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REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**EN BANC**

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| PANAY POWER CORPORATION, Petitioner, | C.T.A. EB NO. 551 (C.T.A. Case Nos. 7353 & 7401) |
| | Members: |
| - versus - | ACOSTA, *PJ* <br> CASTAÑEDA, JR. <br> BAUTISTA, <br> UY, <br> CASANOVA, <br> PALANCA-ENRIQUEZ, <br> FABON-VICTORINO, <br> MINDARO-GRULLA, and <br> COTANGCO-MANALASTAS, *JJ.* |
| COMMISSIONER OF INTERNAL REVENUE, Respondents. | Promulgated: <br> JAN 27 2011 [signature] 1:30 p.m. |

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# DECISION

***Fabon-Victorino, J.:***

This is a Petition for Review[1] filed by petitioner Panay Power Corporation on October 23, 2009, seeking to set aside the (1) Decision[2] dated May 15, 2009 of the Court in Division in the

[1] En Banc Case Docket, pp. 1-55.
[2] Penned by Associate Justice Olga Palanca-Enriquez and concurred by Associate Justices Juanito C. Castañeda Jr. and Erlinda P. Uy.

consolidated cases docketed as C.T.A. Cases Nos. 7353 and 7401, denying due course to petitioner's claim for refund of its alleged creditable and unutilized input Value-Added Tax ("VAT") in the amount of Nine Million Two Hundred Thirty Seven Thousand Eight Hundred Sixty and 07/100 Pesos (P9,237,860.07) for the third and fourth quarters of calendar year 2003; and (2) the Resolution [3] dated September 30, 2009, denying petitioner's Motion for Reconsideration for lack of merit. The respective dispositive portions of the assailed Decision and Resolution read as follows:

> **WHEREFORE**, premises considered, the petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**.
>
> **SO ORDERED**.
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> xxx xxx xxx
>
> **WHEREFORE**, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

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[3] *See Note 2.*

## THE PARTIES

Petitioner is a duly organized domestic corporation with principal office at the 2nd Floor, Benpres Building, Meralco Avenue, Pasig City. It is into the business of power generation and wholesale of electric power to the National Power Corporation (NPC), private electric utilities and electric cooperatives, and other businesses incident thereto, including but not limited to the sale of by-products of power generation. It is authorized to operate facilities for electric generation and is registered with the Energy Regulatory Commission ("ERC"). It is a registered VAT taxpayer with Tax Identification Number ("TIN") 004-964-861-VAT.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) with the authority to decide, approve and grant or deny application for refunds or issuance of tax credit certificate of erroneously or excessively collected or paid taxes, with office address at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

## THE FACTS

The facts as found by the Court in Division are as follows:

Petitioner filed its Quarterly VAT Returns for calendar year 2003 on the following dates:

| Periods | Date of Filing | Exhibit |
|---|---|---|
| 3rd Quarter | October 27, 2003 | "E" |
| 4th Quarter - Original | January 26, 2004 | "F" |
| Amended | February 20, 2004 | "G" |
| Second Amended | July 28, 2004 | "H" |

On December 22, 2004, petitioner filed an administrative claim for refund of unutilized excess input VAT for the four (4) quarters of calendar year 2003 in the amount of P18,002,410.37 with the BIR Revenue District Office No. 043.

Since respondent has not acted on petitioner's administrative claim for refund, petitioner elevated its claim before this Court by way of two separate Petitions for Review, docketed as C.T.A. Case No. 7353 and 7401.

*CTA Case No.7353*

In C.T.A. Case No. 7353, in his Answer, respondent alleged by way of special and affirmative defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
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> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
>
> 8. The grant of a claim for refund [is] tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

*CTA Case No. 7401*

While in C.T.A. Case No. 7401, respondent alleged the following:

> "2. He SPECIFICALLY DENIES the allegations in paragraphs 1, 3, 4, 5, 10, 11 and 12 of the petition for lack of knowledge or information sufficient to form a belief as to the truth thereof;
>
> 3. He SPECIFICALLY DENIES the allegations in paragraphs 6, 7, 8, 9, 13 and 14 of the petition for being, as a whole, mere opinions, gratuitous assertions, and erroneous conclusions or interpretations of fact and/or the law, the truth of the matter being those stated hereunder;
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> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

5. The amount of P6,916,039.97 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of goods and services for the fourth quarter of 2003 is not properly documented;

6. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;

8. 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 Corporation vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

On April 27, 2006, petitioner filed a *Motion for Consolidation*, praying for the consolidation of CTA Case No. 7401 with CTA Case No. 7353, the case bearing the lower docket number, which the Court granted in a Resolution dated May 26, 2006.

In view of the consolidation, on July 18, 2006, the parties filed their "Joint Stipulation of Facts and Issues" and stipulated the following facts:

> 1. Existence of VAT Ruling No. 050-03 dated December 1, 2003.
>
> 2. On 26 January 2004, petitioner filed its original quarterly VAT return for the fourth quarter of taxable year 2003. The said quarterly VAT return was amended and filed with the BIR on 20 February 2004 and 28 July 2004.
>
> 3. Existence of Section 112(A) and (D) of the Tax Code.
>
> 4. To date, respondent has not favourably acted upon petitioner's administrative claim for refund."

In the course of the proceedings, petitioner presented several witnesses who identified documents in support of its claim for refund. On the other hand, respondent submitted the cases for decision without presenting any witness.

On December 23, 2008, petitioner filed its Memorandum.

On January 16, 2009, the cases were deemed submitted for decision *sans* the memorandum from respondent, who failed to file any despite the directive issued by the Court in Division on November 26, 2008.

On May 15, 2009, the Court in Division rendered the assailed Decision denying petitioner's judicial claim for refund/issuance of a TCC for its unutilized input VAT for the third and fourth quarters of calendar year 2003 for having been filed beyond the two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales were made as enunciated in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.*, G.R. No. 172129, September 12, 2008 (the "Mirant Case")].

Believing otherwise, petitioner filed a "Motion for Reconsideration" on June 4, 2009, which the Court in Division denied for lack of merit in its Resolution of September 30, 2009.

On October 23, 2009, petitioner filed the instant Petition for Review raising the following issues for the resolution of the Court *En Banc,* to wit:

## ***The Issues***

I. WHETHER OR NOT THE PETITIONS FOR REVIEW FILED BY THE PETITIONER FOR C.T.A. CASE NOS. 7353 AND 7401 ARE ALREADY BARRED BY PRESCRIPTION.

II. WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE UNUTILIZED

INPUT VAT PAYMENTS IN THE AMOUNT OF P9,237,860.07.

In the Resolution dated December 15, 2009, respondent was granted ten (10) days from notice, within which to comment on the Petition for Review.

On February 10, 2010, the instant petition was deemed submitted for decision without any comment from respondent whose second Motion for Extension of Time to File comment was denied.

On March 3, 2010, respondent, instead of seeking a reconsideration of the foregoing resolution, filed a Motion to Admit Comment. In the attached Comment dated March 1, 2010, respondent agrees with the finding of the Court in Division that prescription had set in justifying the denial of the two Petitions for Review but on a different ground. He argues that judicial claims for refund of input VAT are dismissible as they were instituted after the lapse of the 30-day period to appeal prescribed under Section 112(D) of the NIRC, as amended, and not because they were filed beyond the two-year prescriptive period.

## *THE RULING OF THE COURT EN BANC*

Petitioner strongly rejects the finding of the Court in Division that prescription had already set in when it filed its judicial claims for refund for the third and fourth quarters of calendar year 2003 on October 26, 2005 and January 18, 2006, respectively. It argues that the two-year prescriptive period for filing a claim for refund of unutilized creditable input VAT should be reckoned from the date of the filing of the corresponding quarterly VAT return as held in Atlas Consolidated Mining & Development Corporation v. CIR[4] and not from the close of taxable quarter when the relevant sales were made as erroneously ruled by the Court in Division following the doctrine laid down in CIR v. Mirant Pagbilao Corporation.[5] According to petitioner, the former aimed to harmonize Sections 112(B), 114 and 229, all of the NIRC, as amended, and it was the prevailing doctrine at the time the two Petitions for Review were instituted in Court.

Further, the Mirant Case has a different factual milieu, thus the principle laid therein cannot be considered as a precedent but a mere *obiter dictum* not binding upon petitioner. In contrast,

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[4] G.R. Nos. 141104 and 148763, June 8, 2007.
[5] G.R. No.1719, September 12, 2008.

the Atlas Case resolved the very same issue raised in this petition.

There is also no substantial difference between the wording of Section 106 of the 1977 Tax Code and Section 112 of the 1997 Tax Code, as amended, that could justify a change in the interpretation of basically the same provisions. Although the doctrine in the Mirant case is in direct conflict with that of the Atlas Case, to the mind of petitioner, the former did not overturn the latter. Petitioner posits that only a decision of the Supreme Court *En Banc* can reverse or modify an existing principle promulgated by its Division like the two conflicting cases.

It is also flawed to state that judicial interpretations become part of the law as of the date of its enactment as it merely establishes the contemporaneous legislative intent of the law, applying *Senarillos v. Hermosisima.* [6] The attendant circumstances of the cited case are different, therefore inapplicable in the case at bar.

Even granting that the Mirant Case is now the prevailing doctrine, the same cannot be applied retroactively as to impair

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[6] 100 Phil 501.

the vested rights of petitioner, who in good faith, relied on the old doctrine in pursuing its judicial claim for refund. Contrary to the opinion of the Court in Division, procedural laws may not be given retrospective effect if it would work injustice to those who would be affected. Besides, Section 112(A) is not a procedural legislation since it affects petitioner's substantive right to claim for a refund. If at all, the new doctrine enunciated in the Mirant Case should apply to cases filed after its promulgation on September 12, 2008 and not to those filed prior thereto such as petitioner's cases.

With all the foregoing, petitioner maintains that it is entitled to a refund and/or issuance of a tax credit for its unutilized input VAT payments in the total amount of Php9,237,860.07, having complied with all the requirements specified under the rules.

Indeed, the primordial issue in a claim for refund or tax credit of creditable and unutilized input VAT attributable to zero-rated sales or effectively zero-rated sales is the timeliness of the filing of such claim, both in the administrative and judicial levels. Admittedly, the governing rule on the matter is Section 112 of the NIRC, as amended. It fact, petitioner in its own pleading invokes the said provision in asking judicial intervention in its petitions for review separately filed before the Court in Division. The relevant portion of Section 112 of the NIRC, as amended, reads as follows:

> "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 sales 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."
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> xxx xxx xxx
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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 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.
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> "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*)
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> xxx xxx xxx

Clearly, a VAT-registered person has two **(2) years after the close of the taxable quarter when the pertinent sales were made,** within which to apply with respondent a claim for refund or tax credit of creditable input tax which remains unutilized. Respondent, on the other hand, has **120 days from the date of submission of complete documents in support of the application for refund or tax credit of input tax** to grant or deny the same, pursuant to Section 112(D). Upon notice of denial or expiration of the allowable period of 120 days without any action on the part of respondent, the VAT-registered person has **30 days, within which to appeal the adverse decision or the inaction of respondent with the Court of Tax Appeals** via a petition for review.

Note that the two-year prescriptive limit referred to in the provision is only for the filing of an administrative claim for refund or tax credit with respondent and not resort to Court. It starts to run after the close of the taxable quarter when the pertinent sales were made irrespective of when the payment was made as enunciated in the case of *Intel v. CIR,*[7] where the Supreme Court held, thus:

> Under Section 106 (A)(2)(a)(1) in relation to 112 (A) of the Tax Code, a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for a refund or issuance of a tax credit certificate for input taxes paid attributable to such sales upon complying with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated (like export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) **the claim must be filed within two years after the close of the taxable quarter when such sale were made;** (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations.

Since delay on the part of respondent will not in any way extend the allowable 120-day period to act on the application for

[7] G.R. No. 166732, April 27, 2007.

refund, it is incumbent upon the aggrieved taxpayer - such as petitioner - to challenge respondent's inaction before the CTA via a petition for review filed under Rule 42 of the Rules of Court within 30 days from the lapse of the 120 days in the administrative level. [8] Failure to seasonably seek judicial recourse is fatal as it will deprive the Court of the authority to hear and determine the claim in a trial de novo, where evidence are presented anew in support of the parties' respective positions.

