REPUBLIC OF THE PHILIPPINES

COURT OF TAX APPEALS

QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	C.T.A. EB NO. 657 (C.T.A. Case Nos. 7424 & 7492)
	Members:
- versus -	ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
SAN ROQUE POWER CORPORATION, *Respondent*.	Promulgated: APR 04 2012 9:00 a.m.

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D E C I S I O N

Fabon-Victorino, J.:

Before the Court *En Banc* is a Petition for Review[1] filed on August 4, 2010, assailing the Decision[2] of this Court's Former Second Division dated January 8, 2010 and its subsequent

[1] *En Banc* docket, pp. 6-26.

[2] *Id.*, pp. 30-53.

Resolution[3] dated June 28, 2010, affirming the assailed Decision.

The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, premises considered, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-NINE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FIVE PESOS AND 18/100 (P29,931,505.18)** in favor of petitioner, representing unutilized input VAT attributable to effectively zero-rated sales of electricity to NPC for the four quarters of 2004.
>
> **SO ORDERED.**

The Facts

The pertinent facts, as found by the Court in Division, are as follows:

> "San Roque Power Corporation (herein respondent) is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at Barangay San Roque, San Manuel, Pangasinan. It was incorporated on October 14, 1997, to design, construct, erect, assemble, own, commission, operate, and maintain power-generating plants and related facilities, pursuant to and under contract with the Government of the Philippines, or any subdivision, instrumentality or agency

[3] *Id.*, pp. 54-58.

thereof, or any government-owned or controlled corporation, or other entity engaged in the development, supply, or distribution of energy. Petitioner is registered with the Board of Investment (BOI) on a preferred pioneer status as new operator of hydroelectric power generating plant for which it was issued a Certificate of Registration No. 97-356 dated February 11, 1998. Likewise, it is registered as a VAT taxpayer with the BIR and was issued a Certificate of Registration No. OCN 98-006-007394.

Respondent (herein petitioner) is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.

On October 11, 1997, (respondent) entered into a Power Purchase Agreement (PPA) with NPC for the development of the San Roque hydroelectric facilities (Power Station) located at the Lower Agno River in San Manuel, Pangasinan on a build-operate-transfer basis.

Under the PPA, (respondent) shall be responsible for the design, construction, installation, completion, testing, commissioning, operation, and maintenance of the Power Station, subject to NPC instructions. Article 8 of the PPA specifically provides that during the cooperation period of twenty-five (25) years, commencing from the completion date of the Power Station, NPC will take and pay for all electricity available from the Power Station. In other words, the electricity to be generated by the Power Station will be sold to and purchased entirely by NPC.

(Respondent) filed an Application for VAT Zero-Rate for its sale of electricity to NPC, which was granted on January 14, 2004; with the effectivity period from January 14, 2004 up to December 31, 2004.

For the four quarters of 2004, (respondent) filed with (petitioner) its Quarterly VAT Returns, with its Amended Quarterly VAT Returns for the first, second, and third quarters of 2004, showing excess input VAT payments in the amount of P31,976,709.88; detailed as follows:

Year 2004	Exh.	Date Filed Original Quarterly VAT Returns	Exh.	Date Filed Amended Quarterly VAT Returns	Excess Input Tax
1st Qtr	C	April 26, 2004	D	October 5, 2004	P17,017,648.31
2nd Qtr	E	July 14, 2004	F	October 5, 2004	4,910,873.42
3rd Qtr	G	October 5, 2004	H	October 21, 2004	3,514,588.58
4th QTR	I	January 25, 2005	-	-	6,533,599.57
					P31,976,709.88

On December 22, 2005 and February 27, 2006, (respondent) instituted two separate administrative claims for refund of its alleged unutilized input tax for the period covering January 1, 2004 to March 31, 2004 and April 1, 2004 to December 31, 2004, respectively.

(Petitioner) however failed to act on both administrative claims, which led to the filing of the present Petitions for Review docketed as CTA Case Nos. 7424 and 7492.

The Petition for Review docketed as CTA Case No. 7424 was filed on March 30, 2006, to seek the refund or issuance of tax credit certificate in the amount of P17,017,648.31, allegedly representing unutilized input taxes for the period from January 1, 2004 to March 31, 2004.

On June 2, 2006, (petitioner) filed (her) Answer in CTA Case No. 7424, interposing the following counter-arguments:

> "7. (Respondent) alleged claim for refund is subject to administrative investigation by the Bureau;
>
> 8. (Respondent) must prove that it paid the alleged VAT input taxes for the periods stated;
>
> 9. (Respondent) must prove that its sales of electricity is subject to VAT at zero percent (0%) rate;
>
> 10. (Respondent) must prove that the alleged input VAT is directly attributable to such alleged zero-rated sales;
>
> 11. (Respondent) must prove that its alleged unutilized input VAT has not been applied against any output tax liabilities;

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> 12. (Respondent) must prove that the alleged claim was filed within the two (2) year period prescribed in Section 112 of the NIRC of 1997;
>
> 13. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;
>
> 14. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation."

Subsequently or on June 20, 2006, respondent filed another Petition for Review docketed as CTA Case No. 7492, for issuance of tax credit certificate or refund of the amount of P14,959,061.57, representing unutilized creditable input taxes for the period April 1, 2004 to December 31, 2004.

On July 10, 2006, respondent moved for the consolidation of two cases, which the Court in Division granted in the Resolution dated August 2, 2006.

On September 1, 2006, petitioner filed her Answer in CTA Case No. 7492, raising the same special and affirmative defenses.

On November 23, 2006, the parties filed their Joint Stipulation of Facts and Issues raising the following for the resolution of the Court in Division, thus:

1. Whether or not petitioner's administrative claim was timely filed;

2. Whether or not petitioner's judicial claim was timely filed;

3. Whether or not petitioner's sale of electricity to NPC is effectively VAT zero-rated under the NIRC, as amended;

4. Whether or not the amount of P31,976,709.88 represents the accumulated excess creditable input taxes paid by petitioner within the year 2004;

5. Whether or not petitioner's accumulated excess creditable input taxes for the year 2004 were directly attributable to its primary source of revenue which is effectively VAT zero-rated;

6. Whether or not petitioner's accumulated excess creditable input taxes for the year 2004 is duly supported by pertinent documents, such as VAT invoices and official receipts;

7. Whether or not the accumulated excess creditable input taxes paid by petitioner within the year 2004 in the total amount of P31,976,709.88 remain unutilized;

8. And in sum, whether or not petitioner is entitled to the claim for refund or issuance of tax credit certificate in the accumulated amount of P31,976,709.88 representing its accumulated excess and unutilized input taxes for the year 2004.

During trial, respondent presented evidence - documentary and testimonial - in support of its claims. Petitioner however, failed as it was deemed to have waived her right to present evidence for failure to appear twice during the scheduled hearings set for initial presentation of her evidence on September 22, 2008 and October 15, 2008.

On January 8, 2010, the Court in Division rendered the assailed Decision, partially granting the Petition for Review and directing petitioner to refund the amount of Php29,931,505.18 in favor of respondent representing the latter's unutilized input taxes attributable to effectively zero-rated sales for the taxable year 2004.

On February 10, 2010, petitioner filed her Motion for Reconsideration, to which respondent filed Comment/Opposition on March 1, 2010.

In a Resolution dated June 28, 2010, the Court in Division denied petitioner's Motion for Reconsideration, for lack of merit.

On August 4, 2010, petitioner filed with the Court *En Banc* the instant Petition for Review, praying that the assailed Decision of January 8, 2010 and the subsequent Resolution of June 28, 2010 on the Motion for Reconsideration be reversed and set aside and a new one be rendered denying respondent's entire claim for refund.

On November 30, 2010,[4] respondent filed its Comment on the Petition in compliance with the Court's directive dated November 12, 2010.

