Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

TeaM ENERGY CORPORATION (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 706
(CTA Case No. 7617)

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:
MAY 0 2 2011 3:00 pm

x--x

RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution is the Petition for Review before the Court *En Banc* filed by petitioner on December 17, 2010 of the Amended Decision[1] dated November 26, 2010 rendered by the Special First Division of this Court, which dismissed the Petition for

[1] Penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and with dissenting opinion by Associate Justice Lovell R. Bautista. *En Banc* Docket, pp. 38-49.

Review for failure to comply with 120-day period provided under *Section 112 (D) of the NIRC of 1997*. The dispositive portion of the assailed Amended Decision reads:

Amended Decision dated November 26, 2010:

> "**WHEREFORE**, the Motion for Reconsideration (Re: Decision promulgated 13 July 2010 of the respondent is hereby **GRANTED.** The assailed July 13, 2010 decision is hereby REVERSED and SET ASIDE and CTA Case No. 7617 is hereby considered DISMISSED for having been prematurely filed."

In its petition, petitioner claims that the requirement to exhaust the 120-day period for respondent to act on its administrative claim for input VAT refund/credit under *Section 112 (D) of the NIRC of 1997* is merely a species of the doctrine of exhaustion of administrative remedies and is therefore not jurisdictional.[2] Further, the non-observance of the doctrine merely results in lack of cause of action and failure to invoke the same operates as a waiver of the objection.[3] Hence, petitioner asseverates that respondent's failure to raise the issue of premature filing of the instant petition in her Special and Affirmative Defenses, she is deemed to have waived the foregoing objection and the Court may then proceed with the case as if the doctrine had been observed. Finally, petitioner posits that the doctrine laid down in the recent case of *Commissioner of Internal Revenue v. Aichi Forging*

---

[2] Petition for Review, par. 15, *En Banc* Docket, p. 8.
[3] *Id.*, par. 17, *En Banc* Docket, p. 9.

Company, Inc.[4] should not be applied in the instant case but must be applied prospectively.[5]

Despite receipt of notice, respondent failed to file her Comment on the Petition for Review.[6]

The petition is bereft of merit.

Section 112 (D) of the NIRC of 1997, as amended, reads:

> SEC. 112 (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 <u>within one hundred twenty (120) days</u> from the date of submission of complete documents in support of the application** filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, <u>within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period,</u> appeal the decision or the unacted claim with the Court of Tax Appeals.** [Emphasis supplied.]

In the recent case of ***Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.***[7] *(the "Aichi Case")*, the Supreme Court categorically ruled that observance of the 120-day period set forth under *Section 112 (D) of the NIRC of 1997* is crucial in filing an appeal

---

[4] G.R. No. 184823, October 2, 2010.
[5] Petition for Review, par. 22, *En Banc* Docket, p. 12.
[6] *En Banc* Records Verification Form dated March 1, 2011, *En Banc* Docket, p. 73.
[7] G.R. No. 184823, October 6, 2010.

before the Court of Tax Appeals. The pertinent portion of the said decision reads:

> "Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales." **The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.** This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.
>
> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA.** As we see it then, **the 120-day period is crucial in filing an appeal with the CTA.**
>
> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc. [130 Phil. 12 (1968)]* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
>
> In fine, **the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."**[8] [Emphasis supplied.]

---

[8] *Id.*

From the foregoing, the Supreme Court's conclusion is clear and categorical, *i.e.*, **the premature filing of taxpayer's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as <u>no jurisdiction was acquired by the CTA.</u>** Hence, the aforementioned inference clearly belies petitioner's claim that failure to observe the 120-day period under Section 112 (D) of the NIRC of 1997 before perfecting an appeal before the CTA is merely a class of doctrine of exhaustion of administrative remedies. Instead, as the High Court puts it, the premature filing of taxpayer's claim for refund/credit of input VAT before the CTA is tantamount to lack of jurisdiction on the part of the CTA to act on the claim and therefore warrants a dismissal of the petition.[9]

In the instant case, records disclose that petitioner timely filed its administrative claim for tax refund/credit corresponding to the input VAT reported in its Quarterly VAT Returns for the first three (3) quarters of 2005 and Monthly VAT Declaration for October 2005 before respondent on December 20, 2006 or within the two (2)-year period prescribed under *Section 112 (A) of the NIRC of 1997*. However, petitioner prematurely filed its judicial appeal before this Court on April 18, 2007 or 119 days after it filed its application for refund before respondent. It therefore failed to heed on the mandatory period of 120 days, which is crucial in filing an appeal with the CTA, as held in the *Aichi Case*.

