REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SITEL PHILIPPINES CORPORATION [formerly Clientlogic Philippines, Inc.],
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 644
(CTA Case No. 7423)

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

PROMULGATED:
NOV 1 1 2011 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by petitioner Sitel Philippines Corporation [formerly Clientlogic Philippines, Inc.] before the Court of Tax Appeals (CTA) *En Banc* assailing the Decision[1] dated October 21, 2009 and the Resolution[2] dated

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[1] *Rollo*, pp. 12-35. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta, dissenting, and Associate Justice Lovell R. Bautista, concurring.
[2] *Rollo*, pp. 5-11.

May 31, 2010 promulgated by the CTA Special First Division in the case entitled "*Sitel Philippines Corporation [formerly: Clientlogic Philippines, Inc.] vs. Commissioner of Internal Revenue,*" docketed as CTA Case No. 7423.

The assailed decision PARTIALLY GRANTED the petition seeking the refund or issuance of a tax credit certificate in favor of petitioner in the reduced amount of P11,155,276.59 allegedly representing unutilized input value-added tax (VAT) paid on its domestic purchases of goods and services attributable to zero-rated sales and purchases/importations of capital goods for all the four quarters of the taxable year 2004.

THE FACTS

The facts of the case as found by the CTA First Division are as follows: [3]

> Petitioner SITEL PHILIPPINES is a corporation organized and existing under the laws of the Philippines with office address at 22nd Floor, Wynsum Corporate Plaza, Emerald Avenue, Ortigas Center, Pasig City.
>
> Respondent, is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the BIR National Office Building located at Agham Road, Diliman, Quezon City.
>
> Petitioner is engaged in the business of providing call center services from the Philippines to domestic and offshore business including, but not limited to, tactical telemarketing campaigns and programs and customer relationship management services. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with TIN/VAT Registration No. 2008-780-708 effective December 14, 2000 and with BIR Certificate of Registration No. OCN 3RC0000244761 issued by BIR Revenue District Office No. 43 (Pasig). Petitioner is likewise registered with the Board of Investments (BOI) as a new information technology service firm in the field of call center on pioneer status with Board Investment Certificate of Registration No. 2001-091.
>
> Petitioner was formerly known as "Contact World, Inc." prior to the change in its corporate name to "Clientlogic Philippines, Inc." effective

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[3] *Rollo*, pp. 13-15.

February 19, 2004 as evidenced by the Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission.

For the period from January 1, 2004 to December 31, 2004, petitioner filed with the BIR its Quarterly VAT Return as follows:

Period Covered	***Date Filed***
1st Quarter 2004	26 Apr-04
2nd Quarter 2004	26 Jul-04
3rd Quarter 2004	25 Oct-04
4th Quarter 2004	25 Jan-05

Petitioner's Amended Quarterly VAT Returns from the 1st, 2nd, 3rd, and 4th quarters of 2004 declare as follows:

Taxable Sales (A)	Zero-Rated Sales (B)	Total Sales (C=A+B)	Input Tax For the Qtr. (D)	Input Tax From Capital Goods (E)	Input Tax From Regular Transactions (F=D-E)	Input Tax Allocated to Taxable Sales [G=(A/C)X(F)]	Input Tax Allocated to Zero-Rated Sales [H=(B/C)X(F)]
509,799.74	180,450,030.29	180,957,830.03	3,842,714.21	2,422,090.40	1,400,623.81	3,930.40	1,396,693.41
0	142,664,271.00	142,664,271.00	3,554,922.94	2,846,225.66	708,696.58	-	708,696.58
517,736.36	205,021,590.46	205,539,326.82	9,568,047.25	7,629,734.40	1,938,312.85	4,882.45	1,933,430.40
0	334,384,766.48	334,384,766.48	6,137,028.74	3,005,573.11	3,313,455.63	-	3,313,455.63
1,025,536.10	**862,520,658.23**	**863,546,194.33**	**23,102,712.44**	**15,923,623.57**	**7,179,088.87**	**8,812.85**	**7,170,276.02**

On March 28, 2006, petitioner filed separate formal claims for refund or issuance of tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its unutilized input VAT arising from domestic purchase of goods and services attributed to zero-rated transactions and purchases/importations of capital goods for the 1st, 2nd, 3rd and 4th quarters of 2004.

To date, respondent has not yet acted upon petitioner's claim for refund or tax credit.

Respondent in his Answer interposed the following Special and Affirmative Defenses:

> "7. The claim for refund is still under examination by the respondent's Bureau;
>
> 8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 9. The grant of claim for refund tantamount[s] to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; *gc*

10. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.

After trial on the merits, this case was submitted for decision on February 9, 2009 taking into consideration petitioner's Memorandum filed on January 16, 2009. Respondent did not file his Memorandum.

On October 21, 2009, the Court in Division rendered the assailed Decision partially granting the Petition for Review. The dispositive portion of the assailed Decision reads as follows:

In view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Petitioner is entitled to the instant claim in the reduced amount of P11,155,276.59 computed as follows:

Amount of Input VAT Claim		P 23, 093,899.59
Less:	Input VAT Claim on Zero-Rated Sales	7,170,276.02
Input VAT Claim on Capital Goods Purchases		P 15,923,623.57
Less:	Not Properly Substantiated Input VAT Claim on Capital Goods Purchases	
	Per ICPA Report (*P15,923,623.57 less P13,824,129.14*)	2,099,494.43
	Per this Court's further verification	2,668,852.55
Refundable Input VAT on Capital Goods Purchases		**P 11,155,276.59**

Accordingly, respondent is **ORDERED to REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **P11,155,276.59** representing unutilized input VAT arising from petitioner's domestic purchases of goods and services which are attributable to zero-rated transactions and purchases/importations of capital goods for the taxable year 2004.

SO ORDERED.[4]

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[4] *Rollo*, pp. 23-24.

Aggrieved, petitioner filed a Motion for Reconsideration on November 11, 2009. The same was denied for lack of merit by the CTA Special First Division in its Resolution promulgated on May 31, 2010. The dispositive portion of the assailed Resolution reads as follows:

> **WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration and Supplement (To Motion for Reconsideration [of Decision dated October 21, 2009]*) are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[5]

Hence, this Petition for Review *En Banc.*

THE ISSUE

In the present Petition for Review, petitioner raises a lone issue:

> WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OR TAX CREDIT OF ITS UNUTILIZED INPUT VAT ARISING FROM PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES AND PURCHASES/IMPORTATIONS OF CAPITAL GOODS FOR THE 1ST, 2ND, 3RD AND 4TH QUARTERS OF TAXABLE YEAR 2004 IN THE AMOUNT OF P23,093,899.59.[6]

THIS COURT'S RULING

The petition is without merit.

In determining petitioner's entitlement to a refund of unutilized input VAT, the Court deems appropriate to determine first whether or not petitioner's administrative and judicial claims for refund of unutilized input VAT were filed

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[5] *Rollo,* page 11.
[6] *Rollo*, page 49.

within the prescriptive period under the 1997 National Internal Revenue Code (NIRC).

Prescriptive periods for filing administrative and judicial claims on VAT refund cases.

The administrative claim for refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sales is governed by Section 112 (A) of the 1997 NIRC, to wit:

> Section 112. Refunds or Tax Credits of Input Tax. —
> (A) Zero-rated or Effectively Zero-rated Sales. — any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter 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 of 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 ours)

Meanwhile, 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, to wit:

> (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 ours)

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.

Concomitantly, the period within which to file judicial claims is found under Section 112 (D)[7] of the 1997 NIRC, the pertinent portion of which is quoted hereunder:

> **Sec. 112 – *Refunds or Tax Credits of Input Tax*.** –
>
> xxx xxx xxx
>
> 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

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

> hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.-
>
> 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.

Applying the same to the present case, the administrative claims for refund filed by petitioner covering the first to fourth quarters of 2004 was filed on March 28, 2006.[8] It is clear that the administrative claim was filed within the two-year prescriptive period. Immediately thereafter or two days after, without awaiting the decision of the CIR or the lapse of the 120-day period, a judicial claim was filed on March 30, 2006.[9] Despite the timely filing of the administrative claim, this Court is constrained to deny petitioner's refund claim on the ground that its judicial claim was prematurely filed.

The non-observance of the 120-day period under Section 112 (D) of the NIRC of 1997 results in prematurity of claim which warrants a dismissal as no jurisdiction was acquired by the CTA. *Je*

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[8] Paragraph 7, Joint Stipulation of Facts and Issues, Division Docket, p. 59.
[9] Petition for Review, Division Docket, pp. 1-10.

The premature filing of judicial claim warrants a dismissal inasmuch as no jurisdiction was acquired by the court. This in consonance with the principles and doctrines laid down in the recent cases promulgated by the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* [10] (*Aichi* case) and *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Corporation, Inc.)* [11] (*Mirant*) which are applicable to the present case. In the mentioned cases, 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***
>
> 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

[10] 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.
[11] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

> (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.
>
> 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)

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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Also, 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, to wit:

> ***The filing of the judicial claim was premature***
>
> However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112 (D) of the NIRC, which provides that:
>
> SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> xxx xxx xxx
>
> (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. (Emphasis supplied.) *jc*

Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

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

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period 52 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 . . . 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.

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> **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.** [12] (emphasis ours)

The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.

Since the CTA is a specialized court of limited jurisdiction, [13] we can only take cognizance of such matters as are clearly within our jurisdiction *i.e.*, exclusive appellate jurisdiction on decisions/rulings or inaction of the CIR.[14] The law conferring jurisdiction on the CTA is Section 7 of Republic Act No. 1125, as amended by RA 9282, to wit:

> Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of

[12] *Supra*, note 10.
[13] *Southern Cross Cement Corporation vs. Philippine Cement Manufacturers Corporation,* G.R. No. 158540, July 8, 2004, 434 SCRA 65.
[14] *Visayas Geothermal Power Company vs. Commissioner Internal Revenue,* CTA EB Case Nos. 520 & 521 (CTA Case No. 7394), May 9, 2011.

> Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**; (emphasis ours)

The CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the CIR in cases involving refunds of internal revenue taxes. In case where the NIRC provides a specific period for action, the CIR's inaction shall be deemed a denial.

In this case, 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. On the other hand, when a judicial claim is filed without awaiting the lapse of the 120-day period and there is no decision yet, the CTA acquires no jurisdiction as there is no decision or inaction to speak of.

Also, the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* [15] should be applied by analogy to the present case. The pertinent portion of the ruling states:

> **The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal**, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would**

[15] G.R. No. 168498, April 24, 2007, 522 SCRA 144.

> **bar the appeal and deprive the Court of Tax Appeals of its jurisdiction** to entertain and determine the correctness of the assessments. **Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.** (emphasis ours) [16]

The Supreme Court ruled that the **30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction**. This applies to cases of refund under Section 112 where the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA. "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." [17]

At this point, there was neither a showing that a decision was rendered by the CIR or that the 120-day period has already lapsed. Evidently, there is nothing yet to be reviewed by the CTA. Thus, the 120-day period is crucial in filing an

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

appeal with the CTA.[18] We reiterate the ruling that "a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."[19]

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED.** Accordingly, the Decision of CTA First Division dated October 21, 2009 and the Resolution issued by the Special First Division dated May 31, 2010, are hereby reversed and set aside. Petitioner's refund claim of P19,702,880.80 is **DENIED** on the ground that the judicial claim for the first to fourth quarters of taxable year 2004 was prematurely filed.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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[18] *Supra*, note. 10.
[19] *Ibid.*

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(Concurs with the Dissenting Opinion
Of Presiding Justice Acosta)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(Concurs with the Dissenting Opinion
Of Presiding Justice Acosta)
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SITEL PHILIPPINES CORPORATION [formerly Clientlogic Philippines, Inc.],
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- versus -

COMMISSIONER OF INTERNAL REVENUE,
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CTA EB NO. 644
(CTA CASE NO. 7423)

Members:

ACOSTA, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, *and,*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
NOV 11 2011 [signature]

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DISSENTING OPINION

With all due respect to the majority's opinion, I disagree with the dismissal of the Petition for Review merely on the ground that it was prematurely filed.

The pertinent dates are as follows:

Period Covered	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim	End of the 120-day period under Section 112 (D), NIRC	End of the 30-day period under Section 112 (D), NIRC
1^{ST} to 4^{th} Quarter, 2004	March 28, 2006	March 30, 2006	July 26, 2006	August 25, 2006

[initials]

As correctly applied by the majority, an application for refund or tax credit over input taxes arising from zero-rated sales or effectively zero-rated sales or effectively zero-rated sales is governed by Section 112(A) and (D) of the 1997 NIRC which provides:

> **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 of 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.
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> xxx xxx xxx
>
> **(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. (Emphasis Ours)

The foregoing provisions require that a claim for refund over excess input VAT arising from zero-rated or effectively zero-rated sales must be

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administratively filed within two (2) years from the close of the taxable quarter when the sales were made. There is also an indispensable requirement for the taxpayer to await the action or inaction of the Commissioner within a period of one hundred twenty (120) days before it can appeal to this Court its claim for refund on excess or unutilized input VAT arising from zero-rated or effectively zero-rated sales. The application of Sections 112(A) and (D) of the 1997 NIRC has already been established in the cases of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[1] and *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[2]

Following the provisions of Sections 112(A) and (D) of the 1997 NIRC, it appears that the claim for refund or issuance of a tax credit certificate of input VAT was administratively filed within the two (2) year period, hence, compliant with Section 112(A) of the 1997 NIRC. The petitioner, however, failed to comply with the one hundred twenty (120) day period required to await the decision of the respondent as prescribed in Section 112(D) of the 1997 NIRC. Thus, it is true that petitioner prematurely filed the judicial claim of excess input VAT for all the four quarters of taxable year 2004.

Nevertheless, I beg to differ from the view of the majority that the premature filing of a refund claim involving unutilized input VAT is jurisdictional. With all due respect, the premature filing of said claim is a violation of the doctrine of exhaustion of administrative remedies.

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[1] G.R. No. 172129, September 12, 2008.
[2] G.R. No. 184823, October 6, 2010.

It is well settled that non-exhaustion of administrative remedies is not jurisdictional. It only renders the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[3] The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel,* the case is susceptible of dismissal for lack of cause of action.[4]

However, it appears that respondent failed to allege in her answer or in a motion to dismiss the premature filing of the case in Court. Thus, respondent is considered to have waived said defense. Therefore, the Court must aptly acquire jurisdiction to determine petitioner's claim of unutilized input VAT for all the four quarters of taxable year 2004.

In view thereof, I dissent on the majority's dismissal of petitioner's claim for refund or issuance of a tax credit certificate representing its unutilized input VAT for all the four quarters of taxable year 2004 since the Court may aptly take cognizance of the case for failure of respondent to allege the defense of lack of cause of action.

ERNESTO D. ACOSTA
Presiding Justice

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[3] *Carale vs. Abarintos,*G.R. No. 120704, March 3, 1997.
[4] *Paat vs. Court of Appeals,* G.R. No. 111107, January 10, 1997.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SITEL PHILIPPINES CORPORATION (Formerly Clientlogic Philippines, Inc.), Petitioner,	**CTA EB CASE NO. 644** (CTA Case No. 7423)
-versus-	Present: *Acosta, P.J. Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, Fabon-Victorino, Mindaro-Grulla, and Cotangco-Manalastas, JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 1 1 2011 [illegible] 1:08 p.m.

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Dissenting Opinion

BAUTISTA, J.:

Contrary to the disquisitions made by the Court *En Banc*, I find the Petition for Review filed with the Special First Division of the Court ("Court in Division") made within the period provided under the 1997 National Internal Revenue Code ("NIRC"), as amended, and therefore, the claimant-taxpayer is entitled to a refund or issuance of a tax credit certificate of unutilized input value-added tax arising from its domestic purchases of goods and services attributable to zero-rated transactions, and purchases / importations of capital goods for the taxable year 2004.

Section 112(D)[1] of the 1997 NIRC, as amended, is hereby quoted 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.

With the afore-quoted provision, and considering the factual milieu present in the case at bench, I submit that the same issue had been raised and thoroughly addressed in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[2] to wit:

> **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.
>
> 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:

[1] Prior to the effectivity of Republic Act No. 9337.
[2] CTA EB No. 408 (CTA Case No. 6647), March 25, 2009.

> "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.
>
> 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 Revenue on appeal.** 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*)." (*Boldfacing supplied.*)

Indeed, in not a few instances did this Court hold that the use of the word "*may*" in Section 112(D) of the 1997 NIRC indicates that the judicial recourse within thirty (30) days after the lapse of the one hundred twenty (120)-day period is directory and permissive, and not mandatory nor jurisdictional as long as the said period is within the two (2)-year prescriptive period under Sections 112[3] and 229[4] of the 1997 NIRC.[5] Therefore, if the two (2)-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the one hundred twenty (120)-day period before the taxpayer can lodge its appeal with this Court.[6]

On the other hand, the reckoning of the two (2)-year prescriptive period should be the then prevailing doctrine advocated in law and jurisprudence - from the date of filing of the relevant return[7] - not from the close of the pertinent quarter.[8]

In observing the prospectivity principle of judicial decisions, I deem it wise to quote the oft-cited case of *Chicot County Drainage District v. Baxter States Bank*,[9] which set forth a compelling rationalization as follows:

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[3] 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.

[4] 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 a 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.

[5] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB No. 416, February 4, 2009.

[6] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.

[7] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

[8] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.

> 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.[10] (*Boldfacing supplied.*)

In addition, the case of *Magtoto v. Manguera, et al.*,[11] the Supreme Court *En Banc*, made the following pronouncement:

> The final authority of this Court rests upon public respect for its decisions. That public respect is based upon an image which represents this Court as declaring legal principles with an authority and certainty that the people may place upon it their *bona fide* reliance and reasonable expectations. To hold now that public officers, who have acted in justifiable reliance on Our aforecited doctrines, have transgressed the Constitution, would certainly not strengthen public respect on the authority of Our judgments.
>
> **Where there has been justifiable reliance on Our decisions, and those who have so relied may be substantially harmed if retroactive effect is given, where the purpose of the new rule can be adequately effectuated without giving it retroactive operation, or where retroactive operation might greatly burden the administration of justice, then it is Our duty to apply the new rule prospectively.**
>
> The factual and textual bases for a contrary rule, are at best, less than compelling. Relevant is the Court's duty to assess the consequences of its action. More than the human dignity of the accused in these cases is involved. There is the compelling realization that substantial interests of society may be prejudiced by a retrospective application of the new

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9 308 US 371, 374 [1940].

10 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 7.*

11 G.R. Nos. L-37201-02, L-37424, and L-38929, March 3, 1975, 63 SCRA 4, Concurring Opinion penned by Justice Felix Q. Antonio, with Justices Antonio P. Barredo and Cecilia Muñoz-Palma, concurring.

> exclusionary rule. Thus, the values reflected transcend the individual interests of the herein accused, and involve the general security of society. The unusual force of the countervailing considerations strengthens my conclusion in favor of prospective application. xxx (*Boldfacing supplied.*)

Clearly, rulings of the court modifying or reversing a doctrine or principle, operates prospectively, and rights acquired under such doctrine or principle prior to its modification or reversal may not be affected thereby.[12]

To stress, the administrative claim filed on March 28, 2006, and the Petition for Review filed on March 30, 2006, albeit with the interval of merely two (2) days, were made *before* the Supreme Court enunciated the reckoning of the two (2)-year prescriptive period from the close of the taxable quarter when the pertinent sales were made.

The Court cannot expect the taxpayer-claimant to observe a prescriptive period that has yet to be set by the Supreme Court at that time. Not even the taxpayer-claimant itself could have foreseen that after it had filed its claims before the administrative and judicial fora, a subsequent ruling, either modifying or overruling a previous one, would be issued that would put to naught its claims. It would be the height of injustice for this Court to impose a ruling that was yet in effect at the time the claims were filed.

Consistent with the foregoing, I bring forth no reason to rule that the Petition for Review filed with the Court in Division on March 30, 2006 by petitioner covering the four quarters of the taxable year 2004 was prematurely made.

[12] People *v.* Jabinal, G.R. No. 30061, February 27, 1974, 55 SCRA 607.

Accordingly, I vote for the **PARTIAL GRANT** of the Petition for Review. I, therefore, maintain my stand with the Decision promulgated by the Special First Division on October 21, 2009, and the Resolution dated May 31, 2010.

Petitioner is entitled to a refund or issuance of a tax credit certificate of unutilized input value-added tax arising from its domestic purchases of goods and services attributable to zero-rated transactions, and purchases /importations of capital goods for the taxable year 2004 in the amount of ₱11,155,276.59.

LOVELL R. BAUTISTA
Associate Justice