REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO ILIJAN CORPORATION,
Petitioner,

CTA EB No. 611
(CTA Case No. 6682)

Members:

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 1 3 2011 Apolinario 2:00 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This is a Petition for Review assailing the Decision dated September 1, 2009 and Amended Decision dated March 11, 2010 issued by the Court in Division in CTA Case No. 6682.

THE FACTS

Kepco Ilijan Corporation ("petitioner") is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. As a VAT registered entity, petitioner is engaged in the production and sale of electricity to National Power Corporation ("NPC").[1]

The Commissioner of Internal Revenue ("respondent") is a public official tasked to decide disputed assessments, refund of erroneously or excessively paid internal revenue taxes, fees or other charges, penalties, or other matters under Republic Act (R.A.) No. 8424, or also known as the, "1997 National Internal Revenue Code" ("NIRC")" or other laws administered by the Bureau of Internal Revenue ("BIR").[2]

Petitioner filed its quarterly valued added tax (VAT) returns for the taxable year 2001. These returns allegedly reflected the following:

Date Filed	Period	Output VAT	Input VAT					
			Carry-Over	Domestic Purchases	Importations	Subtotal	Overpayment
26-April-01	1st Qtr. 01	0	1,679,528,614.60	34,800,355.23	44,699,729.25	1,759,028,699.08	(1,759,028,699.08)
25-July-01	2nd Qtr.01	0	1,759,028,699.08	4,261,870.04	126,778,264.97	1,890,068,834.09	(1,890,068,834.09)
25-Oct-01	3rd Qtr.01	0	1,890,068,834.09	711,266.80	59,570,880.00	1,950,350,980.89	(1,950,350,980.89)
25-Jan-02	4th Qtr.01	0	1,950,350,980.89	62,132,872.36	5,323,820.00	2,017,807,673.25	(2,017,807,673.25).[3]

As shown in the VAT returns, petitioner allegedly incurred the amount of P338,279,058.65 as input VAT on its importations and domestic purchases for the taxable year 2001: Jr

[1] Docket, CTA Case No. 6682, p.24.
[2] *Ibid.*
[3] *Ibid.*.

Total input VAT at the end of The 4th quarter of 2001	P2,017,807,673.25
Less: Input VAT at the start of the year	1,679,528,614.60
Input VAT incurred for 2001	**P 338,279,058.65**[4]

Due to its unutilized input VAT for the entire quarters of taxable year 2001 in the amount of P338,279,058.65, petitioner sought a refund with the BIR on April 15, 2003.[5]

The BIR's inaction on its refund claim prompted petitioner to file a Petition for Review docketed as CTA Case No. 6682 with the Court in Division on April 23, 2003.

In her Answer, respondent countered that the refund claim is still under examination with the BIR; the burden of proof of entitlement to refund is upon the petitioner; the grant of the refund claim is tantamount to an exemption and is construed strictly against the claimant and in favor of the taxing authority; and the taxes sought to be refunded were paid in accordance with the law.[6]

On September 1, 2009, the Court in Division partially granted the Petition and ordered the refund of P161,462,492.03 representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the second, third and fourth quarters of taxable year 2001.[7]

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[4] *Ibid.*
[5] *Ibid.*
[6] Docket, CTA Case No. 6682, p. 25.
[7] Docket, CTA Case No. 6682, pp. 576-594. Penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

Unfazed, petitioner moved for the partial reconsideration of the assailed Decision which the Court in Division partially granted in its favor and ordered the issuance of a tax credit certificate or refund in the increased amount of P237,974,498.55 for the four quarters of taxable year 2001 as shown in the Amended Decision dated March 11, 2010, detailed as follows:

Amount of Input VAT Claim		P338,279,058.65
Less:	Input VAT Claim Pertaining to Non-Capital Goods/Services	1,606,007.11
Input VAT Claim on Capital Goods/Services		P336,673,051.54
Less:	Not Properly Substantiated Input VAT	
	a. Per ICPA Report	3,265,235.41
	b. Per this Court's further verification	95,433,317.58
Refundable Input VAT on Capital Good/Services		**P237,974,498.55**[8]

THE ISSUES

Dissatisfied, on April 21, 2010, petitioner elevated the case on appeal before the Court *En Banc* raising the following grounds:

> A. KEILCO paid Raytheon 2001, and did not file any claim in other period, making the disallowance of P38,244,779.71 input VAT claim erroneous.

[8] Docket, CTA Case No. 6682, pp. 622-628.

B. Input VAT on importation of supported by certified true copy of machine validated IEDs was erroneously disallowed.

(i) The IEDs were certified by the proper public officers in the exercise of their official functions and are covered by the presumption of regularity in the performance of duty.

(ii) An IED is a public document that is proved by presenting its certified true copy, without need of authentication.

(iii) Petitioner's IEDs are machine validated, in compliance with Customs Administrative Order No. 2-95 to serve as proof of payment, without need for other documents.[9]

Respondent on the other hand failed to file her Comment to the Petition.

In compliance with the Resolution dated July 15, 2010, only petitioner filed its Memorandum with a prayer that this Court partially reverse and set aside the assailed Amended Decision dated March 11, 2010 and order the respondent to issue a tax credit certificate or refund the amount of P94,909,877.58 representing unutilized input VAT for taxable year 2001. Thereafter, the case was submitted for Decision.

As to the first ground, the Court in Division disallowed petitioner's input VAT payment of P38,244,779.71 on the basis that the official receipt was issued by Raytheon on January 28, 2002, outside the period of claim.

According to petitioner, while the official receipt was issued in January 2002, it actually made payment within 2001. It is not extraordinary that payment and issuance of official receipt do not occur simultaneously. There are payments not evidenced by official receipts and vice versa. *Jc*

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[9]Rollo, p. 16.

Petitioner further argues that the issuance of official receipt is beyond its control. To disallow a substantial amount because petitioner complied with what is provided in the Tax Code would not be fair on its part.

It bears stressing that Raytheon's invoices were dated taxable year 2001. On the basis of the Supreme Court's case in *AT and T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*[10], Raytheon's sales invoice dated within the period of claim should likewise be accepted as proof of input VAT payment for such service relative to the refund claim.

To coincide with other company records and reflect the correct amount of input VAT actually paid, petitioner properly included the input VAT indicated in Raytheon's official receipt as part of the amount being claimed for taxable 2001.

The ICPA report also confirms that the input VAT documented by Raytheon official receipt was never claimed in 2002 or any other period. An entry appears in petitioner's books reclassifying input VAT to input VAT receivables after the filing of the administrative claim.

Input VAT account representing input VAT for domestic purchases of capital goods and services included P38,244,779.71. To deny petitioner's substantial amount on account of its true and actual transaction reflected in its books and returns would be tantamount to punishing the taxpayer for following the correct rule.

[10] G.R. No. 182364, August 3, 2010, 626 SCRA 567.

Concerning the second ground, petitioner asserts that input VAT on importation supported by certified true copies of machine validated import entry declarations (IEDs) were erroneously disallowed.

The IEDs were certified by the proper public officers in the exercise of their official functions.

The public officer's stamp declaring that the IED is a certified true copy attests presumption of regularity in the performance of duty. The function of a presumption is to shift to the other party the burden to prove otherwise.

In the instant case, no contrary evidence was presented assailing the IEDs. Thus, the presumption in favor of the petitioner applies showing that the proper officers were in the regular performance of their duties when they certified the IEDs. The burden should not be shifted to the taxpayer, and thereafter be prejudiced by an assertion that it failed to prove that the certifiers are actually authorized custodians of the documents.

The IEDs were certified as true copies by either the Bureau of Customs (BOC) or the Commission on Audit, two of the government agencies specifically named as custodian of said documents. The ICPA report named those who certified petitioner's IEDs.

As a public document, the certified true copies of the IEDs are prima facie evidence of the facts stated therein under Rule 132 of the Rules of Court. The IED is a public document because it contains entries regarding details of importation and duties and taxes to be paid made by the customs assessor, chief customs assessor, among others, and recorded in the record of liquidations. Thus, presentation of certified true copy of the IED even in the absence of its authentication is proper.

There being no complete and conclusive proof of its falsity or nullity, the public document sustains its evidentiary value. Convincing evidence is required to dispute the facts stated therein and to contest the presumption of its regularity.

Finally, even if the bank statements are photocopies, petitioner's IEDs are machine validated, in compliance with the Customs Administrative Order No. 2-95 to serve as proof of payment, without need for other documents.

Petitioner's IEDs were Citibank N.A. machine validated, signed by a representative from its Trade Management Services. Having been machine validated, there is no need to present other documents to prove actual payment since the machine validation already shows the amount paid. The amount per Citibank validation and the IED Grant Total entry are the same. Notwithstanding the absence of a supporting bank statement, or that the accompanying bank statement is a mere photocopy, not in conformity with the best evidence rule, the fact of payment has already been satisfactorily established in this case.

THE COURT'S RULING

The Petition deserves scant consideration.

The following salient points in this case are as follows:

1. **THE GROUND OF PRESCRIPTION IS INDISPENSABLE AND NECESSARY IN ARRIVING AT A JUST DECISION.**

2. **A TAXPAYER-CLAIMANT WHOSE SALES ARE ZERO-RATED SALES OR EFFECTIVELY ZERO-RATED SALES HAS TWO YEARS (2) YEARS FROM THE CLOSE OF THE TAXABLE QUARTER WHEN THE SALES WERE MADE TO FILE AN ADMINISTRATIVE REFUND CLAIM OF UNUTILIZED INPUT VAT.**

3. **THE SUPREME COURT IS THE ULTIMATE ARBITER. THE RECENT DECISION IN THE *AICHI* CASE[11] MUST BE CONFORMED TO UNDER THE PRINCIPLE OF STARE DECISIS.**

4. **A CLAIMANT'S PREMATURE FILING OF A REFUND CLAIM INVOLVING UNUTILIZED INPUT VAT IS JURISDICTIONAL AS RECENTLY RESOLVED BY THE SUPREME COURT IN THE *AICHI* CASE.**

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[11] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

4.a THE COMMISSIONER HAS ONE HUNDRED TWENTY (120) DAYS FROM SUBMISSION OF COMPLETE DOCUMENTS TO RULE ON THE REFUND CLAIM AND OBSERVANCE OF THIS PERIOD IS CRUCIAL IN FILING AN APPEAL WITH THE COURT OF TAX APPEALS.

5.THE SUPREME COURT IS CORRECT IN APPLYING THE LAW BECAUSE THE LAW TAKES EFFECT UPON THE DATE OF ITS ENACTMENT AND NOT UPON THE PROMULGATION OF A JUDGMENT INTERPRETING THE LAW.

Before proceeding to the other issues, the Court deems appropriate to rule on whether or not petitioner's refund claim has prescribed, and if the refund claim should be treated as premature.

THE GROUND OF PRESCRIPTION IS INDISPENSABLE AND NECESSARY IN ARRIVING AT A JUST DECISION.

In resolving if petitioner is entitled to the refund claim, the ground of prescription is indispensable and necessary in arriving at a just decision even if it was not assigned as an error on appeal as declared by the Supreme Court in the case of *Hi-Tone Marketing Corporation v. Baikal Realty Corporation*[12], *viz*:

> While the procedural rule is that a party is required to indicate in his brief an assignment of errors and only those assigned shall be considered by the appellate court in deciding the case, it is equally settled that appellate courts have ample authority to rule on matters not assigned as errors in an appeal, if these are indispensable or necessary to the just resolution of the pleaded issues. This Court has allowed the consideration of other grounds not raised or assigned

[12] G.R. No. 149992, August 20, 2004, 437 SCRA 121.

> as errors specifically in the following instances: **1) grounds not assigned as errors but affecting jurisdiction over the subject matter**; 2) matters not assigned as errors on appeal but are evidently plain or clerical errors within the contemplation of the law; 3**) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice;** 4) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; 5) matters not assigned as errors on appeal but closely related to an error assigned; and 6) matters not assigned as errors on appeal but upon which the determination of a question properly assigned is dependent.[13] (Emphasis Ours.)

TAXPAYER-CLAIMANT WHOSE SALES ARE ZERO-RATED SALES OR EFFECTIVELY ZERO-RATED SALES HAS TWO (2) YEARS FROM THE CLOSE OF THE TAXABLE QUARTER WHEN THE SALES WERE MADE TO FILE AN ADMINISTRATIVE REFUND CLAIM OF UNUTILIZED INPUT VAT.

Under Section 112(A) of the 1997 NIRC, as amended, the taxpayer-claimant whose sales are zero-rated sales or effectively zero-rated sales has two years from the close of the taxable quarter when the sales were made to file an administrative refund claim of unutilized input VAT as emphasized by the Supreme Court in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[14]which clarified that:

> xxx xxx xxx 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**

[13] *Ibid.*
[14] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

> **certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.**[15] (Emphasis supplied.)

THE SUPREME COURT IS THE ULTIMATE ARBITER. THE RECENT DECISION IN THE *AICHI* CASE MUST BE CONFORMED TO UNDER THE PRINCIPLE OF STARE DECISIS.

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy.[16] "All courts must take their bearings from the decisions of this Court."[17]

Maintaining stability in jurisprudence is of paramount importance under the principle of *stare decisis et non quieta movere* which simply means follow past precedents and do not disturb what has been settled. Where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[18] That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.[19] Thus, the *Aichi* case constitutes as *stare decisis* to the case at bar.

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[15] *Ibid.*
[16] *Dante Nacuray, et al. v. National Labor Relations Commission*, G.R. Nos. 114924-27, March 18, 1997, 270 SCRA 9.
[17] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781.
[18] *Negros Navigation Co., Inc.., v. Court of Appeals, et al.*. G.R. No. 110398, November 7, 1997, 281 SCRA 534.
[19] *Gregorio Castillo v. Sandiganbayan*, G.R. No. 138231. February 21, 2002, 377 SCRA 509 citing *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, June 20, 2000, 334 SCRA 114.

The Supreme Court's pronouncements in the *Aichi* case were also echoed in the recent CTA *En Banc* cases of *Miramar Fish Company, Inc. v. Commissioner of Internal Revenue*[20]; *Kepco Ilijan Corporation v. Commissioner of Internal Revenue and Commissioner of Internal Revenue v. Kepco Ilijan Corporation*[21]; *Visayas Geothermal Power Company v. Commissioner of Internal Revenue, Commissioner of Internal Revenue v. Visayas Geothermal Power Company*[22]; *Commissioner of Internal Revenue v. Taganito Mining Corporation*[23] and *Commissioner of Internal Revenue v. Toledo Power Company and Toledo Power Company v. Commissioner of Internal Revenue*[24].

A CLAIMANT'S PREMATURE FILING OF A REFUND CLAIM INVOLVING UNUTILIZED INPUT VAT IS JURISDICTIONAL AS RECENTLY RESOLVED BY THE SUPREME COURT IN THE *AICHI* CASE.[25]

Although not assigned as an error on appeal, this Court shall likewise determine if petitioner's refund claim is premature in the light of the Supreme Court's ruling in the *Aichi* case[26] where the Highest Tribunal disallowed the refund claim for having been prematurely filed on the basis of the absence of the Court of Tax Appeals' (CTA) jurisdiction, pertinent excerpts of which read:

[20] EB Case No. 627, February 15, 2011.
[21] EB Case Nos. 516 and 518, January 27, 2011.
[22] EB Case Nos. 520, 521, December 10, 2010.
[23] EB Case No.624, December 8, 2010.
[24] EB Case Nos. 623 and 629, November 22, 2010.
[25] G.R. No. 184823, October 6, 2010, 632 SCRA 422.
[26] *Ibid.*

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.**[27] (Emphasis supplied.)

Just recently, the Supreme Court's findings in the *Aichi* case were sealed with finality:

Acting on respondent's motion for partial reconsideration of the Decision dated 06 October 2010 and considering that the basic issues have already been passed upon and there is no substantial argument to warrant a modification of this Court's decision, the Court resolves to ***DENY*** reconsideration with ***FINALITY***. xxx xxx xxx

NO FURTHER pleadings or motions shall be entertained herein.

Let an **ENTRY** of judgment in this case be made in due course. xxx[28]

Clearly, the ruling in the *Aichi* case on the ground of prematurity must be applied to the instant case.

THE COMMISSIONER HAS ONE HUNDRED TWENTY (120) DAYS FROM SUBMISSION OF COMPLETE DOCUMENTS TO RULE ON THE REFUND CLAIM AND OBSERVANCE OF THIS PERIOD IS CRUCIAL IN FILING AN APPEAL WITH THE COURT OF TAX APPEALS.

In the *Aichi* case, the Supreme Court explained when a refund claim is considered premature, in this wise:

Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the

[27] *Supra* note 11.
[28] Supreme Court Resolution dated December 6, 2010, G.R. No. 184823.

> **application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.**
>
> **In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.**
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> 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.[29] (Emphasis Ours.)

The *Aichi* case mentioned that the Commissioner has one hundred twenty (120) days from submission of complete documents to rule on the refund claim. Thereafter, the aggrieved party's judicial recourse is to appeal before the Court of Tax Appeals within thirty (30) days from receipt of the decision denying the refund claim or upon the expiry of the one hundred twenty (120) day period in case of the Commissioner's inaction to the refund claim. The observance of these periods is mandatory and non-compliance therewith would result in the denial of the claim. The second paragraph of

[29] *Supra,* note 11.

Section 112(D) contemplates two scenarios: (1) when a decision is issued by the Commissioner before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both situations, the taxpayer has 30 days within which to file an appeal with the CTA. Clearly, the 120-day period is crucial in filing an appeal with the CTA.[30]

THE SUPREME COURT IS CORRECT IN APPLYING THE LAW BECAUSE THE LAW TAKES EFFECT UPON THE DATE OF ITS ENACTMENT AND NOT UPON THE PROMULGATION OF A JUDGMENT INTERPRETING THE LAW.

Also in the *Aichi* case, the Supreme Court outrightly applied the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[31] where the Supreme Court ruled that the administrative refund claim should be within two (2) years from the close of the taxable quarter when the sales were made. Despite the fact that the *Aichi* case pertains to the third quarter of taxable year 2002 and both the administrative and judicial claim for refund were still pending prior to the *Mirant's* promulgation on September 12, 2008, the Supreme Court applied the ruling in the *Mirant* case to the *Aichi* case without any qualification. We quote:

> ***Unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made.***

[30] *Supra*, note 11.
[31] G.R. No.172129, September 12, 2008, 565 SCRA 154.

In computing the two-year prescriptive period for claiming a refund/credit of unutilized input VAT, the Second Division of the CTA applied Section 112 (A) of the NIRC, which states:

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. (Emphasis supplied.)

The CTA En Banc, on the other hand, took into consideration Sections 114 and 229 of the NIRC, which read:

SEC. 114. Return and Payment of Value-Added Tax. —

(A) In General. — Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided,* however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: *Provided*, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

xxx xxx xxx

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, 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 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. (Emphasis supplied.)

Hence, the CTA En Banc ruled that the reckoning of the two-year period for filing a claim for refund/credit of unutilized input VAT should start from the date of payment of tax and not from the close of the taxable quarter when the sales were made.

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*, 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." xxx (Emphasis Ours.)

xxx xxx xxx

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.**[32] (Emphasis Ours.)

The Supreme Court in the *Aichi* and *Mirant* cases applied Section 112 of the 1997 NIRC in ascertaining the reference point of the two year prescriptive period for refund

[32] *Supra, Note 11.*

of unutilized input VAT payments attributable to zero-rated or effectively zero-rated sales because the law takes effect upon the date of its enactment, and not upon the Court's interpretation of the law. The Court's interpretation of the law is part of that law as of the date of enactment because its interpretation merely establishes the contemporary legislative intent that the construed law purports to carry into effect.[33]

Judicial decisions interpreting the law as of the time of its effectivity is not tantamount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one.[34]

In consonance with the intent and wordings of Congress, the date of effectivity of the 1997 NIRC was on January 1, 1998. Logically, it is improper to treat the date of promulgation of the Supreme Court's Decisions of the *Mirant or Aichi* cases as basis in applying the enforceability of the 1997 NIRC. Otherwise stated, the application of Section 112 of the 1997 NIRC must be reckoned from the time of the effectivity of the 1997 NIRC, and not from the date of promulgation of the *Aichi* and *Mirant* cases.

It is not a license for courts to engage in judicial legislation. The duty of courts is to apply or interpret the law, not to make or amend it.[35]

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[33] *National Amnesty Commission v. Commission on Audit and Philippine Constitution Association v. Salvador Enriquez,* G.R. No. 156982, September 8, 2004, 437 SCRA 655 and *Philippine Constitution Association v. Salvador Enriquez*, G.R Nos. 113105, 113174, 113766 and 113888, August 19, 1994, 235 SCRA 506. See *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, EB Case No.513, March 10, 2010 and *Commissioner of Internal Revenue v. Team Sual Corporation*, EB Case No. 504, June 16, 2010.

[34] *Eagle Realty Corporation v. Republic of the Philippines*, G.R. No. 151424, Resolution dated July 31, 2009, 594 SCRA 555 and *Kepco Ilijan Corporation v. Commissioner of Internal Revenue*, CTA Case No. 6590, Resolution dated July 23, 2009, citing *Senarillos v. Hermosisima*, No. L-10662, December 14, 1956, 100 Phil. 501.

[35] *Rommel Silverio v. Republic of the Philippines*, G.R. No. 174689, October 19, 2007, 537 SCRA 373.

In the instant case, petitioner filed its administrative and judicial claims for refund covering its unutilized input VAT of zero-rated or effectively zero-rated sales for the four quarters of the taxable year 2001 as follows:

COVERED PERIOD	LAST DAY IN FILING FOR ADMINISTRATIVE CLAIM FOR REFUND	FILING OF ADMINISTRATIVE CLAIM FOR REFUND	FILING OF THE PETITION FOR REVIEW
January-March 2001	March 31, 2003	April 15, 2003	April 23, 2003
April-June 2001	June 30, 2003	April 15, 2003	April 23, 2003
July-September 2001	September 30, 2003	April 15, 2003	April 23, 2003
October-December 2001	December 31, 2003	April 15, 2003[36]	April 23, 2003[37]

Records disclose that petitioner filed its administrative claim for refund and Petition for Review before this Court on April 15, 2003 and April 23, 2003, respectively. Petitioner's administrative refund claim for the first quarter of taxable year 2001 was filed beyond the two (2)-year reglementary period. The Court also observes non compliance with the 120-day period within which the Commissioner is vested with power on whether to grant or deny the refund claim because eight (8) days had elapsed from the filing of the administrative claim and the Petition for Review with the CTA. Evidently, the failure of the petitioner to conform to the 120-day period results in

[36] Exhibit "F".
[37] See CTA Case No. 6682.

the premature filing of judicial claim with the Court in Division. Clearly, petitioner is disqualified to the refund claim for its failure to comply with the period mandated by Section 112 of the 1997 NIRC.

The Court sees no cogent reason to rule on the other issues for being moot.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. Accordingly, the Decision dated September 1, 2009 and Amended Decision dated March 11, 2010 issued by the Special First Division in CTA Case No. 6682, are hereby reversed and set aside. Petitioner's refund claim of P94,909,877.58 is **DENIED** on the grounds of prescription for the first quarter of taxable year 2001 and premature filing of the refund claim for the second, third and fourth quarters of the same taxable year.

SO ORDERED.

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

WE CONCUR:

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

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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

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

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO ILIJAN CORPORATION, Petitioner,	**EB CASE NO. 611** **(C.T.A. CASE NO. 6682)**
- versus -	Members: **ACOSTA**, *PJ*, **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **PALANCA-ENRIQUEZ**, **FABON-VICTORINO**, **MINDARO-GRULLA**, *and*, **COTANGCO-MANALASTAS**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 13 2011 ... 2:00 p.m.

x- x

CONCURRING AND DISSENTING OPINION

With all due respect to the majority's opinion, I hereby state my agreement as to the dismissal of the Petition for Review on the ground of prescription insofar as the claim of petitioner for the first quarter of taxable year 2001. I, however, disagree to the dismissal on the ground of lack of jurisdiction insofar as the claim for excess input VAT for the second, third and fourth quarters of taxable year 2001.

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

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

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

Pagbilao Corporation[1] and *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[2].

Applying the aforementioned therefore, pertinent to enumerate foremost the important dates applicable in this case, viz:

COVERED PERIOD	LAST DAY IN FILING FOR ADMINISTRATIVE CLAIM FOR REFUND	FILING OF ADMINISTRATIVE CLAIM FOR REFUND	FILING OF THE PETITION FOR REVIEW
January-March 2001 (1st)	March 31, 2003	April 15, 2003	April 23, 2003
April-June 2001 (2nd)	June 30, 2003	April 15, 2003	April 23, 2003
July-September 2001 (3rd)	September 30, 2003	April 15, 2003	April 23, 2003
October-December 2001(4th)	December 31, 2003	April 15, 2003	April 23, 2003

Following the provisions of Sections 112(A) and (D) of the 1997 NIRC, it appears that the claim for refund of input VAT for the first quarter of 2001 was filed beyond the two (2) year period required to file and administrative claim, hence, the petitioner's claim for excess input VAT for the first quarter of 2001 has already prescribed.

Insofar as the second, third and fourth quarters of 2001, the claim was administratively filed within the two (2) year period, hence, compliant with Section 112 (A) of the 1997 NIRC. The petitioner, however, failed to comply with the one hundred twenty (120) day period required to await the decision of the respondent as prescribed in Section 112 (D) of the 1997 NIRC. Thus, it is true that petitioner prematurely filed the judicial claim of excess input VAT for the second, third and fourth quarter of 2001.

I beg to differ from the stance of the majority that the premature filing of a refund claim involving unutilized input VAT is jurisdictional. With all due respect, I believe, the premature filing of said claim is a violation of the doctrine of exhaustion of administrative remedies.

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

It is already well settled that non-exhaustion of administrative remedies is not jurisdictional. It only renders the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[3] The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel,* the case is susceptible of dismissal for lack of cause of action.[4]

Since it appears that respondent failed to allege in her answer or on a motion to dismiss the premature filing of the case in Court, the respondent is considered to have waived said defense. The Court, hence, must aptly acquire jurisdiction to determine petitioner's claim of excess input VAT as to its second, third and fourth quarters of 2001.

In view thereof, I concur with the majority in dismissing the petitioner's claim for refund on the ground of prescription but only insofar as the first quarter of 2001. I dissent, however, on the majority's dismissal of petitioner's claim for refund over its excess input VAT for the second, third and fourth quarters of taxable year 2001 since the Court may aptly take cognizance of the case for the failure of respondent to allege the defense of lack of cause of action.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[3] *Carale vs. Abarintos*, GR No. 120704, March 3, 1997.
[4] *Paat vs. Court of Appeals*, G.R. No. 111107, January 10, 1997; 266 SCRA 167, pp. 175-177.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO ILIJAN CORPORATION, Petitioner,	**CTA EB NO. 611** (CTA Case No. 6682)
	Present:
-versus-	*Acosta, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Palanca-Enriquez,* *Fabon-Victorino,* *Mindaro-Grulla, and* *Cotangco-Manalastas, JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated on: JUN 13 2011 [illegible] 2:00 p.m.

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DISSENTING OPINION

BAUTISTA, J.:

The Court *En Banc* dismissed the Petition for Review filed by the Kepco Ilijan Corporation ("Kepco") on the ground of failure to comply with the prescriptive period mandated by Section 112[1] of the 1997 National Internal Revenue Code ("NIRC"). Specifically, the Court held that the administrative claim covering the first quarter was filed beyond the two (2)-year prescriptive period, and that the non-compliance with the one hundred twenty (120)-day period within which the

[1] As amended by Republic Act No. 9337.

Commissioner may grant or deny the refund claim resulted in the finding that the Petition for Review was prematurely filed.

With all due respect to my esteemed colleagues, I must dissent on the Decision made by the Court *En Banc*.

It is my opinion that the declaration of the two (2)-year prescriptive period under Section 112 of the 1997 NIRC must be in accordance with Section 229 of the same Code. Thus, the judicial recourse to this Court allowed by Section 112(C) of the 1997 NIRC is merely directory and permissive, and not mandatory nor jurisdictional, for so long as it is made within the settled two (2)-year prescriptive period.[2]

A taxpayer-claimant *may* file an appeal within thirty (30) days, either from the lapse of the one hundred twenty (120)-day period within which the CIR shall decide on the claim, or after the receipt of the decision denying the same, so long as it is within the two (2)-year prescriptive period.

Section 112 (C) of the 1997 NIRC states that:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may,

[2] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB No. 416, February 4, 2009.

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.

The cited provision will show that it contains the word "may," thus indicating that it is merely permissive and operates to confer discretion.[3] It gives the taxpayer-claimant an option to pursue the claim with this Court, provided that the claim is filed within the prescriptive period.

The same issue had been thoroughly addressed in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[4] to wit:

> **It bears stressing that the use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Section 229 of the NIRC.** It is a well-settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.
>
> Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year prescriptive period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated in this wise:
>
>> "It appears therefore, **that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case**. This is so because of the positive mandate of Section 230 of the Tax

[3] Bersabal *v.* Salvador, G.R. No. L-35910, July 21, 1978, 84 SCRA 176, *citing Dizon v. Encarnacion, G.R. No. L-18615, December 24, 1963, 9 SCRA 714.*
[4] CTA EB No. 408 (CTA Case No. 6647), March 25, 2009.

> Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
>
> Incidentally, **the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal.** The law fixed the same period — two years — for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court. Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Boldfacing supplied*)

Based on the records of the case, petitioner filed its Quarterly Value-Added Tax ("VAT") Returns for the taxable year 2001 on the following dates: April 26, 2001; July 25, 2001; October 25, 2001 and January 25, 2002. The administrative claim for refund was filed with the Commissioner of Internal Revenue ("CIR") on April 15, 2003, while the Petition for Review was filed on April 23, 2003.

As this claim has been filed prior to the promulgation of the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern*

Energy Quezon, Inc.),[5] on September 12, 2008, it has been my consistent stand that claims for refund or tax credit of VAT on zero-rated or effectively zero-rated sales transactions should follow the doctrine set in the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* (*"Atlas case"*),[6] wherein the 2-year prescriptive period is reckoned not from the close of the pertinent quarter, but from the date of filing of the VAT return.

While judicial decisions become part of the law of the land, however, the Court should keep in mind the principle behind Article 4 of the New Civil Code which states that "laws shall have no retroactive effect unless the contrary is provided;" the same provision expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward.[7]

This principle was applied in the case of *Rolando Santos v. Sandiganbayan and the People of the Philippines*,[8] citing *Co v. Court of Appeals*,[9] wherein the Supreme Court ruled that:

> In accordance with Article 8 of the Civil Code providing that "(j)udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines," and Article 4 of the same Code stating that "(l)aws shall have no retroactive effect, unless the contrary is provided," the principle of prospectivity of statutes, original or amendatory, shall apply to judicial decisions, which, although in themselves are not laws, are nevertheless evidences of what the law means.

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[5] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[6] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[7] Spouses Gauvain and Bernardita Benzonan v. Court of Appeals, G.R. No. 97973, January 27, 1992, 205 SCRA 515, *citing Francisco v. Certeza, No. L-16849, November 29, 1961, 3 SCRA 565.*
[8] G.R. Nos. 71523-25. December 8, 2000, 347 SCRA 386, 420.
[9] G.R. No. 100776. October 28, 1993, 277 SCRA 444, 448-449 [1993].

Again in the case of *Columbia Pictures, Inc., et al. v. Court of Appeals, et al.,*[10] the Supreme Court ruled that:

> The reasoning behind *Senarillos vs. Hermosisima* that judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect, is all too familiar. 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.
>
> It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, **subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.** *(Boldfacing supplied)*

In the case of *JIDECO Manufacturing Philippines, Inc. v. CIR,*[11] the Court *En Banc* affirmed the matter as follows:

> As we have already elucidated in our Resolution dated July 20, 1998 in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296,* the two-year prescriptive period for the filing of claims for VAT refund should be reckoned from the date of filing of the corresponding quarterly VAT returns in order to harmonize the provisions of Section 112(B) of the NIRC of 1997 with Sections 114(A) and 229 of the same Code.
>
> xxx xxx xxx
>
> In the cases of *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Appeals, G.R. No. 83736, dated January 15, 1992 and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957,*

[10] G.R. No. 110318, August 28, 1996, 261 SCRA 144.
[11] CTA Case No. 6552, September 16, 2004.

> the Supreme Court held that the two (2)-year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of the tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these matters can only be determined if a return is filed. It is logical therefore, that the two-year period should not immediately be counted from the close of the quarter but from the prescribed date of filing of the VAT return.[12]

Thus in the present case, it is clear that the administrative claim for all four quarters, as well as the judicial claim via the Petition for Review, was filed within the two (2)-year period.

In sum, there is no need to wait for the denial of the claim by the CIR or even his inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court,[13] for claims for refund or tax credit, both in the administrative and judicial fora must be filed within the 2-year period.[14] Beyond that period, the taxpayer can no longer appeal to this Court.[15]

Accordingly, I vote that the Petition for Review filed by Kepco Ilijan Corporation in CTA EB No. 611 be **GRANTED**, subject to the verification of its input VAT for the taxable year 2001.

LOVELL R. BAUTISTA
Associate Justice

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[12] CTA EB No. 53, June 7, 2005.
[13] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.
[14] Commissioner of Internal Revenue *v.* Victorias Milling Co., Inc., No. L-24108, January 3, 1968, 22 SCRA 12.
[15] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.