Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

TOTAL (PHILIPPINES) CORPORATION,	CTA EB Case No. 838 (CTA Case No. 7855)
Petitioner,	
- versus -	
COMMISSIONER OF INTERNAL REVENUE,	Members: CASTAÑEDA, JR., *Acting P.J.* BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *J.J.*
Respondent.	Promulgated: FEB 2 1 2013 1:30 p.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on October 3, 2011, by petitioner-Total (Philippines) Corporation, seeking the reversal of the June 30, 2011 Decision[2] (Assailed Decision) and September 14, 2011 Resolution[3] (Assailed Resolution) of the Court of Tax Appeals (CTA) Second Division in CTA Case No. 7855, entitled *"Total (Philippines) Corporation vs. Commissioner of Internal Revenue,* the respective dispositive portion of which reads, as follows:

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[1] CTA En Banc Rollo, pp. 1-36.
[2] Annex "A" of the Petition for Review, Ibid, pp. 38-50.
[3] Annex "B" of the Petition for Review, Id, pp. 52-56.

June 30, 2011 Decision

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED."

September 14, 2011 Resolution

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

SO ORDERED."

The factual antecedents of the case as found by the Second Division of this Court are as follows:

> "Petitioner Total (Philippines) Corporation is a domestic corporation duly registered with and licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines, with principal office address at Penthouse, Total Corporate Center, 1012 Triangle Drive, North Bonifacio, Bonifacio Global City.
>
> It is a VAT-registered entity as evidenced by Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC0000019580 and was assigned with Taxpayer's Identification Number (TIN) 005-145-964-000.
>
> Petitioner's primary purpose is to 'acquire, assemble, install, construct, equip, repair, remodel, maintain, develop, operate, hold, own, lease and otherwise deal with oil terminals and service station networks; to develop and operate a wholesale distribution network and carry out the purchase, acquisition, including importation, if appropriate, storage, marketing, distribution, transport, use, wholesale, exportation, refinement, treatment, distillation and manufacture of, and generally deal in, Fuel Oils, Gas Oils, Gasolines, Lubricants and, subject to market conditions, Bitumens, Solvents and

Kerosenes and, subject to the written agreement of the stockholders any and all kinds of oil products, such as Jet Fuel and liquefied petroleum gas.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including, among others, to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Quezon City.

Petitioner filed its Quarterly VAT Return for the fourth quarter of taxable year 2006. During the said fourth taxable quarter of 2006, petitioner exported goods to companies located in foreign countries and to companies located in special economic zones and freeport zones. And it purportedly incurred/paid input taxes on its purchases of vatable goods and services for the said period. The sales and purchases for the fourth quarter of 2006 are summarized as follows:

Zero-rated Sales	Exempt Sales	Sales Subject to 12% VAT	Output Tax	Purchases	Input Tax
P75,273,816 .73	150,618.31	6,024,195,649.40	722,903,477.93	5,971,569,508.60	716,588,254.94

Petitioner filed its application for issuance of tax credit certificate for the unutilized VAT input taxes in the amount of P8,843,228.30, along with all supporting documents on December 18, 2008 with the Large Taxpayers Service-Large Taxpayer Audit and Investigation Division II.

Respondent has not acted on petitioner's claim for refund, prompting petitioner to file this Petition for Review on December 22, 2008.

On February 6, 2009, respondent filed his Answer, interposing the following Special and Affirmative Defenses:

> '4. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

5. Petitioner's alleged claim for tax credit/refund is subject to administrative routinary investigation/examination by respondent's Bureau.

6. Taxes collected are presumed to be in accordance with laws and regulations.

7. Petitioner's judicial claim for tax credit/refund was prematurely filed for failure to comply with the provision of Section 112 (C) of the 1997 National Internal Revenue Code (NIRC), as amended, which states:

> 'Section 112. Refunds or Tax Credits of Input Tax. —
>
> **(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.
>
> 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.' (Italics supplied)

As stated in the Petition, petitioner filed its administrative claim for tax credit/refund with respondent on 18 December 2008. After only four (4) days or on 22 December 2008, the instant Petition for Review was filed with this Honorable Court. Obviously, the 120-day period given to respondent to decide on the claim has just started. Such action on the part of petitioner is tantamount to a wanton disregard of the doctrine of exhaustion of administrative remedies.

Well settled is the rule that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes (Zabat vs. Court of Appeals, 338 SCRA 551). This rule on exhaustion of administrative remedies was explained thus:

> 'The underlying principle of the rule on exhaustion of administrative remedies **rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly**. There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and more speedy solution to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts — for reasons of law, comity and convenience — will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct errors committed in the administrative forum." *(Union Bank of the Philippines vs. Court of Appeals, 290 SCRA 198)*

8. *Grantia argumenti* that the instant claim for tax credit/refund was not prematurely filed, it is imperative for petitioner to prove its compliance with the following, viz.:

a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations.

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003).

c. The submission of complete documents in support of the administrative claim for tax credit/refund pursuant to Section 112 (C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of such claim.

d. That the input taxes of P8,843,228.30 allegedly representing unutilized input VAT from its purchases of goods and services attributed/allocated to its export sales and sales to companies located in the special economic zones/freeport zones were:

    i. paid by petitioner;

    ii. attributable to its zero-rated or effectively zero-rated sales; and,

iii. such input taxes paid should not have been applied against any output tax.

e. That petitioner's claim for tax credit/refund allegedly representing unutilized input VAT in the amount of P8,843,228.30 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the 1997 NIRC, as amended.

9. Furthermore, in an action for tax credit/refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

10. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same. *(Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005).* Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted *(Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444).'*

During trial, petitioner presented documentary and testimonial evidence. Respondent's counsel, however, manifested that she has no evidence to present.

On January 26, 2011, this Court considered the case submitted for decision after petitioner filed its Memorandum on January 17, 2011 and respondent filed his Memorandum through registered mail on January 17, 2011."[4]

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[4] Id, pp. 38-43.

On June 30, 2011, the Court in Division dismissed the instant Petition for Review for lack of jurisdiction.

Undaunted, petitioner filed its Motion for Reconsideration[5] on July 15, 2011, but the same was denied for lack of merit in a Resolution[6] dated September 14, 2011. Thus, this Petition for Review filed before the Court *En Banc* on October 3, 2011.

On October 25, 2011, the Court *En Banc* issued a Resolution[7] ordering respondent to file her comment within ten (10) days from receipt thereof. Respondent filed her Comment (Re: Petition for Review dated September 30, 2011)[8] on November 14, 2011. Hence, in a Resolution[9] dated December 21, 2011, this Court resolved to give due course to petitioner's Petition for Review, and ordered both parties to submit their respective memorandum.

On February 22, 2012, respondent filed a Manifestation (Re: Resolution dated January 27, 2012)[10] stating therein that "she is adopting the arguments raised in her Comment to the Petition for Review filed before the Court *En Banc* on January 27, 2012 as her Memorandum on account of the fact that she has already fully discussed her arguments in said Comment." Petitioner, on the other hand, filed its Memorandum[11] on March 2, 2012.

Pursuant to the Court's Resolution dated March 29, 2012, the case was submitted for decision taking into consideration respondent's Manifestation filed on February 22, 2012 and petitioner's Memorandum filed on March 2, 2012.

Hence, this Decision.

In this Petition, petitioner raised the following issues for the resolution of this Court:

"I.

WHETHER OR NOT THE SECOND DIVISION OF THE COURT OF TAX APPEALS ERRED IN RULING AND

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[5] Division Docket, pp. 625-647.
[6] Ibid, pp. 686-690.
[7] CTA En Banc Rollo, pp. 58-59.
[8] Ibid, pp. 60-90.
[9] Id, pp. 92-93.
[10] Id, pp. 103-105.
[11] Id, pp. 107-140.

CONSEQUENTLY IN DISMISSING THE PETITION FOR REVIEW DOCKETED AS CTA CASE NO. 7855 ON THE GROUND THAT THE JUDICIAL CLAIM OF PETITIONER FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) ON UNUTILIZED INPUT VAT, INCURRED FROM TRANSACTIONS FOR THE FOURTH QUARTER OF THE TAXABLE YEAR 2006 AND ATTRIBUTABLE TO ZERO-RATED SALES, WAS PREMATURELY FILED

II.

ASSUMING THAT THE PETITION WAS PREMATURELY FILED, WHETHER OR NOT PETITIONER'S PROPERTY RIGHT WAS VIOLATED IN REVERSING THE INTERPRETATION OF THE LAW WHICH WAS VALID AND WAS COMPLIED IN GOOD FAITH BY THE PETITIONER AT THE TIME OF FILING THE PETITION.

III.

WHETHER OR NOT PETITIONER'S SALES IN THE FOURTH QUARTER OF 2006 ARE SUBJECT TO ZERO PERCENT (0%) VAT.

IV.

WHETHER OR NOT PETITIONER HAS UNUTILZED INPUT VAT FOR THE FOURTH QUARTER OF YEAR 2006 IN THE TOTAL AMOUNT OF EIGHT MILLION EIGHT HUNDRED FORTY THREE THOUSAND TWO HUNDRED TWENTY EIGHT AND THIRTY CENTAVOS (P8,843,228.30) ARISING FROM ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES IN RELATION TO ITS ZERO-RATED SALES.

V.

WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE FOURTH QUARTER OF YEAR 2006 ARE PROPERLY SUBSTANTIATED BY INVOICES AND OFFICIAL RECEIPTS AND OTHER SUPPORTING DOCUMENTS.

VI.

WHETHER OR NOT THE UNUTILIZED INPUT VAT PAYMENTS FOR THE FOURTH QUARTER OF YEAR 2006 WERE CARRIED OVER TO AND UTILIZED IN THE

SUCCEEDING TAXABLE QUARTER(S) OR APPLIED AGAINST ANY OUTPUT VAT LIABILITY OF THE PETITIONER.

VII.

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE UNUTILIZED INPUT VAT PAYMENTS IN THE AMOUNT OF EIGHT MILLION EIGHT HUNDRED FORTY THREE THOUSAND TWO HUNDRED TWENTY EIGHT AND THIRTY CENTAVOS (P8,843,228.30).

Petitioner further argues that: (i) the Petition for Review docketed as CTA Case No. 7855 was not prematurely filed; (ii) that in the interest of justice, the Petition for Review must be decided upon based on the merits of the case and not based on procedural technicality which the petitioner relied in good faith considering that it was the interpretation of the Court at the time of filing the Petition; (iii) petitioner must not suffer losing its property rights in relying in good faith of the Court's interpretation at the time of the filing the petition; and (iv) petitioner complied with all the requirements for the refund of its excess and unutilized input VAT arising from its purchases of taxable goods and services for the 4th Quarter of CY 2006 attributable to its zero-rated sales in the total amount of P8,843,228.30.

Respondent, on the other hand, counter-argues that : (i) this Court has no jurisdiction to take cognizance of the instant case for failure of petitioner to file the judicial claim within the period prescribed by law; (ii) the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation; (iii) Section 120 of the NIRC of 1997, as amended, is the governing rule to be followed in application for tax refund and not Section 229 as allegedly claim by petitioner; (iv) the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., cannot be considered as a new doctrine, hence, may be retroactively applied to the instant case; and (v) the laws which are civil in nature may be applied retroactively.

After a careful and thorough evaluation and consideration of the records and arguments as well as the jurisprudence on the matter, the CTA *En* Banc finds no merit in the instant Petition.

We observed that the arguments that petitioner relied upon for review in the instant petition have been thoroughly and sufficiently passed upon and resolved in the Assailed Resolution of the CTA Second Division, pertinent portion of which is hereby quoted as follows:

> "The provision of Section 112(D) *[now 112(C)]* of the 1997 National Internal Revenue Code (NIRC), as amended, clearly provides that the Commissioner of Internal Revenue has one hundred twenty (120) days from the submission of complete documents by the taxpayer in support of its claim for refund, to decide on the claim; and that the taxpayer has thirty (30) days within which to appeal before this Court from the denial of the claim or the expiration of the 120-day period in case of inaction.
>
> The said provision of the NIRC was applied in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* which involves a claim for refund of input tax covering the period from July 1, 2002 to September 30, 2002. In that case, the Supreme Court ruled that '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.' Accordingly, 'in both instances, the taxpayer has 30 days within which to file an appeal with the CTA,' and 'the premature filing of a claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.' In the same *Aichi* case, it was held that Section 229 of the NIRC does not apply to refunds/credits of input VAT.
>
> Bearing in mind that in our system of judicial administration, the Supreme Court has the last word on what the law is; that it is the final arbiter of any justiciable controversy; and that there is only one Supreme Court from whose decisions all other courts should take their bearings, this Court has no reason to depart from the decision of the Supreme Court in that *Aichi* case. It is settled rule in this jurisdiction that 'once a case has been decided one way, courts have no choice but to resolve subsequent cases involving the same issues in the same manner.'
>
> Moreover, contrary to petitioner's stance that the *Aichi* case should be applied prospectively, suffice it to state that the construction/interpretation placed upon Section 112 of

> the NIRC in that *Aichi* case retroacts to the date of the enactment of the said law on January 1, 1998 following the well-settled rule that 'the Court's interpretation of the law is part of the law as of the date of its enactment since the Court's interpretation merely establishes the contemporary legislative intent that the construed law purports to carry into effect."

In the case at bench, petitioner's administrative claim for refund/credit of its unutilized input VAT was, indeed, timely filed on December 18, 2008. Applying subsections (A) and (D) of Section 112 of the 1997 NIRC, as amended, CIR has one hundred twenty (120) days or until April 17, 2009, within which to decide on the said claim. After the lapse of the said 120-day period without any action on the part of the CIR, petitioner may appeal the unacted claim within thirty (30) days or until May 17, 2009 with the CTA. However, as can be gleaned from the records, petitioner's Petition for Review (CTA Case No. 7855) was filed on December 22, 2008 or merely four (4) days from the filing of the administrative claim. Thus, the premature filing of petitioner's claim before the CTA warrants a dismissal in as much as no jurisdiction was acquired by this Court.

Since the Court *En Banc* has no jurisdiction over the instant Petition for Review, the other issues raised by petitioner becomes inconsequential and need not be resolved by this Court.

In sum, there is no cogent reason or justification to disturb the findings and conclusion spelled out in the Assailed June 30, 2011 Decision and September 14, 2011 Resolution of the CTA Second Division in CTA Case No. 7855, entitled *"Total (Philippines) Corporation vs. Commissioner of Internal Revenue."*

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, June 30, 2011 Decision and September 14, 2011 Resolution of the CTA Second Division are hereby **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

(I Maintain My Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(Concurs with the Separate Concurring Opinion of Associate Justice Amelia R. Cotangco- Manalastas)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(With Separate Concurring Opinion)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

TOTAL (PHILIPPINES) CORPORATION, Petitioner,	**CTA EB CASE NO. 838** (CTA Case No. 7855)
- *versus* -	Present: *Castañeda, Jr., Acting P.J.* *Bautista,* *Uy,* *Casanova,* *Fabon-Victorino,* *Mindaro-Grulla, and* *Cotangco-Manalastas, JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 21 2013

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DISSENTING OPINION

BAUTISTA, J.

On October 6, 2010, the High Court promulgated a Decision ruling that pursuant to Section 112 of the 1997 National Internal Revenue Code, as amended, a taxpayer-claimant has two (2) years after the close of the taxable quarter when the pertinent sales were made, within which to apply with the Commissioner of Internal Revenue a claim for refund or tax credit of its creditable input tax. The latter, on the other hand, has one hundred and twenty (120) days from the filing of such administrative claim to grant or deny the same pursuant to Section 112(C) of the same Code. And upon denial or expiration of the allowable period of one hundred twenty (120) days without any action on the part of the Commissioner, the taxpayer-claimant had only thirty (30) days to challenge the adverse decision or elevate its claim with this Court. Otherwise, the Court will be deprived of jurisdiction to entertain the case.[1]

Nonetheless, a perusal of the factual milieu present in the case at bench supports the application of the *then prevailing jurisprudence at the time the claims were made*. And I find the ruling in the case of *Chavez v. NHA*,[2] as aptly discussed by the Supreme Court *En Banc*, instructive:

> The "operative fact" doctrine is embodied in *De Agbayani v. Court of Appeals*, wherein it is stated that a legislative or executive act, prior to its being declared as unconstitutional by the courts, is valid and must be complied with, thus:
>
>> As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.
>>
>> **Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic.** It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more

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[1] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.
[2] G.R. No. 164527, August 15, 2007.

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> fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. **This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.**
>
> In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. **The past cannot always be erased by a new judicial declaration.** The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* and the decision in *Manila Motor Co., Inc. v. Flores.* An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.*[3]

This doctrine was reiterated in the more recent case of *City of Makati v. Civil Service Commission,*[4] wherein we ruled that:

[3] No. L-23127, April 29, 1971, 38 SCRA 429, 434-435; *cited in supra, note 2.*
[4] G.R. No. 131392, February 6, 2002, 376 SCRA 248, 257; *cited in supra, note 2.*

> Moreover, we certainly cannot nullify the City Government's order of suspension, as we have no reason to do so, much less retroactively apply such nullification to deprive private respondent of a compelling and valid reason for not filing the leave application. **For as we have held, a void act though in law a mere scrap of paper nonetheless confers legitimacy upon past acts or omissions done in reliance thereof.** Consequently, the existence of a statute or executive order prior to its being adjudged void is an operative fact to which legal consequences are attached. It would indeed be ghastly unfair to prevent private respondent from relying upon the order of suspension in lieu of a formal leave application.

The principle was further explicated in the case of *Rieta v. People of the Philippines*,[5] thus:

> In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter Bank*[6] to wit:
>
>> The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. x x x It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a

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[5] G.R. No. 147817, August 12, 2004, *citing Tañada v. Tuvera, April 24, 1985, 136 SCRA 27; cited in supra, note 2.*
[6] 308 US 371, 374 [1940]; *cited in supra, note 5.*

> statute, prior to [the determination of its invalidity], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects -with respect to particular conduct, private and official. **Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive** invalidity cannot be justified. (*Boldfacing supplied.*)

Therefore, while rulings of the Supreme Court are laws in their own right for they interpret what the law says or mean,[7] and that pursuant to Article 8 of the Civil Code which expressly provides that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines"; nonetheless, the same is still subject to Article 4 of the same Code which states that "laws shall have no retroactive effect unless the contrary is provided." It follows then that the principle of prospectivity of statutes, original or amendatory, shall also apply to judicial decisions, which although, in themselves, are not laws are nevertheless evidence of what the law means.[8]

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[7] Philippine Veterans Affairs Office *v.* Segundo, G.R. No. L-51570, August 15, 1988, 164 SCRA 365.
[8] Filoteo, Jr. *v.* Sandiganbayan, G.R. No. 79543, October 16, 1996, 263 SCRA 222.

Therefore, rulings of the court modifying or reversing a doctrine or principle, operates prospectively, and rights acquired under such doctrine or principle prior to its modification or reversal may not be affected thereby.[9]

With the foregoing disquisitions in mind, I hereby find the administrative and judicial claims filed on December 18, 2008 and December 22, 2008, respectively, made within the required period at the time the actions were performed - from the close of the relevant quarter,[10] and not within thirty (30) days from receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.[11]

For emphasis, the latter ruling was clearly promulgated *after* the taxpayer-claimant had faithfully relied and complied with the then Court's ruling at the time it filed its claim.

Accordingly, I vote that the Petition for Review be **GRANTED**. The Petition for Review, docketed as CTA Case No. 7855, should be **REINSTATED.**

LOVELL R. BAUTISTA
Associate Justice

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[9] People *v.* Jabinal, G.R. No. 30061, February 27, 1974, 55 SCRA 607.
[10] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[11] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 838
(CTA Case No. 7855)

Present:
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

FEB 21 2013 attpoliario 1:30p.m.

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SEPARATE CONCURRING OPINION

COTANGCO-MANALASTAS, *J.*:

In the challenged Decision[1] and Resolution[2], the Court in Division dismissed petitioner's claim for input VAT refund or issuance of TCC on the ground of lack of jurisdiction. The Court in Division pronounced that petitioner's non-observance of the periods provided under Section 112 (C) of the NIRC of 1997, as amended, would mean that this Court cannot take cognizance of the instant Petition for Review.

I agree with the dismissal by the Court *En Banc* of the instant Petition for Review. However, at the outset I wish to clarify that although I agree with the dismissal of the instant Petition, I am of the humble opinion that the aforesaid case should have been dismissed for prematurity resulting to lack of cause of action and not for lack of jurisdiction.

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[1] *Rollo*, pp. 38-50.
[2] *Rollo*, pp. 52-56.

Premature filing of judicial claim for refund or non-observance of the doctrine of exhaustion of administrative remedies is not jurisdictional; it only renders the action premature and not ripe for judicial determination.

The following points articulate my stance concerning the premature filing of judicial claim for refund/tax credit of excess or unutilized input VAT, *viz*:

[i] Premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel*, the case is susceptible of dismissal for **lack of cause of action**[3]. Thus, the premature filing of the subject Petition for Review is only tantamount to *lack of cause of action.*

[ii] The premature filing of claim for refund or failure to exhaust administrative remedies **does not affect the jurisdiction** of a Court[4].

[iii] Since the premature filing of claim for refund or failure to exhaust administrative remedies is not jurisdictional, such defense is thus **waivable** pursuant to Section 1, Rule 9 of the Rules of Court.

Records reveal the following facts:

2006 Taxable Quarter	CTA Case No.	Administrative Claim Filed w/ Supporting documents	End of 120 Days for the BIR Commissioner to Decide the Claim	Date Judicial Claim Filed
4th	7855	December 18, 2008	April 17, 2009	December 22, 2008

Section 112(C) of the NIRC of 1997, as amended, provides that a VAT-registered taxpayer who desires to refund its unutilized input VAT attributable to zero-rated sales may apply for refund or issuance of a tax credit certificate within two (2) years from the close of the taxable quarter; and the Commissioner of Internal Revenue (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

[3] *Montanez vs. PARAD, et al.*, G.R. No. 183142, September 17, 2009.

[4] *Merida Water District, et al. vs. Francisco Bacarro, et al.*, G.R. No. 165993, September 30, 2008.

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 the CTA within 30 days.[5] Applying the foregoing to the facts of this case, it is apparent that petitioner's judicial claim was filed prematurely. Petitioner failed to wait for the lapse of 120 days from the filing of its administrative claim, before filing its judicial claim pursuant to Section 112 (C) of the NIRC of 1997, as amended.

Bearing in mind that the premature filing of claim for refund and/or tax credit or non-exhaustion of administrative remedies is not jurisdictional and, at the most, only renders the case susceptible of dismissal for lack of cause of action, such defense is waivable or may be considered waived pursuant to Section 1, Rule 9 of the Rules of Court.

In this case, considering that respondent alleged in her Answer[6] the special and affirmative defense of prematurity of petitioner's judicial claim for refund based on Section 112 (C) of the NIRC of 1997, as amended, it cannot be said that respondent waived such defense of premature filing, thus, said defense was properly raised as a valid ground for dismissal.

Hence, considering that petitioner's judicial claim for refund or issuance of TCC of unutilized input VAT for the 4th quarter of 2006 was prematurely filed, and the said defense of premature filing was timely raised in respondent's Answer, I vote for the dismissal of the present Petition for Review on the ground of prematurity resulting to lack of cause of action and not for lack of jurisdiction.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[5] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,* G.R. No. 184823, October 6, 2010.
[6] *Docket*, pp. 57-63.