---

[9] In a Resolution dated December 6, 2010, the Supreme Court denied the Motion for Reconsideration filed in the case entitled, CIR v. Aichi Forging Company of Asia, Inc., G.R. No. 184823

Hence, the filing of petitioner's claim for unutilized input VAT refund/credit before the Court *a quo* was premature as there was no CIR decision for this Court to review nor was there inaction on the part of respondent after the lapse of the 120-day period provided under *Section 112(D) of the NIRC of 1997, as amended.* Therefore, pursuant to the *Aichi Case*, the petition for review filed before this Court warrants a dismissal inasmuch as no jurisdiction was acquired by the Court *a quo* to take cognizance of the case.

Well-entrenched is the rule that jurisdiction over the subject matter is "conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside."[10] In ***People v. Casiano***,[11] the Supreme Court discussed the operation of the principle of estoppel on the question of jurisdiction, thus:

> "*The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not*. If it had *no* jurisdiction, but the case was tried and decided upon the theory that it *had* jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same "must exist *as a matter of law*, and *may not be conferred by consent of the parties or by estoppel*" (5 C.J.S., (861-863). However, if the lower court *had* jurisdiction and the case was heard and decided upon a given theory such, for instance, as that the court had *no* jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position — that the lower court *had* jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law,

---

[10] *La Naval Drug Corporation vs. Court of Appeals*, G.R. No. 103200, 31 August 1994.
[11] G.R. No. L-15309, 111 Phil. 73, February 16, 1961.

> and does not depend upon the will of the parties, has no bearing thereon."

Similarly, it is significant to emphasize that the Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[12] Pursuant to ***Section 7 of R.A. No. 9282***, *amending R.A. No. 1125, otherwise known as the Law Creating the Court of Tax Appeals, and* ***Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals,*** it is evidently clear that "the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue."[13] More importantly, "***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,***"[14] provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 120-day period prescribed under *Section 112 (D) of NIRC of 1997* for the Commissioner to act on the claim for tax refund/credit.[15]

---

[12] *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[13] *Id.*
[14] *Id.*
[15] *See Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

As to petitioner's contention that the *Aichi Case* should be applied prospectively, it cited prior decisions[16] of the Supreme Court which allegedly adopted the view that the two (2) year prescriptive period under *Section 112 (A) of the NIRC of 1997* applies to both administrative and judicial claims for tax refund or credit of unutilized input VAT.[17] Otherwise stated, petitioner argues that the doctrine laid down in *Aichi Case* should be applied prospectively and should not be applied to parties who had relied on prevailing jurisprudence and acted on the faith thereof.

We are not persuaded.

The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines which provides, thus:

> ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

Under the doctrine of *stare decisis*, "***once a point of law has been established by the court, that point of law will, generally, be followed by the same court and by all courts of lower rank in***

---

[16] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.
[17] Petition for Review, par. 22-25, *En Banc* Docket, p. 12-13.

subsequent cases where the same legal issue is raised."[18] Moreover, it proceeds from the first principle of justice that, absent powerful countervailing considerations, like cases ought to be decided alike.[19]

A meticulous scrutiny of the Supreme Court decisions[20] cited by petitioner reveals that, unlike in *Aichi Case*, the legal issue of whether compliance with the 120-day period within the purview of *Section 112 (D) of the NIRC of 1997* is mandatory before resorting to judicial appeal with the Court of Tax Appeals was not squarely raised. Instead, different issues were separately addressed in the foregoing Supreme Court decisions.

It must be pointed out that the issues raised in ***Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue***[21] are limited to (1) whether the absence of the BIR authority to print or the absence of the TIN-V in petitioner's export sales invoices operates to forfeit its entitlement to a tax refund/credit of its unutilized input VAT attributable to its zero-rated sales; and (2) whether petitioner's failure to indicate "TIN-V" in its sales invoices automatically invalidates its claim for a tax

---

[18] *Ayala Corporation v. Rosa-Diana Realty and Development Corporation*, G.R. No. 134284, December 1, 2000 *citing* 5 Am Jur 2d, Appellate Review § 599 citing Samsel v. Wheeler Transp. Servs., 246 Kan 336, 789 P2d 541. [Emphasis supplied.]
[19] *Id., citing* 5 Am Jur 2d, Appellate Review § 599 citing State ex rel. Moore v. Molpus (Miss) 578 So 2d 624.
[20] *Supra* note 14.
[21] G.R. No. 166732, 522 SCRA 657, April 27, 2007.

credit certification.[22] Similarly, in ***San Roque Power Corporation v. Commissioner of Internal Revenue,***[23] the core issue therein is whether petitioner may claim a tax refund/credit for creditable input tax attributable to zero-rated or effectively zero-rated sales pursuant to *Section 112(A) of the NIRC* or for input taxes paid on capital goods as provided under *Section 112(B) of the NIRC* whereby the main dispute therein is the existence of zero-rated or effectively zero-rated sales, to which creditable input taxes may be attributed.[24] Finally, the only issue raised in ***AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue***[25] is whether presentation of sales invoice would suffice in order to prove petitioner's entitlement to tax refund/credit of its unutilized input VAT.

