which provides that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc;
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> 2. The doctrine laid down in the Aichi case that the 120-30 day rule is mandatory has been effectively abandoned by the Supreme Court in the cases of *Hitachi Global Storage Technologies Phils. Corp. vs. Commissioner of Internal Revenue*, G.R. No. 174212, dated October 20, 2010, *Silicon Philippines, inc. vs. Commissioner of Internal Revenue*, G.R. No. 172378 dated January 17, 2011, and *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961 dated January 31, 2011;

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[24] G.R. No. 184823, October 6, 2010.
[25] *Supra* note 2.

3. The Second Division erred in applying the doctrine laid down in the Aichi case to the instant case considering that the factual antecedents involved are not identical;

4. The Second Division erred in giving retroactive application of the doctrine laid down in the Aichi case;

5. The Decision of the Second Division contradicts the doctrine that substantial justice, equity and fair play prevail over technicalities and legalism;

6. The Second Division erred in ruling that Respondent is not estopped from raising the issue of jurisdiction despite active participation in all stages of the proceedings;

7. The 120-30 day rule mentioned in Section 112(C) of the National Internal Revenue Code of 1997 (NIRC), as amended, is directory or permissive – not mandatory."[26]

In essence, the core issue is whether petitioner is entitled to a tax refund or credit of its alleged unutilized input VAT attributable to zero-rated sales for the periods covering July 2005 to September 2005 and October 2005 to December 2005 in the amount of ₱53,624,427.14.

The issue is answered negatively.

Petitioner argues that the Court *a quo* failed to appreciate Article VIII, Section 4(3) of the Constitution[27] when it expressly applied the

[26] *En Banc* Docket, pp. 4-5.
[27] Article VIII
Judicial Department
"Sec. 4(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*. Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting *en banc*.

Aichi Case in holding that the compliance with the 120-30-day period under Section 112(D) of the NIRC of 1997 is crucial in filing an appeal before this Court. Petitioner opines that prior to the *Aichi* Case, the well-established doctrine that has been enforced and implemented in numerous cases clearly shows that the 120-30-day period under the foregoing provision is merely permissive and not mandatory. Similarly, petitioner further contends that in ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*** (the "*Atlas* Case"),[28] the Supreme Court emphatically held that "[i]n case the application for refund/credit of input VAT was denied or remained unacted upon by the BIR and before the lapse of the two-year prescriptive period, the taxpayer applicant may already file a Petition for Review before the CTA."

In her Comment, respondent asserts that prior to the promulgation of the *Aichi* Case, there has never been a pronouncement by the Supreme Court construing or interpreting the pertinent provisions of Section 112 of the 1997 NIRC. Thus, the doctrine laid down in *Aichi* Case is a clear judicial interpretation of Section 112 of 1997 NIRC. Moreover, respondent claims that petitioner's reliance on the *Atlas* Case

[28] G.R. Nos. 141104 & 148763, June 8, 2007.

as the prevalent doctrine is erroneous as the said case was decided under Section 230 of the Tax Code of 1977, which does not contain a provision similar to Section 112(C) of the present Code.

Petitioner's argument is misplaced.

Contrary to petitioner's claim, the *Aichi* Case did not overturn the doctrine laid down in the *Atlas* Case as the latter was an interpretation made by the Supreme Court of the provisions under the 1977 NIRC, prior to its amendment by Republic Act (RA) No. 7716; whereas the recent decision of the Supreme Court in the *Aichi* Case was an application and interpretation of the NIRC of 1997, as amended.

As we have elucidated in ***Marubeni Philippines Corporation vs. Commissioner of Internal Revenue***,[29] the need to harmonize the provisions under Section 106 (now Section 112) and Section 230 (now Section 229) of the Tax Code of 1977, as amended, is no longer necessary nor applicable due to the clear legislative intent embodied in the amendatory provisions of RA No. 7716 and RA No. 8424, which clearly delineated the prescriptive period in claiming administrative and judicial claims for unutilized input VAT refund/credit, thus:

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[29] CTA EB No. 557 (CTA Case No. 6469), March 23, 2011.

> "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 Refunds 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 Collected 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* [G.R. No. 96322, 204 SCRA 957, 963-964, December 20, 1991] and *Commissioner* of *Internal Revenue v. TMX Sales, Inc.* [G.R. No. 83736, 205 SCRA 184, 187-192, January 15, 1992]. As previously discussed, prior to the effectivity of R.A. No. 7716 and R.A. No. 8424, there was no specific provision on judicial claim for unutilized input VAT refund/credit under *Section 106* of *the NIRC* of *1977*, hence, there is the need to harmonize the provisions of *Section 106 with Section 230* of *the Tax* Code.
>
> It was in the advent of R.A. No. 7716 and R.A. No. 8424 when the legislature specifically provided for a judicial recourse with the Court of Tax Appeals in claiming unutilized input VAT refund/credit under *Section 106 (D)* of *the NIRC* of *1977 (now Section 112* of *the NIRC* of *1997)* within the period of thirty (30) days reckoned from receipt of the decision of the CIR denying the claim or after the expiration of a given period (now 120 days)." [Emphasis supplied.]

Hence, in the recent case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*** (the "*Aichi* Case"),[30] the Supreme Court finally laid to rest the issue on prescriptive period for filing administrative claim for unutilized input VAT and its judicial appeal before this Court under *Section 112 of the NIRC of 1997, as amended.* The Supreme Court categorically held that *Section 112(A) of the NIRC of 1997, as amended*, is the applicable provision in determining the start of the two (2)-year period for claiming unutilized input VAT refund/credit

[30] G.R. No. 184823, October 6, 2010. In a Resolution dated December 6, 2010, the Supreme Court resolved to DENY with FINALITY the motion for partial reconsideration of the "*Aichi*" Decision.

and not *Sections 204(C) and 229 of the NIRC of 1997, as amended*, as the latter provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes. Therefore, insofar as the administrative claim for unutilized input VAT refund/credit is concerned, it must be filed "within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not."[31]

Concomitantly, in determining the period within which to file a judicial claim for unutilized input VAT refund/credit before the Court of Tax Appeals, the applicable provision is *Section 112(C) of the NIRC of 1997, as amended,* which reads:

> "Sec. 112(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.]

Significantly, the Supreme Court in the *Aichi Case* interpreted the foregoing provision in this wise:

[31] *Id. citing Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008, 565 SCRA 154.

> "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." [Emphasis supplied.]

Further, in the same case, the Supreme Court emphatically held that *the 120-day period under Section 112(D) [now, Section 112(C)] of the NIRC of 1997, as amended, for the Commissioner of Internal Revenue to act on administrative claims for refund/credit of unutilized input VAT is crucial in filing an appeal to the Court of Tax Appeals.* The pertinent portion of the said decision reads:

> "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.
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> 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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> 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.
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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." [Emphasis supplied.]

Based on the foregoing, the Supreme Court's inference is clear and categorical, *i.e.*, **the premature filing of taxpayer's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.** Hence, the taxpayer's compliance with the 120-day period under *Section 112(C) of NIRC of 1997, as amended,* is both mandatory and jurisdictional. Otherwise stated, *a taxpayer claiming unutilized input VAT refund/credit can only invoke the jurisdiction of this Court within the period of 30 days reckoned from the notice of denial or expiration of the 120-day period without any action on the part of the CIR. Necessarily, failure to heed the mandatory twin periods of 120 and 30-days is crucial to its appeal and warrants a dismissal on the ground of lack of jurisdiction to hear and decide the taxpayer's appeal.*

In refuting the application of the *Aichi* Case in the instant petition, petitioner asseverates that the 120-30 day rule mandated under the *Aichi* Case has been effectively abandoned by the more recent decisions of the Supreme Court in *Hitachi Global Storage Technologies Phils. Corp. vs. Commissioner of Internal Revenue* (the "*Hitachi* Case"),[32] *Silicon Philippines, inc. vs. Commissioner of Internal Revenue* (the "*Silicon* Case"), [33] and *Kepco Philippines Corporation vs. Commissioner of Internal Revenue* (the "*Kepco* Case"), [34] which apparently did not observe the 120-30 day rule adopted in the Aichi Case. Thus, petitioner opines that the *Aichi* decision is merely *pro hac vice* or for the particular occasion only and the same does not constitute a precedent. Similarly, considering that the *Hitachi, Silicon and Kepco* cases are more recent or later decisions than the *Aichi Case*, then the doctrine in the former cases should prevail being the later decisions of the Supreme Court.

We are not persuaded.

A meticulous review of the foregoing cases cited by petitioner reveals that, unlike in the *Aichi Case*, the legal issue of whether

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[32] G.R. No. 174212, October 20, 2010.
[33] G.R. No. 172378, January 17, 2011.
[34] G.R. No. 179961, January 31, 2011.

compliance with the 120-30 day period under *Section 112 (C) of the NIRC of 1997, as amended,* is mandatory and crucial in filing a judicial appeal with the Court of Tax Appeals was not squarely raised. Instead, different issues were accordingly addressed by the Supreme Court in these cases.

In the *Hitachi* Case, the issue hinges on whether the taxpayer's failure to comply with the invoicing requirements prescribed under Section 4.108-1 of Revenue Regulation No. 7-95 is sufficient to invalidate its claim for VAT refund for the taxable year 1999. Similarly, in the *Silicon* Case, the core issues raised therein are whether failure (1) to show that the taxpayer secured an Authority to Print (ATP) from the BIR and to indicate the same in its export sales invoices; and (2) to print the word "zero-rated" in its export sales invoices, are fatal in its claim for credit/refund of input VAT attributable to its zero-rated sales. Finally, the issue in the *Kepco* Case revolves on whether the taxpayer's failure to imprint the words "zero-rated" on its VAT official receipts issued is fatal to its claim for refund of unutilized input tax credits.

In view of the foregoing, it is clear that the *Aichi* Case remains the prevailing doctrine insofar as the mandatory observance of the 120-30 day rule under *Section 112 (D) [now Section 112(C)] of the NIRC of*

1997, as amended. Hence, the Supreme Court's interpretation of the afore-mentioned provision in the *Aichi* Case, being a judicial interpretation of a statute, constitutes part of that law as of the date of its original passage.[35] Significantly, "[s]uch interpretation does not create a new law but construes a pre-existing one; it merely casts light upon the contemporaneous legislative intent of that law."[36] Thus, contrary to petitioner's contention, the Court *a quo* correctly applied the doctrine laid down in the *Aichi Case* in the instant petition as the Supreme Court's interpretation of the aforesaid provision of the NIRC of 1997, as amended, in the said case constitutes part of the law as of the date of its original passage.

Parenthetically, even assuming *arguendo* that the later decisions of the Supreme Court by division in the *Hitachi, Silicon and Kepco* Cases indeed reversed the doctrine enunciated in the *Aichi* Case, We cannot discard the latter doctrine in favor of the former without running afoul of the constitutional mandate under *Article VIII, Section 4(3) of the Constitution*, which explicitly provides that "no doctrine or principle of

[35] See *Castro v. Hon. Deloria*, et al., G.R. No. 163586, January 27, 2009.
[36] *Id.*

law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting *en banc.*"

Applying the foregoing precepts, We shall now determine whether petitioner timely filed its administrative and judicial claims for refund under *Section 112 (C) of the NIRC of 1997, as amended.*

In the instant case, petitioner timely filed its administrative claim for unutilized input VAT refund/credit before the BIR on August 21, 2007[37] for the period July 1, 2005 to December 31, 2005, which is clearly within the two-year prescriptive period reckoned from the close of the taxable quarter when the sales were made. As to its judicial claim, however, petitioner filed a Petition for Review before this Court in Division on September 27, 2007[38] or thirty-seven (37) days after it filed its application for refund before the respondent. Evidently, it failed to comply with the mandatory period of 120-30 days under *Section 112(C) of the NIRC of 1997, as amended,* which is crucial in filing an appeal before the Court of Tax Appeals, as held in the *Aichi* Case.

Hence, petitioner's judicial claim for unutilized input VAT refund/credit before the Court *a quo* was premature as there was no

[37] Par. 12, JSFI, Division Docket, p. 220.
[38] *En Banc* Docket, pp. 1-276.

CIR decision yet for this Court to review nor was there inaction on the part of the CIR after the lapse of the 120-day period provided under *Section 112(C) of the NIRC of 1997, as amended.* Therefore, pursuant to the *Aichi* Case, the petition for review filed before this Court warrants a dismissal for lack of jurisdiction to take cognizance of the case.

Anent petitioner's contention that respondent is now estopped from raising the issue of jurisdiction due to its active participation in all stages of the proceedings as held in the cited cases of *Tijam, et al. vs. Sibonghanoy, et al.* (the "*Sibonghanoy* Case"),[39] *La'o vs. Republic of the Philippines, et al.* (the "*La'o* Case"),[40] and *Bernardo vs. Heirs of Eusebio* (the "*Bernardo* Case"),[41] this argument does not hold water.

It is an elementary rule of procedure that jurisdiction over the subject matter is "conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside." [42] Significantly, the concept of waiver of defense of lack of jurisdiction over the subject matter by reason of estoppel by laches was established by

[39] No. L-21450, April 15, 1968, 23 SCRA 29.
[40] G.R. No. 160719, January 23, 2006, 479 SCRA 439.
[41] G.R. No. 183357, March 15, 2010, 615 SCRA 466.
[42] *La Naval Drug Corporation vs. Court of Appeals*, G.R. No. 103200, 31 August 1994.

the Supreme Court in the landmark case of *Tijam, et al. v. Sibonghanoy,et al.,*[43] the pertinent portion of which reads:

> "It has been held that a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties is barred from such conduct *not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated*—obviously for reasons of public policy.
>
> Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (Pease vs. Rathbun-Jones etc., 243 U.S. 273, 61 L.Ed. 715, 37 S.Ct. 283; St. Louis etc. vs. McBride, 141 U.S. 127, 35 L. Ed. 659). And in Littleton vs. Burges, 16 Wyo, 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty."[44]

However, it must be emphasized that the *Sibonghanoy* Case "represented an exceptional case wherein the party invoking lack of jurisdiction did so only after fifteen (15) years, and at a stage when the proceedings had already been elevated to the Court of Appeals."[45] As clarified by the Supreme Court in ***Vda. De Herrera v. Bernardo, et al.***[46]

[43] *Supra* note 37.
[44] *Id.* at 35-36.
[45] Metromedia Times Corporation and/or Robina Gokongwie-Pe vs. Johnny Pastorin, G.R. No. 154295, July 29, 2005.
[46] G.R. No. 170251, June 1, 2011.

citing ***Regalado v. Go,***[47] "*__laches should be clearly present for the Sibonghanoy doctrine to apply.__*"[48] Thus:

> "In *Regalado v. Go,* the Court held that laches should be clearly present for the *Sibonghanoy* doctrine to apply, thus:
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> > *Laches* is defined as the "failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier, it is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."
> >
> > The ruling in *People v. Regalario* that was based on the landmark doctrine enunciated in *Tijam v. Sibonghanoy* on the matter of jurisdiction by estoppel is the exception rather than the rule. *Estoppel by laches may be invoked to bar the issue of lack of jurisdiction only in cases in which the factual milieu is analogous to that in the cited case.* __In such controversies, laches should have been clearly present; that is, lack of jurisdiction must have been raised so belatedly as to warrant the presumption that the party entitled to assert it had abandoned or declined to assert it.__
> >
> > In *Sibonghanoy,* the defense of lack of jurisdiction was raised for the first time in a motion to dismiss filed by the Surety almost 15 years after the questioned ruling had been rendered. At several stages of the proceedings, in the court *a quo* as well as in the Court of Appeals, the Surety invoked the jurisdiction of the said courts to obtain affirmative relief and submitted its case for final adjudication on the merits. It was only when the adverse decision was rendered by the Court of Appeals that it finally woke up to raise the question of jurisdiction."[49] [Emphasis supplied.]

Notably, the factual antecedents in *Sibonghanoy, La'o* and *Bernardo* Cases cited by petitioners are not present in the instant case

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[47] G.R. No. 167988, February 6, 2007, 514 SCRA 616, 635.
[48] Emphasis supplied.
[49] *Vda. De Herrera v. Bernardo, et al., supra* note 44.

that would justify the application of estoppel by laches against respondent. Similar to *Sibonghanoy*, laches is clearly present in the *La'o* and *Bernardo* cases that necessitate the application of estoppel by laches. Quite interestingly, in the *Bernardo case*, the Supreme Court observed:

> "We note that the decisions of the RTC and of the Court of Appeals discussed extensively the merits of the case, which has been pending for nearly ten (10) years. It was handled by two (2) judges and its records had to be reconstituted after the fire that gutted the courthouse. If we were to accede to petitioner's prayer, all the effort, time and expenses of parties who participated in the litigation would be wasted. Quite obviously, petitioner wants a repetition of the process hoping for the possibility of a reversal of the decision. The Court will not countenance such practice."[50] [Emphasis supplied.]

Moreover, as eloquently discussed by the Supreme Court in ***People v. Casiano***,[51] the operation of the principle of estoppel on the question of jurisdiction depends on whether the court actually had jurisdiction or not, thus:

> "*. . . The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not.* If it had *no* jurisdiction, but the case was tried and decided upon the theory that it *had* jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same "must exist *as a matter of law,* and *may not be conferred by consent of the parties or by estoppel*" (5 C.J.S., (861-863). However, if the lower court *had* jurisdiction and the case was heard and decided upon a given theory such, for instance, as that the court had *no* jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position — that the lower court *had* jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is

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[50] *Bernardo v. Heirs of Eusebio Villegas, supra* note 39.
[51] No. L-15309, February 16, 1961, 1 SCRA 478.

> conferred by law, and does not depend upon the will of the parties, has no bearing thereon . . ."[52] [Emphasis supplied.]

In the instant case, pursuant to the *Aichi Case*, petitioner's failure to heed the mandatory twin period of 120-30-day rule is fatal to its appeal before this Court and warrants a dismissal on the ground of lack of jurisdiction. Clearly then, the principle of estoppel by laches cannot be applied in the instant case. Hence, respondent is not estopped from assailing the jurisdiction of this Court even on appeal.

Moreover, it is a basic precept that the "Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction."[53] Significantly, the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue.[54] Therefore, the decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal,[55] specifically on a claim for refund, provided it is filed within 30 days after the receipt of such

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[52] *Id.* at 496-497.
[53] *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[54] *See* Section 7 of Republic Act No. 9282, amending R.A. No. 1125, otherwise known as the Law Creating the Court of Tax Appeals and Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals.
[55] *Supra* note 51.

decision or ruling, or within 30 days after the expiration of the 120-day period fixed by law for the Commissioner to act on claim for refund.[56] Otherwise put, the 30-day period after the receipt of such decision or ruling, or inaction on the part of the CIR within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the appeal or petition for review. Notably, said period is not merely directory but mandatory and it is beyond the power of the courts to extend or shorten the same.

Further, it must be borne in mind that "the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail of the same must comply with the requirements of the law. Failing to do so, the right to appeal is lost."[57]

In fine, We reiterate the long-standing principle in taxation that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law must be construed in *strictissimi juris* against

[56] *See Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., supra* note 22.
[57] *Producers Bank of the Phil. vs. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185 *citing Ortiz vs. Court of Appeals*, 299 SCRA 708 (1998).

the taxpayer. Consequently, since taxes are the lifeblood of the nation, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based.[58]

Finding that the Court *a quo* acquired no jurisdiction over the instant case, We find no cogent reason to further discuss the other issues raised in the said petition.

WHEREFORE premises considered, the petition is hereby **DENIED**. The Decision of the Second Division of this Court in CTA Case No. 7683 dated November 9, 2010 and its Resolution dated March 7, 2011 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

(with 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

[58] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 124043, October 14, 1998, 298 SCRA 83.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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

(concurs with the Dissenting Opinion of Presiding Justice Acosta)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

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

PROCTER & GAMBLE ASIA, PTE., LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 740
(CTA CASE NO. 7683)

Members:

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

Promulgated:
JUN 1 8 2012 ... 1:00 p.m.