On April 6, 2011, the instant petition was deemed submitted for decision after respondent filed its Memorandum dated March 4, 2011, and petitioner, its Manifestation dated March 1, 2011, adopting her Petition for Review dated August 2, 2010 as her Memorandum, in compliance with the Court *En Banc's* Resolution dated February 1, 2011. [5]

The Issues

Petitioner assigns the following errors allegedly committed by the Court in Division, thus:

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[4] *En Banc* docket, pp.79-80.
[5] *Id.*, pp. 97-99.

I

THE HONNORABLE COURT ERRED IN RULING THAT RESPONDENT WAS ABLE TO PROPERLY SUBSTANTIATE ITS CLAIM FOR REFUND.

II

THE HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT'S RECOURSE TO JUDICIAL REVIEW WAS PROPERLY FILED IN ACCORDANCE WITH THE PROCEDURE REQUIRED BY LAW.

Petitioner's Arguments:

Petitioner asserts that respondent failed to submit complete documents required under Section 112(D) [now Subsection (C) of Section 112] of the National Internal Revenue Code (NIRC) of 1997 and amplified in Revenue Memorandum Order No. 53-98,[6] to substantiate its administrative claims for refund. Prior compliance with this requirement is mandated before the 120-day audit period applies and before the taxpayer may seek judicial recourse. According to petitioner, respondent submitted only eight (8) classes of documents for the first

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[6] Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

administrative claim for refund as indicated in its letter-application dated December 14, 2005, and only three (3) for the following letter-application filed on February 24, 2006. Respondent's failure to submit all the documents enumerated in the implementing rules and regulations justifies the denial by inaction of the administrative claims.

Petitioner likewise finds flaws in the ruling that "non-submission of documents in support of the refund claim in the administrative level does not affect the jurisdiction of the Court". She argues that the said ruling rendered the explicit requirement of Section 112(D) not only useless and superfluous but also transforms the proceeding before the Court into an original action for excess input VAT refund. She claims that before *trial de novo* proceeds, respondent is obliged to prove procedural compliance in the administrative level, citing the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[7].

Further, the ruling of the Court in Division that respondent's judicial recourse was properly filed was completely inconsistent with the procedure prescribed in Section 112(D) of

[7] G.R. No. 145526, March 16, 2007, 518 SCRA 425.

the NIRC, as amended. Pursuant to the said mandate, she had 120 days from December 14, 2005 or until April 21, 2006 to act on the first application for refund and until June 27, 2006, for the second, filed February 27, 2006. Thus, the judicial claims for refund were prematurely filed on March 30, 2006 and June 20, 2006. This is jurisdictional and failure to observe it will deny the Court of competence to determine the two separately filed Petitions for Review.

Finally, tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant.

Respondent's Arguments:

Contrary to petitioner's contentions, respondent's claim for refund was duly supported by pertinent documents as evidenced by the various exhibits offered and submitted before the Court in Division. Besides, non-compliance with the submission of documents listed in RMO No. 53-98 is not fatal to taxpayer's judicial claim for tax refund/credit as ruled by this *En Banc* in the case of *Commissioner of Internal Revenue vs. CE Luzon*

Geothermal Power Company, Inc.[8] Further, in the case of *Commissioner of Internal Revenue vs. Visayas Geothermal Power Company, Inc.*,[9] the CTA *En Banc* clarified that what is important in a claim for VAT refund or issuance of tax credit certificate is the satisfaction of the following requisites: 1) there must be zero-rated or effectively zero-rated sales; 2) the input taxes were incurred or paid; 3) such input VAT payments are directly attributable to zero-rated or effectively zero-rated sales; 4) the input VAT payments were not applied against any output VAT liability; and 5) the claim for refund or tax credit was filed within the two-year prescriptive period. Moreover, in the case of *Commissioner of Internal Revenue vs. Taganito Mining Corp.*,[10] the CTA *En Banc* ruled that once jurisdiction is acquired, it is the court's authority to determine the relevance and effects of respondent's compliance and non-compliance with Revenue Regulations No. 3-88 and RMO No. 53-98 to its claim for tax refund/credit.

[8] C.T.A. EB Case No. 474 (C.T.A. Case Nos. 6792 and 6837) September 1, 2009.
[9] C.T.A. EB Case No. 282 (C.T.A Case Nos. 6790 and 6838) November 20, 2007.
[10] C.T.A. EB Case No. 376 (C.T.A. Case No. 7157) January 19, 2009.

Likewise, the Court *En Banc* in various cases has ruled,[11] that a taxpayer need not wait for the lapse of the 120-day period, prescribed under Section 112(D) of the NIRC of 1997, as amended, before he could seek redress from the court.

Lastly, the doctrine of *strictissimi juris* should not be applied when the claim is founded on the principle of *solutio indebiti* and when the evidence presented are overwhelming to overcome the burden of proof.

Ruling of the Court En Banc

The Court *En Banc* will address the issues presented by petitioner in *seriatim*.

The Court *En Banc* agrees with the Court in Division that non-submission of documents in support of the application for refund in the administrative level does not affect the jurisdiction of the Court in Division to hear and determine respondent's Petitions for Review. This has long been settled in the case of

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[11] *CIR vs. CE Cebu Geothermal Power Company*, Inc., C.T.A. EB Case Nos. 426 and 427, May 29, 2009; *CIR vs. Accenture, Inc.*, C.T.A. EB Case No. 410, March 18, 2009.

Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.,[12] where the Court *En Banc* held that non-submission of supporting documents in the administrative level is **NOT** fatal to an appeal on ground of petitioner's inaction before the Court in Division. The pertinent portion of the Decision reads:

> *Non-submission of supporting documents in the administrative level is not fatal to a claim for refund*
>
> Section 112 (D) of the NIRC provides:
>
> > SEC. 112. Refunds of Tax Credits of Input Tax. —
> >
> > xxx xxx xxx
> >
> > (D) Period within which Refund or Tax Credit of Input of 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, the taxpayer affected may, within thirty (30) days from the receipt

[12] *Supra*, see note 8.

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

xxx xxx xxx

A careful reading of the above-quoted provision reveals that although the submission of the complete supporting documents is necessary for the granting of refund or tax credit certificate, the non-submission of the same with the petitioner does not make the administrative claim for refund or tax credit certificate invalid or pro forma, the effect of which makes the judicial appeal dismissible for lack of jurisdiction. What is clearly required is that the taxpayer must elevate its claim before the Court within 30 days from receipt of the denial of its claim for refund/tax credit or after the expiration of the 120-day period granted to respondent to decide on the taxpayer's, which must all be done within two years from payment of the tax or penalty.

In the same light, respondent's non-compliance with the requirements listed under RMO No. 53-98 is not fatal. The requirements listed under RMO No. 53-98 refer mainly to the requirements for refund of tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim for refund or tax credit. However, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. In this connection, it may not be amiss to mention that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court. (*Emphasis supplied*)

The alleged non-submission of complete documents at the administrative level will not bar the Court from entertaining the appeal, receive, evaluate and appreciate the evidence presented before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court.[13] The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[14] Moreover, CTA being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of their cases. Judicial claims are decided based on the evidence presented and formally offered by the party litigants during the trial and not on mere allegation of non-submission of complete documents before the BIR[15].

Indeed misplaced is petitioner's reliance with the ruling in the Atlas case that before trial de novo proceeds and disposes of the issue of refund entitlement under substantive law, the taxpayer must first proved that it complied with the procedure

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[13] *Commissioner of Internal Revenue vs. Visayas Geothermal Power Company, Inc.*, CTA EB Case No. 282 (CTA Case Nos. 6790 & 6838), November 20, 2007, citing *Jideco Manufacturing Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6552, September 16, 2004.

[14] *Supra*, note 8.

[15] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571.

laid down in pursuing the administrative claim leading to the appellate proceedings.

In the *Atlas case,* the Supreme Court found lethal to the taxpayer's cause its **failure to submit sufficient evidence such as invoices and receipts in support of its claim before the Court** and not before respondent in the administrative claim for refund, as obtaining in the case at bar.

The record reveals and correctly observed by the Court in Division, respondent had sufficiently substantiated its claim to the satisfaction of the Court justifying the grant of refund, albeit partially.

On the second assignment of error, the Court *En Banc* agrees with petitioner that respondent's premature filing of its judicial claims before the Court in Division is in violation of the 120-30 days periods required under Section 112(D) [now subsection (C) of Section 112, as amended]. However, failure to comply with the 120 days required under Section 112(D) is a violation primarily of the doctrine of exhaustion of administrative remedies which is tantamount only to lack of cause of action of the judicial petitions and does not amount to lack of jurisdiction.

Record shows that respondent filed with the Bureau of Internal Revenue its administrative claims for refund and/or issuance of tax credit certificate of its unutilized input VAT for the first quarter of 2004 and for the second to fourth quarters of 2004 on December 14, 2005 and February 27, 2006, respectively. On March 30, 2006, respondent filed its judicial claim for the first quarter of 2004 which was followed on June 20, 2006 by a similar claim for the second to the fourth quarter of 2004. Undoubtedly, respondent prematurely filed its judicial claims before the lapse of the 120-day period granted unto petitioner to act on the claims. Under the obtaining circumstances, petitioner had until April 13, 2006, for the first administrative claim for refund and until June 27, 2006 for the second, to grant or deny them.

Jurisprudence has it that a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.[16] If a litigant goes to court without first pursuing his administrative remedies, his action is premature as he has no cause of action to ventilate in Court. His case is simply not ripe for judicial determination.[17] Long familiar is the precept that failure to exhaust administrative remedies is fatal to any court review.[18]

It is also beyond telling that the right to appeal is not part of due process but a mere statutory privilege that has to be exercise only in the manner and in accordance with the provisions of the law. The party who seeks to avail the same must comply with the requirements of the rules.[19]

And of fresh vintage is the case of *The Philippine National Bank v. Commissioner of Internal Revenue,*[20] where the Supreme Court, citing the Case of *Air France Philippines v. Leachon*,[21] has ruled that the procedural rules setting the manner and the period for filing appellate petition are generally inviolable. The law as well as its implementing rules and regulations must be strictly followed. The Highest Court continued to say that such

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[16] *Carale vs. Abarintos*, 269 SCRA 142.
[17] *Aboitiz vs. Collector of Customs*, 83 SCRA 271; *Abe-Abe vs. Manila*, 90 SCRA 531.
[18] *Rallos v. Ruiz*, 285 SCRA 342.
[19] *Stolt-Nielsen Marine Services, Inc. v. NLRC, et al.*, G.R. No. 147623 December 13, 2005.
[20] G.R. No. 172458, December 14, 2011.
[21] 472 SCRA 439, 442-443 [2005].

requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of judicial business. The manner and the period set by law are not only mandatory, but jurisdictional as well.

Significantly, the parties in their Joint Stipulations of Facts and Issues filed on November 23, 2006, agreed to submit for the determination of the Court in Division the timeliness of the filing of the appeal hinged on the ground of inaction on the part of petitioner.

In fine, the Court *En Banc* has no option but set aside the assailed Decision promulgated on January 8, 2010 and the subsequent Resolution of June 28, 2010, on the ground that the Petitions for Review were prematurely filed.

WHEREFORE, the Petition for Review filed by petitioner Commissioner of Internal is hereby **GRANTED.** Accordingly, the Petition for Review filed by respondent on March 30, 2006 docketed as CTA Case No. 7424, as well as the Petition for

Review filed on June 20, 2006 docketed as CTA Case No. 7492 are hereby **DISMISSED** on ground of prematurity.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

(On Wellness Leave)
ERNESTO D. ACOSTA
Presiding Justice

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

(with Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

SAN ROQUE POWER CORPORATION,
Respondent.

CTA EB CASE NO. 657
(CTA Case Nos. 7424 & 7492)

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

Promulgated:
APR 04 2012 [signature] 9:00 a.m.

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DISSENTING OPINION

BAUTISTA, J.:

The Court should bear in mind that there is only one Supreme Court from whose decision all other courts should take their bearings,[1] thus, it is Our duty to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[2] Nonetheless, this Court should not decide a case by merely adhering to precedence; idolatrous reverence for precedent, simply as precedent, no longer holds true, for more important than anything else is that the

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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 Conducto v. Judge Monzon, 353 Phil. 796, 813 (1998); Tahanan Development Corporation v. Court of Appeals, 203 Phil. 652, 690 (1982).*

[2] *Ibid., citing Albert v. Court of First Instance of Manila, No. L-26364, May 29, 1968, 23 SCRA 948, 961.*

Court should be right.[3] Therefore, the Court cannot merely impose a ruling that was yet to be enunciated at the time a claim was lodged in Our forum.

Before the Supreme Court even reckoned the two (2)-year prescriptive period from the close of the pertinent quarter,[4] this Court, in not a few instances, ruled that the date of filing of the relevant return[5] is the determinative factor.

Taking into consideration that a taxpayer-claimant cannot observe a prescriptive period that has yet to be enunciated by the Supreme Court at the time it filed its claim, I, therefore, bring forth no reason to rule that the Petitions for Review, docketed as CTA Case No. 7424, and CTA Case No. 7492, filed with the Former Second Division of this Court on March 30, 2006, and June 20, 2006, respectively, were prematurely filed.

When petitioner filed its claims in the administrative level on December 22, 2005 and February 27, 2006, of its unutilized input tax for the period covering January 1, 2004 to March 31, 2004, and April 1, 2004 to December 31, 2004, respectively, and the Petitions for Review as earlier mentioned, ***the then prevailing doctrine, is that, the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return.***

It was merely unfortunate, however, that during the pendency of the case at bench, the Supreme Court issued a ruling wherein the two (2)-year period is reckoned, not from the filing of the return, but from the close of the taxable quarter

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[3] Philippine Trust Company and Smith, Bell and Co. *v.* Mitchell, 59 Phil. 30, 36.
[4] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[5] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

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.[6]

Albeit I agree that the latter rulings are more in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code ("NIRC"), as amended, it would be the height of injustice to impose a new ruling wherein after a taxpayer-claimant had faithfully relied and complied therein, this Court will only nullify the same 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.

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. Thus, an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.[7]

For emphasis, the administrative claims and the Petitions for Review were made ***before*** the Supreme Court enunciated the reckoning of the two (2)-year

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[6] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.
[7] 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].*

prescriptive period from the close of the taxable quarter when the pertinent sales were made applies to administrative claim, and that the taxpayer is merely given a period of thirty (30) days to elevate its claim either from receipt of the denial of its claim, or after the one hundred twenty (120)-day period given to the Commissioner.

Further, the use of the word *"may"* in Section 112(C) of the 1997 NIRC, as amended, indicates that the judicial recourse within thirty (30) days after the lapse of the one hundred twenty (120)-day period is directory and permissive, and not mandatory nor jurisdictional as long as the said period is within the two (2)-year prescriptive period under Sections 112[8] and 229[9] of the 1997 NIRC.[10] Therefore, if the two (2)-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the

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[8] 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.

[9] 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 a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[10] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB No. 416, February 4, 2009.

expiration of the one hundred twenty (120)-day period before the taxpayer can lodge its appeal with this Court.[11]

Consistent with the foregoing, I find the administrative and judicial claims correspondingly filed.

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

LOVELL R. BAUTISTA
Associate Justice

[11] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.