At this juncture, it cannot be gainsaid that the *Aichi Case* is the prevailing doctrine insofar as the mandatory observance of the 120-day period under *Section 112 (D) of the NIRC of 1997* before filing an appeal with the Court of Tax Appeals. Thus, contrary to petitioner's stance, the Supreme Court's judicial interpretation of a statute in *Aichi Case, i.e., Section 112 (A) and (D) of the NIRC of 1997*, constitutes part of that law as of the date of its original passage.[26] Such interpretation

---

[22] *Id.* at 678.
[23] G.R. No. 180345, 605 SCRA 536, November 25, 2009
[24] *Id.* at 554.
[25] G.R. No. 182364, 626 SCRA 567, August 3, 2010.
[26] See *Castro v. Hon. Deloria*, et al., G.R. No. 163586, January 27, 2009.

does not create a new law but construes a pre-existing one; it merely casts light upon the contemporaneous legislative intent of that law.[27]

Time and again, jurisprudence is replete with cases holding that "tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government."[28] Hence, strict compliance with tax laws, specifically with the conditions set forth under *Section 112 (D) of the NIRC of 1997*, should be applied in this jurisdiction, considering that taxes are the lifeblood of the government and the price we pay for civilization.

As a final consideration, this Court cannot countenance petitioner's counsels' erroneous and inaccurate citation of Presiding Justice Ernesto D. Acosta's Separate and Dissenting Opinion in its petition for review in order to mislead this Court in believing that the Supreme Court notably considered the said opinion in reversing the CTA *En Banc* decision in the *Aichi Case* above-mentioned.[29] Paragraph 15 of the Petition for Review states:

> "15. x x x In the Separate and Dissenting Opinion of Presiding Justice Ernesto D. Acosta **when the CTA En Banc decided the *Aichi Forging* case, which was notably considered by the Supreme Court in reversing the CTA En Banc decision**, he opined that the failure of Aichi Forging Company of Asia to comply with the 120-day period required in Section 112 (D) of the 1997 NIRC led to premature filing of its judicial claim in violation of the doctrine of exhaustion of administrative remedies, x x x " [Emphasis supplied.]

---

[27] *Id.*
[28] *Commissioner of Internal Revenue v. Acosta*, G.R. No. 154068, August 3, 2007.
[29] Petition for Review, par. 15-16. *En Banc* Docket, pp. 8-9.

A simple perusal of the records readily reveals that the assailed Decision and Resolution of the CTA subject of appeal before the Supreme Court in *Aichi Case* was docketed as CTA EB Case No. 384 (CTA Case No. 7065) dated July 30, 2008 and October 6, 2008, respectively. Moreover, the foregoing Decision and Resolution were unanimously affirmed by the Court *En Banc*. If petitioner's counsels were diligent and thorough enough, they would have easily identified the Separate and Dissenting Opinion of Presiding Justice Ernesto D. Acosta as referring to another case involving similar parties entitled: *Commissioner of Internal Revenue v. Aichi Forging Company of Asia*, docketed as CTA EB Case No. 519 (CTA Case No. 6540) dated February 18, 2010.

We wish to remind petitioner's counsels and, in turn, members of the bar, of ***Rule 10.02, Canon 10 of the Code of Professional Responsibility*** [30] which mandates every lawyer not to knowingly misquote or misrepresent the contents of a paper, text of a decision or authority.

At this juncture, we, therefore, ADMONISH petitioner's counsel of record, as members of the bar and officers of this Court, for their carelessness in their erroneous reference of Presiding Justice Ernesto D. Acosta's Separate

[30] Canon 10, Rule 10.02 – A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

and Dissenting Opinion in its petition for review in utter disregard of *Rule 10.02, Canon 10 of the Code of Professional Responsibility.*

WHEREFORE premises considered, the Petition for Review is hereby **DENIED DUE COURSE** for lack of merit.

Attys. Rachel P. Follosco and Froilyn P. Doyaoen-Pagayatan are hereby ***ADMONISHED*** to be more careful in the discharge of their duty to the court as a lawyer under the Code of Professional Responsibility.

SO ORDERED.

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

WE CONCUR:

(on wellness leave)
ERNESTO D. ACOSTA
Presiding Justice

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

(with dissenting opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(on wellness leave)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice