Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

MARUBENI PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 557
(CTA Case No. 6469)

For: Refund or Tax Credit of Unutilized Input VAT Credit for the Period January 1, 2000 to March 31, 2000)

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

Promulgated: ArtApolinario
MAR 23 2011 1:30 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Rule 4, Section 2(a)(1)*, in relation to *Rule 8, Section 4(b)* of the *2005 Revised Rules of the Court of Tax Appeals (RRCTA)*,[1] as

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1 Rule 4, 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:

amended, of the Decision[2] dated June 2, 2009, rendered by the former Second Division[3] of this Court in CTA Case No. 6469, and its Resolution[4] dated October 20, 2009.

Petitioner seeks reversal of both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated June 2, 2009:

"**WHEREFORE**, premises considered, the petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**.

SO ORDERED."

Resolution dated October 20, 2009:

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

SO ORDERED."

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(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

Rule 8, 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.

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[2] *En Banc* Docket, pp. 42-58.

[3] Penned by Associate Justice Olga Palanca-Enriquez, concurred in by Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy.

[4] *En Banc* Docket, pp. 60-68.

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The antecedent facts as culled from the Decision of this Court's former Second Division are as follows:

> Petitioner was organized to principally engage in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment or all kinds of goods, wares, merchandise or products whether natural or artificial.
>
> As a seller of goods and services, petitioner is duly registered with the Bureau of Internal Revenue (hereafter "BIR") as a Value- Added Tax (hereafter "VAT") taxpayer, as evidenced by its BIR certificate of registration dated February 29, 1996.
>
> For the first quarter ending March 31, 2000, on April 25, 2000, petitioner filed with the BIR its Quarterly VAT Return, showing, among others, the aggregate amount of input VAT that it had paid for the same period on its domestic purchases of capital goods and other taxable goods and services.
>
> On October 25, 2000, petitioner filed an Amended Quarterly VAT Return for the period ending March 31, 2000.
>
> On January 25, 2002 petitioner further amended its VAT Return for the period ending March 31, 2000.
>
> On April 24, 2002, petitioner filed its third Amended Quarterly VAT Return for the period ending March 31, 2000, and the amended return showed the following details:

PURCHASES	**AMOUNT**	**INPUT VAT**
Domestic	P42,386,782.77	P4,238,679.22
SALES	**AMOUNT**	**OUTPUT VAT**
Taxable	P3,148,688.97	P314,868.60
Zero-rated	P65,783,916.32	
Total	P68,932,605.29	P314,868.60

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EXCESS INPUT VAT P3,923,810.62

Pursuant to *Section 112(A) of the Tax Code of 1997, as amended*, on March 27, 2002, petitioner, through its external auditor, Sycip ,Gorres, Velayo and Company, filed with the BIR a written claim for a refund and/or the issuance of a TCC of its unutilized input VAT credits for the 1st Quarter of 2000 amounting to P3,911,838.33, representing the excess of its accumulated input VAT payments over the output VAT due on domestic taxable sales.

However, due to a reduction in the amount of the VAT claim from P3,911,838.33 to P3,887,419.31 brought about by the allocation of input VAT that could not be directly attributable to either of petitioner's taxable domestic sales of goods and services or its zero-rated sales of goods and services, on April 25, 2002, petitioner, through its external auditor, Sycip, Gorres, Velayo and Company, filed with the BIR an amended claim for a refund and/or the issuance of a TCC of its unutilized input VAT credits for the 1st quarter of 2000, attributable to its zero-rated sales.

To date, the administrative claim for refund and/or tax credit has not been acted upon by respondent.

In his answer, respondent alleged the following special and affirmative defenses:

> "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 refund/issuance of tax credit certificate is still subject to administrative routinary investigation 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/tax credit in the amount of P3,887,419.31 as alleged unutilized input VAT paid on its domestic purchases of goods

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and services for the period January 1, 2000 to March 31, 2000 was not fully substantiated;

7. Petitioner's instant claim for refund/tax credit representing the alleged unutilized input VAT paid for the period January 1, 2000 to March 31, 2000 is not subject to zero percent (0%) rate of VAT under Sections 106 (A)(2)(a) and 108(B)(2) and (3) of the 1997 Tax Code;

8. Petitioner's claim for refund/credit of the alleged unutilized input VAT paid on its domestic purchases of goods and services for the period January 1, 2000 to March 31, 2000 has already prescribed pursuant to Section 112(A)(B) of the 1997 Tax Code;

9. It is incumbent upon the latter 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;

10. 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)."

The former Second Division of this Court rendered a Decision[5] dismissing petitioner's claim for tax refund and/or issuance of a TCC of its unutilized input VAT credits for the first Quarter of 2000 in the amount of P3,887,419.00, principally on the ground of prescription, citing the 2008 Supreme Court decision entitled ***Commissioner of Internal***

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[5] *Supra* note 2.

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Revenue v. Mirant Pagbilao Corporation *(the "Mirant Case")*.[6] In essence, this Court ruled that pursuant to the *Mirant Case*, the two-year period to claim input VAT refund based on zero-rated or effectively zero-rated sales under *Section 112(A) of the NIRC of 1997, as amended*, must be reckoned from the close of the taxable quarter when the relevant sales were made and not from the date of payment of the tax. Similarly, claims for refund based on input VAT on the purchases of capital goods must be filed within two (2) years from the close of the taxable quarter when the importation or purchase was made as specifically provided under *Section 112 (B) of the 1997 NIRC Code, as amended*. Hence, the Court concluded that both administrative and judicial claims for input VAT refund must be filed within the two-year prescriptive period reckoned from the close of the taxable quarter when the sales, importation or purchase was made. Therefore, while the original administrative claim for refund filed on March 27, 2002 was filed within the two-year prescriptive period, the judicial claim filed before this Court on April 25, 2002 had already prescribed.

[6] G.R. No. 172129, 565 SCRA 154, September 12, 2008.

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Petitioner filed a motion for reconsideration of the above-cited Decision, which was subsequently denied in a Resolution[7] dated October 20, 2009.

Hence, this Petition for Review was filed before the Court *En Banc* on November 26, 2009.[8]

The crux of this petition anchors on the reckoning point of the two-year period of prescription under *Sec. 112 (A) and (B) of the NIRC of 1997, as amended*, in view of the decisions of the Supreme Court in ***Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue***[9] (the "*Atlas Case*") and ***Commissioner of Internal Revenue v. Mirant Pagbilao Corporation***[10] (the "*Mirant Case*"), promulgated on June 8, 2007 and September 12, 2008, respectively. Corollary thereto is the determination of the issue on whether petitioner's administrative and judicial claims for unutilized input VAT refund were duly filed within the two-year prescriptive period provided under *Section 112 of the NIRC of 1997, as amended.*

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[7] *Supra* note 4.
[8] The Petition for Review was filed within the extended period granted by the Court *En Banc* in a Resolution dated November 16, 2009.
[9] In the *Atlas Case*, the Supreme Court reckoned 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 *(G.R. Nos. 141104 & 1487636, June 8, 2007)*.
[10] In the *Mirant Case*, the Supreme Court reckoned the two-year prescriptive period for filing a claim for refund/credit of unutilized input VAT payments arising from zero-rated sales from the close of the taxable quarter when the relevant sales were made regardless of whether said tax was paid or not *(G.R. No. 172129, September 12, 2008)*.

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Thus, petitioner raised the following arguments before the Court *En Banc*, to wit:

1. **THE TWO-YEAR PRESCRIPTIVE PERIOD FOR THE FILING OF ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR TAX CREDIT OF EXCESS AND UNUTILIZED INPUT VAT IS RECKONED FROM THE DATE OF THE FILING OF THE QUARTERLY VAT RETURN AND THE PAYMENT OF THE OUTPUT TAX, AS HELD BY THE SUPREME COURT IN ATLAS CONSOLIDATED MINING DEVELOPMENT CORPORATION VS. COMMISSIONER OF INTERNAL REVENUE;[11]**

2. **PURSUANT TO ARTICLE VIII, SECTION 4(3) OF THE CONSTITUTION, THE RULING OF THE SECOND DIVISION OF THE SUPREME COURT IN THE MIRANT CASE COULD NOT AND DID NOT VALIDLY OVERTURN THE DOCTRINE LAID DOWN IN THE ATLAS CASE; AND**

3. **EVEN ASSUMMING FOR THE SAKE OF ARGUMENT THAT THE MIRANT DECISION VALIDLY OVERTURNED THE DOCTRINE LAID DOWN IN THE ATLAS CASE, THE MIRANT DECSION SHOULD ONLY BE APPLIED PROSPECTIVELY, AND SHOULD NOT BE MADE TO APPLY TO PENDING JUDICIAL CLAIMS FOR REFUND OF EXCESS INPUT VAT.**

In a nutshell, petitioner contends that *Section 112 (A) and (B) of the NIRC of 1997, as amended*, should be harmonized with *Sections 204 (C) and 229 of the same Code*, in conformity with the *Atlas Case*.

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[11] G.R. Nos. 141104 & 1487636, 524 SCRA 73, June 8, 2007.

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Moreover, petitioner opined that the *Mirant Case,* decided by the Second Division of the Supreme Court, could not validly overturn the *Atlas Case* without violating *Article VIII, Section 4(3) of the Constitution,* which explicitly 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*." Finally, petitioner argued that at the time of filing of the Petition for Review, it was an established rule that the two-year prescriptive period for the filing of claims for refund of excess input VAT is reckoned from the date of filing of the quarterly VAT return; hence, the *Mirant Case* should only be applied prospectively.

We are not persuaded.

Suffice it to say that unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made.

Statutory and jurisprudential antecedents underlie the present controversy particularly *Section 112 (A) and (B) of the NIRC of 1997, as amended*, from which petitioner anchored its claim for refund. Said

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provision originated from *Section 106 of the 1977 Tax Code* which was later on amended by *Republic Act (R.A.) No. 7716* .

Section 106 of the 1977 Tax Code classified refunds or tax credits of input tax into three categories, namely:

(1) export sales;

(2) zero- rated or effectively zero rated sales; and

(3) capital goods, thus:

> "SECTION 106. Refunds or tax credits of input tax. —
>
> (a) Export Sales. — An exporter who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.
>
> (b) Zero-rated or effectively zero-rated sales. — Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
>
> (c) Capital goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application for refund may be made only after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made: Provided, That a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of

> registration or actual start of business operations, whichever comes later: Provided, however, That the application is filed not later than 2 years from the dates herein prescribed.
>
> (d) Cancellation of VAT-registration. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 100 (c) of this Code may, within 2 years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes.
>
> (e) Period within which refund of input taxes may be made by the Commissioner. — The Commissioner shall refund input taxes within 60 days from the date the application for refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraph (a), (b) and (c) as the case may be.
>
> (f) Manner of giving refund. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being counter-signed by the Chairman, Commission on Audit, the provisions of the Revised Administrative Code to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit."

Based on the foregoing, the period within which to apply for the issuance of a tax credit certificate or refund of input VAT varies depending on its category. The two-year period to apply for the issuance of a tax credit certificate or refund of input tax is reckoned from (1) the date of exportation for *Export Sales*; (2) the close of the quarter when such sales were made for *Zero-rated or Effectively Zero-rated Sales*; and (3) the expiration of two succeeding quarters following the quarter in which the importation or local purchase was made for *Capital Goods*.

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The Supreme Court applied the foregoing provision in the renowned *Atlas Case*[12] on June 8, 2007. In resolving a claim for refund/credit of unutilized input VAT on its purchases of capital goods and on its zero-rated sales covering the taxable years 1990 and 1992, the Supreme Court 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 xxx"***, thus:

> "xxx, although the taxpayer's refundable or creditable input VAT may not be considered as illegally or erroneously collected, its refund/credit is a privilege extended to qualified and registered taxpayers by the very VAT system adopted by the Legislature. Such input VAT, the same as any illegally or erroneously collected national internal revenue tax, consists of monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Therefore, whether claiming refund/credit of illegally or erroneously collected national internal revenue tax, or input VAT, the taxpayer must be given equal opportunity for filing and pursuing its claim.
>
> For the foregoing reasons, **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 which, according to the law then existing, should be made within 20 days from the end of each quarter.** [Emphasis supplied.]

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[12] *Supra* note 9.

On January 1, 1996, **R.A. No. 7716**[13] took effect and amended several provisions of the 1977 NIRC including *Section 106 of the Tax Code*, which reads:

> Sec. 106. Refunds or tax credits of creditable input tax. —
>
> (a) 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the 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 or 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.
>
> (b) Capital goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. **The application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made.**
>
> (c) Cancellation of VAT-registration. — A person whose registration has been cancelled due to retirement from a cessation of business, or due to changes in or cessation of status under Section 100(c) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in pursuance of his other internal revenues taxes.

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[13] An Act Restructuring the Value-Added Tax (VAT) System, Widening its Tax Base and Enhancing its Administration, and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as Amended, and for Other Purposes.

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> (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 for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.**
>
> (e) Manner of giving refund. — Refund shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Revised Administrative Code, to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit. [Emphasis supplied.]

A perusal of *Section 106 of the Tax Code, as amended by R.A. No. 7716*, reveals that the same was considerably amended. *First*, the provision on *Export Sales* was deleted. *Second*, the application for unutilized input VAT refund/credit paid on *Capital Goods* may be made only within two years after the close of the taxable quarter when the importation or purchase was made, contrary to the previous provision which provides that application should be made only after the expiration of two succeeding quarters following the quarter the importation or local purchase was made. *Third*, unlike the previous provision, the amended provision now explicitly provides for a judicial claim for refund under *Section 106(D)* above-cited, which gives the taxpayer concerned a thirty (30)-day period reckoned from the receipt of the decision of the CIR denying the claim or after the expiration of the sixty (60)-day period (now 120 days) within which to appeal before the Court of Tax Appeals.

Thereafter, on January 1, 1998, **R.A. No. 8424,** otherwise known as Tax Reform Act of 1997, took effect. The provision on Refunds or Tax Credits of Input Tax is now embodied under Section 112 (previously Section 106) of the NIRC of 1997 with minor amendments, thus:

> "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 or 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.
>
> (B) Capital Goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. **The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.**

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(C) Cancellation of VAT Registration. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

(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.

(E) Manner of Giving Refund. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit. [Emphasis Supplied.]

On May 24, 2005, **R.A. No. 9337**[14] was enacted amending several provisions of the 1997 NIRC, including Section 112 thereof specifically deleting the provision on *Capital Goods* (Section 112 [B] of 1997 NIRC).

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[14] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes. This law was supposed to take effect on July 1, 2005 but its enforcement was stopped because of a temporary restraining order, its constitutionality was upheld in ABAKADA Guro Party list officer Samson S. Alcantara et. al. v. The Hon. Executive Secretary Eduardo Ermita, G.R. No. 168056,

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On September 12, 2008, the Supreme Court promulgated the well-celebrated case of *Mirant.*[15] In resolving a claim for refund due to the belated payment of input VAT corresponding to 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 held that ***Section 112(A) of the NIRC of 1997 "clearly provides in no uncertain terms that the 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 112(A) governs a claim for tax refund of unutilized input value-added tax (VAT) payments arising from zero-rated sales.***

In a recent case promulgated by the Supreme Court on October 6, 2010 entitled: **"Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc."**[16] *(the "Aichi Case")*, the Supreme Court has

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October 18, 2005. The law was finally enforced on November 1,2005. (The National Internal Revenue Code of the Philippines, Second Edition, RBSI Editorial Staff, p.215).
[15] *Supra* note 6.
[16] G.R. No. 184823, October 6, 2010.

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laid to rest the issue on the reckoning point of the two-year prescriptive period under *Section 112(A) of the NIRC of 1997*. In applying the *Mirant Case*, the Supreme Court categorically ruled that ***unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made pursuant to Section 112(A) of the NIRC, which is the applicable provision for claims of unutilized input VAT refund/credit.*** The pertinent portion of the said decision reads:

> The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [G.R. No. 172129, September 12, 2008, 565 SCRA 154]*, where we ruled 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** *[Id. at 173]*." We explained that:
>
>> The above proviso [Section 112 (A) of the NIRC] 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 pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998.

Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable

To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:

Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. – The Commissioner may –

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(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

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Sec. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

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> Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, **both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.**
>
> ***MPC's creditable input VAT not erroneously paid***
>
> For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the equation.
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> x x x x
>
> Considering the foregoing discussion, **it is clear that Sec. 112 (A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes** *[Id. at 171-175]*. (Emphasis supplied.)
>
> In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. **To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.** [Emphasis supplied.]

A careful analysis of the above-mentioned cases of *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.

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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*[17] *and Commissioner of Internal Revenue v. TMX Sales, Inc.*[18] 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

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[17] G.R. No. 96322, 204 SCRA 957, 963-964, December 20, 1991.
[18] G.R. No. 83736, 205 SCRA 184, 187-192, January 15, 1992.

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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. No. 8424, which delineated specific amendatory provision for the prescriptive period in claiming administrative and judicial claims for unutilized input VAT refund/credit.

Further, contrary to petitioner's argument that the prevailing doctrine should still be the *Atlas Case* because the *Mirant Case* was decided merely by the Second Division of the Supreme Court and not *En Banc*; therefore, the *Mirant Case* cannot validly overturn the *Atlas Case* doctrine without violating *Article VIII, Section 4(3) of the Constitution*, it is worthy of emphasis that the *Mirant Case* did not overturn the *Atlas Case*. As pointed out earlier, *Section 106 of the 1977 Tax Code* was amended and restructured by R.A. No. 7716 and further amended by R.A. No. 8424. Hence, the *Atlas Case* doctrine, which is an interpretation of *Section 106 of the 1977 Tax Code* prior to the aforesaid amendments, is no longer applicable because the legislature clearly delineated both administrative and judicial claims for unutilized input VAT refund/credit in one provision of the Tax Code, and that is *Section 106 of the 1977 Tax Code, as amended by R.A. No. 7716 (now Section 112 of the NIRC of 1997)*.

Settled is the rule that laws in general have no retroactive effect, unless the contrary is provided. "All statutes are to be construed as having only a prospective operation, unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. In case of doubt, the doubt must be resolved against the retrospective effect."[19] "This is based on the Latin maxim: *Lex prospicit non respicit* (the law looks forward, not backward)."[20]

Thus, the *Mirant Case* should be read in relation to the prospectivity principle of statutes considering that it was an interpretation of the prevailing and applicable law, i.e., R.A. No. 7716, as amended by R.A. No. 8424. This is in consonance with the Supreme Court's pronouncement in ***Senarillos v. Hermosisima, et al.***[21] that "judicial interpretation of a statute constitutes part of the law as of the

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[19] *Philippine Society for the Prevention of Cruelty to Animals vs. Commission on Audit*, et al., G.R. No. 169752, September 25, 2007 *citing* 1 Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 24 (1983).
[20] *Spouses Marian B. Lintag, et al. vs. National Power Corporation*, G.R. No. 158609, July 27,2007.
[21] 100 Phil. 501, 504 (1956).

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date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, as is the situation in this case."[22]

The doctrine laid down in the *Atlas Case* should therefore be applied only to claims for unutilized input VAT refund prior to the effectivity of R.A. No. 7716 which took effect on January 1, 1996. In the instant case, the taxable period covering petitioner's claim for refund is the first quarter of calendar year 2000; thus, the applicable law is *Section 112 of the NIRC of 1997, as amended,* and not *Section 106 of the 1977 NIRC* as interpreted in the *Atlas Case*.

Concomitantly, there is no merit in petitioner's contention that it should not be penalized for relying and observing the existing laws, prevailing rule and jurisprudence (due to the long line of Court of Appeals and Court of Tax Appeals cases allegedly applying the Atlas doctrine) considering that petitioner anchored its claim under *Section 112 of R.A. 8424* and in which case, the *Mirant and Aichi Cases* are the leading jurisprudence in interpreting the said provision.

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[22] *Roos Industrial Construction Inc. and Oscar Tocmo vs. NLRC and Jose Martillos*, G.R. No. 172409, Feb. 4, 2008 *citing Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 907-908.

Although the decisions of subordinate courts have a persuasive effect and may serve as judicial guides, and even possible to be raised to the status of a doctrine if, after it has been subjected to test in the crucible of analysis and revision the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence, ***only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction***.[23] This Court must take its bearings from the decisions of the Supreme Court.[24] In ***Filinvest Development Corporation vs. CIR,***[25] it was reiterated that only the Supreme Court has the last word on what the law is, thus:

> "The CA, likewise, erred in relying on CTA decisions as jurisprudential basis for its decision. As this Court has held in the past:
>
> > **By tradition and in our system of judicial administration this Court has the last word on what the law is, and that its decisions applying or interpreting the laws or the Constitution form part of the legal system of the country, all other courts should take their bearings from the decisions of this Court,** ever mindful of what this Court said fifty-seven years ago in People vs. Vera that "[a] becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation".

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[23] *Commissioner of Internal Revenue v. Court of Appeals, et al.,* G.R. No. 104151, March 10, 1995; *Atlas Consolidated Mining and Development Corporation v. Court of Appeals, et al.*, G.R. No. 105563, March 10, 1995.
[24] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.
[25] G.R. No. 146941, August 9, 2007.

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> The principle of *stare decisis et non quieta movere*, as embodied in Article 8 of the Civil Code of the Philippines, enjoins adherence to judicial precedents. **It requires our courts to follow a rule already established in a final decision of the Supreme Court.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land." [Emphasis supplied.]

Finally, petitioner's contention that it relied upon a Supreme Court minute resolution in the case entitled *Commissioner of Internal Revenue v. Hopewell Power (Phils.) Corporation*,[26] which affirmed the CTA and CA decisions in all its material points, including the lower courts' determination that the proper point of reference for the two-year prescriptive period is the filing of the quarterly VAT returns, and the same rule has been consistently applied by this Court even prior to the *Atlas Case*, fails to convince this Court.

Significantly, the said minute resolution is not a binding precedent because only decisions of the Supreme Court constitute as a binding precedent as evidently enunciated in the case of ***Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue***,[27] thus:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal

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[26] Minute Resolution, G.R. No. 145354 (date not supplied).
[27] G.R. No. 167330. September 18, 2009.

> and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, **if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.** Thus, in CIR v. *Baier-Nickel*, the Court noted that a previous case, CIR v. *Baier-Nickel* involving the same parties and the same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case "ha(d) no bearing" on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.
>
> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, **the proviso of Section 4 (3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.** [Emphasis supplied.]

Accordingly, since petitioner was neither a party nor its case having the same subject matter as in the minute resolution[28] referred to earlier, then petitioner cannot validly invoke the said minute resolution in its favor since, for all intents and purposes, the same does not constitute a binding precedent.

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[28] Minute Resolution, *Commissioner of Internal Revenue vs. Hopewell Power (Phils) Corporation*, G.R. No. 145354 (date not supplied).

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Clearly, after the effectivity of R.A. No. 7716 on January 1, 1996, unutilized input VAT must be claimed within two years reckoned from the close of the taxable quarter when the sales were made.

On the question as to whether petitioner has complied with the prescriptive period for administrative and judicial claims for input VAT refund/credit under Section 112 of the NIRC of 1997, as amended, suffice it to say that the administrative claim for unutilized input VAT refund was filed on time.

In the instant case, it is undisputed that petitioner filed with the BIR its written claim for refund and/or tax credit of its unutilized input VAT credits for the first quarter of 2000 on March 27, 2002. Thereafter, petitioner filed an amended claim for refund and/or tax credit of its unutilized input VAT credits for the same taxable period on April 25, 2002 due to a reduction in the amount of the VAT claim. Petitioner then timely filed its original claim (March 27, 2002) for unutilized input VAT refund with the BIR having filed it within two (2) years reckoned from the close of the taxable quarter when the sales were made.

On the next question as to whether petitioner has timely filed its judicial claim for refund before this Court, We find that the filing of the

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judicial claim for unutilized input VAT refund was premature. In dismissing petitioner's claim for unutilized input VAT refund for the first quarter of 2000 on the ground of prescription, the former Second Division of this Court ratiocinated in the assailed decision as follows:

> Records show that while the original administrative claim for refund or the issuance of a TCC filed by petitioner on March 27, 2002 *(par. 8 Joint Stipulation of Facts and Issues)* falls within the two (2) year prescriptive period; **however, the Petition for Review filed before this Court on April 25, 2002 *(Original Docket, p.1)* is beyond the two (2)-year period prescribed by law.** Thus, petitioner is barred from claiming refund of the alleged unutilized input taxes for the first quarter of 2000 in the amount of P3,887,419.31, due to prescription.[29] [Emphasis supplied.]

