REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PROCTER & GAMBLE ASIA, PTE. LTD., Petitioner,	CTA EB NO. 830 (CTA CASE NO. 7982)
	Present:
- versus -	ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	DEC 2 0 2012 4:10 pm

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DECISION

UY, J.:

This Petition for Review filed before the Court of Tax Appeals *En Banc* on September 22, 2011, seeks a review of the Resolutions promulgated on May 23, 2011 and September 6, 2011 by the Third Division of this Court (Court in Division)[1] in CTA Case No. 7982, entitled "Procter & Gamble Asia,

[1] Chaired by Associate Justice Lovell R. Bautista, with Associate Justice Olga Palanca-Enriquez and Associate Justice Amelia R. Cotangco-Manalastas as members.

Pte. Ltd., petitioner, vs. Commissioner of Internal Revenue, respondent", to wit:

1) Resolution promulgated on May 23, 2011[2] granting respondent's Motion to Dismiss, and correspondingly dismissing the Petition for Review in CTA Case No. 7982 for having been filed late; and

2) Resolution promulgated on September 6, 2011[3] denying herein petitioner's Motion for Reconsideration for lack of merit.

THE FACTS

Based on the records, the significant factual antecedents of the case are as follows:

Petitioner is a foreign corporation duly organized and existing under the laws of Singapore, and is maintaining a Regional Operating Headquarters in the Philippines at 18th Floor, Petron Megaplaza, 358 Sen. Gil Puyat Avenue, Makati City, in accordance with the Certificate of Registration and License No. A199913443 issued by the Securities and Exchange Commission. It provides management, marketing, technical and financial advisory, and other qualified services to related companies. It is duly registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) entity on October 8, 1999 under Certificate of Registration No. OCN 9RC0000071787.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), who is authorized to, among others, refund or credit taxes pursuant to Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended.

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[2] Docket, pp. 72-92.
[3] Ibid, at pp. 37-41.

On April 30, 2008, petitioner filed its Applications for Tax Credits/Refunds (BIR Form 1914) and letter request dated April 30, 2008 with the BIR Revenue District Office (RDO) No. 49 – North Makati, for the refund or tax credit of its alleged unutilized input VAT attributable to its zero-rated sales covering the quarters ending September 30, 2007 and December 31, 2007, in the amounts of P40,331,961.38 and P42,921,538.82, respectively. Thereafter, on October 31, 2008, petitioner filed another Applications for Tax Credits/Refunds (BIR Form 1914) and letter request dated October 31, 2008 with the same BIR RDO for the refund or tax credit of its alleged unutilized input VAT attributable to its zero-rated sales covering the quarters ending March 31, 2008 and June 30, 2008, in the amounts of P47,142,402.31 and P52,257,888.82, respectively.[4]

Without any action from respondent, petitioner filed on September 30, 2009 a Petition for Review before the First Division of this Court, docketed as CTA Case No. 7982, claiming for a refund of or issuance of a tax credit certificate in its favor in the aggregate amount of P182,653,791.33, allegedly representing its unutilized input VAT paid on goods and services attributable to its zero-rated sales for the quarters ending September 30, 2007, December 31, 2007, March 31, 2008, and June 30, 2008, pursuant to Section 110(B), in relation to Section 112(A), of the NIRC of 1997, as amended.

Respondent filed through registered mail her Answer[5] to the said Petition for Review on November 27, 2009, alleging, as one of her special and affirmative defenses, the argument that petitioner failed to comply with

[4] Petition for Review, Statement of Facts, pp. 5-6, Docket, pp. 5-6.
[5] CTA Case No. 7982, Answer, Records, pp. 229-231.

the conditions/requirements under the provisions of Section 112 (A), (B) and (D) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Meanwhile, on January 7, 2010, the First Division of this Court issued an Order transferring CTA Case No. 7982 to the Third Division of this Court (Court in Division)[6], pursuant to CTA Administrative Circular No. 01-2010 dated January 5, 2012, "Implementing the Fully Expanded Membership in the Court of Tax Appeals". Consequently, the Court in Division issued an Order on January 29, 2010 setting the pre-trial conference on February 19, 2010, which was thereafter reset to February 26, 2010 in the Order dated February 16, 2010[7].

A Joint Stipulation of Facts and Issues[8] was filed by the parties on March 3, 2010, duly approved by the Court in Division in the Resolution dated March 22, 2010[9]. Trial ensued thereafter and petitioner was able to present both documentary and testimonial evidence on its behalf, and appropriately filed its "Formal Offer of Evidence (Exhibits) for the Petitioner" on January 7, 2011.

On the other hand, instead of filing a comment/opposition to petitioner's Formal Offer of Evidence, respondent filed on March 4, 2011 a "Motion with Urgent Ex Parte Motion to Reset Hearing"[10] and a "Motion to Dismiss"[11] on the grounds of lack of cause of action and lack of jurisdiction, with petitioner's Comment/Opposition[12] thereto and Supplement to the

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[6] Supra., note 1.
[7] CTA Case No. 7982, Records, p. 255.
[8] Ibid., pp. 267-272.
[9] Id., p. 274.
[10] Id., pp. 553-554.
[11] Id., pp. 555-561.
[12] Id., pp. 565-587.

Comment/Opposition[13] later filed on March 16, 2011 and March 21, 2011, respectively.

In a Resolution dated May 23, 2011, the Court in Division rendered its assailed Resolution[14], granting respondent's Motion to Dismiss; and accordingly dismissed the Petition for Review in CTA Case No. 7982 for having been belatedly filed, in violation of Section 112(C) of the NIRC of 1997, as amended. The majority of the Court *a quo* ruled that petitioner clearly filed its petition for review way beyond the 30-day prescribed period to appeal, in violation of the provision of Section 112(C) and of the pronouncements made in Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc..

In his Dissenting Opinion[15], Honorable Justice Lovell R. Bautista, Chairperson of the Third Division, stated that the judicial recourse to this Court by a taxpayer-claimant within thirty (30) days, either from the lapse of the 120-day period within which the Commissioner of Internal Revenue (CIR) shall decide on the claim, or after the receipt of the decision denying the same, pursuant to Section 112(C), is merely directory and permissive, and not mandatory nor jurisdictional, provided that it is made within the 2-year prescriptive period prescribed under Sections 112 and 229 of the NIRC of 1997, as amended. Therefore, he concluded that there is no need for the taxpayer to wait for the denial of the claim by the CIR or even the inaction after the expiration of the 120-day period before the taxpayer can exercise its

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[13] Id., pp. 599-604.
[14] Resolution dated May 23, 2011, Annex "D", Petition for Review, Docket, pp. 72-92.
[15] Ibid., pp. 85-92.

right to appeal with this Court, for claims for refund or tax credit, both in the administrative and judicial claims must be filed within the 2-year period.

In addition, Justice Bautista expressed that since the prevailing jurisprudence, at the time the Petition for Review in CTA Case No. 7982 was filed, is the case of Commissioner of Internal vs. Mirant Pagbilao Corportion (Formerly Southern Energy Quezon, Inc.), petitioner merely has the 2-year prescriptive period from the close of the taxable quarter when the relevant sales were made to comply with in order for this Court to acquire jurisdiction over petitioner's instant judicial claim.

Petitioner filed a Motion for Reconsideration of the assailed Resolution before the Court *a quo* on June 9, 2011, with respondent's Comment/Opposition thereto filed on July 18, 2011. Finding that the issues raised thereto are without merit, the Court in Division denied said Motion for Reconsideration in the Resolution dated September 6, 2011[16].

Thus, petitioner came before the Court *En Banc* praying that the assailed Resolutions dated May 23, 2011 and September 6, 2011 of the Court in Division be set aside, and that the present case be remanded to the Court in Division to rule on the merits of the case and not on mere technicalities.

In compliance with the Resolutions dated October 25, 2011 and November 14, 2011, respondent filed through registered mail her Comment/Opposition (To Petitioner's Petition for Review) on November 28, 2011, and duly received by this Court on December 7, 2011. Likewise, petitioner filed its Memorandum on January 24, 2012; while respondent filed

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[16] Resolution dated September 6, 2011, Annex "B-1", Petition for Review, Docket, pp. 37-41.

her Manifestation and Motion on the same date stating that she is adopting all her arguments and affirmative defenses found in her Comment/Opposition to petitioner's instant petition, as well as the factual findings and conclusions of the Court in Division in the assailed Resolutions dated May 23, 2011 and September 6, 2011 in CTA Case No. 7982. Thereafter, this case was considered submitted for decision on February 8, 2012.

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for this Court's consideration:

1. Whether the ruling in the Aichi case that the 120-30 day rule is mandatory has been effectively abandoned by the Supreme Court in the subsequent cases of *Hitachi Global Storage Technologies Phils. Corp. vs. CIR, Silicon Philippines, Inc. vs. CIR, Kepco Philippines Corporation vs. CIR, Microsoft Philippines, Inc. vs. CIR,* and *Southern Philippines Power Corporation vs. CIR* wherein the Supreme Court effectively reverted to the previous doctrine that the 120-30 day rule is not mandatory;

2. Whether jurisdiction is waived or estoppel sets in when a party actively participated in the proceedings until the petitioner rested its case before questioning the jurisdiction of this Court;

3. Whether the Aichi decision constitutes as a valid precedent considering that it violated Article VIII, Section 4(3) of the Constitution which provides that no doctrine or principle of law laid down by the Supreme Court in a decision rendered en banc or in division may be modified or reversed except by the Supreme Court sitting en banc;

4. Whether the Aichi ruling should be given prospective application considering that retroactive application will violate Article 4 in relation to Article 8 of the Civil Code;

5. Whether the Court in Division erred in applying the Aichi ruling to the instant case considering that the factual antecedents involved are significantly different;

6. Whether, as ruled by the Supreme Court in BPI-Family Savings Bank case (G.R. No. 122480, April 12, 2002), substantial justice, equity, and fair play prevail over technicalities and legalism; and

7. Whether the 120-30 day rule mentioned in Section 112(D), now Section 112(C) of the National Internal Revenue Code of 1997, as amended, is directory or permissive.

THE COURT EN BANC'S RULING

Upon consideration of the various issues raised before Us, the Court finds that the principal issue boils down to whether or not the Court of Tax Appeals properly acquired jurisdiction over the instant claim taking into consideration the timeliness of the filing of the judicial claim as provided under the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Hence, all the issues raised by petitioner shall be discussed jointly.

At the outset, it bears mentioning that paragraph 2, Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, states that "[i]n deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case".

Needless to state, to obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties.[17] Corollary thereto, to inquire

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[17] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.

into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[18] It should be recalled that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[19]

In other words, although respondent has not immediately raised the issue of jurisdiction, nevertheless, this Court may *motu proprio* determine whether or not it has jurisdiction over the instant case taking into consideration, the factual and legal allegations contained in the pleadings filed by both parties and admitted by this Court. More so, in the present case, respondent's Motion to Dismiss filed before the Court in Division in CTA Case No. 7982 precisely raised said jurisdictional issue, and petitioner was given the opportunity to counter the same by directing it to file its comment/opposition thereto, which it actually did on March 16, 2011[20], followed by a Supplement to the Comments/Opposition to the Motion to Dismiss filed on March 21, 2011.

Therefore, petitioner's allegation that the issue on jurisdiction is deemed waived or that estoppel sets in when respondent actively participated in the proceedings until it has rested its case before questioning the jurisdiction of this Court, is of no moment simply because jurisdiction is conveyed only by law. Bear in mind that lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence,

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[18] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[19] Supra, note 17.
[20] Annex "F", Petition for Review, Docket, pp. 81-90.

acquiescence, or even by express consent of the parties.[21] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[22]

Now in resolving the primary issue of jurisdiction, Section 7 of Republic Act (RA) No. 1125[23], as amended by RA No. 9282[24], defines the appellate jurisdiction of the Court of Tax Appeals. The said provision, in part, reads:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
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> a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
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> (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 Code or other laws administered by the Bureau of Internal Revenue;
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> (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 Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**; xxx" *(Emphasis Ours)*

Furthermore, Section 11 of the same law prescribes how the said appeal should be taken, to wit:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by** a decision, ruling

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[21] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[22] *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.
[23] AN ACT CREATING THE COURT OF TAX APPEALS.
[24] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO.1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**.
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> **Appeal should be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. xxx" *(Emphases Ours).*

One of the "inactions" contemplated in the above-quoted provisions, pertinent to the instant case, is found in Section 112 of the NIRC of 1997, as amended, the pertinent provisions of which state:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
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> (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: xxx
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> xxx xxx xxx
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> (C)[25] *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) 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**

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[25] Previously Section 112(D) before Republic Act No. 9337 took effect on November 1, 2005.

> **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." *(Emphasis Ours)*

Based on the foregoing provisions, prior to seeking judicial recourse before the Court of Tax Appeals, a VAT-registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax attributable to zero-rated or effectively zero-rated sales within two (2) years after the close of taxable quarter when the sales or purchases were made. This was enunciated in the case of ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)***[26].

In said case, the Supreme Court held that:

> "The above proviso (Sec. 112 [A]) clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer **must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid**. xxx" *(Emphasis Ours)*

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

Additionally, a further reading of the provisions of Section 112 shows that under paragraph (C) thereof, the Commissioner of Internal Revenue is given a **120-day period, from submission of complete documents in support of the administrative claim** within which to act on claims for refund/applications for issuance of the tax credit certificate. Upon denial of the claim or application, or **upon expiration of the 120-day period, the taxpayer only has a 30-day period within which to appeal said adverse decision or unacted claim before the Court of Tax Appeals**.

The aforesaid provision was applied in ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***,[27] wherein the Supreme Court expounded on the significance of the **120-day** and **30-day** periods as follows:

> "Section 112(D)[28] 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**.
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> xxx. 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

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[27] G.R. No. 184823, October 6, 2010.

[28] Changed to Section 112(C) upon effectivity of Republic Act No. 9337 in November 1, 2005.

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 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.**

xxx xxx xxx." *(Emphasis and underscoring Ours)*

Clearly therefore Section 112(C) of the NIRC of 1997, as amended, directs the Commissioner of Internal Revenue to act on administrative claims for refund/applications for issuance of the tax credit certificate within a period of one hundred twenty (120) days from submission of complete supporting documents. Upon partial or full denial of such claim, or the expiration thereof without any action by the Commissioner on said claim, the taxpayer only has a period of thirty (30) days within which to seek judicial recourse from the adverse decision or inaction of the Commissioner before the Court of Tax Appeals.

Thus, it becomes incumbent upon the taxpayer-claimant to comply, not only with the two-year period within which to file a refund/tax credit claim with the Bureau of Internal Revenue, but must also give the Commissioner of Internal Revenue a period of one hundred twenty (120) days to either partially or fully deny the claim.

Subsequently, upon denial of the claim, or after the expiration of the 120-day period without any action by the Commissioner thereon, only then may the taxpayer-claimant seek judicial recourse to appeal the Commissioner's action or inaction on a refund/tax credit claim, within a period of 30 days therefrom.

Petitioner however contends that the *Aichi case*[29] and the 120-30 day rule should not be applied in the present case because decisions of the High Court at the time of the filing of the Petition for Review before the Court in Division in CTA Case No. 7982 held that the 120-30 day period under Section 112(D) [now Section 112(C)] of the NIRC of 1997 is merely permissive or directory in character and that the doctrine provided in the *Aichi case* was abandoned in subsequent decisions of the Supreme Court.

The arguments advanced by petitioner deserve scant consideration.

It is worthy of emphasis that judicial interpretation of a statute constitutes a 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.[30] As the Supreme Court is merely interpreting a law (Section 112 of the NIRC of 1997) which had long been effective, and not modifying or reversing any existing jurisprudence, the pronouncements made in the *Mirant case*[31] and *Aichi case* (although promulgated only on September 12, 2008 and October 6, 2010, respectively) must be applied herein.

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[29] Supra., note 27.
[30] *Eagle Realty vs. Republic of the Philippines,* G.R. No. 151424, July 31, 2009; *Philippine Constitution Association, et al. vs. Enriquez, et al.*, G.R. No. 113105, August 19, 1994.
[31] Supra., note 26.

Furthermore, the doctrine enunciated in the *Aichi case* was not abandoned by the Supreme Court in its subsequent rulings for the same can only be made by the Supreme Court *En Banc*. Section 4(3) of Article VIII of the 1987 Constitution provides:

> "ARTICLE VIII
> JUDICIAL DEPARTMENT
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> xxx xxx xxx
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> (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."

This Court is bound by the doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) embodied in Article 8 of the Civil Code of the Philippines.[32] The doctrine of *stare decisis* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court. A decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[33]

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[32] *Lazatin, et al. vs. Desierto, et al.*, G.R. No. 147097, June 5, 2009.
[33] *Fermin, et al. vs. People of the Philippines*, G.R. No. 157643, March 28, 2008.

Applying the foregoing discussion in the case at bench, We hereby affirm the findings of the Court in Division in the Resolution dated May 23, 2011, pertinent portions of which are quoted hereunder for easy reference:

> "With respect to petitioner's argument that the 120-30 day periods in Section 112(C) of the NIRC of 1997, as amended, are directory because of the word "may" in the said provision, it bears stressing that the use of the word "may" in said Section, simply means that the taxpayer has the option to appeal the CIR decision or the CIR inaction to this Court. It merely gives the taxpayer the option to appeal or not to appeal the adverse ruling or inaction of respondent within the 30-day reglementary period. Again, the phrase "may appeal" does not mean that the judicial recourse <u>within thirty (30) days</u> from the receipt of the decision/ruling or from the lapse of the 120-day period is directory and permissive.
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> As to petitioner's allegation that the Supreme Court decisions in the *Silicon case* and *Kepco case* bolster its contention that the *Aichi* decision is either abandoned or applicable to *Aichi* case only; suffice it to say that the issues in the *Silicon case* and *Kepco case* did not include the interpretation of Section 112(C) of the NIRC of 1997, as amended. The Supreme Court did not expressly state that the ruling of the 120-30 day period in *Aichi case* has been abandoned.
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> In the *Silicon case*, the partial denial of therein petitioner's claim was due to its failure to present its Authority to Print (ATP) and to print the word 'zero-rated' on its export sales invoices, and that the items reflected in its Summary of Importation Goods, such as training materials, office supplies, posters, banners, T-shirts, books, and the other similar items, are not capital goods. In the *Kepco case*, the principal ground for the partial denial of therein petitioner's claim was the absence of the word 'zero-rated' on the invoices.
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> Apparently, the denials in the aforementioned cases were based on therein petitioner's failure to meet the substantiation requirements provided under the pertinent provisions of the NIRC of 1997, as amended, and corresponding revenue regulation.
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> Besides, respondent had raised in her Answer, as one of her affirmative defenses, the failure of petitioner to comply with the conditions/requirements under Section 112(A)(B)(D) of the

NIRC of 1997, as amended, which was neither clearly shown nor discussed in the *Silicon case* and *Kepco case*."[34]

In other words, since the *Aichi case* was the first ever case which made a categorical pronouncement on the importance of the **120-day** and **30-day** prescriptive periods under Section 112 of the NIRC of 1997, as amended, it therefore becomes a judicial precedent to be followed in subsequent cases by all courts in the land, which may only be reversed and modified only by the Supreme Court sitting *en banc*. To reiterate, the doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Hence, strict compliance with the aforesaid prescriptive periods is therefore mandatory.

In view thereof, although it appears from the records of the case and as stated in the parties' Joint Stipulation of Facts and Issues[35] approved before the Court in Division on March 22, 2010, that petitioner has indeed complied with the required two-year period within which to file a refund/tax credit claim with the Bureau of Internal Revenue by filing its administrative claims on April 30, 2008 and October 31, 2008 (within the period from the close of the subject quarters of taxable years when the relevant sales or purchases were made), petitioner's corresponding judicial claim filed with the Court in Division on September 30, 2009 was filed beyond the 30-day period, detailed hereunder as follows[36]:

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[34] Resolution dated May 23, 2011, pp. 11-13, Docket, pp. 82-84.
[35] Supra., note 8.
[36] These undisputed facts were contained in the parties' Joint Stipulation of Facts and Issues filed and approved by the Court in Division in CTA Case No. 7982.

Taxable Quarters ending	*Filing date of the administrative claim*	*Last day of the 120-day period under Section 112(C) from the date of filing of the administrative claim in case of inaction*[37]	*Last day of the 30-day period to judicially appeal said inaction*	*Filing date of the Petition for Review*
September 30, 2007 and December 31, 2007	April 30, 2008	August 28, 2008	**September 27, 2008**	**September 30, 2009**
March 31, 2008 and June 30, 2008	October 31, 2008	February 28, 2009	**March 30, 2009**	

Based on the foregoing, the reckoning date of the 120-day period under Section 112(C) of the NIRC of 1997, as amended, commenced *simultaneously* with the filing of petitioner's administrative claim, as no sufficient proof was presented by petitioner to show its alleged subsequent filing of any supporting documents.

In the absence of acceptable proof of subsequent submission of complete documents from the date of the filing of its administrative claims on April 30, 2008 and October 31, 2008, or until August 28, 2008 and February 28, 2009, respectively, We find that the 120-day period should be counted from said dates. Indubitably, petitioner failed to observe the 30-day period under Section 112(C) of the NIRC of 1997, as amended, to judicially appeal the instant administrative claim. Correspondingly, the belated filing of the Petition for Review before the Court in Division in CTA Case No. 7982 warrants a dismissal with prejudice, inasmuch as no jurisdiction was acquired thereon to entertain the said case.

[37] As there was no sufficient proof that petitioner submitted any supporting documents to the BIR, the 120-day period commenced to run from the date of actual filing of petitioner's administrative claim.

Thus, the Court in Division correctly ruled that:

> "Sections 112(A) and 112(C) of the NIRC of 1997, as amended, prescribe the periods within which certain acts must be done, particularly, when the administrative claim and judicial appeal may be filed. Therefore, compliance with the periods provided therein is imperative and mandatory.
>
> As a general principle, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. By their very nature, these rules are regarded as mandatory.
>
> xxx xxx xxx
>
> Based on Section 112(C) of the NIRC of 1997, and as interpreted in the *Aichi case*, **a taxpayer has 30 days within which to file an appeal with this Court in either of the following instances: (1) when a decision is issued by the CIR before the lapse of the 120-day period.** If after the lapse of 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 this Court **within 30 days.**
>
> xxx xxx xxx
>
> It is undisputed that the judicial claim for refund or issuance of tax credit certificate (TCC) was filed on <u>September 30, 2009</u>. Petitioner clearly filed the instant petition for review way beyond the 30-day prescribed period to appeal provided under Section 112(C) of the NIRC of 1997, as amended. Hence, the instant Petition for Review was filed late."[38] *(Emphasis and underscoring supplied)*

Parenthetically, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[39] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action

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[38] Resolution dated May 23, 2011, pp. 8, 10-11, Docket, pp. 79, 81-82.
[39] Supra., note 18.

or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[40] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[41]

Furthermore, the right of petitioner to refund unutilized input VAT is a mere statutory privilege and not a vested right. It bears emphasis that recovery of excess input VAT is a refund which is in the nature of an exemption. There is parity between tax refund and tax exemption when the former is based either on a tax exemption statute or a tax refund statute. Evidently, a claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.[42]

In this case, input VAT is taxes legally due to the government from the taxpayer and is not a kind of an erroneously or illegally collected tax. However, under certain exceptional circumstances (such as for sales or purchases that are zero-rated), the legislature provided a tax refund statute under Section 112 from which the taxpayer is given the benefit to refund such input VAT as a mere privilege granted by the government for having such

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[40] Supra., note 21.
[41] Supra., note 22.
[42] *CIR vs. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008; *Commissioner of Internal Revenue vs. SC Johnson & Son, Inc.*, 368 Phil. 388, 411, June 25, 1999; *Magsaysay Lines, Inc., vs. Court of Appeals*, 329 Phil. 310, 324, August 12, 1996; *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 314 Phil. 220, 228, May 26, 1995.

kind of sales or transactions. Hence, it being a mere liberality granted to the taxpayer, it is with more reason that the Court must be cautious in interpreting the law governing the claim for such privilege.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated May 23, 2011 and September 6, 2011 of the Court in Division in CTA Case No. 7982 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my Dissenting Opinion on the Resolution dated May 23, 2011)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
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 conclusions in the above decision were reached in consultation 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