REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILEX MINING CORPORATION, Petitioner,	**CTA EB No. 808** **(CTA Case Nos. 7859 and 7886)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**CASANOVA,** **PALANCA-ENRIQUEZ,** **FABON-VICTORINO,** **MINDARO-GRULLA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
	Promulgated: JUN 06 2012 Cortapolinario 1:00p.m.

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D E C I S I O N

UY, *J.*:

In this Petition for Review filed on August 1, 2011, petitioner Philex Mining Corporation prays for the reversal of the Decision dated April 20, 2011 and the Resolution dated July 14, 2011,[1] both rendered by the Second Division of this Court in CTA Case Nos. 7859 and 7886, entitled *"Philex Mining Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

[1] Both penned by Associate Justice Cielito N. Mindaro-Grulla, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova. Docket, pp. 22 to 42.

<u>**Decision dated April 20, 2011**</u>:

> "**WHEREFORE,** the instant consolidated Petitions for Review are hereby **DISMISSED** for lack of jurisdiction, considering that CTA Case No. 7859 was prematurely filed and CTA Case No. 7886 was filed out of time.
>
> **SO ORDERED**."

<u>**Resolution dated July 14, 2011**</u>:

> "**WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

Petitioner Philex Mining Corporation is engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. It is VAT-registered under VAT Registration Certificate No. 35-6-000731 effective October 29, 1997 and BIR Form No. 7303 as of January 31, 1997. It likewise had its Application of Zero-Rate pursuant to Section 4.100-3 of Revenue Regulations No. 7-95 approved effective April 2, 1998.

On the other hand, respondent is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the National Internal Revenue Code (NIRC). Respondent holds office at the Bureau of Internal Revenue (BIR), National Office Building, Diliman, Quezon City.

Petitioner filed its original VAT Return for the fourth quarter of 2006 on January 23, 2007. It filed an Amended Return on June 20, 2008, which reflected total zero-rated sales of ₱ 2,709,703,123.71, importation of goods amounting to ₱ 174,836,441.67 with input tax of ₱ 20,980,373.00, and purchase of services of ₱ 478,859.92 with input tax of ₱ 57,463.19.

Petitioner filed its original VAT Return for the first quarter of 2007 on April 24, 2007. It then filed an Amended Return on June 20, 2008, which reflected total zero-rated sales of ₱ 2,672,732,942.84, importation of goods amounting to ₱ 195,424,758.14 with input tax of ₱ 23,450,971.00, and purchase of services of ₱ 1,232,383.92 with input tax of ₱ 147,886.07.

Pursuant to Section 4.112-1 of Revenue Regulations No. 16-2005, petitioner filed its claim for refund/tax credit with the One-Stop-Shop Center of the Department of Finance on September 24, 2008, per Application No. 54766 in the amount of ₱ 21,037,836.19 for the fourth quarter of 2006, and per Application No. 54765 in the amount of ₱ 23,598,857.07 for the first quarter of 2007.

As respondent did not act on petitioner's claim for refund or tax credit, petitioner filed before the Court in Division Petitions for Review docketed as CTA Case Nos. 7859 and 7886 filed on January 9, 2009 and March 26, 2009, respectively.

On February 4, 2009, respondent filed her Answer in CTA Case No. 7859, interposing certain Special and Affirmative Defenses. For CTA Case No. 7886, respondent filed her Answer on May 4, 2009, likewise raising the same Defenses.

During the hearing held on June 4, 2009, petitioner's counsel moved for the consolidation of CTA Case No. 7859 with CTA Case No. 7886, which were both pending before the Court in Division. There being no objection from respondent's counsel, the Court in Division granted the consolidation of the two cases.

On June 10, 2009, the parties filed their "Consolidated Stipulation of Facts and Issues," which was approved in the Resolution dated June 29, 2009. In the same Resolution, the pre-trial was terminated and the parties were ordered to proceed with the trial on the merits. Petitioner presented oral and documentary evidence and filed its Formal Offer of Evidence on December 18, 2009, offering Exhibits "A" to "O", inclusive of sub-markings.

During the hearing held on April 12, 2010, counsel for respondent manifested that he is submitting the case for decision based on the pleadings. Respondent was then given thirty (30) days from April 12, 2010 or until May 12, 2010 to file her Memorandum, while petitioner was given twenty (20) days from receipt of the Resolution to file its memorandum.

On June 17, 2010, the case was submitted for decision after petitioner submitted its Memorandum on April 29, 2010, sans respondent's memorandum.

In the assailed Decision, the Court in Division dismissed the consolidated Petitions for Review for lack of jurisdiction, considering that CTA Case No. 7859 was prematurely filed, while CTA Case No. was filed out of time.

On May 12, 2011, petitioner filed a Motion for Reconsideration of said Decision, arguing, in essence, that the Court in Division erred: (1) in dismissing the petitions on the ground of lack of jurisdiction due to alleged premature filing of CTA Case No. 7859 and due to alleged late filing in the case of CTA Case No. 7886; and (2) in retroactively applying the ruling in the case of *Commissioner of*

Internal vs. Aichi Forging Company of Asia, Inc.[2] (hereinafter referred to as the "*Aichi* case") in deciding the instant case.

The Court in Division ordered respondent to comment on the said Motion for Reconsideration, in its Resolution dated May 17, 2011. However, respondent failed to do so. Nevertheless, the Court in Division denied petitioner's Motion for Reconsideration for lack of merit, in the assailed Resolution dated July 14, 201,

Hence, this recourse before the Court *En Banc* in this Petition for Review, praying that the assailed Decision promulgated on April 20, 2011 and Resolution dated July 14, 2011 be reversed, and that the case be remanded to the Court in Division for the determination of petitioner's excess and unutilized input VAT for the 4th quarter of 2006 and for the 1st quarter of 2007 on the basis of the evidence that has been presented and admitted.

In the Resolution dated September 7, 2011, respondent was ordered to file a comment on the instant Petition for Review within ten (10) days from receipt thereof.[3] Respondent, however, failed to file said comment. On October 24, 2011, the Court *En Banc* resolved to give due course to the instant Petition for Review, and required the parties to file their respective memorandum.

Only petitioner filed its Memorandum on November 16, 2011 while respondent failed to file her memorandum. Correspondingly, this case was deemed submitted for decision in the Resolution dated January 16, 2012.[4]

Hence, this Decision.

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[2] G.R. No. 184823, October 6, 2010.
[3] Docket, pp. 44 to 45.
[4] Docket, p. 68

ASSIGNMENT OF ERRORS

Petitioner assigned the following errors allegedly committed by the Court in Division, to wit:

I.

> "THE 2ND DIVISION ERRED IN NOT RULING THAT RESPONDENT IS DEEMED TO HAVE WAIVED THE DEFENSES OF PREMATURE FILING AND LATE FILING OF THE JUDICIAL CLAIMS WITH THE CTA, PURSUANT TO RULE 9, SECTION 1, OF THE RULES OF COURT; THUS, THE 2ND DIVISION COULD ENTERTAIN AND EXERCISE JURISDICTION OVER THE CASE AND RIGHTFULLY RENDER A DECISION THEREON BASED ON THE EVIDENCE FORMALLY OFFERED AND ADMITTED.

II.

> THE 2ND DIVISION ERRED IN DENYING THE PETITIONS DUE TO ALLEGED PREMATURE FILING AND LATE FILING. THE FACT IS THAT THE PETITIONS WERE FILED WITH THE CTA WITHIN THE PERIOD SET BY PREVAILING COURT RULINGS AT THE SAME TIME THEY WERE FILED.

III.

> THE 2ND DIVISION ERRED IN RETROACTIVELY APPLYING THE AICHI RULING IN DISMISSING THE PETITIONS IN THESE CONSOLIDATED CASES."

Petitioner's Arguments

Petitioner argues that since respondent failed to plead in her answer the defense that the petitions failed to state a cause of action due to premature filing / late filing, respondent is deemed to have waived the same. Thus, the Court in Division could entertain the case and exercise jurisdiction over it, and can render a decision thereon on the merits.

Furthermore, petitioner contends that the petitions were filed within the period set by prevailing court rulings when they were filed and hence, the filings were not premature nor late.

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Finally, petitioner asserts that the *Aichi* case should not be given retroactive application.

THE COURT EN BANC'S RULING

The Court *En Banc* finds no merit in the instant Petition for Review.

The premature or late filing of the Petitions for Review before the court* a quo *involves a question of jurisdiction, not simply of the respondent's failure to state a cause of action which can be waived.

Section 112 of the NIRC of 1997, as amended by Republic Act No. (RA) 9337,[5] provides as follows:

> "SEC. 112. *Refund 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
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> 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 Subsections (A) and (B) 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 to act on the application within the period prescribed above**, the

[5] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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**.
xxx xxx xxx." *(Emphases supplied)*

In the *Aichi* case, the Supreme Court held:

"A taxpayer is entitled to a refund either by authority of a statute expressly granting such right, privilege, or incentive in his favor, or under the principle of *solutio indebiti* requiring the return of taxes erroneously or illegally collected. In both cases, **a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim**.
xxx xxx xxx

Section 112(D)[6] 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 (petitioner in these cases) **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

[6] Now Section 112(C), as renumbered by RA 9337.

> 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)[7] 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)[8] 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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> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* 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.
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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 no jurisdiction was acquired by the CTA.**
> xxx xxx xxx." *(Emphases supplied)*

The foregoing jurisprudence is clear on the importance of the faithful compliance by the concerned taxpayer with the procedural due process as the non-observance of the prescriptive period within which to file the judicial claim would result in the denial of the same. It must be emphasized that the High Court used the phrase *"no jurisdiction was acquired by the CTA"*, thereby indicating that the timely filing with this Court within the 30-day period contemplated under said

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[7] Id.
[8] Id.

Section 112 is jurisdictional. In other words, the Supreme Court could not have used such phrase so loosely, if the timely filing with this Court is not jurisdictional. Hence, the concerned taxpayer must file his judicial claim within the said 30-day period. Otherwise, the Court in Division will not acquire jurisdiction over the subject matter or nature of the action.

Apropos, jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[9] 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 or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[10] Moreover, jurisdiction of a court over the nature of the action and its subject matter does not depend upon the defenses set forth in an answer[11] or a motion to dismiss.[12] Thus, there can be no merit on petitioner's contention that since respondent failed to plead in her answer the defense that the petitions failed to state a cause of action due to premature filing / late filing, respondent is deemed to have waived the same.

Petitioner cannot invoke the first sentence of Section 1, Rule 9 of the 1997 Rules of Civil Procedure, since the applicable provision is the second sentence thereof. For easy reference, the said Section is quoted as follows:

> "SECTION 1. *Defenses and objections not pleaded.*— Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject**

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[9] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, 2 January 1968.
[10] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[11] *Salas vs. Castro*, G.R. No. 100416, December 2, 1992.
[12] *Hilado vs. Chavez*, G.R. No. 134742, September 22, 2004.

> **matter**, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, **the court shall dismiss the claim**." *(Emphases and underscoring supplied)*

In support of its argument that the applicable provision is the first sentence of the above-quoted provision, petitioner opines that the Court in Division has jurisdiction to entertain its Petitions for Review in CTA Case Nos. 7859 and 7886 by citing Section 7 of RA 1125, as amended by RA 9282, precisely in this manner:

> "'Sec. 7 Jurisdiction. The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) x x x
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving x x x **refunds of internal revenue taxes,** fees or other charges' (Underscoring supplied)"

Petitioner then concluded that since the subject matter in the instant case is the "refund of internal revenue taxes", the Court in Division has jurisdiction.

Petitioner is gravely mistaken. It has wittingly or unwittingly quoted and misread said Section 7.

The rule is that in order to ascertain whether a court has jurisdiction or not, the provisions of the law should be inquired into.[13] However, the legislative intent must be ascertained from a consideration of the statute as a whole, and not of an isolated part or a particular provision alone.[14]

Indeed, Section 7 of RA 1125[15], as amended by RA 9282[16], enumerates

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[13] *Soller, et al. vs. Sandiganbayan, et al.*, G.R. Nos. 144261-62, May 9, 2001.
[14] *Maceda vs. Macaraig, Jr., et al.*, G.R. No. 88291, May 31, 1991.
[15] AN ACT CREATING THE COURT OF TAX APPEALS.

over which cases this Court has exclusive appellate jurisdiction. Its paragraph (a), sub-paragraph (2), completely provides:

> "SEC. 7. *Jurisdiction.*— The CTA shall exercise:
>
> (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
> xxx xxx xxx
>
> (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**; *(Emphases supplied)*
>
> xxx xxx xxx."

