REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

STEAG STATE POWER, INC. (Formerly State Power Development Corporation),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA EB No. 710
(CTA Case Nos. 7458 & 7554)

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

Promulgated:

JUL 19 2012 2:10 pm

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DECISION

CASTAÑEDA, JR., *J.* :

For review on appeal is the Amended Decision[1] of the Special First Division of the Court of Tax Appeals (CTA Special First Division) dated December 6, 2010 in the consolidated cases docketed as CTA Case Nos. 7458 and 7554 both entitled "*STEAG STATE POWER, INC. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue.*"

[1] *Rollo,* pp.73-79, penned by Presiding Justice Ernesto D. Acosta and concurred by Associate Justice Caesar A. Casanova while Associate Justice Lovell R. Bautista dissented.

Petitioner STEAG STATE POWER, INC. (Formerly State Power Development Corporation) filed its Petition for Review *en banc* on January 10, 2011 praying that this Court reverse and set aside the assailed Amended Decision and declare that petitioner is entitled to a refund of or issuance of TCC for the total amount of Php670,950,937.37, representing unutilized input value-added tax (VAT) on capital goods for January 1, 2004 to December 31, 2004 and for January 1, 2005 up to October 31, 2005. [2]

The dispositive portion of the assailed Amended Decision provides, as follows: [3]

> **WHEREFORE,** respondent's Motion for Reconsideration is hereby **GRANTED** while petitioner's Motion for Reconsideration is hereby **DENIED.** Accordingly, these consolidated cases are hereby **DISMISSED** since the Court has no jurisdiction thereof.
>
> **SO ORDERED.**

The Facts

The facts of this case as found by the CTA First Division are as follows:[4]

> The records of the case disclose that petitioner, formerly known as 'State Power Development Corporation', is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office address at the 20th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Makati City. It is registered with the Bureau of Internal Revenue ("BIR") as a value-added tax ("VAT") taxpayer with Tax Identification No. 004-626-938-000 as shown on its BIR Certificate of Registration bearing RDO Control No. 9RC0000121415. It is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation

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[2] *Rollo.*, p. 37.
[3] *Id.*, p. 78.
[4] *Id.*, pp. 45-47.

("NPC") under a Build, Operate, Transfer ("BOT") scheme. Respondent, on the other hand, is empowered to act on and approve claims for refund or issuance of tax credit certificate of overpaid internal revenue taxes as provided by law xxx xxx xxx.

In connection with the purpose of its existence, petitioner entered into a Registration Agreement with the PHIVIDEC Industrial Authority to conduct and operate its business inside the PHIVIDEC Industrial Estate-Misamis Oriental (PIE-MO). Since 2003, petitioner has been engaged in the construction of its power plant located in PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental, comprising of two (2) 105 megawatts (MW) Coal-Fired Thermal Units and related project facilities and the same was completed on November 15, 2006.

During the construction period, petitioner filed its quarterly VAT returns for the first, second, third and fourth quarters of 2004 on April 26, 2004, July 26, 2004, October 25, 2004 and January 25, 2005, respectively. Subsequently, it filed an amended VAT returns for the said taxable quarters on December 16, 2004 and April 22, 2005, declaring, *among others*, the following:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Input tax carried over	243,485.97	72,600,632.98	74,022,743.37	107,915,494.81
Input tax on:				
Purchases of capital goods	1,027,124.49	298,776.20	24,917,335.32	
Purchases other than capital goods				23,467,686.98
Purchases of service	69,682,549.26	1,123,334.19		
Services by non-resident	1,647,473.26		132,624.10	147,430.64
Importations of capital goods			8,842,792.02	979,100.00
Total available input tax	72,600,632.98	74,022,743.37	107,915,494.81	132,509,712.43

Likewise, in taxable quarters of 2005, petitioner filed its quarterly VAT returns on April 22, 2005, July 26, 2005, October 25, 2005 and January 25, 2006, respectively, declaring, *among others*, the following:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Input tax carried over	132,509,712.43	152,649,870.09	34,700,194.67	52,710,434.48
Input tax on:				
Purchases of capital goods				29,475,318.54
Purchases other than capital goods	1,060,455.29	40,722,526.85	64,215,862.89	56,719,049.53
Services by non-resident	23,820.37	35,671.29	35,612.61	34,478.88

Importations-capital goods	19,055,882.00	336,614,417.00	30,248,991.00	
Total available input tax	152,649,870.09	530,022,485.23	129,200,661.17	138,939,281.43
VAT Refund/TCC claimed		494,551,959.45	76,490,226.69	99,908,751.83
Creditable/Allowable input tax		35,470,525.78	52,710,434.48	39,030,529.60

Later, petitioner filed the following administrative claims for refund of its alleged unutilized input tax payments of P670,950,937.97 on purchases and importations of capital goods with the BIR Revenue District Office No. 50 (South Makati):

Date of Application	Period Covered	Amount of Claim
June 30, 2005	January 1, 2004 to May 31, 2005	P408,768,002.82
August 31, 2005	June 1, 2005 to August 31, 2005	162,274,183.32
October 28, 2005	September 1, 2005 to October 31, 2005	44,988,727.50
December 19, 2005	October 2005	54,920,024.33
TOTAL		**P670,950,937.97**

Due to inaction on the said administrative claims for refund, petitioner was constrained to file on April 20, 2006 the Petition for Review docketed as CTA Case No. 7458 elevating its claim for refund for taxable year 2004. Petitioner likewise sought judicial recourse by way of a Petition for Review on December 27, 2006 docketed as CTA Case No. 7554 involving its claim for refund for taxable year 2005. Petitioner filed the said Petitions for Review to suspend the running of the two-year prescriptive period under the Tax Code and Revenue Regulations No. 7-95 and in order to preserve its right to judicially claim for the refund or the issuance of a tax credit certificate for its unutilized input VAT. These Petitions for Review were later consolidated considering that the parties involved and the questions of law and/or facts presented are the same. *(Underline Supplied)*

On August 27, 2009, the CTA First Division denied the consolidated cases docketed as CTA Case Nos. 7458 and 7554. The dispositive portion of the said Decision reads, as follows:[5]

WHEREFORE, this consolidated case is hereby DENIED due to insufficiency of evidence.

SO ORDERED.

[5] *Rollo*, p. 53, penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Lovell R. Bautista and Caesar A.Casanova.

On September 22, 2009, petitioner filed its Motion for Reconsideration (With Motion to Submit Supplemental Evidence)[6] and prayed, among others, the following:

1. On the basis of law and evidence, reverse and set aside the Decision and issue an amended decision in favor of Petitioner granting the refund of input VAT on capital goods amounting to Php670,950,937.97;

2. Grant Petitioner leave to submit and offer supplemental evidence and allow the admission of the attached documents and/or to recall the previously commissioned ICPA to supplement her report and identify the documents examined in the course of her verification; and

3. On the basis of the supplemental evidence submitted, consider the same as sufficient and competent to prove that Petitioner's claim for refund of input VAT on capital goods is duly substantiated.

Thereafter, in a Resolution[7] dated January 5, 2010, the CTA First Division by a majority vote ruled to partially grant the said motion. The dispositive portion of the said resolution provides:

> **WHEREFORE**, petitioner's *Motion for Reconsideration (With Motion to Submit Supplemental Evidence)* is hereby **PARTIALLY GRANTED.** Accordingly, let this case be set for hearing for the presentation of Annexes "A" and "A-1" (inclusive of sub-markings [Exhibits EEE to ZZZ], inclusive of sub-markings) on **January 29, 2010** at **9:00 a.m.**
>
> Meanwhile, the resolution of petitioner's *Motion for Reconsideration* with regard to the issue of whether petitioner was able to substantiate its claim for a refund or tax credit in the total amount of PhP670,950,937.97, allegedly representing its unutilized input tax paid on purchases and importations of capital goods from January 1, 2004 to October 31, 2005, is **HELD IN ABEYANCE** pending the formal offer of said Annexes. Thereafter, the *Motion* shall be deemed submitted for resolution.

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[6] *Division Docket*, pp. 421-485.
[7] *Id.*, pp. 531-542, penned by Associate Justice Lovell R. Bautista and concurred by Associate Justice Caesar A. Casanova with a Concurring and Dissenting Opinion of Presiding Justice Ernesto D. Acosta.

Furthermore, respondent's *Motion to Admit/Opposition* is hereby **GRANTED** and his *Comment/Opposition* is hereby **ADMITTED.**

SO ORDERED.

On January 29, 2010, a hearing was conducted.[8] Thereafter, petitioner filed its Supplemental Formal Offer of Evidence on February 8, 2010.[9]

Dissatisfied with the Resolution dated January 5, 2010, respondent filed a Motion for Reconsideration on February 10, 2010.[10]

On March 19, 2010, petitioner filed its Comment (Re: Respondent's Motion for Reconsideration dated February 8, 2010).[11]

On April 26, 2010, the CTA Special First Division admitted the supplemental documentary evidence, and submitted for resolution petitioner's Motion for Reconsideration filed on September 22, 2009 and respondent's Motion for Reconsideration filed on February 10, 2010 with petitioner's Comment(Re: Respondent's Motion for Reconsideration dated February 8, 2010) filed on March 19, 2010.[12]

On December 6, 2010, the assailed Amended Decision was promulgated wherein the CTA Special First Division, by a majority vote, granted respondent's Motion for Reconsideration and denied petitioner's Motion for Reconsideration. Accordingly, the consolidated cases were dismissed since the court has no jurisdiction.[13]

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[8] Division Docket, pp. 550-551.
[9] *Id.*, pp. 552-558.
[10] *Id.*, pp.559-569.
[11] *Id.*, pp. 604-629.
[12] *Id.*, pp.631-632.
[13] *Supra*, Note 1.

On December 23, 2010, petitioner filed a Motion for Extension of Time to File Petition for Review which the Court *en banc* granted.[14]

On January 10, 2011, petitioner filed the Petition for Review.[15]

On January 21, 2011, the Court *en banc* ordered respondent to file Comment within ten (10) days from notice.[16] However, respondent failed to file Comment even during the extension of time granted by the Court, thus, the petition was given due course and the parties were required to submit their respective Memorandum within 30 days from receipt of the April 20, 2011 Resolution.[17]

Thereafter, both parties filed their respective motion for extension of time in filing their memoranda which the Court granted.[18] Within the period prescribed by the Court, the parties filed their Memoranda, thus, the case was submitted for Decision on August 31, 2011.[19]

ISSUE

Whether or not the dismissal of the consolidated cases on the ground that the Court has no jurisdiction thereof is proper.

In its petition for review, petitioner alleges that the First Division erred in dismissing the consolidated cases because of the following grounds:[20]

1. The Petitions for Review were filed within the period prescribed by law; Jr

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[14] *Rollo*, p. 7.
[15] *Id.*, pp. 8-43.
[16] *Id.*, pp. 86-87.
[17] *Id.*, pp. 93-95.
[18] *Id.*, pp. 96-102.
[19] *Id.*, p. 165.
[20] *Id.*, p. 22.

2. Petitioner has basis to rely on the law as it has been legally and jurisprudentially understood at the time of filing its claims for refund; and

3. The observance of the 120-day rule should only be applied prospectively.

THIS COURT'S RULING

We deny the petition.

Petitions for Review were not filed within the period prescribed by law

In the cases promulgated by the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* [21] (*Aichi* case) and *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Corporation, Inc.)* [22] (*Mirant*), the Supreme Court reckoned the two-year prescriptive period for filing an administrative claim for refund from the close of the taxable quarter when the relevant sales were made.

The pertinent portion of the Supreme Court's ruling in *Aichi* states:

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

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[21] G.R. No. 184823, October 6, 2010, 632 SCRA 422. The *Aichi* case became final as per Supreme Court's Resolution dated December 6, 2010.
[22] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

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

SEC. 112. Refunds or Tax Credits of Input Tax. –

(A) Zero-rated or Effectively Zero-rated Sales – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. (Emphasis supplied.)

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

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

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

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

x x x x

> SEC. 229. Recovery of tax erroneously or illegally collected. –
>
> No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied.)

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

The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* where we ruled that Section 112(A) of the NIRC is the applicable provision in

> **determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes**." xxx (emphasis ours)
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> xxx xxx xxx
>
> In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. **To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.** (emphasis ours)
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> xxx xxx xxx

Moreover, the *Aichi* case mentioned that the Commissioner has one hundred twenty (120) days from submission of complete documents to rule on the refund claim. Thereafter, the aggrieved party's judicial recourse is to appeal before the CTA within thirty (30) days from receipt of the decision denying the refund claim or upon the expiry of the one hundred twenty (120) day period in case of the Commissioner's inaction to the refund claim. The non-observance of the 120-day period is fatal to the filing of a judicial claim with the CTA as held in the said decision, as follows:

> xxx xxx xxx
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." **The phrase "within two (2) years . . . apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed**

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> **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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> xxx xxx xxx
>
> *(Emphasis Supplied).*

Based on the foregoing, the application for refund of unutilized input VAT attributable to zero-rated sales and input VAT on purchases/importation of capital goods may be made only within two (2) years after the close of the taxable quarter when the sales were made. This period, however, refers solely to applications for refund/credit filed with the Commissioner of Internal Revenue (CIR) and not to appeals made to the CTA. The administrative claim for refund or issuance of tax credit certificate of input taxes paid on capital goods imported or locally purchased is governed by Section 112 (B) of the 1997 NIRC which reads, as follows:

> (B) Capital Goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. **The application may be made only within two (2) years after the close of the taxable quarter**

> **when the importation or purchase was made**. (*Emphasis Supplied*)
>
> xxx xxx xxx

On the other hand, the period within which to file judicial claims is found under Section 112 (D)[23] of the 1997 NIRC which reads, as follows:

> D) *Period within which Refund or Tax Credit of Input Taxes Shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.-
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> xxx xxx xxx xxx

Accordingly, judicial claim for refund should be filed within thirty (30) days from receipt of the decision of the CIR or upon the expiration of the one hundred twenty (120) days in case of inaction of the CIR. The observance of these periods is mandatory and non-compliance therewith would result in the denial of the claim.

In this case, petitioner filed four (4) administrative applications for refund for unutilized input tax payments on purchases and importations of capital goods, as follows: 1) June 30, 2005 application covers the period

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[23] Now Section 112 (C) under Republic Act (RA) No. 9337.

January 1, 2004 to May 31, 2005; 2) August 31, 2005 application covers the period June 2005 to August 2005; 3) October 28, 2005 application covers the period September 2005 to October 2005; and 4) December 19, 2005 application covers the month of October 2005.

Thereafter, petitioner filed two (2) petitions for review for a refund of or issuance of TCC representing unutilized input value-added tax (VAT) on capital goods for the total amount of Php670,950,937.37, namely: 1) CTA Case No. 7458 was filed on April 20, 2006 for the unutilized input VAT on capital goods from January 1, 2004 to December 31, 2004 in the amount of P101,569,776.82; and, 2) CTA Case No. 7554 was filed on December 27, 2006 for the unutilized input VAT on capital goods from January 1, 2005 up to October 31, 2005 in the amount of P569,381,161.15.

For easier analysis regarding timeliness of the administrative applications and judicial claims of the petitioner, the pertinent facts were summarized in the table below:

<table>
<tr><th>Period Covered</th><th>Administrative Application</th><th>End of 120-days (Sec. 112(D)</th><th>End of the 30 day period (last day to file the judicial claim)</th><th>Judicial Claim</th></tr>
<tr><td>January 1,2004 to December 31, 2004</td><td rowspan="2">June 30, 2005</td><td rowspan="2">October 28,2005</td><td>November 27, 2005</td><td>April 20,2006 (CTA Case 7458)</td></tr>
<tr><td>January 1,2005 to May 31,2005</td><td>November 27,2005</td><td>December 27, 2006 (CTA Case7554)</td></tr>
</table>

June 2005 to August 2005	August 31, 2005	December 29, 2005	January 28,2006	December 27, 2006 (CTA Case 7554)
September 2005 to October 2005	October 28, 2005	February 25, 2006	March 27, 2006	December 27, 2006 (CTA Case 7554)
Month of October 2005	December 19, 2005	April 18, 2006	May 18, 2006	December 27, 2006 (CTA Case 7554)

After a careful analysis of the foregoing data, We find that the consolidated cases of CTA Case Nos. 7458 and 7554 were belatedly filed by petitioner, thus, the dismissal of these cases on the ground of lack jurisdiction is proper.

With respect to its application for refund/TCC dated June 30, 2005, We agree that the Petitions for Review were filed beyond the thirty day period allowed by law. Pertinent portion of the assailed Amended Decision reads:

> As to its application for refund dated June 30, 2005 is concerned, the Commissioner of Internal Revenue has one hundred twenty days or until October 28, 2005 within which to decide on the claim. After the lapse of the one hundred twenty day period, petitioner should have elevated its claim with the Court within thirty (30) days starting from October 29, 2003 to November 27, 2005 pursuant to Section 112(D) of the NIRC in relation to Section 11 of RA 1125, as amended by Section 9 of RA No. 9282. Unfortunately, the Petition for Review (docketed as CTA Case No. 7458) covering the claimed input tax for the four quarters of 2004 on April 20, 2006 and the other Petition for Review (docketed as CTA Case No. 7554)

> covering in part the claimed input tax from January 2005 to May 2005 were filed on December 27, 2006, beyond the 30-day period set by law and therefore, the Court has no jurisdiction to entertain the subject matter of the case considering that the 30-day appeal period provided under Section 11 of RA 1125 is considered by the Supreme Court as a jurisdictional requirement. For this reason, its claimed input tax of P408,768,002.82 should be denied considering that the Petitions for Review were filed beyond the thirty day period allowed by law.

As regards petitioner's applications for refund/TCC filed on August 31, 2005, October 28, 2005, and December 19, 2005, We agree with the following findings and discussion of the CTA Special First Division, thus, We adopt the pertinent portion of the assailed Amended Decision as quoted hereunder:

> "With respect to these applications for refund, the 120-day period provided in Section 112(D) of the NIRC ended on December 29, 2005; February 25, 2006 and April 18, 2006 reckoned from the respective dates when petitioner applied for refund with the BIR on August 31 , 2005, October 28, 2005 and December 19, 2005, respectively. Supposedly, after the lapse of the said 120-day period, petitioner had thirty days or until January 28, 2006, March 27, 2006 and May 18, 2006, respectively, within which to appeal to this Court pursuant to Section 112(D) of the NIRC."

We do not agree, however, with the CTA Special First Division's conclusion that the August 31, 2005, the October 28, 2005, and the December 19, 2005 applications for refund/TCC were prematurely filed. In these applications for refund/TCC, there were inactions on the part of the CIR and petitioner also failed to file the judicial claims within 30 days after the 120-day period.

Section 112 (D) of the NIRC provides specific period of action *i.e.*, the 120-day period within which the CIR shall render a decision. When no decision is made after the 120-day period, the taxpayer has 30 days within which to file an appeal with the CTA. If the taxpayer failed to do so, the taxpayer loses his right of judicial recourse.

It has been ruled that **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, we declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[24]

With respect to August 31, 2005, October 28, 2005, and December 19, 2005 applications for refund/TCC, the last day to file the judicial claims, the 30th day after the lapse of the 120-day period, were on **January 28, 2006, March 27, 2006, and May 18, 2006.** However, petitioner filed these judicial claims only on **December 27, 2006**. Clearly, these claims were filed out of time, thus, the Court has no jurisdiction.

Judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one.

While it is true that petitioner's judicial claim was filed even before the *Aichi* case was promulgated, however, this does not mean that the doctrine laid down in *Aichi* should only be applied prospectively.

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[24] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010, 628 SCRA 96.

It should be emphasized that judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one. [25]

Considering that the law takes effect from the time of its effectivity and not from the time of the promulgation of a decision applying the law, the *Aichi* doctrine (which merely interprets the NIRC of 1997 which took effect on January 1, 1998) applies to petitioner's claims which involve January 1, 2004 to October 31, 2005.

Based on the foregoing, the dismissal of the consolidated cases docketed as CTA Case Nos. 7458 and 7554 by the CTA Special First Division is correct on the ground of lack of jurisdiction.

WHEREFORE, premises considered, the Petition for Review *en banc* is **DENIED**. Accordingly, for lack of jurisdiction, We **AFFIRM** the Amended Decision of the CTA Special First Division dated December 6, 2010 on the ground that the Petitions for Review were belatedly filed.

SO ORDERED.

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

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[25] *Eagle Realty Corporation vs. Republic*, G.R. No. 151424, Resolution dated July 31, 2009, 594 SCRA 555.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(I maintain my Dissenting Opinion as promulgated in the Amended Decision dated December 6, 2010)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

ERNESTO D. ACOSTA
Presiding Justice