REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

KEPCO ILIJAN CORPORATION, Petitioner,	**CTA CASE NO. 6966**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 18 2011 4:15 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., *J.*:

This resolves petitioner's ***"Motion for Partial Reconsideration with Prayer to Admit Attached Additional Supporting Documents"*** filed on April 30, 2009. The said *Motion* seeks the reconsideration of this Court's Decision promulgated on April 14, 2009, the dispositive portion of which reads:

> "**WHEREFORE**, with the foregoing disquisitions, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P23,389,050.05, representing unutilized excess input VAT attributable to its zero-rated sales of electricity to NPC for the second, thrd., and fourth quarters of taxable year 2002."

In its *Motion,* petitioner prays that:

1. an Order be issued admitting its Annexes "A" to "O" or in the alternative, allowing the formal presentation of the additional supporting documents; and

2. the Decision dated April 14, 2009 be reconsidered and amended insofar as it partially denied the claim of petitioner due to (1) for not being supported with the required documentary evidence in the amount of P47,559,061.24 (2) prescription in the amount of P1,740,640.93 covering the input VAT claim of petitioner for the first quarter of calendar year 2002, and that resolution be rendered ordering respondent to refund and/or issue a tax credit certificate to the petitioner in the additional amount of P49,229,702.17 over and above the P23,389,050.05 already awarded to petitioner.

Consequently, petitioner's prayer that it be allowed to present additional documents in support of its *Motion* was granted in a Resolution[1] dated August 11, 2009, while the disposition of its *Motion for Partial Reconsideration* of the assailed Decision was held in abeyance.

After presentation and formal offer of petitioner's additional evidence, Exhibits "FFF" to "SSS" as well as Exhibits "CCC" to "EEE" were admitted pursuant to this Court's Resolutions dated December 16, 2009[2] and March 2, 2010[3], respectively, while respondent was deemed to have waived her right to present controverting evidence.[4]

Both parties were thereafter required by this Court to submit their respective memoranda. In compliance thereto, petitioner filed its *Memorandum for the Petitioner*[5] on May 7, 2010. The *Motion for Partial* Ja

[1] Docket, pp. 418-420.
[2] Docket, pp. 485-486.
[3] Docket, pp. 503-504.
[4] Resolution dated March 2, 2010.
[5] Docket, pp. 509-548.

Reconsideration of the Decision dated April 14, 2009 was submitted for decision on May 20, 2010[6] sans respondent's Memorandum.

Petitioner raised the following averments in its *Motion for Partial Reconsideration* and *Memorandum,* to wit:

> "1. That it should not be denied its claim in the amount of P1,740,640.93 covering the first quarter of calendar year 2004 since at the time the petition was filed, the prevailing jurisprudence is the case of Atlas Consolidated Mining Corporation vs. Commissioner of Internal Revenue which ruled that the counting of the two-year prescriptive period for claim for refund of unutilized input taxes is from the date of the filing of the return and the payment of the tax due;
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> 2. That the Court inadvertently erred in disallowing the invoices and official receipts with TIN-V considering that Section 113, 237 and 238 of the National Internal Revenue Code (NIRC) of 1997 and Revenue Regulations No. 7-95 do not provide that failure to indicate the TIN-V in the invoices or receipts would result to the outright denial of the claim for tax refund/credit;
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> 3. That this Court inadvertently failed to consider the ORs or Invoices issued in the name of KEPCO as issued in the name of petitioner;
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> 4. That the input VAT claim of petitioner is substantiated with supporting documents as examined by the ICPA; and
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> 5. The input VAT claim in the amount of P14,476,468.00 are within the period of taxable year 2002."

As to the first argument, petitioner maintains that this Court erred in applying the doctrine laid down by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly*

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[6] Resolution dated May 20, 2010; Docket, p. 549.

Southern Energy Quezon, Inc.)[7] (*Mirant* Case), promulgated on September 12, 2008. Petitioner is of the belief that the application of the *Mirant* Case, which case allegedly established a new doctrine, in the instant petition would result in the retroactive application of laws which is prohibited under Article 4 of the New Civil Code of the Philippines in relation to Article 8 of the same law.

We are not persuaded.

An examination of the facts surrounding the *Mirant* Case reveals that it did not create a new doctrine. Instead, it merely established the correct application of Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which took effect on January 1, 1998. In adopting the *Mirant* Case, this Court, in effect, merely applied Section 112(A) of the NIRC of 1997, as amended, to the instant petition. The interpretation made by the Supreme Court in the *Mirant* Case constitutes part of the law as of the date the NIRC of 1997, as amended, was passed. It is elementary that the interpretation placed by this Court upon a law constitutes part of the law as of the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[8] Clearly, there was actually no new doctrine that was retroactively applied by this Court in the assailed Decision.

To reiterate the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly*

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[7] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[8] G.R. No. L-10662, December 14, 1956, 100 Phil. 501.

Southern Energy Quezon, Inc.)[9], this Court hereunder quotes the pertinent part of the said Decision to wit:

> "The above proviso 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.**"

Verily, the ruling in the case of *Mirant* which set the reckoning of the two year prescriptive period for filing claims for refund from the close of the taxable quarter when the sales were made applies in the present case.

However, while this Court upholds the ruling of the Supreme Court in the case of *Mirant*, a closer study of the provisions of Section 112(A) of the NIRC, as amended, and of the very recent ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[10] reveals that the ruling in the *Mirant* case in relation to Section 112(A) of the NIRC of 1997, as amended, apply only to the determination of the timeliness of the administrative claim for refund. Thus, a review of the Court's Decision as to the timeliness of the filing of the administrative and judicial claims for refund is deemed necessary. gr

[9] *Supra*, note 7.
[10] G.R. No. 184823, October 6, 2010.

The pertinent portion of the High Court's ruling in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[11] reads:

> "xxxx 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.
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> ***The administrative claim was timely filed***
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> Bearing this in mind, we shall now proceed to determine whether the administrative claim was timely filed.
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> Applying this to the present case, the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. Hence, respondent's administrative claim was timely filed.
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> x x x Subsection (A) of the said provision (Section 112) 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.**" (*Emphasis supplied*)

Petitioner claims for refund or issuance of tax credit certificate for its unutilized input Value-Added Tax (VAT) on its purchase of capital goods and services made in the four quarters of taxable year 2002. Applying the foregoing jurisprudence in relation to Section 112(A) of the NIRC of 1997, as amended, the reckoning date of the two-year prescriptive period for filing the administrative claim for tax refund commences from the close of the first,

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[11] *Supra,* note 10.

second, third and fourth taxable quarters of 2002 which are on March 31, 2002, June 30, 2002, September 30, 2002 and December 31, 2002, respectively.

Now, in computing the aforementioned two year prescriptive period for the filing of the administrative claim for refund, this Court deems it necessary to cite the pertinent portion of the Supreme Court's decision in the case of *Commissioner of Internal Revenue vs. Primetown Property Group Inc.*,[12] to wit:

> "Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter — the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.
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> There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*
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> Applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987 to this case, the two-year prescriptive period (reckoned from the time respondent filed its final adjusted return on April 14, 1998) consisted of 24 calendar months, computed as follows:

Year 1	1st	calendar month	April 15, 1998	to	May 14, 1998
	2nd	calendar month	May 15, 1998	to	June 14, 1998
	3rd	calendar month	June 15, 1998	to	July 14, 1998
	4th	calendar month	July 15, 1998	to	August 14, 1998
	5th	calendar month	August 15, 1998	to	September 14, 1998
	6th	calendar month	September 15, 1998	to	October 14, 1998
	7th	calendar month	October 15, 1998	to	November 14, 1998
	8th	calendar month	November 15, 1998	to	December 14, 1998
	9th	calendar month	December 15, 1998	to	January 14, 1999
	10th	calendar month	January 15, 1999	to	February 14, 1999
	11th	calendar month	February 15, 1999	to	March 14, 1999
	12th	calendar month	March 15, 1999	to	April 14, 1999

[12] G.R. No. 162155, August 28, 2007, 531 SCRA 436.