The Supreme Court echoed this ruling in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]*[9] *and San Roque Power Corporation vs. Commissioner of Internal Revenue.*[10]

Thus, to eliminate all doubts in the application of the doctrine articulated in the foregoing cases, the Court *En Banc* in case of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[11] spelled out the reasons therefore, in this wise:

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[8] Section 4, Rule 8 of the Revised Rules of the CTA.
[9] G.R. No. 172129, September 12, 2008, 565 SCRA 154, 171.
[10] G.R. No. 180345, November 25, 2009.
[11] C.T.A. EB No. 513, March 10, 2010.

"First, the applicable provision of law in the instant case which can be found under Section 112 of NIRC of 1997 is clear and unambiguous. Under the *verba legis* rule, if the words of the law are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without any interpretation.[12] It is not within the province of the Court to inquire into the wisdom of the law, for indeed, we are bound by the words of the statute.[13] As in the case of *Abello vs. Commissioner of Internal Revenue*[14] the Supreme Court enunciated:

> It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application (Cebu Portland Cement Co. v. Municipality of Naga, 24 SCRA 708 [1968])
>
> Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed (Chartered Bank Employees Association v. Ople, 138 SCRA 273 [1985]; Luzon Surety Co., Inc. v. De Garcia, 30 SCRA 111 [1969]; Quijano v. Development Bank of the Philippines, 35 SCRA 270 [1970]).

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Second, the Atlas ruling was not modified by Mirant. It is noteworthy that in the Atlas case, petitioner claimed for a refund/credit of the

[12] Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, G.R. No. 159610, June 12, 2008, 554 SCRA 398.
[13] Commissioner of Customs vs. Manila Star Ferry, Inc., G.R. Nos. L-31776-78, October 21, 1993, 227 SCRA 317.
[14] G.R. No. 120721, February 23, 2005, 452 SCRA 162 citing the case of Rizal Commercial Banking Corporation vs. Intermediate Appellate Court, G.R. No. 74851, December 9, 1999, 320 SCRA 289.

input VAT on its purchases of capital goods for the taxable quarters 1990 and 1992 where the applicable law was the then Tax Code of 1977. In contrast with the Mirant case where the present NIRC of 1997 was applied. Clearly, the cases involved different tax codes. Hence, there is no modification of ruling to speak of.

If indeed there was modification of the Atlas ruling, the Supreme Court effected and adopted outright in the Mirant case the literal application of Section 112 (A) of the NIRC of 1997 notwithstanding the existence of a contrary rule in the Atlas case. Significantly, Mirant case itself confirmed the retroactive application of the Supreme Court's current view in the reckoning of the two-year prescriptive period in a claim for refund.

Further, petitioner's contention of non-retroactivity of Mirant ruling runs counter to a more recent decision of the Supreme Court in the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue* ("San Roque case").[15] In San Roque case, petitioner San Roque filed a claim for refund of its unutilized input VAT for the period covering January to December 2002. It filed its judicial claim on April 15, 2004. In determining the reckoning of the two-year prescriptive period, the Supreme Court held:

> "The last requirement determines that the claim should be filed within two years after the close of the taxable quarter when such sales were made. The sale of electricity to NPC was reported at the fourth quarter of 2002, which closed on 31 December 2002. Petitioner had until 30 December 2004 to file its claim for refund or credit. For the period January to March 2002, petitioner filed an amended request for refund or tax credit on 30 May 2003; for the period July 2002 to September 2002, on 27 February 2003; and for the period October 2002 to December 2002, on 31 July

[15] G.R. No. 180345, November 25, 2009.

> 2003. In these three quarters, petitioners seasonably filed its requests for refund and tax credit. However, for the period April 2002 to May 2002, the claim was filed prematurely on 25 October 2002, before the last quarter had closed on 31 December 2002."

It should be emphasized that when Mirant case was promulgated, San Roque case was already and still pending before the Supreme Court. Yet, the Supreme Court in deciding San Roque case, it retroactively adopted Mirant ruling. Hence, We see no reason why We should not adopt the same ruling to the instant case.

Moreso, assuming arguendo that the Mirant case modified Atlas ruling, it is nonetheless clear that the provision itself, standing alone, provides that input VAT payments attributable to zero-rated or effectively zero-rated sales not otherwise applied against output tax may be claimed within the two years after the close of the taxable quarter when the sales were made. And, where a provision of law speaks categorically, the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms.[16]

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Third, the law takes effect from the time of its effectivity and not from the time of the promulgation of a decision applying the law. Considering that the law applicable here is the 1997 Tax Code which took effect on January 1, 1998, [17] petitioner is very well within its coverage. Notably, it is only upon effectivity of the statute that legal rights and obligation become available to those entitled by the language of the statute. [18] The validity and

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[16] Carmelino F. Pansacola vs. Commissioner of Internal Revenue, G.R. No. 159991, November 16, 2006, 507 SCRA 81 citing the case of Allied Brokerage Corporation vs. Commissioner of Customs, No. L-27641, August 31, 1971, 40 SCRA 555, 559, 560.
[17] Ibid.
[18] Abakada Guro Party List, et.al. vs. Cesar V. Purisima, et.al., G.R. No. 166715, August 14, 2008, 562 SCRA 251.

> obligatory force of a law proceed from a fact that it has first been promulgated.[19]
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> Fourth, the Court's interpretation of the law is part of the law as of the date of its enactment since the Court's interpretation merely establishes contemporary legislative intent that construed the law purports (*sic*) to carry into effect.[20] 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, and that is precisely the situation obtaining in this case.[21]

Significantly, in the very recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[22] the Final Arbiter, in an erudite disquisition interpreted Section 112 of the Tax Code, as amended, as referring only to the filing of the administrative claim for refund or credit with respondent and does not include judicial recourse, thus:

> "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 xxx apply for the issuance of a tax**

[19] Mighty Corporation vs. E. & J. Gallo Winery, G.R. No. 154342, July 14, 2004, 434 SCRA 473.
[20] Philippine Constitution Association vs. Enriquez, G.R. No. 113105, August 19, 1994, 235 SCRA 506 citing People vs. Licera, 65 SCRA 270.
[21] Kepco Ilijan Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 6590, Resolution dated July 23, 2009 citing Senarillos vs. Hermosisima, et. al., No. L-10662, December 14, 1956, 100 Phil. 501.
[22] G.R. No. 184823, October 6, 2010.

> **credit certificate or refund" refers to application 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. (*Underscoring ours*)

Again, following the foregoing jurisprudence, an aggrieved VAT-registered person, whose claim for tax refund or tax credit has been denied or has not been acted upon in the administrative level may, within 30 days from receipt of the adverse decision or after the expiration of the 120-day period without any action on the part of respondent, seek judicial relief via a petition for review with this Court seating in Division.

Until and unless the Supreme Court reverses its own ruling, this Court is obliged to apply the prevailing jurisprudence as enunciated in the cited relevant cases. By tradition in our system of judicial administration, the Supreme Court, as the final Arbiter of any justiciable controversy, [23] has the last word on what the law is. There is only one Supreme Court from whose decisions all other courts should take bearings.[24]

Verily, petitioner's administrative claim for refund and/or tax credit for the third and fourth quarters of taxable year 2003 were seasonably filed on December 22, 2004. The same is however not true insofar as its judicial claims are concern.

It was established that respondent failed to act on petitioner's claims for refund or tax credit within the allowable period of 120 days reckoned from December 22, 2004 or until April 21, 2005. Henceforth, petitioner had 30 days or until May 21, 2005, within which to invoke this Court's competence via a petition for review. But for reason only known to it, petitioner filed its judicial claims for the third and fourth quarters of taxable year 2003 only on October 26, 2005 and January 18, 2006, respectively. At that time, the Court was already deprived of its

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[23] Dante Nacuray et, al. v. NLRC, 270 SCRA 59
[24] *Commissioner of Internal Revenue vs. Michael J. Lhuiller Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178 citing the case of *GSIS vs. Court of Appeals*, 334 Phils. 163, 175.

jurisdiction to entertain the claims as they were filed way beyond the 30-day period to appeal provided under Section 112(D) of the 1997 Tax Code, as amended.

Note that the 30-day period to appeal the decision or inaction of respondent is also expressly mandated in Section 11 of Republic Act No. 9282,[25] which amended Republic Act No. 1125[26], to wit:

> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action** as referred to in Section 7(a)(2) herein.
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> "**Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.**" xxx xxx xxx

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[25] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as mended, otherwise known as the Law Creating the Court of Tax Appeals, and for other purposes.
[26] the Law Creating the Court of Tax Appeals.

Established is the rule that an appeal is neither a natural nor constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it.[27] The perfection of an appeal in the manner and within the period set by law is not only mandatory, but as well jurisdictional. And failure to perfect an appeal within the reglementary period deprived the court - otherwise competent - of jurisdiction to hear and determine it.

In the 1996 case of Videogram Regulatory Board v. Court of Appeals[28], the Supreme Court, no less, chronicled the inviolability of the period of perfecting an appeal in this fashion:

> x x x There are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules. **The rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional** and the failure to perfect the appeal renders the judgment of the court final and executory. Just

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[27] Air France Philippines v. Leachon, 472 SCRA 439, 442-443 [2005].
[28] G.R. No. 106564, November 28, 1996.

> as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case. These periods are carefully guarded and lawyers are well-advised to keep track of their applications. After all, a denial of a petition for being time-barred is a decision on the merits.

Irrefragably, the timeliness of an appeal is a jurisdictional caveat that not even the Supreme Court can trifle with. [29] Precisely this Court, in a number of cases, emphasized the pronouncement in *Aichi Case* that a taxpayer claimant must prove not only his entitlement to a refund, but also his compliance with the procedural due process which petitioner utterly failed to do. Non-observance of the prescriptive periods within which to file the administrative and judicial claims will result in the denial of the relief sought as should happen in this case.

Note that procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and the administration of justice[30]. There is no quarrel that litigation is not a game of technicality, but every case must be prosecuted in accordance with the

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[29] BA vs. Gerochi, Jr. 230 SCRA 9 [1994].
[30] Fortech v. Corona, G.R. No. 131457, November 17, 1998.

prescribed procedure to ensure an orderly and speedy administration of justice. Not only litigants but also the courts are enjoined to abide strictly by the rules. While there have been instances where the Supreme Court allowed relaxation in the application of the rules, but this flexibility was never intended to forge a bastion for erring litigants to violate the rules with impunity.[31]

Far from petitioner's protestation, procedural rules should not to be belittled or dismissed simply because their non-observance would result in prejudice to a party's substantive rights.[32] In point is the ruling in *Spouses Baniqued v. Teresita S. Ramos and the Register of Deeds o Manila,*[33] where the Supreme Court held, thus:

> In a catena of cases, the Court has ruled that the right to appeal is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin, a remedy that may be exercised only in the manner prescribed by the provisions of law authorizing such exercise. Hence, the legal requirements must be strictly complied with. **It would be incorrect to consider the requirements of the rules on appeal as merely harmless and trivial technicalities that can be discarded. Indeed, deviations from the rules cannot be tolerated.** In these times when

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[31] Norris v. Hon. Jose Parentela, Jr. et., al, G.R. No. 143216, February 27, 2003.

[32] Pedrosa vs. Hill, 257 SCRA 373 [1996].
[33] G.R. No. 158615, March 4, 2005.

> court dockets are clogged with numerous litigations, such rules have to be followed by parties with greater fidelity, so as to facilitate the orderly disposition of cases. After a judgment has become final, vested rights reacquired by the winning party. If the proper losing has the right to file an appeal within the prescribed period, then the former has the correlative right to enjoy the finality of the resolution of the case. Thus, we agree with the Court of Appeals that the trial court did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the petitioners' motion to elevate the records to the CA.

Hence, for failure to appeal within the prescribed period, petitioner is now barred from claiming a refund or issuance of a tax credit certificate for its alleged unutilized input VAT from its domestic purchases of taxable goods and services attributable to its zero-rated sales for the period covering the third and fourth quarters of calendar year 2003 in the aggregate amount of Php9,237,860.07.

**WHEREFORE**, the instant Petition for Review filed by petitioner Panay Power Corporation is hereby **DENIED.** The Decision dated May 15, 2009 and the Resolution dated September 30, 2009 are **AFFIRMED**, however, the dismissal is on the ground that C.T.A. Cases Nos. 7353 and 7401 were filed beyond the thirty (30)-day period to appeal pursuant to Section

112(D) of the National Internal Revenue Code of 1997, as amended.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(On Leave)
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

CIELITO N. MINDARO-GRULLA
Associate Justice

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 before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice