REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- PHILIPPINE BANK OF COMMUNICATIONS, *Respondent.*	CTA EB No. 1421 (CTA Case No. 8632)
PHILIPPINE BANK OF COMMUNICATIONS, *Petitioner,* -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	CTA EB No. 1423 (CTA CASE No. 8632) *Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.* Promulgated: JAN 1 1 2018 4:09 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue (CIR) *via* registered mail on June 16, 2017, seeking to set aside this Court's Decision promulgated on May 23, 2017,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review filed by the Commissioner of Internal Revenue docketed as CTA EB No. 1421 is **DENIED** for lack of merit and the Petition for Review filed by Philippine Bank of Communications docketed as CTA EB No. 1423 is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated September 9, 2015 and the Resolution dated January 19, 2016 are hereby **MODIFIED**. The Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **TWENTY-SEVEN MILLION FOUR HUNDRED SEVENTEEN THOUSAND TWO HUNDRED SIXTY SIX AND 25/100 PESOS** (**₱27,417,266.25**) representing Philippine Bank of Communication's unutilized creditable withholding taxes for taxable year 2010.
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> **SO ORDERED.**"

In his motion, CIR insists that Philippine Bank of Communications (PBCom) failed to exhaust its administrative remedies, considering that PBCom did not wait for the CIR's decision before filing its judicial claim before this Court.

In its Comment,[3] PBCom claims that such issue was already passed upon before this Court's Division, as well as in the assailed Decision; that the motion is a mere rehash of CIR's allegations in the assailed Decision; and that it was able to comply with the requirement of filing its administrative claim before filing its action for refund before this Court.

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[1] *En Banc* Docket, CTA EB No. 1421, pp. 180-185.
[2] *En Banc* Docket, CTA EB No. 1421, pp. 142-167.
[3] *En Banc* Docket, CTA EB No. 1421, pp. 299-307.

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The motion is bereft of merit.

The arguments proffered by the CIR in this instant Motion are mere rehash of the arguments raised before the Court in Division and *En Banc*, which were thoroughly and exhaustively passed upon.

To note and repeat, Section 204(C)[4] in relation to Section 229[5] of the NIRC requires the filing of an administrative claim for refund before the filing of a judicial claim, both of which claims should be filed within two years from payment of the tax.[6] To emphasize further, the Supreme Court, in its 2017 promulgated case of *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*,[7] states that:

> "Notably, <u>both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein</u>, <u>and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription</u>. In this regard, case law states that "the primary purpose of filing an administrative claim [is] to serve as a notice of warning to the CIR that court action

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[4] Which states that, "No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty xxx"

[5] 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, of any sum alleged to have been excessively or in any manner wrongfully 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.

[6] *Futamura Chemical Co. Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 8906, January 30, 2017.
[7] G.R. No. 182582, April 17, 2017.

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> would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. <u>To clarify, Section 229 of the Tax Code - then Section 306 of the old Tax Code - however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed.</u>"[8]"

The procedure outlined in Sections 204(C) and 229 provide that a claim for refund of excessively or erroneously collected taxes should be made within two (2) years from the date the taxes are paid.[9] Both the administrative and judicial claims should be brought within the two (2)-year prescriptive period.[10] Otherwise, they shall forever be barred.[11] This pronouncement could not get any clearer, thus to be applied mandatorily by this Court.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

"I maintain my Concurring and Dissenting Opinion."
ROMAN G. DEL ROSARIO
Presiding Justice

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[8] *Ibid.,* citing *Commissioner of Internal Revenue vs. Goodyear Philippines,* Inc., G.R. No. 216130, August 3, 2016.
[9] *CE Luzon Geothermal Power Company, Inc., vs. Commissioner of Internal Revenue,* G.R. Nos. 197526 and 199676-77, July 26, 2017
[10] *Ibid.*
[11] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* G.R. Nos. 193383-84 and 193407-08, January 14, 2015.

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice