REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

WNS GLOBAL SERVICES PHILIPPINES, INC., Petitioner,	**CTA EB NO. 1453** (CTA Case No. 9061)
	Present:
- versus -	Del Rosario, *PJ*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 12 2017 3:40 PM

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review filed by petitioner WNS Global Services Philippines, Inc., seeks to annul, set aside and reverse the Court of Tax Appeals (CTA) 1st Division's Resolutions dated October 29, 2015[1] and April 8, 2016,[2] respectively.

The dispositive portion of the assailed Resolution dated October 29, 2015 reads:

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[1] Resolution, penned by Associate Justice Erlinda P. Uy, CTA 1st Division Docket, pp. 129-137.
[2] Resolution, penned by Associate Justice Erlinda P. Uy, CTA 1st Division Docket, pp. 166-171.

"**WHEREFORE**, premises considered, respondent's **Motion to Dismiss** is **GRANTED**. Accordingly, the Petition for Review filed by WNS Global Services Philippines, Inc. on May 28, 2015 is hereby **DISMISSED**.

SO ORDERED."[3]

On the other hand, the dispositive portion of the assailed Resolution dated April 8, 2016 reads:

WHEREFORE, finding no compelling reason to reverse the ruling of this Court in the assailed Resolution, petitioner's **Motion for Reconsideration** (Re: *Resolution* dated 29 October 2015) is hereby **DENIED** for lack of merit.

SO ORDERED."[4]

THE FACTS

The facts as found by the CTA 1st Division, are as follows:

"On March 11, 2011, petitioner filed an administrative claim for refund of unutilized input tax for Fiscal Year 2009 in the amount of ₱21,818,942.57.

On July 1, 2011, in compliance with the Final Notice dated June 28, 2011, petitioner submitted documents in relation to the documents required in the investigation of petitioner's VAT liabilities for the period April 1, 2009 to March 31, 2010.

On August 8, 2011, alleging inaction on the part of respondent, petitioner filed a judicial claim for refund in accordance with Section 112 of the Tax Code which was raffled to the CTA First Division, docketed as CTA Case No. 8317.

On January 16, 2012, the CTA First Division issued a Resolution dismissing petitioner's judicial claim for being prematurely filed, deeming the documents submitted on July 1, 2011 as supplemental to the claim for refund. Je

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[3] See Note 1, p. 137.
[4] See Note 2, pp. 170-171.

Petitioner filed a Motion for Reconsideration on February 6, 2012 which was later denied in the Resolution dated April 3, 2012.

On May 17, 2012, petitioner filed a Petition for Review with the CTA *En Banc*. On September 10, 2013, the Court *En Banc* rendered a Decision affirming the Resolutions dated January 16, 2012 and April 3, 2012. The CTA *En Banc*, likewise denied petitioner's Motion for Reconsideration in its Resolution dated March 5, 2014.

Petitioner filed a Motion for Extension of Time to File Petition for Review on Certiorari before the Supreme Court on April 4, 2014, requesting an additional period of 30 days from April 4, 2014 or until May 4, 2014, within which to file its petition. On April 4, 2014, petitioner filed its Petition for Review on Certiorari, which sought the setting aside and reversal of the Decision and Resolution of the CTA *En Banc* docketed as G.R. No. 211739.

On September 3, 2014, petitioner received a copy of the Supreme Court – Second Division's Minute Resolution dated July 14, 2014, denying its Petition for Review on Certiorari on the ground of 'failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of the Court's discretionary appellate jurisdiction'. Petitioner's Motion for Reconsideration was likewise denied by the Supreme Court – Second Division in its Resolution dated November 19, 2014.

In an Entry of Judgment dated February 9, 2015, the Supreme Court declared the Second Division Resolution dated July 14, 2014 final.

On February 20, 2015, petitioner filed a Motion for Leave to File Incorporated Supplemental Motion for Reconsideration (Re: Resolutions dated 14 July 2014 and 19 November 2014).

On May 8, 2015, petitioner received the Supreme Court's Entry of Judgment dated February 9, 2015.

Thereafter, petitioner filed with the Supreme Court its Motion to Withdraw Supplemental Motion for Reconsideration dated 20 February 2015.

Petitioner then filed the instant Petition for Review on May 28, 2015."[5]

[5] See Note 1, pp. 129-131.

On July 15, 2015, respondent filed a Motion to Dismiss,[6] arguing that petitioner's judicial claim was filed out of time and that petitioner violated the 120+30 days period provided under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. Moreover, petitioner's first judicial claim filed on August 8, 2011 did not toll the 120+30 day period as provided by the Court *En Banc*'s Decision in *Hyder Consulting Middle East Ltd. Manila ROHQ v. Commissioner of Internal Revenue*.

On the other hand, petitioner pertinently argued in its Comment/Opposition (Re: Respondent's Motion to Dismiss dated 14 July 2015)[7] that:

> "14. The Supreme Court's final finding of prematurity in G.R. No. 211739 necessarily carried with it a finding that the 120-day period contemplated in Section 112(C) of the Tax Code, as applied to Petitioner's claim for refund in CTA Case No. 8317, started on 01 July 2011 (as argued by the Respondent, which the courts found meritorious), rather than on 11 March 2011 (as argued by Petitioner, which the courts dismissed). The 120-day period was tolled when Petitioner filed its judicial claim on 08 August 2011. Counting from 01 July 2011 to 08 August 2011, therefore, only thirty-eight (38) days of the 120-day period would have lapsed, leaving Petitioner with eighty-two (82) days remaining in the 120-day period during which it must await any ruling by Respondent on its administrative claim before it should file a judicial claim. Adding thirty (30) more days (also as contemplated in Section 112[C] of the Tax Code) to said 82 unused days, Petitioner had one hundred twelve (112) days remaining. Counting said remaining 112 days from 09 February 2015 (the date of finality of the Supreme Court's finding of premature filing), Petitioner therefore had until <u>01 June 2015</u> to re-file its judicial claim. Hence, the timeliness of the filing of the instant *Petition*."[8]

On October 29, 2015, the CTA 1st Division rendered the assailed Resolution granting respondent's Motion to Dismiss. On November 17, 2015, petitioner filed its Motion for Reconsideration (Re: Resolution dated 29 October 2015),[9] which was denied by the CTA 1st Division in the assailed Resolution dated April 8, 2016.

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[6] CTA 1st Division Docket, pp. 193-199.
[7] CTA 1st Division Docket, pp. 114-126.
[8] CTA 1st Division Docket, pp. 122-123.
[9] CTA 1st Division Docket, pp. 138-156.

On May 18, 2016,[10] petitioner filed the instant Petition for Review. On July 28, 2016, the Court *En Banc* issued a Resolution[11] directing the parties to submit their Memoranda. On November 11, 2016, petitioner submitted its Memorandum,[12] while respondent failed to file the same. On March 14, 2017,[13] the instant case was submitted for decision.

Hence, this Decision.

THE ISSUES

Petitioner raised the following issues: (1) Whether the Petition for Review before the CTA 1st Division was timely filed on May 28, 2015; and (2) Whether petitioner is entitled to its claim for refund.

THE RULING

The Court *En Banc* denies the instant Petition.

Petitioner belatedly filed its judicial claim on May 28, 2015

Section 112(C) of the NIRC of 1997, as amended, provides:

> "SEC. 112. **Refunds or Tax Credits of Input Tax.** –
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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 Subsection (A) 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 taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim

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[10] Court *En Banc* Docket, pp. 6-36.
[11] Court *En Banc* Docket, pp. 287-288.
[12] Court *En Banc* Docket, pp. 297-323, attached to petitioner's Omnibus Motion (1) to admit attached Memorandum for Petitioner (2) Partially reconsider the Resolution dated 19 October 2016, Court *En Banc* Docket, pp. 293-296.
[13] Court *En Banc* Docket, pp. 329-330.

> or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Petitioner extensively discussed in the instant Petition that the 120+30 day period in Section 112(C) of the NIRC of 1997, as amended, should be counted from March 11, 2011 and not from July 1, 2011.

On this score, *We* revisit the decision of this Court in *WNS Philippines, Inc. v. Commissioner of Internal Revenue* (First Judicial Claim).[14] In petitioner's First Judicial Claim, this Court sustained the findings of the CTA 1st Division and concluded that petitioner's administrative claim was prematurely filed. Thus:

> "A perusal of the documents reveals that petitioner submitted its documents twice. The first was when it filed its administrative claim on March 11, 2011. And the second was on July 1, 2011, when it submitted additional documents in support of its application for refund. This only shows that on March 11, 2011, the documents submitted by petitioner were not complete. For if petitioner finds the documents submitted on March 11, 2011 are already complete, petitioner would not have submitted additional documents on July 1, 2011. xxx
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> Based on the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation*, *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, *Philex Mining Corporation vs. Commissioner of Internal Revenue*, where it adopted the ruling in *CIR vs. Aichi Forging Company of Asia, Inc*, the Supreme Court held that the 120-day period provided in Section 112(C) is mandatory and jurisdictional. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity.
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> In the instant case, petitioner filed its administrative claim for refund of unutilized input VAT for fiscal year ended March 31, 2010 in the amount of Php21,818,942.57 with Revenue District Office ('RDO') No. 47, on March 11, 2011. Subsequently, on July 1, 2011, petitioner submitted additional documents to completely support its application for refund with the same RDO. Following the instructions of the Supreme Court in the aforesaid consolidated cases and Section 112(C) of the NIRC of 1997, as amended, respondent has 120 days from

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[14] CTA EB No. 899, September 10, 2013, penned by Associate Justice Lovell R. Bautista.

July 1, 2011, or until October 29, 2011, to act on petitioner's claim. However, petitioner filed the instant Petition for Review on August 8, 2011, or before the 120-day period had lapsed. Therefore, the Court has no jurisdiction to entertain the Petition for Review for it was prematurely filed."[15]

Consequently, this Court's Decision in petitioner's First Judicial Claim was sustained by the Supreme Court in G.R. No. 211739, which became final as per Entry of Judgment dated February 9, 2015. In other words, the findings of the CTA 1st Division, which was sustained by this Court and consequently by the Supreme Court, had already attained finality under the doctrine of finality of judgment or immutability of judgment. The Supreme Court explained this doctrine in this wise:

> "It is a hornbook rule that **once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.**
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> The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law. [], the Supreme Court reiterated that the doctrine of immutability of final judgment is adhered to by necessity notwithstanding occasional errors that may result thereby, since litigations must somehow come to an end for otherwise, it would be even more intolerable than the wrong and injustice it is designed to correct." [16] *(Emphasis supplied)*

Considering the foregoing, *We* rule that the 120+30 day period in Section 112(C) of the NIRC of 1997, as amended, shall be counted from July 1, 2011.

Considering that the 120+30 day period shall be counted from July 1, 2011, the CTA 1st Division is correct when it held that:

[15] Id., pp. 12-13.
[16] *Charlie Vios, et al. v. Manuel Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, citing *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-BALAIS v. Coca-Cola Bottlers, Philippines, Inc.*, G.R. No. 155651, July 28, 2005, 464 SCRA 507, 513-514.

"The CTA has exclusive appellate jurisdiction to review on appeal decisions of the CIR in cases involving refunds of internal revenue taxes. Moreover, if the CIR fails to decide within the 120-day period provided by law, such inaction shall be deemed a denial of the application for tax refund which the taxpayer can elevate to the CTA through a petition for review.

A perusal of the records shows that petitioner filed with the BIR the administrative claim for refund of its accumulated excess input VAT for fiscal year 2009 on March 11, 2011 and submitted documents in support of the claim on July 1, 2011. Considering that petitioner appealed the alleged inaction of respondent on its administrative claim for refund, petitioner must file the judicial claim within 30 days from the expiration of the 120-day period provided by law. However, the instant petition was only filed on May 28, 2015, or almost 4 years after the expiration of the 120-day period.

The Court cannot give credence to petitioner's argument that it had until June 1, 2015 within which to file its judicial claim. The filing of the judicial claim on August 8, 2011 did not toll the running of the 120+30 day period provided under Section 112(C) of the NIRC of 1997, as amended.

In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*, the Supreme Court stressed the mandatory and jurisdictional nature of the 120+30 day period provided under Section 112(C) of the NIRC.

Likewise, the Court *En Banc*, in the case of *Hyder Consulting Middle East Ltd. Manila ROHQ vs. Commissioner of Internal Revenue*, ruled that the resort to a wrong remedy will not toll the running of the prescriptive period to file the judicial claim for a refund before this Court, to wit:

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In this case, petitioner prematurely filed its judicial claim on August 8, 2011. Such wrong remedy did not toll the running of the prescriptive period to file the judicial claim for a refund before this Court. Thus, the instant Petition for Review filed by petitioner on May 28, 2015 was clearly filed out of time. The Court therefore has no jurisdiction over the instant petition."[17] *(Citations omitted)*

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[17] See Note 1, pp. 135-136.

Thus, the CTA 1st Division committed no error when it held that the petition was belatedly filed on May 28, 2015, or almost 4 years after the expiration of the 120-day period. Meanwhile, it is also correct that a wrong remedy, *i.e.*, premature filing, will not toll the running of the prescriptive period to file the judicial claim for refund. Considering the foregoing, *We* see no cogent reason to disturb the findings of the CTA 1st Division.

Finally, *We* observe that even if this Court gives merit to petitioner's argument that the running of the prescriptive period was tolled when it filed its judicial claim on August 8, 2011, still, the filing of the Petition on May 28, 2015 would have also been erroneous, ironically, on the ground of premature filing.

Article 1155 of the Civil Code provides that prescription of actions is interrupted when they are filed before the court, among others. In relation thereto, the Supreme Court explained in *Jaime Ledesma v. Court of Appeals and Rizal Commercial Banking Corporation*,[18] that upon the cessation of the suspension of the prescriptive period, the full period of prescription commences to run anew. Thus:

> "Article 1155 of the Civil Code provides that the prescription of an action, involving in the present case the 10-year prescriptive period for filing an action on a written contract under Article 1144(1) of the Code, is interrupted by (a) the filing of an action, (b) a written extrajudicial demand by the creditor, and (c) a written acknowledgment of the debt by the debtor. The effects of the last two instances have already been decided by this Court, the rationale wherein should necessarily apply to the first.
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> The matter of the interruption of the prescriptive period by reason of a written extrajudicial demand by the creditor was decided in *Overseas Bank of Manila vs. Geraldez, et al.* in this wise:
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> . . . The interruption of the prescriptive period by written extrajudicial demand means that the said period would commence anew from the receipt of the demand. That is the correct meaning of interruption as distinguished from mere suspension or tolling of the prescriptive period.
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> A written extrajudicial demand wipes out the period that has already elapsed and starts anew the prescriptive period. . . .

[18] G.R. No. 106646, June 30, 1993.

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That same view as to the meaning of interruption was adopted in *Florendo vs. Organo*, 90 Phil 483, 488, where it was ruled that the interruption of the ten-year prescriptive period through a judicial demand means that "the full period of prescription commenced to run anew upon the cessation of the suspension." When prescription is interrupted by a judicial demand, the full time for the prescription must be reckoned from the cessation of the interruption. . . .

The interruption of the prescriptive period by reason of a written acknowledgment of the debt by the debtor was dealt with in *Philippine National Railways vs. National Labor Relations Commission, et al.,* [6] thus:

Article 1155 of the Civil Code provides that the 'prescription of actions is interrupted' *inter alia*, 'when there is any written acknowledgment of the debt by the debtor.' This simply means that the period of prescription, when interrupted by such a written acknowledgment, begins to run anew; and whatever time of limitation might have already elapsed from the accrual of the cause of action is thereby negated and rendered inefficacious. . . .

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. . . The effect of the interruption spoken of in Article 1155 is to renew the obligation, to make prescription run again from the date of the interruption . . .

Based on the aforecited cases, **Article 1155 has twice been interpreted to mean that upon the cessation of the suspension of the prescriptive period, the full period of prescription commences to run anew. Petitioner, on the other hand, insists that in case of the filing of an action, the prescriptive period is merely tolled and continues to run again, with only the balance of the remaining period available for the filing of another action. This postulation of petitioner, if we are to adopt it, would result in an absurdity wherein Article 1155 would be interpreted in two different ways, *i.e.*, the prescriptive period is interrupted in case of an extrajudicial demand and a written acknowledgment of a debt, but it is merely tolled where an action is filed in court.**

In *Vda. de Nator*, it was held that:

. . . The filing of the case with the CFI arrested the period of prescription (Art. 1155 NCC), and the interruption of said period lasted until the time that the dismissal for lack of jurisdiction became final. 'When prescription is interrupted by a judicial demand, the full time for the prescription must be reckoned from the cessation of the interruption'. . . . The whole period during which the case had been pending cannot be counted for arriving at the prescriptive period. In other words, the running of the period of prescription in this particular case was interrupted on August 6, 1953, when the case in the CFI was filed and began to run again on August 30, 1958, when the same Court had dismissed the case. As the complaint was filed with the CIR on December 5, 1958, the action has not yet prescribed.

This case obviously appears to have made conflicting statements since it proceeds upon a certain premise but arrives at a different conclusion. Hence, we cannot agree that the statements therein sufficiently support the thesis of petitioner.

The case of *Fulton Insurance Company* is not clear either on the matter of the interruption of the prescriptive period where an action is filed in court. It was there held that:

There are two school(s) of thought as to the legal effect of the cessation of the interruption by an intervening action upon the period of prescription. There is the view expressed and perhaps, not without reasons, that the full period of prescription should start to run anew, reckoned from the date of the cessation of the interruption. The contrary view is, that the cessation of the interruption merely tolls the running of the remaining period of prescription, deducting from the full period thereof the time that has already elapsed prior to the filing of the intervening action. Nevertheless, all discussion on this point is academic; considered in the light of either view, We find that the second action is not barred.

In the aforesaid case, the defendant therein moved for the dismissal of the second case alleging that the filing of the first case neither tolled nor interrupted the running of the prescriptive period. This Court ruled that the filing of the first action interrupted the running of the period, and then declared that at any rate, the second action was filed within the balance of the period remaining. It concluded that the issue of whether the filing of the action merely tolled or it actually interrupted the running of the prescriptive period was moot and academic because, in either case, the second action was still filed within the prescriptive period. Consequently, the *Fulton* case cannot *also* sustain the thesis of petitioner.

> On the foregoing considerations, we are convinced and so hold that the correct interpretations of Article 1155 of the Civil Code are reflected in and furnished by the doctrinal pronouncements in *Overseas Bank of Manila* and *Philippine National Railways Company*, not only because they are later in point of time but because the issue is squarely resolved in a decisive and logical manner therein. Petitioner's submission would result in a bifurcated interpretation of Article 1155, aside from the irrational conclusion that a judicial action itself cannot produce the same result on the prescriptive period as a mere extrajudicial demand or an acknowledgment of the debt."

In the instant case, if *We* are to subscribe with petitioner's arguments, *i.e.*, that the August 8, 2011 Petition suspended the running of the prescriptive period and commenced to run again on February 9, 2015, the *Ledesma* case dictates that the full period of prescription commences to run anew, i.e., 120+30 day period. In other words, it is not the balance, but the full period of prescription, which commences to run anew. Therefore, counting 120 days from February 9, 2015, the 120-day period would have expired on June 9, 2015. Considering that petitioner filed the Petition on May 28, 2015 or prior to June 9, 2015, the same could have likewise been a case of premature filing of judicial claim.

To conclude, petitioner failed to convince *Us* that its judicial claim was filed within the reglementary period set by law. Hence, the dismissal of the same is in order.

WHEREFORE, the instant Petition for Review is **DISMISSED**. Accordingly, the Resolutions dated October 29, 2015 and April 8, 2016, respectively, are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR. A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice