REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DENSO TECHNO PHILIPPINES, INC., Petitioner,	C.T.A. EB No. 875 (C.T.A. CASE NO. 7950)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	JUL 09 2013 9:00 a.m.

x- x

DECISION

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

In this Petition for Review dated March 23, 2012, petitioner Denso Techno Philippines, Inc. assails the Resolution dated August 17, 2011, granting respondent's Motion to Dismiss dated March 14, 2011, [1] and the Resolution dated February 14, 2012, denying its Motion for Reconsideration, both rendered by the Court in Division.

The facts as established during the trial are as follows:

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[1] Division docket pp. 400-405.

Petitioner is a duly organized and existing domestic corporation, with principal business address at the 21st Floor, BPI Buendia Centre, Senator Gil Puyat Avenue, Makati City, Metro Manila.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) with authority, among others, to decide, approve, and grant refunds and/or tax credit of excess and unutilized input VAT payments. She holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner is a registered value added tax (VAT) taxpayer with Tax Identification Number (TIN) 240-430-382-000 under Revenue District Office No. 49.[2] It is a wholly owned subsidiary of Denso Techno Co., Ltd., a Japanese corporation.[3]

Petitioner is engaged primarily in the business of providing software programming services and development[4] to its parent company and lone client, Denso Techno Co., Ltd.

On the following dates, petitioner filed with the BIR its Quarterly VAT Returns covering the indicated periods:

Quarterly VAT Return Filed	Period covered
July 23, 2007	April 1, 2007 to June 30, 2007[5]
October 24, 2007	July 1, 2007 to September 30, 2007[6]
January 14, 2008	October 1, 2007 to December 31, 2007[7]
April 25, 2008	January 1, 2008 to March 31, 2008[8]

For the period covering April 1, 2007 to March 31, 2008, petitioner incurred and paid input VAT in the total amount of

[2] Par. 2, Stipulated Facts, Joint Stipulation Of Facts And Issues (JSFI), Division docket pp. 189-192.
[3] Par. 3, Stipulated Facts, JSFI, Division docket pp. 189-192.
[4] Par. 7, Stipulated Facts, JSFI, Division docket pp. 189-192.
[5] Par. 10, Stipulated Facts, JSFI, Division docket pp. 189-192.
[6] Par. 11, Stipulated Facts, JSFI, Division docket pp. 189-192.
[7] Par. 12, Stipulated Facts, JSFI, Division docket pp. 189-192.
[8] Par. 13, Stipulated Facts, JSFI, Division docket pp. 189-192.

P9,379,311.17 for domestic purchases of goods and services.[9]

On November 28, 2008, petitioner filed with the BIR Revenue District Office No. 49, Makati City, an Application for Tax Credits/Refunds (BIR Form No. 1914) for its excess and unutilized input VAT derived from domestic purchases of goods and services attributable to its zero-rated sales in the amount of P9,379,311.17 for the period covering April 1, 2007 to March 31, 2008.[10] This input VAT had not been subject of any claim for refund or Tax Credit.[11]

Due to respondent's inaction, petitioner elevated its claim for refund to the Court in Division via Petition for Review filed on July 23, 2009.[12]

In her Answer dated August 6, 2009,[13] respondent essentially claimed that it was incumbent upon petitioner to prove the tax was erroneously or illegally collected and that it is entitled to refund.

On October 21, 2009, respondent filed a Motion to Dismiss[14] the petition on jurisdictional ground. According to respondent the Petition for Review was filed with the Court in Division beyond the 30 period to appeal mandated under Section 112 of the National Internal Revenue Code (NIRC), as amended. Moreover, the judicial claim for refund for the 1st quarter of fiscal year 2007 is already barred by prescription since it was filed beyond two years after the close of the taxable quarter when the sales were made pursuant to Section 112 of the NIRC.

In a Resolution dated December 11, 2009,[15] the Court in Division ruled in favor of respondent and held that prescription had set in insofar as the claim for refund for the 2nd quarter of 2007 is concerned as it was filed beyond the 2-year period prescribed under Section 112 of the NIRC, as

[9] Par. 8, Stipulated Facts, JSFI, Division docket pp. 189-192.
[10] Par. 4, Stipulated Facts, JSFI, Division docket pp. 189-192.
[11] Par. 9, Stipulated Facts, JSFI, Division docket pp. 189-192.
[12] Par. 6, Stipulated Facts, JSFI, Division docket pp. 189-192.
[13] Division docket pp. 95-97.
[14] Division docket pp. 124-131.
[15] Division docket pp. 145-148.

amended. However, the rest of the claims were seasonably filed.

Petitioner filed a Motion for Partial Reconsideration[16] of the foregoing Resolution but it was denied by the Court in Division in the Resolution dated March 23, 2010.[17]

The parties filed their Joint Stipulation of Facts and Issued which ushered the issuance of a Pre-Trial Order on July 1, 2010.[18]

After petitioner rested,[19] respondent filed another Motion to Dismiss,[20] this time invoking the doctrine laid down in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi)*.[21] The Supreme Court in the said case declared that in claims for tax refund of excess and unutilized input VAT, the 30 day period to appeal after the lapse of the 120-day period for administrative action as provided under Section 112 of the NIRC is mandatory, contrary to the previous ruling of the Court that the administrative and judicial claims are deemed timely filed as long as both are filed within 2 years from the close of the taxable quarter when the sales were made. Following the cited categorical declaration of the Supreme Court, the judicial claim for refund of petitioner should be dismissed for having been filed beyond the reglementary period of 30 days to appeal.

In the assailed Resolution of August 17, 2011, the Court in Division granted respondent's Motion to Dismiss on ground of lack of jurisdiction on the part of the Court to hear and determine the Petition for Review. It was ruled that petitioner failed to challenge respondent's inaction within 30 days from the lapse of the 120-day period to act on petitioner's administrative claim for refund pursuant to Section 112 of the NIRC and as ruled in the *Aichi* case.

[16] Division docket pp. 153-161.
[17] Division docket pp. 164-166.
[18] Division docket pp. 194-200.
[19] Division docket pp. 239-254.
[20] Division docket pp. 400-405.
[21] G.R. No. 184823, October 6, 2010.

In the similarly assailed Resolution of February 14, 2012, petitioner's Motion for Reconsideration[22] was denied for lack of merit.

Hence, the instant Petition for Review before the Court *En Banc*.

Petitioner contends that its Petition for Review was filed with the Court in Division within the 2-year period prescribed in Section 229 of the NIRC, as amended, hence seasonably filed. Further, the 30-day period to appeal under Section 112 of the NIRC is not mandatory but merely directory and permissive given the use of the word "may" in the provision.

According to petitioner, its stance has been upheld by the Supreme Court particularly in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[23] where it was held that claims for refund are timely filed provided that both the administrative and the judicial claims were filed within the 2-year prescriptive period.

Moreover, the *Aichi* case should be prospectively applied and should not adversely affect the instant case lodged before its promulgation on October 6, 2010. Petitioner points out that it filed its administrative claim for refund on November 28, 2008 and the Petition for Review before the Court in Division on July 23, 2009, or obviously before the promulgation of the *Aichi* case.

While admitting that the judicial interpretation of Section 112 in the *Aichi* case constitutes part of the NIRC as of the date it was originally passed in 1997, petitioner nonetheless contends that it is not absolute by virtue of Article 4 of the New Civil Code which states that laws shall have no retroactive effect. Thus, the interpretation of Section 112 in the *Aichi* case, though deemed part of the law, can only be applied prospectively and certainly not to the instant case. Further, retroactive application of the new doctrine would violate petitioner's constitutional right to due

[22] Division docket pp. 432-451.
[23] G.R. Nos. 141104 & 148763, June 8, 2007.

process, especially in light that it relied on the old doctrine in good faith.

Petitioner likewise puts premium on the Resolution of December 11, 2009 where the Court in Division, acting on respondent's Motion to Dismiss, ruled on the issue of prescription in relation to petitioner's filing of the claim for refund saying that except for the second quarter, the rest of the claims were timely filed. That being the case, respondent may no longer raise it anew neither may the Court rule on it again. But this occurred when respondent filed her second Motion to Dismiss dated March 14, 2011, which was favorably acted upon by the Court in the Resolution dated August 17, 2011. As a reversible error, this should be set aside so that the Court may rule on the merits of the case.

Respondent rejects petitioner's theory. According to her prior to the *Aichi* case, there was no Supreme Court decision interpreting Section 112 of the NIRC of 1997, thus, the doctrine laid down in the *Aichi* did not overturn any existing jurisprudence, thus it should be immediately applied. Moreover, a juridical 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.

Respondent also opines that reliance on the *Atlas* case by petitioner is misplaced given that the pronouncement in the said case is based on the interpretation of the 1977 Tax Code, hence not applicable to this case which involves a claim for refund of unutilized input VAT for the years 2007 and 2008 pursuant to the provisions of the 1997 Tax Code.

This is not to ignore as well the ruling in the *Aichi* case that the 120/30 day periods provided in Section 112 are mandatory and jurisdictional. *Ergo,* the failure of petitioner to observe the 120/30-day periods, having filed its Petition for Review some 87 days beyond the 30-day period of appeal, warrants the dismissal of the subject claim for refund for lack of competence on the part of the Court to entertain the appeal. This lack of jurisdiction cannot be cured by the acquiescence or even consent of the parties, leaving the Court with no other option but to dismiss the case especially considering that the Court of Tax Appeals (CTA) is a special court with limited jurisdiction.

Corollary to the foregoing, petitioner points out that lack of jurisdiction can be raised at any stage of the proceedings even on appeal. In fact, the Court can even dismiss the case *moto proprio* if it is of the opinion that it has no jurisdiction over the case, since courts are bound to take notice of the limits of their authority.

There is also no merit to the contention that respondent is estopped from raising the defense of lack of jurisdiction. Such will not apply to her since the BIR, a government office that she represents, is not estopped by the mistake or error of its officials or agents. That being the case, she can invoke the defense of lack of jurisdiction at any time.

Finally, respondent invokes the principle that claims for tax refunds are construed strictly against the taxpayer such as petitioner, who has the burden of proof to establish its entitlement to refund. In the instant case, petitioner failed to discharge the burden justifying the dismissal of its case.

THE RULING OF THE COURT

The instant case involves a claim for refund of P9,379,311.17, representing unutilized input VAT for the period covering April 1, 2007 to March 31, 2008.

Section 112 of the NIRC, as amended, which provides, thus:

> Section 112. Refunds or Tax Credits of Input Tax.

w/

> (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. x x x
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> (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. x x x

The foregoing provision is clear and explicit, hence there is no room for interpretation, only application.[24] The import of the provision was elucidated in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi)*,[25] in this wise:

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[24] Joselito R. Mendoza vs. Commission on Elections and Roberto M. Pagdanganan, G.R. No. 191084, March 25, 2010
[25] G.R. No. 184823, October 06, 2010

> 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.
>
> 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.

Evident from the foregoing that petitioner, within two (2) years after the close of the taxable quarter when the sales were made, may administratively apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.

Evidence show that petitioner filed its administrative claim for refund of its excess and unutilized input VAT derived from domestic purchases of goods and services allegedly attributable to its zero-rated sales on November 28, 2008. Clearly, within two (2) years after the close of the pertinent taxable quarters when the relevant sales were made, hence timely filed.

Under Section 112, respondent had 120 days within which to act on the claim. Thereafter, petitioner had thirty (30) days from receipt of the decision denying the claim, or after the expiration of the 120-day to appeal the decision or the inaction with the CTA. Thus, from the filing of the administrative claim on November 28, 2008, respondent had until March 28, 2009 to either grant or deny the claim for refund. From March 28, 2009, petitioner had 30 days or until April 27, 2009 to elevate to this Court the adverse decision or inaction of respondent.

For reason known only to petitioner, its Petition for Review was filed with the Court in Division only on July 23, 2009 or 87 days beyond the reglementary period of 30 days to appeal. This effectively deprived the Court of authority to hear and determine the case. In fine, the Court in Division was correct in dismissing petitioner's judicial claim for refund for lack of jurisdiction.

Anent the other issues raised by petitioner in the instant Petition for Review, suffice it to say that the most recent case of *Commissioner of Internal Revenue vs. San Roque Power Corporation (San Roque)*[26] has clearly settled all of petitioner's concerns. In the said case, the Supreme Court held, as follows:

> In any event, the *Atlas* doctrine merely stated that the two-year prescriptive period should be counted from the date of payment of the output VAT, not from the close of the taxable quarter when the sales involving the input VAT were made. **The *Atlas* doctrine does not interpret, expressly or**

[26] Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485; Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113; Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156, February 12, 2013.

impliedly, the 120+30 day periods. In fact, Section 106(b) and (e) of the Tax Code of 1977 as amended, which was the law cited by the Court in *Atlas* as the applicable provision of the law did not yet provide for the 30-day period for the taxpayer to appeal to the CTA from the decision or inaction of the Commissioner. **Thus, the *Atlas* doctrine cannot be invoked by anyone to disregard compliance with the 30-day mandatory and jurisdictional period**.

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Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

> x x x the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

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Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.

The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.

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The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant*.** The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. x x x

The *Atlas* doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in *Atlas*. The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional.

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When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from 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 law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional x x x.

From the foregoing disquisition by the High Court, it is plain that petitioner's reliance on the doctrine in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (Atlas)*[27] in relation to its timely filing of its Petition for Review, is misplaced.

As explained by the Supreme Court - "the *Atlas* doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in *Atlas*."

Even prior to the *San Roque* case, it is clear that the Atlas case does not apply to the instant claim for refund. As stated by respondent, the *Atlas* case was resolved by the Supreme Court using the Tax Code of 1977, the law enforced at that time. In rendering the said decision, the Supreme Court construed and applied with specificity Sections 106, 110, and 230 (now Section 229), of the 1977 Tax Code since the said case involved a claim for refund/tax credit of input VAT on therein petitioner's purchases of capital goods and on its zero-rated sales for the taxable quarters of the years 1990 and 1992. This petitioner conveniently ignored. Petitioner's claim for refund/TCC pertains to sales and transaction consummated during the year 2007 and 2008. That being the case, Republic Act No. 8424 or the Tax Reform Act of 1997 (1997 NIRC), which took effect on January 01, 1998, as amended, is the pertinent law, and the *Atlas* case simply does not apply.

Further, *Atlas* used Section 229 of the NIRC as basis in making its ruling that an appeal to this Court is timely filed provided that the same is filed within two (2) years from the payment of the tax. The case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*, (*Mirant* case)[28] as upheld in the subsequent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[29] *(Aichi case)*, already clarified the non-applicability of Section 229 of the NIRC in claims for refund of unutilized input VAT attributable to zero-rated or effectively zero rated sales.

[27] G.R. NOS. 141104 & 148763, June 08, 2007.
[28] G.R. No. 172129, September 12, 2008.
[29] G.R. No. 184823, October 06, 2010.

The *Mirant* case clarified that Sections 204(C) and 229 of the NIRC are inapplicable while the *Aichi* case held that it is erroneous to apply Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. In other words. Section 112 and not Section 229 of the 1997 Tax Code, as amended, applies in claims for refund of excess and unutilized input VAT.

The *San Roque* case also stated that the "application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional."

The Court *En Banc* also agrees with respondent that the *Aichi* case is the first Supreme Court decision which expounds on the application of the 120+30 day periods under Section 112. As such, *Aichi* case did not overturn any existing jurisprudence on the matter, the ruling therein must therefore be applied immediately.

It must also be pointed out that the use of the word "may" in Section 112 does not mean that the 30-day period to appeal is merely directory and permissive. The *San Roque* case in no uncertain terms held that Section 112 "does not make the 120+30 day periods optional just because the law uses the word "**may.**" The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period."

As to the Supreme Court decisions cited by petitioner which allegedly ignored the application of the 120+30 day periods under Section 112 and ruled on the merits *sans* compliance with such periods, the *San Roque* case addressed this issue in this fashion:

> Any issue, whether raised or not by the parties, *but not passed upon by the Court*, does not have any value as precedent.

On petitioner's contention that application of the *Aichi* interpretation of the 120+30 day periods would unduly deprive it of its vested right to appeal and claim for a refund, the Supreme Court, again in the *San Roque* case, has this to say:

> Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity. It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others. For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper. x x x
>
> The mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. **Well settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer**. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

> This Court cannot disregard mandatory and jurisdictional conditions mandated by law simply because the Commissioner chose not to contest the numerical correctness of the claim for tax refund or credit of the taxpayer. Non-compliance with mandatory periods, non-observance of prescriptive periods, and non-adherence to exhaustion of administrative remedies **bar** a taxpayer's claim for tax refund or credit, whether or not the Commissioner questions the numerical correctness of the claim of the taxpayer. This Court should not establish the precedent that non-compliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements, for then every tax refund case will have to be decided on the numerical correctness of the amounts claimed, regardless of non-compliance with mandatory and jurisdictional conditions.

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 justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[30]

On a final note, any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before the Supreme Court.[31] A decision rendered without jurisdiction is not a decision in contemplation of law and can never become executory.[32] In a case, the High Court held that a void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bonds anyone, and under which all acts performed and all claims flowing therefrom are void.[33]

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[30] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003.
[31] Bungcayao, Sr. vs. Fort Ilocandia Property Holdings, G.R. No. 170483, April 19, 2010.
[32] Heirs of Honrales vs. Honrales, G.R. No. 182651, August 25, 2010.
[33] Tanenglian, vs. Silvestre, et al., G.R. No. 173415, March 28, 2008.

WHEREFORE, the Petition for Review dated March 23, 2012 filed by petitioner Denso Techno Philippines, Inc. is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(w/Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

DENSO TECHNO PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 875
(CTA Case No. 7950)

Members:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA
UY
CASANOVA,
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
JUL 09 2013 9:00 a.m.

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CONCURRING AND DISSENTING OPINION

CASANOVA, *J.*:

While I concur with the majority opinion denying petitioner's Petition for Review for lack of merit, I, however, disagree with the outright application of the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue*[1] which clarifies the issue on the application of the 120-30 day prescriptive period for refund under Section 112 of the 1997 NIRC.

It is possible that a Motion for Reconsideration of the said decision may have been filed, thus, until the said Supreme Court case

[1] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

has attained finality and the corresponding entry of judgment has been made[2], prudence dictates that this Court's position on the matter be maintained and application of the new doctrine be, in the meantime, deferred.

In sum, I concur with the majority in affirming the dismissal of petitioner's judicial claim on the ground of lack of jurisdiction.

CAESAR A. CASANOVA
Associate Justice

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2 RULE 36
JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF
Sec. 2. *Entry of judgments and final orders.*
If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.