Year 2	13th	calendar month	April 15, 1999	to	May 14, 1999
	14th	calendar month	May 15, 1999	to	June 14, 1999
	15th	calendar month	June 15, 1999	to	July 14, 1999
	16th	calendar month	July 15, 1999	to	August 14, 1999
	17th	calendar month	August 15, 1999	to	September 14, 1999
	18th	calendar month	September 15, 1999	to	October 14, 1999
	19th	calendar month	October 15, 1999	to	November 14, 1999
	20th	calendar month	November 15, 1999	to	December 14, 1999
	21st	calendar month	December 15, 1999	to	January 14, 2000
	22nd	calendar month	January 15, 2000	to	February 14, 2000
	23rd	calendar month	February 15, 2000	to	March 14, 2000
	24th	calendar month	March 15, 2000	to	April 14, 2000

We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period."

Based from the said Decision of the Supreme Court, for purposes of computing legal periods, two years is equivalent to twenty-four (24) calendar months regardless of the number of days. On such basis, petitioner may only claim for refund in the administrative level for the first, second, third and fourth quarters of 2002 until March 31, 2004, June 30, 2004, September 30, 2004 and December 31, 2004, respectively. It must be noted that the administrative claim for refund was filed on April 13, 2004. Evidently, petitioner's administrative claim for refund for the first quarter of the taxable year 2002 was filed out of time while the administrative claim for the second, third and fourth quarters of taxable year 2002 was accordingly filed within the two year prescriptive period provided by law.

After determination of the timeliness of the filing of administrative claim for tax refund, this Court shall now proceed with the determination of the timeliness of the filing of the judicial appeal before this Court.

This Court find instructive the provision under Section 112(D) [now Section 112 (C)] of the NIRC of 1997, as amended, the pertinent portion of which reads: ~~

> "SEC. 112. Refunds or Tax Credits of Input Tax. –
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> x x x x
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> (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)**
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, 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**." *(Emphases supplied.)*

Significantly, in the same case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[13] the Supreme Court emphasized the mandatory nature of the periods provided in Section 112(D) [now Section 112 (C)] of the NIRC of 1997, as amended, to wit:

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

[13] *Supra*, note 10.

> 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.
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> In fact, **applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR.** The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. **In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**
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> **In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA**."*(Emphases supplied.)*

Taking into consideration the importance of the periods provided under Section 112(D) [now Section 112 (C)] of the NIRC of 1997, as amended, this Court has no recourse but to strictly apply the said provision in this case.

Accordingly, counting from the filing of the administrative claim, which presumably is the date when petitioner had submitted the complete documents supporting its claim, the Commissioner has one hundred twenty (120) days or until August 11, 2004 within which to decide on the said claim. After the lapse of the said period, without any receipt of a decision on its administrative claim, the said inaction shall be deemed a denial of the claim and such denial may be appealed before this Court within thirty (30) days or until September 10, 2004. Nevertheless, petitioner filed its judicial claim on April 22, 2004, merely 9 days from the filing of the administrative claim. Obviously, petitioner prematurely filed the instant Petition without waiting for the lapse of the 120-day period. Thus, petitioner's non-observance of the periods provided under Section 112(D) [now Section 112 (C)] of the NIRC of 1997, as amended, by filing the instant Petition for Review on April 22, 2004 would mean that this Court cannot take cognizance of the instant petition.

In view thereof, a reconsideration of the supplemental evidence submitted by petitioner is rendered moot by the afore-mentioned findings that this Court cannot acquire jurisdiction over the instant petition.

WHEREFORE, premises considered, the **Motion for Partial Reconsideration** is hereby **DENIED** for lack of merit. On the other hand, the assailed Decision promulgated on April 14, 2009 is hereby **SET ASIDE** and the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice