Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	EB Case No. 448 (CTA Case No. 7507)
- versus -	Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
MINDANAO II GEOTHERMAL PARTNERSHIP, Respondent.	Promulgated: **NOV 1 1 2009** 4:10 p.m.

x- -x

DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review[1], filed by petitioner-Commissioner of Internal Revenue from the Decision[2] (the "Assailed Decision") of the Court of Tax Appeals, *Second Division* (CTA Second Division) dated August 12, 2008 in CTA Case No. 7507 entitled "*Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*" ordering the petitioner to refund or to issue tax credit certificate in favor of the respondent in the reduced amount of P6,791,845.24, representing unutilized input VAT incurred for the second, third and fourth quarters of taxable year 2004 and, from the Resolution[3] (the "Assailed

---

[1] CTA En Banc Rollo, pp 1-25
[2] Ibid, pp. 26-40
[3] Ibid, pp. 41-43

Resolution") dated December 3, 2008 denying petitioner's Motion for Partial Reconsideration[4].

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

Mindanao II Geothermal Partnership (petitioner)[5] is a partnership duly registered with the Securities and Exchange Commission, with principal address at Barangay Ilomavis, Kidapawan City, North Cotabato. It is value-added tax (VAT)-registered taxpayer, with Tax Identification No. (TIN) 004-766-953. Petitioner is engaged in the production and sale of electricity as a generation company and sells electricity solely to the National Power Corporation, for and in behalf of the Philippine National Oil Corporation-Energy Development Corporation (PNOC-EDC) under a Build-Operate-Transfer (BOT) Contract.[6]

Respondent[7] is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. She holds office at 4th Floor, BIR National Office Building, Agham Road, Quezon City.

Petitioner entered into a Build-Operate-Transfer contract with the PNOC-EDC for the finance, construction, design, testing, operation, maintenance and repair of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC supplies and delivers steam to petitioner at no cost. In turn, petitioner converts the steam into electric capacity and energy and delivers it to the

---

[4] Division Docket, pp. 616-623
[5] Respondent herein
[6] Exhibits "C-3" and "L"
[7] Petitioner herein

National Power Corporation for and in behalf of PNOC-EDC[8]. Further, its 48.25 megawatt geothermal power plant project has been accredited by the Department of Energy as a Block Power Production Facility under the Implementing Rules and Regulations of Executive Order No. 215, as amended[9]. Petitioner generated sales from its generated power and delivery of electric capacity and energy to NPC for and in behalf of PNOC-EDC.

On June 26, 2001, Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA Law) took effect providing, among others, that the sales of generated power by generation companies shall be VAT-zero rated[10] which previously were subject to ten percent (10%) VAT.

Petitioner alleges that, as an accredited power generation company by the DOE, its sale of generated power and delivery of electric capacity and energy to NPC for and in behalf of PNOC-EDC, its only source of vatable revenue, is within the ambit of Republic Act No. 9136, hence, VAT zero-rated.

On the belief that its sales qualify for VAT zero-rating, petitioner adopted the VAT zero-rating of the EPIRA in computing its VAT payable when it filed its Quarterly VAT Returns as follows:[11]

Date	Quarter	Taxable years
July 26, 2004 & July 12, 2005	2nd	2004
October 22, 2004 & July 12, 2005	3rd	2004
January 25, 2005 & July 12, 2005	4th	2004
April 20, 2005	1st	2005

Petitioner filed its application for refund or issuance of tax

[8] Exhibit "L"
[9] Exhibit "C-1", "C-2" and "C-3"
[10] Petition for Review, par. 2, Division Docket, p. 54
[11] Joint Stipulation of Facts and Issues

credit certificate on October 6, 2006 for the taxable year 2004 with the BIR's Revenue District Office at Kidapawan City.[12]

On July 21, 2006, in order to comply with the prescriptive period required under Section 112(A) of the National Internal Revenue Code, petitioner filed its Petition for Review.

In her Answer filed on September 21, 2006, respondent[13] interposed the following Special and Affirmative Defenses:[14]

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.
>
> 5. The amount of P7,167,005.84 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of goods and services attributable to zero-rated sales for the 2nd, 3rd and 4th quarters of 2004 is not properly documented.
>
> 6. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit.
>
> 7. Petitioner must show that it has complied with the provisions of Section 112 and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit.
>
> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue*

---

[12] Supra, note 9, par. 2, En Banc Rollo, p. 12
[13] Petitioner herein
[14] Answer, Division Docket, p. 44

> *vs. Ledesma, 31 SCRA 95*) and as such they are looked."

After trial on the merits the case was considered submitted for decision on February 11, 2008.[15]

On August 12, 2008, the CTA Second Division promulgated a Decision[16] the dispositive portion of which reads as follows:

> "**WHEREFORE**, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND or to ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SIX MILLION SEVEN HUNDRED NINETY ONE THOUSAND EIGHT HUNDRED FORTY FIVE 24/100 PESOS** (P6,791,845.24), representing unutilized input VAT incurred for the second, third, and fourth quarters of taxable year 2004.
>
> **SO ORDERED**.

Not satisfied with the above decision, petitioner filed a Motion for Partial Reconsideration on September 1, 2008.

In a Resolution[17] dated December 3, 2008, the *CTA Second Division* denied petitioner's Motion for Partial Reconsideration.

On December 23, 2008, petitioner filed the instant Petition for Review[18] with the *CTA En Banc* praying that "the Decision promulgated August 12, 2008, and the Resolution promulgated December 3, 2008, in this case, be reversed and set aside and another one be rendered wholly denying respondent's claim for tax refund or issuance of tax credit certificate in the amount of P7,167,005.84

---

[15] Division Docket, p 599
[16] Ibid, pp. 601-614
[17] Ibid, pp. 627-629
[18] CTA En Banc Rollo, pp. 1-5

representing unutilized creditable input taxes for the second, third and fourth quarters of taxable year 2004."[19]

On February 17, 2009, respondent filed its Comment (To Petitioner's Petition for Review).[20]

On February 24, 2009, the case was submitted for decision.[21]

In support of the instant Petition for Review, petitioner presented the following grounds, to wit:

> "1. The claim for refund or tax credit was filed out of time. Therefore, prescription has set in.
>
> 2. The Honorable Court has no jurisdiction to hear and decide the claim for refund or tax credit."

After a careful and thorough evaluation and consideration of the records of the case, the *CTA En Banc* finds no merit in the Petition.

The records of the case indubitably show that the CTA Second Division had already fully and exhaustively resolved the issue in relation to the arguments/grounds raised in the Petition.

In support of the first ground, petitioner cites the ruling of the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[22] which held that:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC xxx was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
> > (A) Zero-rated or Effectively Zero-rated Sales – Any VAT registered person, whose sales are

---

[19] Petition for Review, last par.; CTA En Banc Rollo, p. 22
[20] CTA En Banc Rollo, pp. 55-60
[21] Ibid, p. 64
[22] G.R. No. 172129 September 12, 2008

> 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: x x x."
>
> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not."

Respondent, on the other hand, counters, in its Comment (to Petitioner's Petition for Review), thus:

> "5. it appears that the above-quoted decision is contrary to the doctrine laid down by the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. CIR*, G.R. Nos. 141104 and 148763, June 8, 2007 wherein it categorically held that the two (2) year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales should be counted from the date of filing of the return and payment of the tax due.
>
> While the case of Mirant Pagbilao was decided only recently, respondent respectfully submits that it has not superseded and cannot supersede the doctrine laid down in the Atlas Consolidated case in that it is expressly provided under Section 4, paragraph 3, Article VIII of the 1987 Constitution that "no doctrine or principle by law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the Supreme Court sitting en banc."[23]

We find respondent's argument/contention to be meritorious.

While it is true that in the recent case of *Mirant Pagbilao Corporation vs. CIR* the Supreme Court had ruled that the claim for refund of unutilized input VAT payments must be filed within two (2) years from the close of the taxable quarter when the relevant sales were made, said ruling, however, should be

---

[23] Comment (To Petitioner's Petition for Review) last par., En Banc Rollo, pp. 56 & 57

applied prospectively pursuant to and consistent with the numerous rulings[24] of the Supreme Court.

In *Columbia Pictures, Inc. vs. Court of Appeals*[25], the Supreme Court, elucidating on the prospective application of judicial decisions, ruled thus:

> "Article 4 of the Civil Code provides that "(l)aws shall have no retroactive effect, unless the contrary is provided. Correlatively, Article 8 of the same Code declares that (j)udicial decisions applying the laws or the Constitution shall form part of the legal system of the Philippines."
>
> Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law. While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines. Judicial decisions of the Supreme Court assume the same authority as the statute itself.
>
> Interpreting the aforequoted correlated provisions of the Civil Code and in light of the above disquisition, this Court emphatically declared in *Co vs. Court of Appeals*, et al. that the principle of prospectivity applies not only to original or amendatory statutes and administrative rulings and circulars, but also, and properly so, to judicial decisions. Our holding in the earlier case of *People vs. Jabinal* echoes the rationale for this judicial declaration, viz:
>
> Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system.'

---

[24] Co vs. Court of Appeals, G.R. No. 100776, October 28, 1993; Sps. Benzonan vs. Court of Appeals, G.R. No. 97998, January 27, 1992; Columbia Pictures, Inc. vs. Court of Appeals, G.R. No. 110318, August 28, 1996

[25] G.R. No. 110318, August 28, 1996

> The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that the law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim '*legis interpretation legis vim obtinet*' – the interpretation placed upon the written law by a competent court has the force of law. x x x, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine be applied propectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. x x x." (Stress supplied)

x x x x x x x x x

This same doctrine was reiterated and cited in the more recent case of *Ejercito vs. Sandiganbayan* (Special Division)[26] when the Supreme Court stated that:

> "While judicial interpretations of statutes, such as that made in Marquez with respect to R.A. No. 6770 or the Ombudsman Act of 1989, are deemed part of the statute as of the date it was originally passed, the rule is not absolute.
>
> *Columbia Pictures, Inc. vs. Court of Appeals* teaches:
>
> > "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. (Emphasis and italics supplied)
>
> When this Court construed the Ombudsman Act of 1989, in light of the Secrecy of Bank Deposits Law in Marquez, that x x x, it was, in

[26] G.R. NO. 157294-95, November 30, 2006

> fact, reversing an earlier doctrine found in *Banco Filipino Savings and Mortgage Bank vs. Purisima*.
>
> x x x x x x x x x
>
> Marquez, on the other hand, practically reversed this ruling in Banco Filipino despite the fact that the subpoena power of the Ombudsman under RA 6770 was essentially the same as that under P.D. 1630. Thus Section 15 of R.A. 6770 empowers the Office of the Ombudsman x x x x x x x x x.
>
> The Marquez ruling that there must be a pending case in order for the Ombudsman to validly inspect bank records in camera thus reversed a prevailing doctrine. Hence, it may not be retroactively applied." (Underscoring supplied)

Thus, applying the doctrine laid down by the Supreme Court in the aforecited and quoted decisions, the prescriptive period applicable in the instant case is still the period enunciated in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[27] where it was held that the counting of the two-year prescriptive period is reckoned from the filing of the quarterly VAT returns. To apply the recent ruling in the *Mirant Pagbilao Corporation vs. Commissioner of Internal Revenue* case would run counter to the pronouncement of the Supreme Court itself in the aforecited and aforequoted decisions 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.[28]" (Underscoring supplied)

As to the second ground, petitioner posits the view that this Court has no jurisdiction "to hear and decide respondent's petition for review due to its failure to observe the doctrine of exhaustion of administrative remedies."

---

[27] G.R. Nos. 141104 & 148763, June 8, 2007
[28] People vs. Jabinal, L-30061, February 27, 1964

This issue had already been squarely settled by the Court when it aptly stated in the Assailed Resolution, thus:

> "The assailed Decision and the Supreme Court in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue are clear in stating that the reckoning of the two-year prescriptive period for the filing of a claim for refund starts from the filing of the Quarterly VAT Returns. To reiterate, counting from the dates when petitioner filed its Quarterly VAT Returns, both the administrative and judicial claims for the second, third and fourth quarters of 2004 were seasonably filed on October 6, 2006 and July 21, 2006, respectively."[29]

Likewise, we find respondent's argument on this point to be persuasive, and, WE quote:

> "13. To reiterate, both the administrative and judicial claims for tax refund or tax credit of respondent were filed within the prescriptive period, applying the case of Atlas Consolidated Mining and Development Corporation.
>
> 14. Petitioner is likewise of the baseless contention that respondent only had 30 days from February 3, 2006 within which to appeal before this Honorable Court under the provision of Section 112(D) of the National Internal Revenue Code (NIRC) of 1997 which states that -
>
>> **Section 112. Refunds or Tax Credits of Input Tax(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 subsection (A) and (B) hereof.
>>
>> In case of full or partial denial of tax refund or tax credit, or the failure on the part of the Commissioner to

[29] Resolution, last par., En Banc Rollo, p. 42

> 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."
>
> 15. Petitioner alleged that respondent failed to comply with the thirty (30)-day period within which to file its appeal from the Commissioner's denial of the administrative claim.
>
> 16. Under the rules on statutory construction, the word "or" is a disjunctive term signifying dissociation and independence of one thing from another. Applying this rule, a careful scrutiny of the cited provision will show that there are two options available to a taxpayer under Section 112(D). The first one is to file an appeal with the Commissioner within thirty (30) days from denial or partial denial of its administrative claim for tax refund or credit. The second option is to file an appeal with the Court of Tax Appeals after expiration of the 120-day period.
>
> 17. Since respondent opted to choose the second option and filed the judicial claim for refund or tax credit after expiration of the 120-day period and its claim remained unacted upon, observance of the 30-day period is not a requirement. What is imperative is that the judicial claim should be filed after the lapse of the 120-day period within two years from date of filing of the return."

In view of the foregoing discussions, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution dated August 12, 2008 and December 3, 2008, respectively, of the CTA Second Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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