While we agree with the Court *a quo* insofar as petitioner's timely filing of its administrative claim for refund with the BIR, We beg to differ with respect to its ruling that petitioner's judicial claim for refund was filed beyond the two-year prescriptive period. Instead, We hold that the filing of the Petition for Review with this Court on April 25, 2002 was premature; hence, the Court *a quo* is without jurisdiction to entertain and determine petitioner's petition for review.

Section 112(D) of the NIRC of 1997, as amended, clearly provides that "[i]n case of full or partial denial of the claim for tax refund or tax credit, or failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected**

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[29] *En banc* Docket, p. 57.

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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".[30]

In the recent case of ***Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.***[31] *(the "Aichi Case")*, the Supreme Court had an occasion to rule on the issue of prescription insofar as filing a judicial claim for unutilized input VAT refund/credit before the CTA. 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

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30 Section 112(D) of NIRC of 1997, as amended.
31 G.R. No. 184823, October 6, 2010.

> for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA.** As we see it then, **the 120-day period is crucial in filing an appeal with the CTA.**
>
> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc. [130 Phil. 12 (1968)]* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
>
> In fine, **the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."** [Emphasis supplied.]

Applying the foregoing in this case, petitioner filed an appeal or petition for review before this Court on April 25, 2002 or barely a month after it filed its application for refund before respondent. It failed to heed on the mandatory period of 120 and 30 days, which is crucial in filing an appeal with the CTA, as held in the *Aichi Case*. Hence, the filing of petitioner's claim for unutilized input VAT refund/credit before the Court *a quo* was premature as there was no CIR decision 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(D) of the NIRC of 1997, as amended*. Therefore, the petition for review filed before this

Court warrants a dismissal on the ground of absence of jurisdiction on the part of the Court *a quo* to take cognizance of the case.

It must be borne in mind 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.[32] A perusal of ***Section 7 of R.A. No. 9282,*** *amending R.A. No. 1125, otherwise known as the Law Creating the Court of Tax Appeals*[33] *and Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals*[34] reveals that the

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[32] Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007, 522 SCRA 144.

[33] Sec. 7. *Jurisdiction.* — The CTA shall exercise:

> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
> >
> > (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

[34] RULE 4. Jurisdiction of the Court

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> SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Division shall exercise:

jurisdiction of the Court of Tax Appeals includes not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. ***The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to***

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

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entertain the appeal,*[35] *specifically on claim for refund, provided it is filed within 30 days after the receipt of such 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. This 30-day period after the receipt of such decision or ruling, or inaction on the part of the CIR after the expiration of the 120-day period, 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. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend or shorten the same.

Further, jurisprudence is replete with cases in holding that "the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and 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." [36] Moreover, it is an established jurisprudence that tax refunds are in the nature of tax exemptions and

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[35] *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144.

[36] *Producers Bank of the Phil. vs. Court of Appeals*, G.R. No. 126620, 381 SCRA 185, April 17, 2002 *citing Ortiz vs. Court of Appeals*, 299 SCRA 708 (1998).

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are to be construed *strictissimi juris*. Hence, *Section 112 (D) of the 1997 NIRC, as amended*, from which petitioner anchored its claim for refund and its right to appeal should be construed *strictissimi juris*, considering that taxes are the lifeblood of the government and the price we pay for civilization, tax laws must be faithfully and strictly implemented.

WHEREFORE, premises considered, the petition is **DENIED**. Accordingly, the Decision of the former Second Division of this Court in CTA Case No. 6469 dated June 2, 2009 and its Resolution dated October 20, 2009 are hereby **AFFIRMED,** with the modification that the dismissal of the Petition for Review is on the ground 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

ESPERANZA R. FABON-VICTORINO
Associate Justice

(with dissenting opinion)
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