It is plain from the foregoing that it is the inaction of the Commissioner of Internal Revenue which is the subject of the *"[e]xclusive appellate jurisdiction"* of this Court *"to review by appeal"*. The phrase following the words *"Inaction by the Commissioner of Internal Revenue"* merely enumerates the cases, which included *"refunds of internal revenue taxes"*, to which said inaction should pertain. Thus, the subject matter is the said inaction of the respondent, and not the case involving such inaction.

Having looked into the provision of law regarding this Court's jurisdiction, it is pertinent to determine, as applied to petitioner's case, whether the Court in Division could indeed entertain and exercise jurisdiction over the same, and

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[16] 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.

rightfully render a decision thereon based on the evidence formally offered and admitted.

The answer is in the negative.

The *Aichi* case stressed the importance of observing the 120-day and 30-day periods under Section 112 of the NIRC of 1997, as amended by RA 9337. To reiterate, the Supreme Court said in the said case:

> "xxx, **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 xxx xxx
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> xxx. The second paragraph of Section 112(D)[17] 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.**" *(Emphases supplied)*

But even if We disregard the instructive ruling in the *Aichi* case, a closer examination of the pertinent law on the jurisdiction of this Court would reveal that the timely filing of the refund claim under Section 112 greatly affects its jurisdiction.

In relation to the above-quoted Section 7(a)(2) of RA 1125, as amended by RA 9282, Section 11 of the same law prescribes how the said appeal should be taken, *viz*:

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

[17] Id.

> **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**.
>
> **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 supplied)*
> xxx xxx xxx."

One of the *"inaction*(s) *by the Commissioner of Internal Revenue"* being contemplated in these provisions is that found in Section 112 of the NIRC of 1997,[18] as amended by RA 9337,—the provision to which petitioner anchors the its claims for refund—wherein it *"provides a specific period of action"*, *i.e.*, a period of 120 days from the date of submission of complete documents for the Commissioner of Internal Revenue, to grant, in proper cases, a refund or to issue a tax credit certificate for creditable input taxes due or paid attributable to zero-rated or effectively zero-rated sales. The lapse of such 120-day period is indeed crucial since it is only at such time that *"the inaction shall be deemed a denial"*. Correspondingly, the applicant/taxpayer ought to observe the 30-day period within which to make the appeal to this Court, in view of such denial.

Applying Sections 7(a)(2) and 11 of RA 1125, as amended by RA 9282, in relation to Section 112(C) of the NIRC of 1997, as renumbered by RA 9337: (1) when petitioner filed its appeal via a Petition for Review on January 9, 2009, which was docketed as CTA Case No. 7859, the specified period of 120 days' inaction on the part of the respondent over the administrative claim of petitioner have not fully lapsed, as to clothe the Court in Division with jurisdiction to

[18] The other *"inaction"* is found in Section 228 of the NIRC of 1997.

entertain said Petition for Review; and (2) when petitioner filed its appeal via a Petition for Review on March 26, 2009 docketed as CTA Case No. 7886, the period of 30 days to appeal the inaction on the part of respondent over the administrative claim of petitioner, which inaction is already deemed a denial by virtue of the lapse of the 120-day period, have already expired, the Court in Division has no more jurisdiction to entertain the same.

As held in *Yao vs. Court of Appeals, et al.*[19]

> "The right to appeal is **not** a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. Since the right to appeal is not a natural right nor a part of due process, **it may be exercised only in the manner and in accordance with the provisions of law**. Corollarily, **its requirements must be strictly complied with**.
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> "**That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional**." *(Emphases supplied)*

Moreover, 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.[20] Relative thereto, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[21]

Such being the case, We see no cogent reason to reverse the ruling of the Court in Division in dismissing the Consolidated Petitions for Review.

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[19] G.R. No. 132428, October 24, 2000.
[20] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[21] Section 1, Rule 9, Rules of Court.

The interpretation of Section 112 of the NIRC of 1997 by the Supreme Court in the* Aichi *case constitutes as part of the law of the land as of the date it was originally passed.

Petitioner's contention that the *Aichi* case should be applied prospectively is without merit.

The Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[22] In *Columbia Pictures, Inc., et al. vs. Court of Appeals, et al.,*[23] the Supreme Court qualified this principle, to wit:

> "It is consequently clear that a judicial interpretation becomes a part of the law **as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith**. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication."

Based on the foregoing, the general rule is that judicial interpretation becomes part of the law as of the date it was originally passed, and the exception thereto is that when a doctrine laid down by the High Court is subsequently overruled or reversed, in which case, the new doctrine will only be applied prospectively.

The *Aichi* case, however, did not overrule or reverse any existing doctrine laid down by the Supreme Court. This must be so because the doctrinal

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[22] *Victorias Milling Co., Inc. vs. Intermediate Appellate Court, et al.,* G.R. No. 66880, August 2, 1991.
[23] G.R. No. 110318, August 28, 1996.

pronouncement in the said case was not done by the Supreme Court *En Banc*, but by a Division thereof (*i.e.*, by its First Division). In this connection, it must be recalled that Section 4(3), Article VIII of the 1987 Constitution provides 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*"[24].

Furthermore, the pronouncement made by the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[25] (hereinafter referred to as the "*Atlas* case"), to the effect that the filing of the administrative and judicial claims for refund of input VAT on zero-rated sales should be made within the two-year prescriptive period, cannot be said to have been reversed or modified by the *Aichi* case.

It must be emphasized that the *Atlas* case involved the refund/credit of the input VAT on purchases of capital goods and on its zero-rated sales in the taxable quarters of the years 1990 and 1992. Thus, the said case was decided interpreting the pertinent provisions of the NIRC of 1977 [Presidential Decree No. (PD) 1158], as amended by Executive Order No. (EO) 273[26] (the law in force in the years 1990 and 1992), which took effect on January 1, 1988.[27] Upon the other hand, the *Aichi* case entailed the refund/credit of input VAT for the period July 1, 2002 to September 30, 2002. Hence, it was decided applying and interpreting Section 112 of the NIRC of 1997, which took effect on January 1, 1998.[28]

[24] Underscoring supplied.
[25] G.R. Nos. 141104 and 148763, June 8, 2007.
[26] ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES.
[27] Section 30, Executive Order No. 273, series of 1987.
[28] Section 8, Republic Act No. 8424.

To bolster this point, a comparison of the provisions in question is in order, to wit:

NIRC of 1977, as amended by EO 273	*NIRC of 1997 (renumbered by RA 9337)*
SEC. 106. *Refunds or tax credits of input tax.* – x x x. (b) *Zero-rated or effectively zero-rated sales.* – Any person, except those covered by paragraph (a) above, whose sales are zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax. x x x x (e) *Period within which refund of input taxes may be made by the Commissioner.* – The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c) as the case may be.	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: x x x (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 Subsections (A) and (B) hereof. **In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.** *(Emphasis supplied)*

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It can be easily discerned from the foregoing comparison that in the refund of input VAT attributable to zero-rated sales, unlike Section 106 of the NIRC of 1977, as amended by EO 273, Section 112 of the NIRC of 1997 spelled out the judicial remedy, by specifying the court where appeal should be taken, and the period within which the same appeal should be made, in case of full or partial denial of the claim, or in case of inaction on the part of the Commissioner of Internal Revenue. Thus, considering that the two cases were decided under different sets of law, it cannot be said that the *Aichi* case overturned or abandoned the doctrinal pronouncement in the *Atlas* case.

The deliberate selection in a statute of language differing from that of earlier acts on the subject indicates that a change of law was intended.[29] In other words, the change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had.[30] Logically, a different meaning of the law entails a different interpretation. An amended act is ordinarily to be construed as if the original statute had been repealed, and a new and independent act in the amended form had been adopted in its stead.[31]

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.[32] Such being the case, in *Commission on Higher Education vs. Dasig*,[33] the High Court said:

[29] *Portillo vs. Salvani*, G.R. No. L-32181, March 10, 1930, citing *Brewster vs. Gage* [1930], U.S. Sup. Ct. Advance Opinions, p. 183.
[30] *Commissioner of Customs vs. Court of Tax Appeals, et al.*, G.R. Nos. L-48886-88, July 21, 1993.
[31] *Estrada vs. Caseda*, No. L-1560, October 25, 1949, 84 Phil. 791.
[32] *Nacuray, et al. vs. National Labor Relations Commission, et al.*, G.R. Nos. 114924-27, March 18, 1997.
[33] G.R. No. 172776, December 17, 2008.

> "...it is the duty of lower courts to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts. 'A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation.' 'There is only one Supreme Court from whose decision all other courts should take their bearings,' so declared Justice J. B. L. Reyes."

Thus, Our adherence to the doctrine laid down in the *Aichi* case is well-founded, despite the fact that this Court has previously issued several decisions or rulings which were contrary to the said case.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED**. The assailed Decision dated April 20, 2011 and Resolution dated July 14, 2011, is hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With concurring and dissenting opinion)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILEX MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 808
(CTA Case Nos. 7859 & 7886)

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

Promulgated:

JUN 0 6 2012 ArApolinario 1:00 p.m.

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CONCURRING AND DISSENTING OPINION

BAUTISTA, J.:

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.[1]

And with the above said principle, it is my considered view that the factual circumstances present in the case at bench supports the application of *the then prevailing jurisprudence at the time the claim was made.*

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[1] 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].*

When petitioner filed its claims for refund/tax credit with the One-Stop-Shop Center of the Department of Finance on September 24, 2008, in the following amounts of ₱21,037,836.19 for the fourth quarter of the taxable year 2006, and ₱23,598,857.07 for the first quarter of the taxable year 2007; and due to respondent's inaction, it accordingly filed Petitions for Review with this Court on January 9, 2009, docketed as CTA Case No. 7859, and on March 26, 2009, docketed as CTA Case No. 7886, the then controlling doctrine is that of the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]*.[2]

The case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[3] has yet to be promulgated on October 6, 2010.

And 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.[4]

Therefore, albeit the latter ruling is more 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, on the basis of the so-called "adherence to precedence," for the latter doctrine is clearly

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[2] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] G.R. No. 184823, October 6, 2010.
[4] 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.

promulgated *after* the taxpayer-claimant had faithfully relied and complied with the Court's former ruling.

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

Further, the same would run counter with the use of the word *"may"* in Section 112(C) of the 1997 NIRC, as amended, which 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 claim is made within the two (2)-year prescriptive period under Sections 112[5] and 229[6] of the of the same Code.[7]

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[5] 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.

[6] 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.

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

With the pronouncements made in the cases of *Commissioner of Internal Revenue v. Toledo Power, Inc.*,[8] and *Commissioner of Internal Revenue v. San Roque Power Corporation*,[9] it must be borne in mind that no claim can be had, whether in the administrative or judicial *fora*, beyond the two (2)-year period provided under Section 112 of the 1997 NIRC, as amended. 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.[10]

Applying the above disquisitions, petitioner had until two (2) years from the close of the last taxable quarter of the year 2006, and two (2) years from the close of the first taxable quarter of the year 2007, respectively, within which to file *both* its administrative and judicial claims. Thus, while I find the administrative claims filed within the prescribed period, as well as, the Petition for Review, docketed as CTA Case No. 7886, covering the first quarter of the taxable year 2007, I, however, must rule that the Petition for Review, docketed as CTA Case No. 7859, covering the last quarter of the taxable year 2006, was made beyond the above mentioned period.

In fine, the Petition for Review, docketed as CTA Case No. 7859 should be dismissed, not for being prematurely filed, but for being filed out of time, while the Petition for Review, docketed as CTA Case No. 7886, should be reinstated.

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[8] CTA EB Case No. 321 (CTA Case Nos. 6805 & 6851), May 7, 2008.
[9] CTA EB Case No. 408 (CTA Case No. 6647), March 25, 2009.
[10] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB Case No. 426, May 29, 2009.

Accordingly, I vote that the Petition for Review be **PARTIALLY GRANTED**. The Petition for Review, docketed as CTA Case No. 7859, should be **DISMISSED** for lack of jurisdiction, while the Petition for Review, docketed as CTA Case No. 7886, should be **REINSTATED**.

LOVELL R. BAUTISTA
Associate Justice