REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ONE-STOP-SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER, DEPARTMENT OF FINANCE (OSS-DOF) AND COMMISSIONER OF INTERNAL REVENUE, Petitioners,	C.T.A. EB NO. 660 (C.T.A. Case No. 7629)
	Members:
	ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
- versus -	
DAICOLOR PHILIPPINES, INC., Respondent.	Promulgated: OCT 10 2011 9:00 a.m.

x- -x

DECISION

Fabon-Victorino, J.:

In this Petition for Review, petitioner Commissioner of Internal Revenue (CIR) assails the Decision dated December 03, 2009,[1] rendered by the Court in Division in CTA Case No. 7629,

[1] Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred by Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez; pp. 22-45, *En Banc* docket.

directing her to refund or to issue a tax credit certificate in the amount of Eight Hundred Fifty Seven Thousand Six Hundred Eleven Pesos and 36/100 (P857,611.36) in favor of respondent Daicolor Philippines, Inc., as well as the subsequent Amended Decision[2] promulgated on July 06, 2010, denying her Motion for Partial Reconsideration, for lack of merit.

The Facts

As established, respondent is a duly organized domestic corporation with Securities and Exchange Commission (SEC) Registration No. A1997-16078 dated February 25, 1999, with business address at Lot 7 D-8 Canlubang, Industrial Estate Canlubang, Calamba City, Laguna.[3] It is registered with Board of Investments (BOI) with BOI Certificate of Registration No. EP 97-208 dated September 25, 1997.[4] As a duly registered VAT taxpayer, it was issued by the Bureau of Internal Revenue (BIR) a Taxpayer Identification No. 005-303-840.[5]

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[2] *En Banc* docket, pp. 46-51.
[3] Par. 3, Facts Admitted, JSFI, rollo, p.148.
[4] Exhibit "C".
[5] Exhibit "A"

Petitioner, on the other hand, is the duly appointed Commissioner of Internal Revenue with the authority to act on applications for refund or issuance of tax credit certificate.

Respondent filed its Quarterly VAT Returns for the four quarters of taxable year 2005 on the following dates:

2005	Date of Filing	Exhibit
First Quarter	April 25, 2005	"N"
Second Quarter	July 25, 2005	"M"
Third Quarter	October 20, 2005	"L"
Fourth Quarter	January 20, 2006	"K"

On April 25, 2007, respondent filed its administrative claim with the One-Stop-Shop Inter-agency Tax Credit and duty Drawback Center, Department of Finance (OSS-DOF) for the refund or issuance of tax credit certificate for its alleged excess input tax for taxable year 2005 in the amount of P2,612,715.07.

On the same day, respondent lodged a Petition for Review with the Court in Division alleging inaction on the part of petitioner on its application for refund or issuance of TCC.

In her Answer filed on July 12, 2007, petitioner CIR alleged among others that respondent's claim for refund in the amount of P2,612,715.07 was not properly documented. Moreover, respondent had the burden of proving compliance with the relevant provisions of the National Internal Revenue Code (NIRC), as amended, with respect to its claim to refund or issuance of tax credit certificate, particularly, Sections 112 (A) and (D) and 229, on the prescriptive period for filing a claim for tax refund/credit, Sections 110 and 113 in relation to the provisions of Revenue Regulations No.7-95, on invoicing requirements, as well as of Revenue Memorandum Order No. 53-98 on the prescribed checklist of requirements for purposes of refund. Petitioner further stated that claims for refunds are in the nature of exemption from taxation hence, must be strictly construed against the claimant.

In addition, petitioner raised the following **SPECIAL AND AFFIRMATIVE DEFENSE:**

> 12. The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of the petitioner to comply with the provision of Section 112 (D) of the 1997 Tax Code which provides, thus:
>
> > Section 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 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)

13. As stated in the petition, petitioner filed the administrative claim for refund with the Bureau of Internal Revenue on April 25, 2007. On the same date, the instant petition was filed. Obviously the 120 days given to the Commissioner to decide on the claim has not yet lapsed when the petition was filed. The petition was prematurely filed, hence it must be dismissed for lack of jurisdiction."

For its part, OSS-DOF alleged as part of its affirmative defenses in its Answer filed on August 29, 2007 that respondent's claim for refund and /or tax credit is deemed not filed for its failure to pay the required filing fee as indicated in Department of Finance (DOF) Department Order No. 49-2000, not to mention that there was likewise failure to substantiate its claim. Even granting that respondent was able to file its administrative claim for tax credit on April 25, 2007, OSS-DOF claimed that a portion of its claim covering the period January to March 2005 had prescribed by virtue of Section 112 of the National Internal Revenue Code (NIRC). The claim for the said quarter should have been filed not later than March 2007, which was the end of the two-year period after the close of the taxable quarter when the sales were made.

Further, respondent prematurely filed the instant Petition for Review on April 25, 2007, or on the same day that it filed its administrative claim for refund with petitioner, depriving the latter of the opportunity to determine the merit of the administrative claim within the allowable 120-day period provided under Section 112 of the NIRC, as amended. For failure of respondent to exhaust available administrative remedies, the petition should be dismissed for lack of cause of action. OSS-DOF stressed that at the time the petition was filed there was yet no adverse decision to speak of, thus petitioner's right of action was yet to accrue. In sum, the Court could not possibly entertain the petition for want of jurisdiction.

OSS-DOF was also of the opinion that the simultaneous filing of the administrative and judicial claim for refund constituted forum shopping on the part of respondent, which is a violation of the Rules of Court.

After the parties' Joint Stipulation of Facts and Issues was approved by the Court on January 9, 2008, the trial proceeded with only respondent presenting evidence. Petitioner waived her right to present evidence opting to file Memorandum 30 days from manifestation in open court on October 20, 2008.

On December 23, 2008, the case was submitted for decision after respondent filed its Memorandum on November 19, 2008 and petitioner on December 19, 2008.

On December 03, 2009, the Court in Division resolved the case partially in favor of respondent disposing it in this wise:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal

> Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in the amount of EIGHT HUNDRED FIFTY SEVEN THOUSAND SIX HUNDRED ELEVEN PESOS AND 36/100 (P857,611.36)** in favour of petitioner, representing its unutilized input VAT for the second, third, and fourth quarters of taxable year 2005.
>
> **SO ORDERED.**

Both aggrieved, petitioner and respondent sought a reconsideration of the foregoing Decision.

On July 06, 2010, the Court denied petitioners' Motion for Partial Reconsideration but partially granted that of respondent's by increasing the amount for refund from Eight Hundred Fifty Seven Thousand Six Hundred Eleven Pesos and 36/100 (P857,611.36) to **ONE MILLION SIXTY-THREE THOUSAND FOUR HUNDRED FIFTY-SIX PESOS AND 62/100 (P1,063,456.62)**. The relevant portion of the assailed Amended Decision is reproduced below for ready reference:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in the amount of ONE MILLION SIXTY-THREE THOUSAND FOUR HUNDRED FIFTY-SIX PESOS AND**

> **62/100 (P1,063,456.62)** in favour of petitioner, representing its unutilized input VAT for the second, third, and fourth quarters of taxable year 2005."
>
> **SO ORDERED**.

Unyielding, petitioner CIR filed the instant Petition for Review[6] before the Court *En Banc* on July 27, 2010, praying that the assailed Decision and Amended Decision promulgated on December 3, 2009 and July 6, 2010, respectively, be reversed and set aside and that another be issued denying respondent's judicial claim for refund.

On September 13, 2010, respondent, in compliance with the Resolution of August 12, 2010, filed its comment on the instant Petition for Review, which was deemed submitted for decision on October 21, 2010.

The Lone Issue

> THE FORMER SECOND DIVISION ERRED IN GRANTING PETITIONER'S CLAIM FOR REFUND IN THE REDUCED AMOUNT OF P1,063,456.62 ALLEGEDLY REPRESENTING ITS UNUTILIZED INPUT VAT FOR THE SECOND, THIRD AND FOURTH QUARTERS OF TAXABLE YEAR

[6] En Banc docket, pp.1-20.

> 2005, BECAUSE THE HONORABLE COURT HAD NO JURISDICTION TO ACT ON THE PETITION FOR REVIEW. ASSUMING THAT THE FORMER SECOND DIVISION HAD JURISDICTION, PETITIONER AVERS THAT HIS DENIAL BY INACTION WAS PROPER AND THAT RESPONDENT HAS NOT SUFFICIENTLY PROVEN ITS ENTITLEMENT TO A REFUND.

Petitioner's Arguments:

Petitioner argues that the Court in Division was deprived of jurisdiction to entertain respondent's Petition for Review as it was prematurely filed in violation of Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended. The said provision which specifically governs refunds or tax credits of input tax applies in this case and not Section 229 which pertains to recovery of taxes erroneously or illegally collected. Further she posits that respondent failed to submit complete documents in support of its application for refund justifying her denial by inaction of the administrative claim. Finally, respondent was unable to sufficiently prove its entitlement to a refund. There was no showing that its purchases of goods and services were made in the course of its trade or business. Neither was there any indication that the said purchases were properly supported by VAT invoices and/or official receipts and other documents, such as entries made in its subsidiary purchase journal, to prove actual payment of VAT in accordance with Sections 110(A)(2) and 113[7] of the NIRC of 1997, as amended, and Section 4.104-5(a) & (b)[8] of Revenue Regulations No. 7-95.[9]

Respondent's Counter-Arguments:

Respondent says otherwise. It insists that the Court has jurisdiction to determine the merit of the petition in C.T.A. Case No. 7629. Under Section 112(A) of the NIRC of 1997, as amended, an application for refund should be filed within two years from the close of the taxable quarters when the sales were made. The taxpayer need not wait for the denial of the administrative claim or the lapse of the 120-day period if the 2-year prescriptive period in Section 229 is about to end. When applied to a claim for VAT, the two-year prescriptive period starts to run from the close of the taxable quarter when the purchases giving rise to the input VAT were made.

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[7] Invoicing and Accounting Requirements for VAT-Registered Persons.
[8] Substantiation of Claims for Tax Credit.
[9] Consolidated Value-Added Tax Regulations

Contrary to petitioner' claim, respondent had sufficiently established its entitlement to VAT refund. Both its the testimonial and documentary evidence indicated that its sales of goods or properties were made to Philippine Economic Zone Authority (PEZA) registered enterprise or such goods were exported to other countries.

Ruling of the Court En Banc

The Court *En Banc* finds for petitioner.

To dispose the conflict, it is paramount that the Court *En Banc* first determine jurisdiction over the Petition for Review filed by respondent before the Court in Division.

The relevant provision is Section 7 of R.A. No. 1125,[10] as amended by R.A. No. 9282,[11] which defines the appellate jurisdiction of the Court of Tax Appeals, to wit:

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[10] AN ACT CREATING THE COURT OF TAX APPEALS.

[11] 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.

> "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 Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) <u>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</u>;" (*Underscoring supplied*)

Clearly, the Court of Tax Appeals has appellate jurisdiction over a claim for refund which has been denied by respondent via an adverse decision or through her inaction within the allowable period of 120 days provided under Section 112 of the NIRC of 1997, as amended by R.A. No. 9337, which reads as follows:

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

Thus, a VAT-registered person has two **(2) years after the close of the taxable quarter when the pertinent sales were made,** within which to apply with petitioner a claim for refund or tax credit of unutilized creditable input tax. Petitioner, on the other hand, has **120 days from the date of submission of complete documents in support of the application for refund or tax credit of input tax** to grant or deny the same. Upon notice of denial or expiration of the allowable period of 120 days without any action on the part of petitioner, the VAT-registered person has **30 days, within which to appeal the adverse decision or the inaction of petitioner with the Court of Tax Appeals** by filing a petition for review.

The record shows that respondent filed its administrative claim on April 25, 2007. A fortiori, petitioner had 120 days from the said date or until August 23, 2007, within which to act on respondent's application for refund. However, in complete disregard of the rules, and without pursuing the required administrative remedy to its completion and affording petitioner time to resolve the issue in her level, respondent sprinted to the Court and filed on the very same day its judicial claim for refund.

The need to wait for the 120-day period for petitioner to act on claim for refunds before judicial action is taken is the legal principle enunciated in *Commissioner of Internal Revenue vs.*

Aichi Forging Company of Asia, Inc.,[12] where the Supreme Court enriched the jurisprudence in this wise:

> "Section 112(D)[13] 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 has no legal basis." (*Emphasis supplied*)

Obviously, in the instant case, there was neither an adverse decision nor inaction on the part of petitioner that could be subject of an appeal before the Court in Division. The

[12] G.R. No. 184823, October 6, 2010.
[13] Now Section 112(C) of the 1997 Tax Code, as amended.

administrative as well as the judicial claims for refund were filed on the same day, viz., April 25, 2007, effectively depriving petitioner of getting even a bird's eye view of the application for refund filed before her.

In fine, the Petition for Review was prematurely filed with the Court in Division justifying its denial on ground of lack of cause of action, which was seasonably invoked by petitioner in her Answer.

Indeed, there are procedural requirements that must be complied with before resort to court can be had. A precept that a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court,[14] cannot simply be disregarded. If a litigant goes to court without first pursuing his administrative remedies, his action is premature as he has no cause of action to ventilate in Court. His case is not ripe for

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[14] Carale vs. Abarintos, 269 SCRA 142.

judicial determination.[15] And the Court is simply not competent to entertain the appeal at the time it was filed by respondent on April 25, 2007.

WHEREFORE, the Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **GRANTED**. The assailed Decision of December 3, 2009 and Amended Decision of July 06, 2010 of the Court in Division are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Petition for Review in *Daicolor Philippines, Inc. vs. One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center - Department of Finance (OSS-DOF) and Commissioner of Internal Revenue*, docketed as CTA Case No. 7629 is **DENIED.**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

[15] Aboitiz vs. Collector of Customs, 83 SCRA 271; Abe-Abe vs. Manila, 90 SCRA 531.

Juanito C. Castañeda, Jr.
(with Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(with Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

Cielito N. Mindaro-Grulla
(Concurs with the Ponente and Associate Justice Castañeda)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

ONE-STOP-SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER, DEPARTMENT OF FINANCE (OSS-DOF) AND COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DAICOLOR PHILIPPINES, INC.,
Respondent.

CTA EB No. <u>660</u>
(CTA Case No. 7629)

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

PROMULGATED:

OCT 10 2011 — Apolinario 9:08 a.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

I concur in the decision penned by Associate Justice Esperanza R. Fabon-Victorino, however, in addition to the grounds set forth, I would like to highlight the application of the ruling in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* [1] (*Aichi* case).

The non-observance of the 120-day period under Section 112 (D)[2] of the NIRC of 1997 results in prematurity of claim which warrants a dismissal as no jurisdiction was acquired by the CTA.

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.* [3] (*Aichi* case) and *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Corporation, Inc.)* [4] (*Mirant*), the premature filing of judicial claim warrants a dismissal inasmuch as no jurisdiction was acquired by the court. In the cited 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 decision in *Aichi* states:

> **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**

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[1] 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.
[2] Now Section 112 (C), as amended by Republic Act (RA) No. 9337.
[3] *Supra*, note 1.
[4] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

> **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)
>
> xxx xxx xxx

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 Court of Tax Appeals (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 observance of these periods is mandatory and non-compliance therewith would result in the denial of the claim. The second paragraph of Section 112 (D) contemplates two scenarios: (1) when a decision is issued by the Commissioner before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both situations, the taxpayer has 30 days within which to file an appeal with the CTA. Clearly, the 120-day period is crucial in filing an appeal with the CTA as held in the same 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:

xxx xxx xxx

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 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.

xxx xxx xxx

> **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.** (Emphasis Ours)

Applying the same to the present case, it can be clearly gleaned that the judicial claim was prematurely filed since both administrative and judicial claims were filed on the same day.

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. [5] "All courts must take their bearings from the decisions of this Court." [6]

Maintaining stability in jurisprudence is of paramount importance under the principle of *stare decisis et non quieta movere* which simply means follow past precedents and do not disturb what has been settled. Where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[7] That decision becomes a judicial precedent to be followed in subsequent cases by all

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[5] *Dante Nacuray, et al. v. National Labor Relations Commission*, G.R. Nos. 114924-27, March 18, 1997, 270 SCRA 9

[6] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781.

[7] *Negros Navigation Co., Inc. v. Court of Appeals, et al.*, G.R. No. 110398, November 7, 1997, 281 SCRA 534.

courts in the land. [8] Thus, the *Aichi* case constitutes as *stare decisis* to the case at bar.

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

WE CONCUR:

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

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

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[8] *Gregorio Castillo v. Sandiganbayan*, G.R. No. 138231, February 21, 2002, 377 SCRA 509 citing *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, June 20, 2000, 334 SCRA 114.

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Court of Tax Appeals
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En Banc

ONE-STOP-SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER, DEPARTMENT OF FINANCE (OSS-DOF), AND COMMISSIONER OF INTERNAL REVENUE,
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Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
OCT 1 0 2011 [signature] 9:00 a.m.

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Dissenting Opinion

BAUTISTA, J.:

The factual circumstances present in the case at bench should make this Court respond to the principle that "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."[1]

When respondent filed its claim in the administrative level and the Petition for Review with the Former Second Division of the Court on April 25, 2007, the then prevailing doctrine, is that, the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return,[2] and not from the close of the quarter.[3]

Before the Supreme Court even reckoned the two (2)-year prescriptive period from the close of the pertinent quarter, this Court, in not a few instances, ruled that the date of filing of the relevant return is the determinative factor.

However, during the pendency of the case at bench, the Supreme Court issued a ruling wherein the two (2)-year period is reckoned, not from the filing of the return, but from the close of the taxable quarter when the sales were made.

Albeit I agree that the said ruling is in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code ("NIRC"), as amended, it would be the height of injustice to impose a new ruling wherein after a taxpayer-claimant had faithfully relied and complied therein, this Court will only nullify the same on the basis of the so-called "adherence to precedence."

Even the taxpayer-claimant itself could not have foreseen that after it had filed its claims before the administrative and judicial *fora*, a subsequent ruling, either

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[1] Magtoto *v.* Manguera, *et al.*, 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.
[2] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[3] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.

modifying or overruling a previous one, would be issued that would put to naught its claims.

It is true that this Court has the duty to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[4] Nonetheless, this Court should not decide a case by merely adhering to precedence; idolatrous reverence for precedent, simply as precedent, no longer holds true, for more important than anything else is that the Court should be right.[5]

Therefore, the Court cannot merely impose a ruling that was yet to be enunciated at the time a claim was lodged in Our forum.

As the Supreme Court aptly ruled, "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."[6]

With this, prior determinations deemed to have finality and acted upon accordingly, demands examination. The effect of a subsequent ruling as to invalidity may have to be considered in various aspects. It may have consequences which cannot just be ignored. Thus, an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.[7]

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[4] Commission on Higher Education *v.* Atty. Felina S. Dasig, G.R. No. 172776, December 17, 2008, 574 SCRA 227, *citing Albert v. Court of First Instance of Manila, No. L-26364, May 29, 1968, 23 SCRA 948, 961.*
[5] Philippine Trust Company and Smith, Bell and Co. *v.* Mitchell, 59 Phil. 30, 36.
[6] *Supra,* note 1.
[7] 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, 308 US 371, 374 [1940].*

Further, the use of the word *"may"* in Section 112(C) of the 1997 NIRC, as amended, 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[8] and 229[9] of the 1997 NIRC.[10] 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.[11]

Otherwise, the Court will be deprived of jurisdiction to entertain the case.[12]

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[8] 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.

[9] 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.

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

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

[12] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.

To stress, the administrative claim and Petition for Review filed on April 25, 2007, was 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.

Taking into consideration that a taxpayer-claimant cannot observe a prescriptive period that has yet to be enunciated by the Supreme Court at the time it filed its claim, I, therefore, bring forth no reason to rule that the Petition for Review filed with the Former Second Division of this Court should be denied for being prematurely filed.

Accordingly, I vote that the Petition for Review, claiming for refund or issuance of tax credit certificate attributable to zero-rated transaction covering the period from January 2005 to December 2005, be **GRANTED**, subject to the verification of the claims involved.

LOVELL R. BAUTISTA
Associate Justice