Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

***En Banc***

**PHILEX MINING CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

C.T.A. EB Case No. 688
(CTA Case No. 7753)

Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *J.J.*

Promulgated:

JUN 2 3 2011 arApolinario 2:50 p.m

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# DECISION

***CASANOVA, J.:***

Before us is a Petition for Review[1] filed by petitioner, Philex Mining Corporation, praying that the Decision[2] dated March 17, 2010 (the "Assailed Decision") and the Resolution[3] dated September 13, 2010 (the "Assailed Resolution") of the Court of Tax Appeals Former Second Division of this Court be set aside and another one be rendered granting the petition and ordering the respondent to refund to petitioner the reduced amount of P5,192,928.68, as

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[1] CTA En Banc Rollo, pp. 4-24
[2] CTA Division Docket, pp. 149-156
[3] Ibid, pp. 172-175

recomputed in its Memorandum[4] filed on October 29, 2009, representing its excess and unutilized input tax for the 1st quarter of 2006.

The facts of the case, as found by the CTA Former Second Division[5], are as follows:

> "Philex Mining Corporation (Petitioner) is a domestic corporation organized under Philippine laws, with principal office at Brixton Street corner Fairlane Street, Pasig City. It is engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. It is VAT-registered effective October 29, 1987 under VAT Registration Certificate No. 35-6-000731 and as of January 31, 1997 under BIR Form No. 2303, with TIN No. 000-283-731-000.
>
> Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to exercise the functions of said office, including *inter alia*, the power to decide claims for refund of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> On January 15, 1988, petitioner filed an Application for Zero-Rate before the Bureau of Internal Revenue, which was later approved effective April 12, 1988.
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> Petitioner argued that its export sales of mineral products to foreign buyers for the first quarter of 2006 were subject to zero percent (0%) tax rate, pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.
>
> On April 24, 2006, petitioner filed its original Quarterly VAT Return for the first quarter of 2006. On February 21, 2008, petitioner amended the said Quarterly VAT Return, which reflected total zero-rated sales of P2,094,210,052.30 and total input tax in the amount of P10,188,692.14.

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[4] Ibid, pp. 131-147
[5] CTA Former Second Division Decision, Ibid, pp. 149-152

On June 20, 2007, petitioner filed its claim for refund/tax credit in the amount of P10,188,692.14 with the One-Stop Shop Center of the Department of Finance via Application No. 54764.

Since respondent has not issued a final decision on petitioner's administrative claim, petitioner filed the instant Petition for Review on April 9, 2008, in order to toll the running of the two-year period to judicially claim a tax refund/credit as provided in Section 229 of the NIRC of 1997.

In his Answer filed on June 12, 2008, respondent interposed the following Special and Affirmative Defenses:

"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 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.

During trial, petitioner presented documentary and testimonial evidence in support of its refund claim. Petitioner filed its Formal Offer of Evidence on June 9, 2009, submitting Exhibits A to J, which was thereafter admitted in a Resolution dated July 29, 2009. During the October 5, 2009 hearing, respondent, through counsel, submitted the case for decision after manifesting that he has not received any reply from the One-Stop Shop of the Department of Finance regarding the report of investigation of the case.

On November 13, 2009, the case was submitted for decision, considering petitioner's Memorandum filed on October 29, 2009, and the report of this Court's Records Division that respondent failed to file a memorandum."

On March 17, 2010, the CTA Former Second Division promulgated its Decision, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **DENIED** on the ground of prescription.
>
> **SO ORDERED**."

On April 19, 2010, petitioner sought reconsideration[6] of the Assailed Decision and prayed that the Decision dated March 17, 2010, denying petitioner's Petition for Review on the ground of prescription be set aside, and a new Decision be issued granting the Petition and ordering the respondent to refund to petitioner the reduced amount of P5,192,928.68, as recomputed in its Memorandum filed on October 29, 2009, representing its excess and unutilized input tax for the 1st quarter of 2006.

In a Resolution[7] dated September 13, 2010, CTA Former Second Division denied respondent's Motion for Reconsideration for lack of merit.

On October 5, 2010, petitioner filed the instant Petition for Review with the CTA En Banc.

In a Resolution[8] promulgated on January 4, 2011, CTA En Banc ordered both parties to file their simultaneous memoranda, within thirty (30) days after notice, after which the petition shall be deemed submitted for decision.

On March 16, 2011, CTA En Banc promulgated a Resolution[9] considering the report from the Judicial Records Division[10] dated February 23, 2011, that respondent failed to file her Memorandum within the period prescribed by the

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[6] Motion for Reconsideration, Ibid, pp. 158-168
[7] Ibid, pp. 172-175
[8] CTA En Banc Rollo, pp. 55-56
[9] Ibid, pp. 71-72
[10] Ibid, p. 69

Court and, it appearing that petitioner already filed its Memorandum on February 7, 2011, the case was submitted for decision.

The petitioner, in the instant Petition for Review, raised this sole issue:

> "Whether petitioner's judicial claim is barred by prescription by virtue of Section 112(A) of the 1997 Tax Code and the *Mirant* Decision of the Supreme Court."

Petitioner argues that the Former Second Division mis-read and misinterpreted the Mirant case; that the timeliness of the filing of the judicial claim with the CTA was not an issue in Mirant, and the Supreme Court did not rule, directly or indirectly, or even hint, that the two-year prescriptive period provided in Section 112(A) of the National Internal Revenue Code of 1997 (Tax Code) likewise applies to the filing of a judicial claim; that the Supreme Court has now made clear and categorically stated in Aichi[11] that the two-year prescriptive period prescribed in Section 112(A) of the Tax Code refers only "to applications for refund/credit filed with the CIR and not to appeals made to the CTA".

Petitioner now contends that, with the categorical pronouncement of the Supreme Court in the Aichi case, the Assailed Decision, which denied its Petition for Review due to prescription, has lost its basis and should now be reversed.

While petitioner is correct in pointing out that the Supreme Court did not rule in the Mirant case, that the two-year prescriptive period prescribed in Section 112(A) of the Tax Code likewise applies to the filing of a judicial claim, the instant Petition for Review must still be denied due to prescription.

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[11] Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010

The Aichi case not only reiterated the ruling in the Mirant case regarding the reckoning of the two-year prescriptive period for filing a claim for refund/credit of unutilized input VAT prescribed under Section 112(A) of the Tax Code.[12] It further ruled on the need to observe the 120-30 day period mandated under Section 112(D) of the same Code.

The High Tribunal ruled in this wise:

> "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:
>
> > SEC. 112. Refunds or Tax Credits of Input Tax. –
> >
> > x x x x
> >
> > (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 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,

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[12] 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 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.

> **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**. (Emphasis supplied)

Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's 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 x x x apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) 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 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."

Petitioner filed its administrative claim for refund of its excess and unutilized input VAT for the first quarter of taxable year 2006 on June 20, 2007, which is well within the 2-year period prescribed under Section 112(A) of the Tax Code. However, applying the ruling in the Aichi case, petitioner's judicial claim (CTA Case No. 7753), which was filed on April 9, 2008, was filed way beyond the 120-30 day period mandated under Section 112(D) of the Tax Code.

To illustrate, from June 20, 2007, respondent had 120 days or until October 18, 2007 to act on petitioner's administrative claim for refund. Since no action was taken by the respondent on said claim within such period, petitioner had 30 days from October 18, 2007, or until November 17, 2007, to file its judicial claim with this Court. Since petitioner filed its Petition for Review (CTA Case No. 7753) only on April 9, 2008, clearly, therefore, petitioner's judicial claim was filed way beyond the mandated 30-day period to appeal.

Petitioner's contention that "assuming as correct that the SC ruled in Mirant that a judicial claim for VAT refund must be filed within the 2-year prescriptive period in Section 112(A), said **ruling should apply prospectively**," is likewise bereft of merit.

It bears stressing that the ruling in the Mirant case has been superseded by the ruling in the Aichi case which categorically stated that the judicial claim must be filed within 30 days from the lapse of the 120-day period given to respondent to act on petitioner's administrative claim for refund.

We have applied the ruling in the Aichi case in the resolution of the instant case, bearing in mind the following rulings of the Supreme Court, to wit:

> In the case of Eagle Realty vs. Republic of the Philippines, et.al.,[13] the Supreme Court had the occasion to rule as follows:
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> > "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, as is the situation in this case."

Likewise, the following ruling of the Supreme Court is enlightening, to wit:

> "x x x.
>
> In Serrano vs. National Labor Relations Commission, an argument was raised similar to the case under consideration. Private respondent therein argued that the new doctrine pronounced by the Court should only be applied prospectively. Said postulation was ignored by the Court when it ruled:
>
> 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.

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[13] G.R. No. 151424, July 31, 2009

> 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 respondent's 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.
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> Indeed, when the Court formulated the Wenphil doctrine, which was 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. x x x."[14]

**FOREGOING CONSIDERED**, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the Decision dated March 17, 2010 and Resolution dated September 13, 2010, of the CTA Former Second Division are hereby **AFFIRMED**.

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

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[14] Cemco Holdings, Inc. vs. National Life Insurance Company of the Philippines, Inc., G.R. No. 171815, August 7, 2007

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

(with Dissenting Opinion)
**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
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

## C E R T I F I C A T I O N

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.

**ERNESTO D. ACOSTA**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*EN BANC*

**PHILEX MINING CORPORATION,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB NO. 688**
**(CTA Case No. 7753)**

Present:

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

Promulgated:
JUN 23 2011

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*DISSENTING OPINION*

*BAUTISTA, J.*

With the Court *En Banc* dismissing the Petition for Review due to prescription, I am compelled to vary from the said disposition considering that I maintain the view that the judicial recourse to this Court under Section 112(C)[1] of the 1997 National Internal Revenue Code ("NIRC") is directory and permissive and not mandatory nor jurisdictional as long as the claim is filed within the two (2)-year prescriptive period provided under Sections 112 and 229 of the 1997 NIRC, as amended.

[1] As Amended by Republic Act No. 9337.

As the Court consistently ruled, the taxpayer-claimant has the option of seeking judicial redress for refund of excess or unutilized input value-added tax ("VAT") attributable to zero-rated sales or effectively zero-rated sales, either within thirty (30) days from receipt of the denial of its claim for refund or tax credit, or after the lapse of the one hundred twenty (120)-day period in the event of inaction by the Commissioner of Internal Revenue ("CIR"); provided that both the administrative and judicial remedies must be undertaken within the two (2)-year period.

In the present case, the petitioner filed its original Quarterly VAT Return for the first quarter on April 24, 2006. The administrative claim for refund was lodged on June 20, 2007, while the judicial claim was filed on April 9, 2008.

At the time the present case was initiated, the ruling doctrine was that of the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*,[2] wherein the two (2)-year prescriptive period is reckoned not from the close of the pertinent quarter but from the date of filing of the VAT return. It was only on September 12, 2008 when the Supreme Court promulgated the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*,[3] which stated that the counting of the prescriptive period starts from the end of the taxable quarter, regardless of when the Quarterly VAT Return is filed.

In the case of *Co. v. Court of Appeals*,[4] the Supreme Court aptly elucidated the prospectivity principle of judicial decisions to wit:

[2] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[3] G.R. No. 172129, September 12, 2008.
[4] G.R. No. 100776, October 28, 1993, 277 SCRA 444.

The principle of prospectivity has also been applied to judicial decisions which, "although in themselves not laws, are nevertheless evidence of what the laws mean, . . . (this being) the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . .'"

So did this Court hold, for example, in *Peo. v. Jabinal*, 55 SCRA 607, 611:

> It will be noted that when appellant was appointed Secret Agent by the Provincial Government in 1962, and Confidential Agent by the Provincial Commander in 1964, the prevailing doctrine on the matter was that laid down by Us in *People v. Macarandang* (1959) and *People v. Lucero* (1958). Our decision in *People v. Mapa*, reversing the aforesaid doctrine, came only in 1967. The sole question in this appeal is: should appellant be acquitted on the basis of Our rulings in *Macarandang* and *Lucero*, or should his conviction stand in view of the complete reverse of the Macarandang and Lucero doctrine in Mapa? . . .
>
> Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . ." The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim "*legis interpretation legis vim obtine*" — the interpretation placed upon the written law by a competent court has the force of law. The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence, of the law of the land at the time appellant was found in possession of the firearm in question and where he was arraigned by the trial court. **It is true that the doctrine was overruled in the Mapa case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.** This is especially true in the construction and application of criminal laws, where it is necessary that the punishment of an act be reasonably foreseen for the guidance of society. *(Boldfacing supplied.)*

Guided by the foregoing doctrines, petitioner has two (2)-years from the filing of its VAT returns within which to make its administrative *and* judicial claims for refund or tax credit.

Pursuant to my discussion, I find the administrative claim and the Petition for Review made within the prescribe periods.

Accordingly, I vote that the Petition for Review be **GIVEN DUE COURSE.**

**LOVELL R. BAUTISTA**
Associate Justice