REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THIRD MILLENNIUM OIL MILLS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 729
(CTA Case No. 7583)

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

Promulgated:

JUN 07 2012 9:00 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by petitioner Third Millennium Oil Mills, Inc. before the Court of Tax Appeals (CTA) *En Banc* assailing the Amended Decision[1] dated July 7, 2010 and the Resolution[2] dated February 2, 2011

[1] *Rollo*, pp. 48-56. Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta and Associate Justice Esperanza R. Fabon- Victorino, concurring.
[2] *Rollo*, pp. 57-64.

promulgated by the CTA First Division in the case entitled "*Third Millennium Oil Mill, Inc. vs. Commissioner of Internal Revenue,*" docketed as CTA Case No. 7583.

The assailed Amended Decision REVERSED AND SET ASIDE the Decision[3] of the CTA First Division promulgated on February 3, 2010 which PARTIALLY GRANTED the petition seeking the refund or issuance of a tax credit certificate in the reduced amount of P2,546,709.78 allegedly representing unutilized input VAT attributable to zero-rated sales for the four quarters of taxable year 2005.

THE FACTS

The facts of the case as found by the CTA First Division are as follows: [4]

> Petitioner, Third Millennium Oil Mills, Inc., is a corporation registered in accordance with Philippine laws, with Securities and Exchange Commission (SEC) License No. A20019187. It is engaged in the production of crude oil, copra cake, meals, pellets, and in the wholesale of agricultural raw materials and live animals. Its principal office is located at Room 403, CSP Building, 815 Quezon Avenue, Quezon City.
>
> Petitioner is registered with the Board of Investments (BOI), in accordance with the provisions of the Omnibus Investments Code of 1987, as a non-pioneer enterprise with pioneer incentives, being located in less developed areas, for the production and sale of crude coconut oil and copra cake. It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT entity, with Tax Identification No. (TIN) 208-989-512-000.
>
> Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes.
>
> For the four quarters of taxable year 2005, petitioner filed with the BIR its Quarterly VAT Returns (BIR Form No. 2550Q), including the amendments for the second and fourth quarters of 2005, on the following dates:

Period Covered	Original Return	Exhibit	Amended Return	Exhibit

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[3] Division Docket, pp. 151-174.
[4] Division Docket, pp. 151-154.

	Filed on		Filed On	
1st Quarter-2005	April 21, 2005	A	-	-
2nd Quarter-2005	July 26, 2005	B	July 28, 2005	C
3rd Quarter-2005	October 24, 2005	D	-	-
4th Quarter-2005	January 25, 2006	E	April 8, 2006	F

In the aforementioned Quarterly VAT Returns, petitioner reflected the following details:

Exh.	2005	Zero-Rated Sales	Exempt Sales	Taxable Sales	Output VAT	Input VAT
		(a)	(b)	(c)	(d)	(e)
L-3	1st Qtr	P 364,129,690.56		P 2,905,124.73	P 290,512.47	P 651,504.40
L-4	2nd Qtr	440,351,183.31		1,710,550.91	171,055.09	806,613.07
L-5	3rd Qtr	451,947,481.00		1,185,484.54	118,548.45	890,655.15
L-6	4th Qtr	373,102,204.71	P17,499,271.50	396,936.36	39,693.64	1,469,133.64
	Total	**P1,629,530,559.58**	**P17,499,271.50**	**P6,198,096.54**	**P619,809.65**	**P3,817,906.26**

Petitioner avers that P3,008,935.81 of the declared input VAT for the four quarters of taxable year 2005 is attributable to its zero-rated export sales and the same remains unapplied against any output VAT.

Relying on Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner filed with the BIR a letter dated June 19, 2006 which was received on June 26, 2006, requesting the refund of the amount of P3,008,935.81 representing unutilized input VAT credits attributable to zero-rated sales for the four quarters of taxable year 2005.

For respondent's failure to act on petitioner's claim, petitioner filed before this Court a Petition for Review on March 28, 2007.

In the Answer dated May 17, 2007 which was filed on May 22, 2007, respondent interposed the following special and affirmative defenses:

"5. The petitioner failed to prove that it is entitled to a probable refund of excess VAT credits in accordance with legal requirement on the carry-over of the credits to the succeeding period;

6. The claim for refund is still under examination by the respondent's Bureau;

7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;

8. The grant of claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

Thereafter, pre-trial was held on July 26, 2007 and the parties jointly agreed to submit a Joint Stipulation of Facts and Issues within twenty (20) days from said date. On September 18, 2007, parties submitted the aforesaid required pleading and was approved in the Resolution dated September 20, 2007. Ju

During trial, petitioner presented documentary and testimonial evidence primarily aimed at proving its supposed entitlement to the refund or issuance of a tax credit certificate in the total amount of P3,008,935.81 representing alleged unutilized input VAT attributable to zero-rated sales for the four quarters of taxable year 2005; while respondent manifested that he is submitting the case for decision based on the pleadings considering that he has no witness to present. Accordingly, the parties were given thirty (30) days to file their respective memorandum. In a Resolution dated February 6, 2009, both parties failed to file their Memoranda; hence, the case was deemed submitted for decision.

On February 3, 2010, the Court in Division rendered a Decision partially granting the Petition for Review. The dispositive portion of the assailed Decision reads as follows:

> WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** to, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **TWO MILLION FIVE HUNDRED FORTY-SIX THOUSAND SEVEN HUNDRED NINE PESOS AND 78/100 (P2,546,709.78)**, representing its unutilized input taxes attributable to zero-rated sales for the four quarters of taxable year 2005.
>
> **SO ORDERED.**[5]

Aggrieved, respondent Commissioner of Internal Revenue filed a Motion for Reconsideration on March 2, 2010. The CTA First Division issued an Amended Decision on July 7, 2010, the dispositive portion reads as follows:

> **WHEREFORE**, in light of the foregoing, respondent's Motion for Reconsideration is hereby **GRANTED.** The assailed Decision is hereby **REVERSED and SET ASIDE.**
>
> Accordingly, the instant Petition for Review is hereby **DISMISSED** on jurisdictional grounds.
>
> **SO ORDERED.**[6] *Je*

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[5] Division Docket, page 170.
[6] *Rollo*, page 55.

On August 10, 2010, petitioner filed a Motion for New Trial and/or Reconsideration to the Amended Decision dated July 7, 2010 and to Admit Additional Evidence. Also, petitioner filed a Supplemental Motion for Reconsideration on November 17, 2010. Both motions were denied in a Resolution dated February 2, 2011, to wit:

> **WHEREFORE,** premises considered, petitioner's "**Motion For New Trial and/or Reconsideration to the Amended Decision dated July 7, 2010 and to Admit Additional Evidence**" and "**Supplemental Motion for Reconsideration**" are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[7]

Hence, this Petition for Review *En Banc.*

THE ISSUES

The issue involved is whether or not petitioner is entitled to a refund of its unutilized input VAT for the 1st, 2nd, 3rd and 4th quarters of 2005 in the total amount of P 3,008,935.81. In the present Petition for Review, petitioner raises the following grounds:

I. THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN DISMISSING THE PETITION FOR REVIEW FOR LACK OF JURISDICTION ON THE BASIS OF THE RULING OF THE SUPREME COURT IN THE CASE OF *COMMISSIONER OF INTERNAL REVENUE VS. AICHI FORGING COMPANY OF ASIA, INC. ("AICHI CASE")* THE SUPREME COURT HAD CONSISTENTLY CONFIRMED IN A NUMBER OF DECISIONS THAT THE 120-DAY PERIOD IS NOT MANDATORY AND THAT BOTH ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND MUST ONLY BE FILED WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD

II. THE FIRST DIVISION OF THE HONORABLE COURT ACTED WITHOUT JURISDICTION WHEN IT RETROACTIVELY APPLIED THE RULING IN THE *AICHI* CASE TO THE PETITION FOR

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[7] *Rollo*, page 63.

REVIEW. THE RETROACTIVE APPLICATION OF THE SAID RULING VIOLATES PETITIONER'S VESTED RIGHTS.

III. SECTION 112 OF THE 1997 NATIONAL INTERNAL REVENUE CODE (NIRC) SHOULD BE READ IN CONJUNCTION WITH SECTION 229 OF THE SAME CODE

IV. THE TWO-YEAR PRESCRIPTIVE PERIOD PROVIDED UNDER SECTION 112 (A) OF THE 1997 NIRC ALSO APPLIES TO JUDICIAL CLAIMS FOR REFUND

V. RESPONDENT HAD WAIVED HIS RIGHT TO RAISE THE PRESCRIPTION OF THE JUDICIAL CLAIM AS A DEFENSE [8]

THIS COURT'S RULING

The petition is without merit.

We affirm the ruling of the CTA First Division DENYING the judicial claim for failure to observe the mandatory 120-30 day period under Section 112 of the National Internal Revenue Code (NIRC) of 1997 as no jurisdiction was acquired by the Court of Tax Appeals (CTA). This is based on the following grounds:

1. When the law provides a period within which to commence an action, such requirement is jurisdictional.[9]

2. The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[10]

3. The principles laid down in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* [11] (*Aichi*) are applicable to the present case.

4. The jurisdiction of a court may be questioned at any stage of the proceedings. *gr*

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[8] Petition for Review, Rollo, pp. 24-25.
[9] *Ker & Company, Ltd. vs. Court of Tax Appeals,* No. L-12396, January 31, 1962, 4 SCRA 160.
[10] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, Resolution dated April 24, 2007, 522 SCRA 144.
[11] G.R. No. 184823, October 6, 2010, 632 SCRA 422. The *Aichi* case became final as per Supreme Court's Resolution dated December 6, 2010.

When the law provides a period within which to commence an action, such requirement is jurisdictional.

To begin with, the applicable law to the instant claim for refund is the 1997 NIRC. The period for filing administrative and judicial claims for refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sales is governed by Section 112 (A) and (D)[12] of the 1997 NIRC, as amended, to wit:

> Section 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 of 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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
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> xxx xxx xxx xxx
>
> D) *Period within which Refund or Tax Credit of Input Taxes Shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within

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[12] Now Section 112 (C) under Republic Act (RA) No. 9337.

> 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.-
>
> xxx xxx xxx xxx

Based on the foregoing, the application for refund of unutilized input VAT attributable to zero-rated sales may be made only within two (2) years after the close of the taxable quarter when the sales were made. This period, however, refers solely to administrative claims filed with the Commissioner of Internal Revenue (CIR) and not to appeals made to the CTA.

Meanwhile, judicial claim for refund should be filed within thirty (30) days from receipt of the decision of the CIR or upon the expiration of the one hundred twenty (120) days in case of inaction of the CIR. The observance of these periods is mandatory and non-compliance therewith would result in the denial of the claim.

Petitioner's administrative claim for refund dated June 19, 2006 was received by the BIR on June 26, 2006[13] while judicial claim was filed on March 28, 2007.[14] Applying the law, We deny petitioner's refund for failure to observe the 120-30 day period under Section 112 (D) of the NIRC of 1997, as amended. It appearing that the CIR failed to render a decision within the 120-day period, *Jc*

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[13] Exhibit "H", Petitioner's Formal Offer of Evidence, Division Docket, pp. 114-116.
[14] Petition for Review, Division Docket, pp. 4-17.

the last day of the 30-day period within which to file a petition reckoned from the lapse of the 120-day period is on November 23, 2006. The period to file judicial claim has already prescribed and as such it warrants a dismissal of the petition as no jurisdiction was acquired by the CTA. Even assuming that petitioner submitted the last supporting documents on February 19, 2007, the Petition for Review must likewise be dismissed for being premature.

The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.

Taking into consideration the CTA's special and limited jurisdiction, the decisions, rulings or inaction of the Commissioner are necessary in order to vest the CTA with jurisdiction to entertain the appeal.[15] The jurisdiction of the CTA is provided under Section 7 of Republic Act (RA) No. 1125, as amended by RA 9282, to wit:

> Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of 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 or other laws administered by the Bureau of Internal Revenue;
>
> (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**

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[15] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, supra, note 10.

> **provides a specific period of action, in which case the inaction shall be deemed a denial**; (emphasis ours)

The CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the CIR in cases involving refunds of internal revenue taxes. In case where the NIRC provides a specific period for action, the CIR's inaction shall be deemed a denial.

In this case, Section 112 (D) of the NIRC provides specific period of action, that is, the 120-day period within which the CIR shall render a decision. When no decision is made after the 120-day period, the taxpayer has 30 days within which to file an appeal with the CTA. At this point, there was no showing that a decision was rendered by the CIR within the 120-day period. The lapse of the said period without CIR's action shall be a denial appealable to the CTA within 30 days. Thus, the 120-day period is crucial in filing an appeal with the CTA.[16]

In the case of *Ker & Company, Ltd. vs. Court of Tax Appeals*,[17] the Supreme Court held that when the law provides a period within which to commence an action, such requirement is jurisdictional, pertinent portion of the decision states:

> While the right to appeal a decision of the Collector to the Tax Court is merely a statutory remedy, nevertheless the requirement that it must be brought within thirty days after receipt of the Collector's decision, or ruling is jurisdiction. "**If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply**

[16] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., supra,* note 11.
[17] No. L-12396, January 31, 1962, 4 SCRA 160.

> **therewith may be raised in a motion to dismiss**" (Callahan vs. Chespeake & Ohio, 407 Supp. 323, mentioned on p. 175, Moran's Rules of Court, Vol. 1, 1952 Ed.). xxx **The right to appeal from the decision of the Collector being a statutory right, the same can be invoked only in accordance with the requisites provided by law** (Wee Poco v. Posadas, 64 Phil. 648). xxx (emphasis ours)

Also, the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* [18] should be applied by analogy to the present case. The pertinent portion of the ruling states:

> The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction** to entertain and determine the correctness of the assessments. **Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.**[19] (emphasis ours)

The Supreme Court ruled that the **30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction**. This applies to cases of refund under Section 112 where the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA.

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[18] *Supra*, note 10.
[19] *Ibid.*

Similarly in the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,*[20] the Supreme Court reiterated that **perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[21]

The principles laid down in the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.[22] are applicable to the present case.

The *Aichi* case is **controlling and should be applied outright** in all cases where the facts are substantially the same as the mentioned case. The *Aichi* case is an actual application of Section 112(A) and (D) of the NIRC of 1997 where the Supreme Court disallowed the refund of unutilized input VAT due to prematurity of judicial claim as no jurisdiction was acquired by the CTA. To reiterate, the pertinent portion of the decision states:

> ***Unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made***

[20] G.R. No. 167606, August 11, 2010, 628 SCRA 96.
[21] *Ibid.*
[22] *Supra*, note 11.

In computing the two-year prescriptive period for claiming a refund/credit of unutilized input VAT, the Second Division of the CTA applied Section 112(A) of the NIRC, which states:

> 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. (Emphasis supplied.)

The CTA *En Banc,* on the other hand, took into consideration Sections 114 and 229 of the NIRC, which read:

> SEC. 114. Return and Payment of Value-Added Tax. –
>
> (A) In General. – Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
>
> Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided,

> That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.
>
> x x x x
>
> 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 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. (Emphasis supplied.)

Hence, the CTA *En Banc* ruled that the reckoning of the two-year period for filing a claim for refund/credit of unutilized input VAT should start from the date of payment of tax and not from the close of the taxable quarter when the sales were made.

The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes." xxx (emphasis ours) xxx xxx xxx

In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. **To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.** (emphasis ours)

xxx xxx xxx

The filing of the judicial claim was premature

However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112 (D) of the NIRC, which provides that:

xxx xxx xxx

Respondent's 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 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 xxx 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) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC *Jc*

> **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.**
>
> xxx xxx xxx
>
> **In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.**[23] (emphasis ours)

It should be noted that the judicial claim in *Aichi* was filed on September 30, 2004, a date earlier than the judicial claim of herein petitioner (June 26, 2006). Yet, the Supreme Court applied outright the ruling in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Corporation, Inc.)* [24] which reckoned the two-year prescriptive period for filing an administrative claim for refund from the close of the taxable quarter when the relevant sales were made. Hence, We see no reason why We should depart from the recent *Aichi* and *Mirant* rulings.

While it is true that petitioner's judicial claim was filed even before the *Aichi* case was promulgated, however, this does not mean that the doctrine laid down in *Aichi* should only be applied prospectively. As held in *Cemco Holdings, Inc. vs. National Life Insurance Company of the Philippines, Inc.,*[25] citing *Serrano vs. National Labor Relations Commission,*[26] the argument on the prospective application of a new ruling was ignored by the Court when it ruled: *ja*

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[23] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., supra*, note 11.
[24] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[25] G.R. No. 171815, August 7, 2007, 529 SCRA 355.
[26] G.R. No. 117040, Resolution dated May 4, 2000, 331 SCRA 331,342-343.

> [While] a judicial interpretation becomes a part of the law as of the date that law was originally passed, this is subject 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.
>
> It is apparent that private respondent misconceived the import of the ruling. **The decision in Columbia Pictures does not mean that if a new rule is laid down in a case, it should not be applied in that case but that said rule should apply prospectively to cases arising afterwards. Private respondents view of the principle of prospective application of new judicial doctrines would turn the judicial function into a mere academic exercise with the result that the doctrine laid down would be no more than a dictum and would deprive the holding in the case of any force.**
>
> **Indeed, when the Court formulated the Wenphil doctrine, which we reversed in this case, the Court did not defer application of the rule laid down imposing a fine on the employer for failure to give notice in a case of dismissal for cause. To the contrary, the new rule was applied right then and there.** xxx (emphasis ours)

Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one. [27]

The law takes effect from the time of its effectivity and not from the time of the promulgation of a decision applying the law. There can be no violation of petitioner's vested rights when the law in force at the time when petitioner filed its administrative and judicial claims is **Section 112 of the 1997 NIRC**, as

[27] *Eagle Realty Corporation vs. Republic*, G.R. No. 151424, Resolution dated July 31, 2009, 594 SCRA 555.

amended. Considering that the applicable law here is the 1997 NIRC which took effect on January 1, 1998, [28] petitioner is very well within its coverage. It is only upon the effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. [29] The validity and obligatory force of a law proceed from the fact that it has first been promulgated. [30]

We note the ruling of the Supreme Court in the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue* [31] penned by then Associate Justice Renato C. Corona (now Chief Justice) that all rulings of the Supreme Court on questions of law are conclusive and binding on all courts. All courts must take their bearings from the decisions of the Supreme Court. Thus, We do not presume to reverse the current decision of the Supreme Court on the ground that a new ruling or doctrine violates any constitutional provision absent any pronouncement from it as such. It should be noted that 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 justifiable controversy. Indeed, there is only one Supreme Court from whose decisions all other courts should take bearings.[32]

The Court has time and again stated that the rule on *stare decisis* promotes stability in the law and should, therefore, be accorded respect. *gc*

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[28] *Commissioner of Internal Revenue vs. McGeorge Food Industries, Inc.,* G.R. No. 174157, October 20, 2010, 634 SCRA 193, 200.
[29] *Abakada Guro Party List, et.al. vs. Cesar V. Purisima*, et.al. , G.R. No. 166715, August 14, 2008, 562 SCRA 251.
[30] *Mighty Corporation vs. E. & J. Gallo Winery*, G.R. No. 154342, July 14, 2004, 434 SCRA 473.
[31] G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781.
[32] *Commissioner of Internal Revenue vs. Michel J. Lhuiller Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178 citing the case of *GSIS vs. Court of Appeals*, 334 Phil. 163, 175; 266 SCRA 187 (1997).

However, blind adherence to precedents, simply as precedent, no longer rules. More important than anything else is that the court is right, thus its duty to abandon any doctrine found to be in violation of the law in force. [33]

The jurisdiction of a court may be questioned at any stage of the proceedings.

Petitioner argued that the defense of prescription was never raised as among the special and affirmative defenses of respondent, hence, such defense was waived.

The argument must fail.

As discussed earlier, the prescriptive period of 120-30 days under Section 112 of the NIRC of 1997 is mandatory and jurisdictional. The rule is that the jurisdiction of a court may be questioned at any stage of the proceedings.[34] Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.[35] The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of

[33] *Commissioner of Internal Revenue vs. Philippine Long Distance Telephone Company,* G.R. No. 140230, December 15, 2005, 478 SCRA 61.
[34] *Honorio Bernardo vs. Heirs of Eusebio Villegas*, G.R. No. G.R. No. 183357, March 15, 2010, 615 SCRA 466 citing the case of *Vargas vs. Caminas*, G.R. No. 137869 and G.R. No. 137940, 12 June 2008, 554 SCRA 305, 316.
[35] *Ibid.*, citing the cases of *Geonzon Vda. de Barrera vs. Heirs of Vicente Legaspi*, G.R. No. 174346, 12 September 2008, 565 SCRA 192, 198, citing *Francel Realty Corporation vs. Sycip*, G.R. No. 154684, 8 September 2005, 469 SCRA 424, 432.

and to render judgment on the action. [36] Even so, lack of jurisdiction is one of the grounds that authorize a court to dismiss a case *motu proprio*. [37]Therefore, the Court is empowered, on its own initiative, to raise the question of jurisdiction even it was not raised by the proper party.

In conclusion, petitioner's judicial claim was not timely filed which warrants a dismissal as no jurisdiction was acquired by the CTA. "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."[38]

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED.** The assailed Amended Decision dated July 7, 2010 and Resolution dated February 2, 2011 are hereby **AFFIRMED**. Accordingly, petitioner's judicial claim for refund of P 3,008,935.81 is **DENIED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

[36] *Ibid.*, citing the cases of *Sales vs. Barro*, G.R. No. 171678, 10 December 2008, 573 SCRA 456, 464, citing *Venancio Figueroa y Cervantes vs. People*, G.R. No. 147406, 14 July 2008, 558 SCRA 63, 69, and *Atwel vs. Concepcion Progressive Association, Inc.*, G.R. No. 169370, 14 April 2008, 551 SCRA 272, 283.
[37] *Carmelita T. Panganiban vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 131471, January 22, 2003, 395 SCRA 624.
[38] *Supra,* note 11.

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
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 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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

THIRD MILLENIUM OIL MILLS, INC., Petitioner,	**CTA EB CASE NO. 729** (CTA Case No. 7583)
-*versus*-	Present: *Acosta, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Palanca-Enriquez,* *Fabon-Victorino,* *Mindaro-Grulla, and* *Cotangco-Manalastas, JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 07 2012 ao Apolinario 9:00 a.m.

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DISSENTING OPINION

BAUTISTA, J.:

It was merely unfortunate that during the pendency of the case at bench that the Supreme Court issued a ruling wherein the two (2)-year prescriptive period is reckoned, not from the filing of the return, but from the close of the taxable quarter when the sales were made; yet, another one was issued stating that the two (2)-year period pertains only to administrative claim, and that the taxpayer is merely given a thirty (30)-day period to elevate its claim before this Court either from the receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.

Based on the records of the case, petitioner filed its administrative claim before respondent on June 26, 2006, and subsequently filed a Petition for Review before this Court on March 28, 2007. At the aforementioned dates, this Court in not a few instances had ruled that the date of filing of the relevant return is the determinative factor.

It was merely during the pendency of the case at bench that the Supreme Court issued a ruling which substantially reversed and modified the reckoning of the prescribed period within which a claim for refund or tax credit is to be made.

It is true that this Court has the duty to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[1] Nonetheless, this Court should not decide a case by merely adhering to precedence; idolatrous reverence for precedent, simply as precedent, no longer holds true.[2] Thus, this Court cannot simply impose a new ruling wherein after a taxpayer-claimant had faithfully relied and complied therein, the same will only be nullified on the basis of the so-called "adherence to precedence."

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.

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[1] Commission on Higher Education *v.* Atty. Felina S. Dasig, G.R. No. 172776, December 17, 2008, 574 SCRA 227, *citing Albert v. Court of First Instance of Manila, No. L-26364, May 29, 1968, 23 SCRA 948, 961.*
[2] Philippine Trust Company and Smith, Bell and Co. *v.* Mitchell, 59 Phil. 30, 36.

As the Supreme Court aptly ruled, "the final authority of this Court rests upon public respect for its decisions; that public respect is based upon an image which represents this Court as declaring legal principles with an authority and certainty that the people may place upon it their *bona fide* reliance and reasonable expectations."[3]

With this, 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.***[4]

In sum, counting two (2) years from the filing of the pertinent returns for the subject taxable year of 2005 on April 21, 2005, July 26, 2005, October 24, 2005, and January 25, 2006, I find the administrative and judicial claims made within the prescribed period in force at the time the action was made.

Accordingly, I vote that the Petition for Review be **GRANTED**.

LOVELL R. BAUTISTA
Associate Justice

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[3] 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.

[4] 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].*