REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	C.T.A. EB No. 682 (C.T.A. CASE NO. 7263)
- versus -	Members: ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
HYDRO-ELECTRIC DEVELOPMENT CORPORATION, Respondent.	Promulgated: MAR 3 0 2012 2:05 p.m.

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DECISION

Fabon-Victorino, J.:

This is an appeal filed by petitioner Commissioner of Internal Revenue (CIR) on October 14, 2010, assailing the (1) Amended Decision dated March 12, 2010, which modified the Decision of August 20, 2008 by granting, albeit partially, respondent's claim for refund; and the (2) Resolution dated August 25, 2010, which denied petitioner's Motion for Reconsideration, both rendered by the Special First Division of the Court.

This appeal stemmed from the Petition for Review filed by respondent before the Court in Division praying for refund or issuance of a tax credit certificate (TCC) in the amount of P2,209,934.38, representing unutilized input value-added tax (VAT) attributable to its zero-rated sales of electricity to the National Power Corporation (NPC), pursuant to EPIRA.

The facts, insofar as pertinent to the present action, are as follows, viz.:

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), empowered to act and approve claims for refund or issuance of tax credit certificate as provided by law, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent Hydro-Electric Development Corporation, on the other hand, is a duly organized and existing domestic corporation with principal office address at 214 Obulan, Ambuklao Road, Beckel, La Trinidad, Benguet. It is registered with the BIR under Revenue District No. 9 – Cordillera Administrative Region with Tax Identification No. 000-309-914 and as a VAT payer has been issued a Certificate of Registration dated April 10, 2003. It has an approved application for VAT zero-rating valid from June 11, 2003 to December 31, 2003.

Respondent filed its Quarterly Vat Returns for the first to the fourth quarters of taxable year 2003 on April 15, 2003, July 18, 2003, October 20, 2003, and January 20, 2004, respectively.

On March 31, 2005, respondent filed an administrative claim for refund or issuance of TCC of its unutilized input VAT for the period January to November 2003 in the amount of P946,409.45. This was followed by a similar claim on April 11, 2005 but for the month of December 2003 in the amount of P1,263,524.93.

On June 1, 2005, respondent filed a Petition for Review with the Court in Division hinged on the inability of petitioner to act on the claim.

In its Answer to the Petition, petitioner raised the following special and/or affirmative defenses, to wit:

6. (Respondent) claim for refund is subject to administrative investigation/examination by the (petitioner);

7. To support its claim, it is imperative for (respondent) to prove the following, viz:

a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1(a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving the claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in law. Hence, petitioner's (herein respondent) failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P2,209,934.38 allegedly paid by the (respondent) on its purchases of goods and services for the taxable year 2003 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That (respondent) administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was (sic) filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and Section 229 of the Tax Code, as amended;

f. That (respondent) domestic purchases of goods and services were made in the course of its trade and business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credit)

8. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish the right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation

are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I.} v. Llanes, 49 Phil 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil 670);

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

On October 26, 2005, the parties filed their Joint Stipulation of Facts and Issues, which the Court in Division approved in its Resolution dated November 07, 2005.

Trial ensued during which respondent presented evidence to substantiate its petition. Petitioner however failed to present any and was deemed to have waived her right to present evidence due to her counsel's continued absence during the hearings set for the presentation of her evidence, per the Resolution dated August 23, 2007.

On August 20, 2008, the Court in Division rendered a Decision denying the Petition for insufficiency of evidence. While convinced that respondent ably substantiated the amount of P858,516.49 by VAT invoices and receipts, the Court in Division nonetheless denied respondent's Petition for Review for the latter's failure to prove that the said amount was not carried over and applied to its output VAT liability for the succeeding quarters/years. The Court in Division considered the Amended Monthly Vat Return for the month of January 2004 insufficient and ruled the need to present respondent's VAT Returns for the four (4) taxable quarters of 2004 to merit the refund albeit in the reduced amount.

Unconvinced, respondent seasonably filed a Motion for Reconsideration insisting that its Amended Monthly Vat Return for the month of January 2004 filed on March 21, 2005 is sufficient as it amply shows that no input tax was carried over from the previous quarter. In any event, and if only to meet the requirement of the Court in Division, respondent annexed to its pleading certified true copies of the following VAT Returns for taxable year 2004 marked as Annexes "A" to "L", to wit:

Month	Date Filed
January 2004	March 31, 2005
February 2004	April 6, 2005
March 2004	April 6, 2005

April 2004	April 6, 2005
May 2004	April 6, 2005
June 2004	April 6, 2005
July 2004	April 6, 2005
August 2004	April 6, 2005
September 2004	April 6, 2005
October 2004	April 6, 2005
November 2004	April 6, 2005
December 2004	April 6, 2005

On October 14, 2008, petitioner filed her Comment/Opposition to Motion for Reconsideration to which respondent filed a Reply on October 27, 2008.

In a Resolution dated May 28, 2009, the Court in Division partially granted respondent's Motion for Reconsideration by allowing it to present in open court the additional documents appended to its pleading, thus:

> "WHEREFORE, petitioner's (herein respondent) *Motion for Reconsideration* is hereby PARTIALLY GRANTED. Accordingly, let this case be set for hearing for the presentation of Annexes "A" to "L" on June

> 04, 2009, at 9:00 A.M. Meanwhile, the resolution of petitioner's *Motion for Reconsideration* with regard to the first assigned error is held in abeyance pending submission and formal offer of the said annexes. Thereafter, the *Motion* is deemed submitted for resolution.
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> SO ORDERED."

After the presentation of its VAT Returns from January to December 2004, respondent filed its Additional Formal Offer of Evidence on July 21, 2009, to which petitioner filed a Comment on July 27, 2007, interposing no objection to the admission of the additional exhibits.

On March 12, 2010, the Court in Division promulgated the assailed Amended Decision granting respondent's claim for refund but only in the amount of P858,516.49. The pertinent portion of the assailed Amended Decision is hereby reproduced for easy reference:

> "WHEREFORE, premises considered, petitioner's (herein respondent) *Motion for Reconsideration* is hereby PARTIALLY GRANTED and this Court's Decision dated August 20, 2008 is hereby MODIFIED. Accordingly, respondent (herein petitioner) is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in the amount of EIGHT HUNDRED FIFTY-EIGHT THOUSAND FIVE HUNDRED SIXTEEN PESOS AND 49/100

> (P858,516.49) in favour of petitioner, representing petitioner's unutilized input VAT attributable to effectively zero-rated sales of electricity to the National Power Corporation for the second, third, and fourth quarters of 2003.
>
> SO ORDERED."

On April 6, 2010, petitioner filed a Motion for Reconsideration (Re: Amended Decision promulgated 12 March 2010), which the Court in Division denied in its Resolution dated August 25, 2010, which reads as follows:

> "WHEREFORE, there having no new matters or issues advanced by the respondent (herein petitioner) in her Motion for Reconsideration which may compel this Court to reverse, modify or amend the March 12, 2010 Amended Decision of the CTA Special First Division, the instant Motion is hereby DENIED for lack of merit.
>
> SO ORDERED."

Petitioner now seeks relief before the Court *En Banc* through the instant Petition for Review filed on October 14, 2010, with the lone assigned error, to wit:

> THE SPECIAL FIRST DIVISION OF THE HONORABLE COURT ERRED WHEN IT RULED THAT RESPONDENT IS ENTITLED TO A REFUND DESPITE NON-COMPLIANCE WITH THE RULES UNDER REVENUE REGULATIONS

NO. 7-95, IN RELATION TO SECTIONS 113 AND 237 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 (NIRC OF 1997).

In her pleading, petitioner commences her argument with the tenet that the construction given to a statute by an administrative agency charged with the interpretation and application of the statute, such as the BIR, is entitled to great respect, referring to Revenue Regulations No. 7-95, in relation to Sections 113 and 237 of the NIRC of 1997. She claims that **certain invoices** forming part of respondent's zero-rated sales failed to comply with the requirements under Revenue Regulations No. 7-95, in relation to Section 113 and 237 of the NIRC of 1997, hence should have been disallowed by the Court in Division.

Respondent also failed to present concrete evidence to prove entitlement to the refund prayed for justifying the denial of the petition. This is fatal given that claims for tax refund are strictly construed against the taxpayer. Thus, the Court in Division erred when it reversed its original finding that respondent failed to present evidence to prove that the substantiated input tax of P858,516.45 was not applied against any output VAT liability in the succeeding quarters.

Likewise flawed is the ruling allowing the presentation of additional documents by respondent after it rested to prove that the substantiated input tax of P858,516.45 was not carried over or applied against any output VAT liability in the succeeding quarters/years. This is procedurally infirm since the additional documents are deemed forgotten and not newly discovered evidence which can be presented in a new trial.

To demolish petitioner's contention, respondent counters that petitioner's allegations are vague and general especially that pertaining to certain invoices allegedly adduced not in accord with the provisions of Revenue Regulations (RR) No. 7-95. Petitioner did not identify the invoices that should have been disallowed for alleged failure to comply with RR No. 7-95 as well as the specific provision of the law that was or were actually violated. This is significant given that petitioner never disputed the finding in the original Decision of August 20, 2008, that the refundable amount of P858,516.49 was duly substantiated by VAT invoices and receipts. According to respondent, the alleged flaws in the Amended Decision of March 12, 2010 are not unsubstantiated and invoke merely for purposes delay.

Just as sweeping as it is general is petitioner's claim that respondent failed to present concrete proof of its actual effectively zero-rated sales without specifying the missing link to bridge the gap.

Finally, the jurisprudence cited by petitioner for the exclusion of Exhibits "XX" to "III," on motion for reconsideration being forgotten evidence, pertain to a motion for new trial, thus, inapplicable to its motion for reconsideration. Further, the presentation of Exhibits "XX" to "III," in support of its Motion for Reconsideration, was only in compliance with Resolution of the Court in Division dated May 28, 2009. More importantly, petitioner did not seasonably interpose any objection to the introduction of these Exhibits. Neither has objection been made to their admissibility when they were formally offered by respondent. As such, petitioner is deemed to have waived any procedural defect, if there was any, in the presentation of Exhibits "XX" to "III."

Moreover, the Monthly VAT Returns for January to December 2004 were merely corroborative and their presentation were merely aimed to bolster the claim that the adjudged duly substantiated amount of P858,516.49 has not been applied to the succeeding quarters/years against any output VAT.

Lastly, the Court is not bound strictly by the rules of procedure and the presentation and admission of Exhibits "XX" to "III" is more in accord with substantial justice as these documents, combined with respondent's other exhibits, clearly proved that respondent is entitled to a refund.

Indeed, the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded with weight and credence by the court, unless it is in sharp conflict with the statute it seeks to interpret. In other words, the rules and regulations must be promulgated to implement the law and not to override it. However, it does not appear from the way the petition is framed that the Court *En Banc* is burdened with such an issue. There is no showing that Revenue Regulations No. 7-95, in relation to Sections 113 and

237 of the NIRC of 1997 was erroneously construed or applied by the Court in Division in its appreciation of the myriad of invoices and receipts presented and formally offered in evidence, hence the need to rectify such flawed interpretation.

Something is nonetheless crystal clear. The Petition was haphazardly prepared manifested in the way it was crafted. The allegations are vague as they are general assailing the Amended Decision which partly granted the Petition for Review filed by respondent.

The High Court ruled in one of its decisions that litigants need to specify the error alleged to have been committed by a lower court, thus:

> "It has been held that a general assignment of errors is unacceptable under the rules. Thus, a statement of the following tenor: that "the Court of First Instance of this City incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence," was deemed insufficient. The appellant has to specify in what aspect of the law or the facts that the trial court erred."[1]

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[1] De Liano vs. Court of Appeals, G.R. No. 142316, November 22, 2001.

Applying the foregoing jurisprudential precept, petitioner's contention that "**certain invoices**" which formed part of respondent's zero-rated sales should be disallowed as they failed to comply with Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the NIRC of 1997, is simply vague as it is general. Such statement is objectionable even in open court as it does not make a particular reference to any supposed defective invoices or receipts. Note that the case involves voluminous invoices and receipts. The failure of petitioner to identify with specificity the flawed invoices and receipts introduced by respondent during the trial and formally offered spells demise to its appeal. The infirmity prevents respondent from squarely confronting the issue and bars the Court *En Banc* from rendering an enlightened decision.

Be that as it may, it appears that there is a need to settle once and for all the issue of whether respondent was able to satisfy the following requirements under Section 112 of the NIRC, justifying the grant of refund, albeit partially, namely:

1. the taxpayer must be VAT-registered;
2. the taxpayer must be engaged in sales which are zero-rate or effectively zero-rated;

3. the claim must be filed within two years after the close of the taxable quarter when such sales were made; and
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.[2]

In the parties' Joint Stipulation of Facts and Issues filed on October 26, 2005, petitioner admitted that respondent is a VAT-registered tax payer engaged in zero-rated or effectively zero-rates sales of electric power with approved Application/Certificate for Zero Rate (pursuant to VAT Ruling No. 18-03 dated January 29, 2003) from the period June 11, to December 31, 2003.

As to the timeliness of the filing of the administrative claims for refund, Section 112 of the NIRC, as amended, is instructive. It reads as follows:

> 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**

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[2] Silicon Philippines, Inc. v. CIR, G.R. No. 172378, January 17, 2011.

> **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 x x x
>
> (B) 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, **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.**

In the instant petition, it was admitted that respondent filed its **administrative claim** for refund of its unutilized input VAT for the period January to November 2003 in the total amount of P946,409.45 on **March 31, 2005**, and again on **April 11, 2005**, for the month of December 2003 in the amount of P1,263,524.95. Hinged on the foregoing provision, respondent filed its administrative claim for refund of unutilized input VAT for the first up to the fourth quarters of taxable year 2003 within the prescriptive period of two years.

But this is not true insofar as respondent's judicial claim is concerned. Pursuant to Section 112 (C), petitioner had 120 days or until **July 29, 2005** to act on respondent's application for refund filed on March 31, 2005 and until **August 9, 2005** for the other, filed on April 11, 2005. In other words, respondent prematurely sought judicial intervention in violation of the 120-day period mandated by Section 112 (C) when it filed its Petition for Review before the Court in Division on **June 1, 2005,** barring the Court in Division from acquiring competence to hear and determine the Petition.

Very enlightening on the matter is the pronouncement of the High Court in the case of Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., thus:

> Section 112 (D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30

days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

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

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

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 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.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a

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

The Supreme Court interpretation of Section 112 of the NIRC, as amended, in the Aichi Case should retroact to the date it took effect on January 1, 1998. This is consistent with the ruling that interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect (Roco v. Executive Secretary, G.R. No. 113174, August 19, 1994; Tanada v. Guingona, G.R. No. 113766 and 11388, August 19, 1994).

It may even be stated that even without the ruling in the Aichi Case, a direct and honest application of the relevant provision will yield the same result. Section 112(A) and (C) clearly provides that an administrative claim for refund of unutilized input VAT must be filed within two (2) years from the close of the taxable quarters when the relevant sales were made while the judicial claim must be instituted within thirty (30) days from the receipt of the CIR's adverse decision or after the expiration of the 120-day period.

Significantly, petitioner, in her Answer to respondent's petition invoked the prescriptive period *vis-à-vis* the actions taken by respondent in relation to its claim for refund. The same certainly cannot be given a cold shoulder. Section 112(A) and (C) are very clear and categorical anent the periods for the filing of administrative and judicial claims for refund.

On the allegation that the Court erred in allowing respondent to introduce additional documents appended to the Motion for Reconsideration which according to petitioner are deemed "forgotten evidence", hence inadmissible, suffice it to say that with the foregoing disquisition, this issue is no longer relevant. In any event, petitioner obviously failed to recall that she did not interpose any objection to the presentation of the additional documents marked as Exhibits "XX" to "III", much less registered objection to their admission by the Court in Division. In fact, petitioner categorically stated in its Comment to respondent's Additional Formal Offer of Evidence that she was not interposing any objection to the admission of the said documents. The objection to their admission at this point is certainly Johnny come lately. Besides, under the circumstances, technicalities in the presentation of evidence may take a back seat in the higher interest of justice. Section 8 of R.A. No. 1125 creating the CTA expressly provides that it shall not be governed strictly by technical rules of evidence,[3] and that technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact.[4] Noteworthy is the fact, that respondent attached to its Motion for Reconsideration certified true copies of its Monthly Vat Returns for the period January to December 2004, which according to the Court in Division would save the day for respondent. Further, petitioner never disputed that the amount of P858,516.49 which the Court in Division ruled to have been sufficiently substantiated.

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[3] Philippine Phosphate Fertilizer vs. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005.
[4] Filinvest Development Corporation vs. CIR, G.R. No. 146941, August 9, 2007.

The pertinent portion of the Amended Decision is hereby reproduced for ready reference:

> "In the assailed *Decision*, this Court found that only the amount of P858,516.49 was duly substantiated by VAT invoices or receipts and timely filed within the two-year prescriptive period, out of petitioner's (herein respondent) total claim in the amount of P2,209,934.38, representing unutilized input VAT on its domestic purchases of goods and services, which are attributable to its VAT zero-rated sales of power generation services to the national Power Corporation (NPC) for the period covering January 2003 to December 2003.
>
> The Court, however, still denied the substantiated input VAT claim of P858,516.49, on the ground that the amended Monthly VAT Declaration for January 2004 submitted by petitioner (herein respondent) was insufficient to prove that the input VAT claim of P858,516.49 was not applied against any output VAT in the succeeding quarters. The pertinent portions of the subject *Decision* are hereunder quoted for easy reference, to wit:
>
>> "Nonetheless, before petitioner (herein respondent) can validly claim for a refund or tax credit, it is imperative to prove that the claimed input taxes were not carried over or applied against any output liability in the succeeding quarters.
>>
>> Petitioner (herein respondent) proffered its Amended Monthly VAT Return for the month of January 2004. The return shows that there was no input tax carried over from the previous quarter. However, the said document was insufficient to prove as to input taxes applied against any output VAT liability for the succeeding quarters.
>>
>> It bears stressing that prior to the filing of the January 2004 amended Monthly VAT Return which was filed on March 21, 2005, petitioner, (herein respondent) as the law requires, should have already filed its

> VAT Returns for the four taxable quarters of 2004. These VAT returns should have been introduced by the petitioner (herein respondent) in order to establish that the claimed input taxes were not actually applied in the said periods.
>
> Thus, for failure of the petitioner (herein respondent) to sufficiently prove that the substantiated input taxes of P858,516.49 was not applied against any output VAT liability in the succeeding quarters, the same cannot be granted."

On July 21, 2009, petitioner (herein respondent) formally offered in evidence its amended Monthly VAT Declarations for the months of February, April, May, July, August, October, and November 2004 and Quarterly VAT Returns for the first, second, third, and fourth quarters of 2004, previously attached to its *Motion*.

A perusal of these documents, together with the previously presented amended Monthly VAT Declaration for January 2004, shows that no amount of "Input Tax Carried Over from Previous Quarter" was reflected in each of the Returns; thus, sufficiently establishing that the substantiated input VAT claim of P858,516.49 for taxable year 2003 was not applied or credited against any output VAT in the succeeding quarters. Accordingly, the Court finds petitioner (herein respondent) entitled to the refund of the amount of P858,516.49, representing the latter's unutilized input VAT attributable to effectively zero-rated sales of electricity to NPC for the second, third, and fourth quarters of 2003."

Granting that respondent was able to establish that the substantiated amount did not belong to the government but must be refunded to it, the Court *En Banc* has no option but to reverse and set aside the assailed Amended Decision dated

March 12, 2010 and on the ground that the judicial claim for refund was prematurely filed.

WHEREFORE, the Petition for Review dated October 07, 2010, filed by the Commissioner of Internal Revenue, is hereby **GRANTED**. The assailed Amended Decision dated March 12, 2010 is hereby reversed and set aside. Accordingly, the Petition for Review filed in CTA Case No. 7263 is hereby **DISMISSED** for having been prematurely filed.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(On Wellness Leave)
ERNESTO D. ACOSTA
Presiding Justice

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

(with Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Wellness Leave)
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 Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

HYDRO-ELECTRIC DEVELOPMENT CORPORATION,
Respondent.

CTA EB CASE NO. 682
(CTA Case No. 7263)

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

Promulgated:

MAR 30 2012 Apolinario 2:05 p.m.

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DISSENTING OPINION

BAUTISTA, J.:

Being one of the members of the Special First Division of the Court, who issued the assailed Amended Decision dated March 12, 2010, and Resolution dated August 25, 2010, which partially granted the claim for refund or issuance of tax credit certificate of unutilized input tax attributable to effectively zero-rated sales to the National Power Corporation for the second, third and fourth quarters of the taxable year 2003, now before this Court sitting *En Banc*, I maintain that the factual circumstances present in the case at bench supports the application of the then prevailing jurisprudence at the time the claim was made.

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

And in not a few instances did this Court rule that the date of filing of the relevant return is the determinative factor. Albeit I agree that the rulings of the Supreme Court in the cases of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.],*[2] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*[3] are more in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code, as amended, it would be the height of injustice to impose a new ruling wherein after a taxpayer-claimant had faithfully relied and complied therein, this Court will only nullify the same on the basis of the so-called "adherence to precedence."

It is true that this Court has the duty to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[4]

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[1] Magtoto *v.* Manguera, *et al.,* G.R. Nos. L-37201-02, L-37424, and L-38929, March 3, 1975, 63 SCRA 4, Concurring Opinion penned by Justice Felix Q. Antonio, with Justices Antonio P. Barredo and Cecilia Muñoz-Palma, concurring.
[2] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] G.R. No. 184823, October 6, 2010.
[4] Commission on Higher Education *v.* Atty. Felina S. Dasig, G.R. No. 172776, December 17, 2008, 574 SCRA 227, *citing Albert v. Court of First Instance of Manila, No. L-26364, May 29, 1968, 23 SCRA 948, 961.*

Nonetheless, this Court should not decide a case by merely adhering to precedence; idolatrous reverence for precedent, simply as precedent, no longer holds true.[5]

Therefore, this Court cannot merely impose a ruling that was yet to be enunciated at the time a claim was lodged in Our forum. As the Supreme Court aptly ruled, "the final authority of this Court rests upon public respect for its decisions; that public respect is based upon an image which represents this Court as declaring legal principles with an authority and certainty that the people may place upon it their *bona fide* reliance and reasonable expectations."[6]

With this, prior determinations deemed to have finality and acted upon accordingly, demands examination. The effect of a subsequent ruling as to invalidity may have to be considered in various aspects. It may have consequences which cannot just be ignored.[7]

Even the taxpayer-claimant itself could not have foreseen that after it had filed its claims before the administrative and judicial *fora*, a subsequent ruling, either modifying or overruling a previous one, would be issued that would put to naught its claims.

Therefore, I quote with approval the following disquisitions:

> In not a few cases did this Court held, that the two-year prescriptive period for the filing of a claim for VAT refund or tax credit should not be counted from the close of the quarter, but **from the date of filing of the VAT Return for it is only during that date, that the VAT**

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[5] Philippine Trust Company and Smith, Bell and Co. *v.* Mitchell, 59 Phil. 30, 36.
[6] *Supra,* note 1.
[7] Albino S. Co *v.* Court of Appeals, *et al.*, G.R. No. 100776, October 28, 1993, 277 SCRA 444, *citing Chicot County Drainage District v. Baxter States Bank, 308 US 371, 374 [1940].*

liability or refundability can be determined. The Supreme Court affirmed in this wise:

> "It is true that unlike corporate income tax, which is reported and paid on installment every quarter but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT the taxpayer may apply against its output VAT; how much output VAT it is due to pay for the quarter or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/credit. . . .
>
> . . ., it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter."

Further, in the computation of the two-year period, a year is equivalent to 365 days regardless of whether it is a regular year or a leap year. A calendar month is "a month designated in the calendar without regard to the number of days it may contain."

However, as borne by the records, petitioner's claim for tax refund or issuance of tax credit certificate does not fall entirely within the two-year prescriptive period.

For the first quarter, petitioner merely proffered its Amended Quarterly VAT Return. Without the introduction of the VAT Return originally filed for the first quarter, this Court cannot ascertain whether petitioner's claim for the said quarter in the amount of ₱67,481.01 was timely filed.

Hence, the claim for the first quarter of taxable 2003 should be disallowed.

> As to claims for the 2nd, 3rd and 4th quarters, petitioner tendered its amended VAT Returns all filed on March 31, 2005. Unlike the claim for the first quarter, the submission of the original VAT Returns are no longer necessary. Even granting that petitioner's second quarterly VAT return was filed before the last day prescribed by law, which is July 25, 2003, still the same falls within the two-year prescriptive period, or until July 25, 2005, within which to file its claim.
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> Since the administrative claim and the Petition for Review were filed on March 31, 2005 and June 1, 2005, respectively, the claims for the 2nd, 3rd and 4th quarters in the respective amounts of ₱335,611.02, ₱199,981.70 and ₱1,606,860.65 are well within the two-year prescriptive period.[8] (*Citations omitted and boldfacing supplied.*)

With the foregoing, when respondent filed its administrative claims for the period covering January to November of the taxable year 2003, on March 31, 2005, and for the period covering the month of December of the same taxable year, on April 11, 2005; and the subsequent judicial claim on June 1, 2005, the then prevailing doctrine, is that the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return,[9] and not from the close of the quarter.[10]

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

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

LOVELL R. BAUTISTA
Associate Justice

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[8] Hydro-Electric Development Corporation *v.* Commissioner of Internal Revenue, CTA Case No. 7263, August 20, 2008.
[9] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[10] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.