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DISSENTING OPINION

With all due respect to the Honorable *Ponente*, I disagree with the dismissal of the Petition for Review merely on the ground that it was prematurely filed.

The pertinent dates are as follows:

Period Covered	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim	End of the 120-day period under Section 112 (D), NIRC	End of the 30-day period under Section 112 (D), NIRC
3rd to 4th Quarter, 2005	August 21, 2007	Sept. 27, 2007	Dec. 19, 2007	January 18, 2008

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

> **SEC. 112.** ***Refunds or Tax Credits of Input Tax. -***
>
> **(A)** ***Zero-Rated or Effectively Zero-Rated Sales.*** - any VAT-registered person, whose sales are zero-rated or effectively zero-rated **may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
>
> xxx xxx xxx
>
> **(D)** ***Period within which Refund or Tax Credit of Input Taxes shall be Made.*** - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis Ours)

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

Following the provisions of Sections 112(A) and (D) of the 1997 NIRC, it appears that the claim for refund or issuance of a tax credit certificate of input VAT was administratively filed within the two (2) year period, hence, compliant with Section 112(A) of the 1997 NIRC. The petitioner, however, failed to comply with the one hundred twenty (120) day period required to await the decision of the respondent as prescribed in Section 112(D) of the 1997 NIRC. Thus, it is true that petitioner prematurely filed the judicial claim of excess input VAT for the third (3^{rd}) and fourth (4^{th}) quarter of taxable year 2005.

Nevertheless, I beg to differ from the view of the Honorable *Ponente* that the premature filing of a refund claim involving unutilized input VAT is jurisdictional. With all due respect, the premature filing of said claim is a violation of the doctrine of exhaustion of administrative remedies.

It is well settled that non-exhaustion of administrative remedies is not jurisdictional. It only renders the action premature, *i.e.*, the claimed cause of

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[1] G.R. No. 172129, September 12, 2008.
[2] G.R. No. 184823, October 6, 2010.

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action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[3] The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel,* the case is susceptible of dismissal for lack of cause of action.[4]

However, it appears that respondent failed to allege in her answer or in a motion to dismiss the premature filing of the case in Court. Thus, respondent is considered to have waived said defense. Therefore, the Court must aptly acquire jurisdiction to determine petitioner's claim of unutilized input VAT for the third (3^{rd}) and fourth (4^{th}) quarter of taxable year 2005.

In view thereof, I dissent on the Honorable *Ponente's* dismissal of petitioner's claim for refund or issuance of a tax credit certificate representing its unutilized input VAT for the third (3^{rd}) and fourth (4^{th}) quarter of taxable year 2005 since the Court may aptly take cognizance of the case for failure of respondent to allege the defense of lack of cause of action.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[3] *Carale vs. Abarintos,* G.R. No. 120704, March 3, 1997.
[4] *Paat vs. Court of Appeals,* G.R. No. 111107, January 10, 1997.

REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

PROCTER & GAMBLE ASIA, PTE. LTD.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 740
(CTA Case No. 7683)

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

Promulgated:

JUN 1 8 2012 *[signature]*

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DISSENTING OPINION

BAUTISTA, J.:

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]

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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.

It was merely unfortunate that during the pendency of the case at bench, the Supreme Court issued a ruling wherein the two (2)-year prescriptive period is to be 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.

Albeit I agree that the latter-issued ruling is 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 with the former, 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.

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 administrative claim on August 21, 2007, and the subsequent Petition for Review with this Court on September 27, 2007, the then prevailing doctrine in this forum, is that, the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return,[5] not from the close of the quarter;[6] and not even within thirty (30) days from receipt of the 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 petitioner's returns, I find the administrative action, as well as the judicial claim, made within the prescribed period in force at the time the action was made.

Accordingly, I vote that the Petition for Review be **GRANTED,** subject to the verification of the amount claimed.

LOVELL R. BAUTISTA
Associate Justice

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