Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

DIAGEO PHILIPPINES, INC.,
Petitioner,

CTA EB CASE NO. 818
(CTA Case No. 7815)

-versus-

Present:
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 05 2013
2:30 p.m.

x---x

D E C I S I O N

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended,* of the Resolution[1] rendered by the First Division of this Court on August 9, 2011.

The antecedent facts of the case read as follows:

Petitioner Diageo Philippines, Inc. is a corporation duly registered with the Securities and Exchange Commission, and existing under and by virtue of Philippine laws, and is engaged in the business of distilling, rectifying, blending, manufacturing, wholesale and exportation of alcohol

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[1] *En Banc* Docket, pp. 19-23.

products and spirits.[2] It is a VAT registered entity with BIR VAT Reg. No. 000-161-879-000.[3]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), and is authorized under the law to act on claims for refunds, tax credit certificates and other matters involving the National Internal Revenue Code (NIRC).[4] She holds office at the BIR National Office, Agham Road, Quezon City.

Petitioner alleges that from April to June 2006, it purchased various raw materials from different local suppliers to be used in the manufacture of alcohol products.[5] Petitioner paid for these purchases including the corresponding Value-added Tax (VAT) passed on to it by the suppliers.[6] These manufactured alcohol products were later sold in the domestic market or exported to other countries within the aforesaid period.[7] In its export sales, petitioner issued zero-rated invoices for these transactions and paid creditable input VAT in the total amount of Seven Million Eight Hundred Seventeen Thousand Four Hundred Seventy Pesos and 78/100 (₱7,817,470.78), which may either be attributed to the foreign export sales, or allocated proportionately on the basis of the volume of such export sales.[8]

Similarly, petitioner asserts that its export sales are subject to zero percent (0%) VAT rate pursuant to Section 106(A)(2)(a)(1) of the NIRC.[9] As such, the acceptable foreign currency exchange proceeds thereof had allegedly been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations.

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[2] Articles of Incorporation, Exhibit "G", Division Docket, pp. 311-333.
[3] Payment Form, Exhibit "I", Division Docket, p. 263.
[4] Joint Stipulation of Facts and Issues, par. 1, Division Docket, p. 84.
[5] *En Banc* Docket, p. 97.
[6] *Id.*, at 98.
[7] *Id.*
[8] *Id.*
[9] *Id.*, at 3.

On February 2, 2007,[10] petitioner filed its Amended Quarterly VAT Return for the period April 1, 2006 to June 30, 2006. Thereafter, on June 28, 2007, petitioner filed a claim for Tax Credit/Refund of its excess input VAT covering the aforesaid period in the amount of P7,817,470.78.[11]

Due to inaction of respondent, petitioner filed a Petition for Review[12] before this Court on July 25, 2008 pursuant to Sections 112(A) and 229 of the NIRC of 1997, as amended, in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for tax credit/refund.

Respondent, in her Answer[13] filed on August 15, 2008, alleged, among others, by way of special and affirmative defense that petitioner failed to substantiate its claim for unused input VAT refund/tax credit, and the petition for review before the Court *a quo* was filed out of time pursuant to the requirements under Section 112(D) of the NIRC of 1997, as amended. She further alleged that petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma; thus, without a validly and duly filed administrative claim for refund, this Court is without jurisdiction to entertain the petition for review.

Petitioner presented its testimonial and documentary evidence, while respondent did not present any evidence.[14] Consequently, both parties were ordered to file their respective Memorandum within thirty (30) days from notice.[15] The petition was deemed submitted for Decision,[16] noting petitioner's Memorandum [17] *sans* respondent's Memorandum.

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[10] Exhibit "C".
[11] *En Banc* Docket, p. 52.
[12] Division Docket, pp. 1-40.
[13] *Id.*, at 42-53.
[14] Resolution dated August 6, 2010, Division Docket, pp. 375-376; Minutes of the Hearing dated March 11, 2010, Division Docket, p. 288.
[15] Resolution dated September 17, 2010, Division Docket, p. 378.
[16] Resolution dated September 27, 2010, Division Docket, p. 436.
[17] Posted on September 13, 2010, Division Docket, pp. 379-405.

On May 16, 2011, the First Division of this Court promulgated a Decision[18] dismissing the Petition for Review for having been belatedly filed. The Court *a quo* anchored its Decision based on the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[19] (the "*Aichi* Case") that the two (2)-year period referred to in *Section 112(A) of the NIRC of 1997, as amended*, actually pertains to applications for input VAT refund/credit filed with the Commissioner of Internal Revenue and not to appeals before this Court. The Court *a quo* further emphasized that compliance with the 120 and 30 day-period under *Section 112(C) of the NIRC of 1997, as amended*, is mandatory and jurisdictional. The dispositive portion of the said Decision reads:

Decision dated May 16, 2011:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for being belatedly filed.
> **SO ORDERED**."[20]

Petitioner moved for reconsideration of the above-cited Decision, which was subsequently denied in a Resolution[21] dated August 9, 2011, *viz*:

Resolution dated August 9, 2011:

> "**WHEREFORE,** premises considered, petitioner's **"Motion for Reconsideration"** is hereby **DENIED** for lack of merit.
> **SO ORDERED."**[22]

Hence, this instant Petition for Review.

Petitioner raise the following issues:

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[18] Division Docket, pp. 438-453.
[19] G.R. No. 184823, October 6, 2010.
[20] Division Docket, p. 452
[21] *En Banc* Docket, pp. 19-23.
[22] *Id.*, at 23.

1. THE PETITIONER IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF SEVEN MILLION EIGHT HUNDRED SEVENTEEN THOUSAND FOUR HUNDRED SEVENTY PESOS AND SEVENTY EIGHT CENTAVOS (PHP7,817,470.78).

2. THE VESTED RIGHTS OF THE PETITIONER WOULD BE IMPAIRED BY THE RETROACTIVE APPLICATION OF THE AICHI RULING.

3. THE PETITION FOR REVIEW WAS TIMELY FILED. THE ATLAS RULING IS APPLICABLE TO THE PRESENT CASE. MIRANT AND AICHI SHOULD NOT BE GIVEN RETROACTIVE APPLICATION. "[23]

The principal issue to be resolved in this case is whether petitioner is entitled to a tax refund or credit of its alleged unutilized input VAT attributable to zero-rated sales for the period April 1, 2006 to June 30, 2006 in the amount of ₱7,817,470.78.

The principal issue is answered in the negative.

The applicable provision in claims for refund or tax credit of unutilized input VAT is *Section 112 of the NIRC of 1997, as amended*, which reads:

SEC. 112. **Refunds of 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

[23] *Id.*, at 6-7.

> 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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> (C). *Period within which Refund or Tax Credit of Input Taxes shall be Made. –*
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> In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes <u>within one hundred twenty (120) days</u> from the date of submission of complete documents in support of the application** filed in accordance with Subsection (A) hereof.
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> 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, <u>within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period,</u> appeal the decision or the unacted claim with the Court of Tax Appeals.** [Emphasis supplied.]
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In *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (the "*Aichi* Case"),[24] the Supreme Court had finally settled the issue of prescription insofar as filing an administrative claim for unutilized input VAT refund/credit before the CIR and its subsequent judicial appeal before the CTA under the foregoing provision.[25] The pertinent portion of the said decision reads:

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[24] *Supra* note 19.
[25] In a Resolution dated December 6, 2010, the First Division of the Supreme Court denied with finality the Motion for Reconsideration filed by Aichi Forging Company of Asia, Inc. in the aforesaid *Aichi Case*.

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

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales." **The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.** This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.

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.**

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc. [130 Phil. 12 (1968)]* 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."**[26] [Emphasis supplied.]

[26] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., supra* note 19.

Based on the foregoing pronouncement of the Supreme Court, it is clear that there are two (2) separate periods for every taxpayer to observe in filing administrative and judicial claims for unutilized input VAT refund/credit. *First*, the administrative claim for refund must be filed before the CIR within two (2) years reckoned from the close of the taxable quarter when the sales were made. *Second*, the judicial appeal must be filed before the Court of Tax Appeals within thirty (30) days reckoned from receipt of the CIR's decision denying the claim or within 30 days after the expiration of the 120-day period under *Section 112(C) of the NIRC of 1997, as amended.*

Significantly, the Supreme Court in the same case emphasized that mandatory observance of the 120-day period under *Section 112 (C) [formerly Section 112 (D)] of the NIRC of 1997, as amended*, is crucial in filing an appeal before the Court of Tax Appeals. Thus, as explicitly stated by the Supreme Court, the premature filing of taxpayer's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.[27]

In refuting the application of *Aichi* Case in the instant petition, petitioner argues that the rule enunciated in the *Aichi* Case should not be applied retroactively as its vested rights would be unduly impaired. Petitioner asseverates that at the time it filed the instant Petition for Review, the controlling jurisprudence insofar as the prescriptive period for filing a judicial claim for refund under *Section 112(A) of the NIRC of 1997, as amended*, was that both the administrative and judicial claims for input VAT refund must be filed within two years reckoned from the filing of the VAT return citing ***Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*** (the "*Atlas* Case").[28]

Petitioner's argument is misplaced.

[27] *Id.*
[28] G.R. Nos. 141104 & 148763, June 8, 2007.

It is axiomatic that when the Supreme Court decides a case, it does not amount to a passage of a new law but merely interprets a pre-existing one, and such judicial interpretation of a statute constitutes part of that law as of the date of its original passage. [29] It merely casts light upon the contemporaneous legislative intent of that law.[30]

In the recent case of *Accenture, Inc. v. Commissioner of Internal Revenue,* [31] the Supreme Court elucidated the foregoing principle in this wise:

> "Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. **When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one.** When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. **It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.**" [32] [Emphasis supplied.]

Thus, contrary to petitioner's assertion, the Supreme Court's interpretation of *Section 112(C) of the NIRC of 1997, as amended,* in the *Aichi* Case may be applied to the instant case without violating the rule against retroactive application as such interpretation constitutes part of the law as of the date of its original passage.

Moreover, it must be underscored that the *Atlas* Case cannot be applied in the instant case as the former was an interpretation made by the Supreme Court of the provisions

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[29] See Castro v. Hon. Deloria, et al., G.R. No. 163586, January 27, 2009.
[30] *Id.*, citing Roos Industrial Construction, Inc. v. National Labor Relations Commission, G.R. No. 172409, February 4, 2008, 543 SCRA 666.
[31] G.R. No. 190102, July 11, 2012.
[32] *Id.* citing Columbia Pictures, Inc. v. Court of Appeals, 329 Phil. 875, 907-908 (1996); and Senarillos v. Hermosisima, 100 Phil. 501 (1956).

under 1977 NIRC, prior to its amendment by Republic Act (RA) No. 7716; whereas the later decision of the Supreme Court in the *Aichi* Case was an application and interpretation of the NIRC of 1997, as amended. Therefore, the need to harmonize the provisions under Section 106 (now Section 112) and Section 230 (now Section 229) of the Tax Code of 1977, as amended, as enunciated in the *Atlas* doctrine, is no longer applicable due to the clear legislative intent embodied in the amendatory provisions of RA No. 7716 and RA No. 8424, which evidently delineated the prescriptive period in claiming administrative and judicial claims for unutilized input VAT refund/credit.[33]

In the instant case, petitioner timely filed its administrative claim for unutilized input VAT refund/credit before the BIR on June 28, 2007 for the period April 1, 2006 to June 30, 2006, which is clearly within the two-year prescriptive period reckoned from the close of the taxable quarter when the sales were made.

As to its judicial claim, however, petitioner belatedly filed its Petition for Review before the Court *a quo* on July 25, 2008 or beyond the prescribed 30-day period to appeal before this Court reckoned from the lapse of the 120-day period fixed by law for the respondent to act on the claim for refund. Clearly then, petitioner failed to comply with the mandatory period of 120-30 days under *Section 112(C) of the NIRC of 1997, as amended,* which is crucial in filing an appeal before the Court of Tax Appeals. Consequently, the petition for review filed before this Court warrants a dismissal on the ground of absence of jurisdiction to take cognizance of the case pursuant to the *Aichi* Case.

In fine, we see no cogent reason to deviate from the factual findings of the Court *a quo* that petitioner is not entitled to its claim for unutilized input VAT tax refund or credit for the period April 1, 2006 to June 30, 2006 in the amount of ₱7,817,470.78.

[33] See Marubeni Philippines Corporation vs. Commissioner of Internal Revenue, CTA EB No. 557 (CTA Case No. 6469), March 23, 2011.

WHEREFORE, premises considered, the petition for review is **DENIED**. The Decision of the First Division of this Court in CTA Case No. 7815 dated May 16, 2011 and its Resolution dated August 9, 2011 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

(with Separate Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

DIAGEO PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA EB CASE NO. 818
(CTA Case No. 7815)

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

Promulgated:

MAR 05 2013 [illegible] 2:30 p.m.

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SEPARATE CONCURRING OPINION

BAUTISTA, J.:

Before Court *En Banc* is the "Petition for Review" filed by petitioner Diageo Philippines, Inc., appealing the Resolution of the First Division of this Court ("Court in Division") dated July 8, 2011,[1] which denied the Motion for Reconsideration filed by petitioner over the dismissal of the Petition for Review dated July 25, 2008 for being belatedly filed.

The Court *En Banc* is affirming the denial of the "Petition for Review," stating that the judicial claim filed by petitioner was belatedly filed, warranting the dismissal on the ground of absence of jurisdiction to take cognizance of the case.

[1] *Rollo*, pp. 18-23.

While I agree with the denial of the "Petition for Review," I am compelled to vary from the basis of the said opinion of the Court.

Pertinent to the case at hand is Section 112 (C) of the 1997 NIRC, as amended, which states:

> **SEC. 112.** *Refunds or Tax Credits of Input Tax.* -
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> xxx xxx xxx
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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. *(Emphasis supplied)*

The word "may," indicates that it is merely permissive and operates to confer discretion.[2] Thus, this provision gives the taxpayer-claimant an option to pursue the claim with this Court, provided that the claim is filed within the prescriptive period.

Section 112 of the 1997 NIRC, as amended, must be read in accordance with Section 229 of the same Code. The judicial recourse to this Court allowed by Section 112(C) of the 1997 NIRC, as amended, is therefore, merely directory and permissive, and not mandatory nor jurisdictional, for so long as it is made within the settled two (2)-year prescriptive period.[3]

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[2] *Bersabal vs. Salvador*, G.R. No. L-35910, July 21, 1978, 84 SCRA 176, citing *Dizon vs. Encarnacion*, G.R. No. L-18615, December 24, 1963, 9 SCRA 714.
[3] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, CTA EB Case No. 416, February 4, 2009.

In the case of *Commissioner of Internal Revenue v. San Roque Power Corporation,*[4] the Court *En Banc* states:

> "It bears stressing that the use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Section 229 of the NIRC. It is a well-settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.
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> Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year prescriptive period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated in this wise:
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>> "It appears therefore, that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
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>> Incidentally, the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal

[4] CTA EB Case No. 408 (CTA Case No. 6647), March 25, 2009.

> <u>Revenue on appeal.</u> The law fixed the same period — two years — for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court. Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*emphasis supplied*)"

Thus, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or even his inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court,[5] for claims for refund or tax credit, both in the administrative and judicial fora must be filed within the 2-year period,[6] and beyond that period, the taxpayer can no longer appeal to this Court.[7]

Further, claims for refund or tax credit of value-added tax ("VAT") on zero-rated sales transactions filed prior to the promulgation of the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)* ("*Mirant case*"),[8] on September 12, 2008 should follow the doctrine set in the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* ("*Atlas case*");[9] while taking into consideration that judicial decisions form part of the law of the land, the Court should also respect the principle behind Article 4 of the New Civil Code which states that "laws shall have no retroactive effect unless the contrary is provided;" the same provision expressed

[5] *Commissioner of Internal Revenue vs. CE Cebu Geothermal Power Company, Inc.*, CTA EB Case No. 426, May 29, 2009.
[6] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc.*, No. L-24108, January 3, 1968, 22 SCRA 12.
[7] *Commissioner of Internal Revenue vs. Accenture, Inc.*, CTA EB Case No. 410 (CTA Case No. 7387), March 18, 2009.
[8] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[9] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

in the familiar legal maxim *lex prospicit, non respicit,* the law looks forward not backward.[10]

In the case of *Columbia Pictures, Inc., et al. v. Court of Appeals, et al.,*[11] the Supreme Court made the following disquisition:

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

This principle was also applied in the case of *Rolando Santos v. Sandiganbayan and the People of the Philippines*[12] citing *Co vs. Court of Appeals*[13] wherein the Supreme Court ruled that:

> "In accordance with Article 8 of the Civil Code providing that '(j)udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines,' and Article 4 of the same Code stating that '(l)aws shall have no retroactive effect, unless the contrary is provided,' the principle of prospectivity of statutes, original or amendatory, shall apply to judicial decisions, which,

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[10] Spouses Gauvain and Bernardita Benzonan v. Court of Appeals, G.R. No. 97973, January 27, 1992, 205 SCRA 515, *citing Francisco v. Certeza, No. L-16849, November 29, 1961, 3 SCRA 565.*
[11] G.R. No. 110318, August 28, 1996, 261 SCRA 144.
[12] G.R. Nos. 71523-25. December 8, 2000, 347 SCRA 386, 420.
[13] G.R. No. 100776. October 28, 1993, 277 SCRA 444, 448-449 [1993].

> although in themselves are not laws, are nevertheless evidences of what the law means."

In *Chicot County Drainage District v. Baxter States Bank*,[14] the High Court also discussed why the "principle of absolute retroactive invalidity"[15] has been negated, to wit:

> "The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those who have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified."[16]

Applying the doctrines laid down in the aforecited cases, the prescriptive period applicable herein would be the then well-established doctrine adopted by this Court in *Atlas case*, wherein the 2-year prescriptive period is reckoned not from the close of the pertinent quarter but from the date of filing of the VAT return.

In the case of *JIDECO Manufacturing Philippines, Inc. v. CIR*,[17] the Court *En Banc* affirmed the matter as follows:

> "As we have already elucidated in our Resolution dated July 20, 1998 in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296*, the two-year prescriptive period for the filing of claims for VAT refund should be reckoned from the date of filing of the corresponding quarterly VAT returns in order to harmonize the provisions of Section

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[14] 308 US 371, 374 [1940].
[15] Felicisimo Rieta v. People, G.R. No. 147817, August 12, 2004, 436 SCRA 273.
[16] 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, supra note 20.*
[17] CTA Case No. 6552, September 16, 2004.

112(B) of the NIRC of 1997 with Sections 114(A) and 229 of the same Code.

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In the cases of *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Appeals, G.R. No. 83736, dated January 15, 1992 and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957,* the Supreme Court held that the two (2)-year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of the tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these matters can only be determined if a return is filed. It is logical therefore, that the two-year period should not immediately be counted from the close of the quarter but from the prescribed date of filing of the VAT return."[18]

Thus, in the case of *Team Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue,*[19] the First Division of this Court made the following pronouncement:

"Although there is a recent case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly SOUTHERN ENERGY QUEZON, INC.),* wherein the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the *Mirant Case.* **To apply said ruling in the present case will in effect be giving the new doctrine retroactive application thereby impairing vested rights.**" *(Boldfacing supplied)*

In the case at hand, the Quarterly VAT Return was filed on July 26, 2006. Petitioner then filed an application for refund of or the issuance of the Tax Credit Certificate covering the period between

[18] CTA EB No. 53, June 7, 2005.
[19] CTA Case Nos. 7229 and 7298, October 5, 2009.

April 1, 2006 to June 30, 2006 on June 28, 2007,[20] while the judicial claims was filed with this Court on July 25, 2008.[21]

Thus, clearly, petitioner filed both the administrative and judicial claims within the two (2)-year period from the filing of the Quarterly VAT Return, in accordance with the *Atlas case*.

Furthermore, I do not agree with the retroactive application of the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. ("Aichi case")*.[22] The basic legal maxim *lex prospicit, non respicit*, states that law looks forward not backward. The principle of prospectivity applies not only to original or amendatory statutes, administrative rulings, and circulars, but also, to judicial decisions.[23] Thus, petitioner's reliance on the prevailing jurisprudence at the time of filing its judicial claims is valid.

Thus, contrary to the findings of the Court in Division, the Petition for Review dated July 25, 2008 should not have been dismissed for being filed out of time. However, I find that the Petition for Review should be dismissed for insufficiency of evidence.

To be able to determine whether or not the filing is within the two (2)-year prescriptive period in accordance with the Supreme Court's ruling in the *Atlas* case, the date of filing of the pertinent return should be known. After studying the records of this case, it is clear that petitioner failed to submit the original Quarterly VAT Return for the period April to June 2006. Without the said document, the Court cannot ascertain whether or not the Petition for Review was timely filed.

Accordingly, I vote that the Petition for Review be **DENIED** for insufficiency of evidence.

LOVELL R. BAUTISTA
Associate Justice

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[20] *Records* (CTA Case No. 7815), p. 38.
[21] *Id.*, pp. 1-38.
[22] G.R. No. 184823, October 6, 2010, 632 SCRA 442.
[23] *Columbia Pictures, Inc., Orion Pictures Corporation, Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, United Artists Corporation, Universal City Studios, Inc., The Walk Disney Company, and Warner Brothers, Inc. vs. Court of Appeals, Sunshine Home Video, Inc. and Danilo Pekindario*, G.R.No. 110318, August 28, 1996, 252 SCRA 259, citing *Co vs. Court of Appeals, et al.*, G.R. No. 100716, October 28, 1993, 227 SCRA 444.