Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PROCTER & GAMBLE ASIA, PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB Case No. 742
(CTA Case Nos. 7581 & 7639)

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

Promulgated:
SEP 2 1 2012 *[illegible] 2:00 p.m.*

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DECISION

CASANOVA, J.:

This is an appeal, by way of a Petition for Review,[1] filed by petitioner Procter & Gamble Asia, Pte. Ltd., praying that the Resolution[2] (the "Assailed Resolution") of the Special Second Division, promulgated on March 9, 2011, be set aside and the instant case be decided "based on its merits and not on pure technicality."

The Assailed Resolution affirmed the Special Second Division Decision,[3] promulgated on November 17, 2010, dismissing petitioner's claim for refund or tax credit in the amount of P42,097,482.75, covering the first and second quarters of calendar year 2005, for having been prematurely filed.

[1] En Banc Rollo, pp. 1-28
[2] Annex "B-1" to Petition for Review, Ibid, pp. 34-38
[3] Annex "C-1" to Petition for Review, Ibid, pp. 40-56

As narrated by the Special Second Division of this Court in its Decision of November 17, 2010, the facts of the case are as follows:

"Petitioner, Procter & Gamble Asia, Pte. Ltd., is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarter in the Philippines, with office address at the 18/F Petron Megaplaza, 358 Sen. Gil Puyat Ave., Makati City. It provides management, marketing, technical and financial advisory, and other qualified services to related companies as specified by its Certificate of Registration and License issued by the Securities and Exchange Commission. It is a VAT-registered taxpayer and is covered by Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the duty to act upon and approve claims for refunds or tax credits as provided by law. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Quezon City.

Petitioner filed its Monthly VAT Declarations and Quarterly VAT Returns on the following dates:

VAT RETURN/DECLARATION	DATE FILED (ORIGINAL)	DATE FILED (AMENDED)	EXHIBIT
January (Monthly)	February 21, 2005		E
February (Monthly)	March 18, 2005		F
Ending March (Quarterly)	April 25, 2005	March 19, 2007	I and J
April (Monthly)	May 20, 2005		G
May (Monthly)	June 21, 2005		H
Ending June (Quarterly)	July 26, 2006	March 20, 2007	K and L

On March 22, 2007 and May 2, 2007, petitioner filed applications and letters addressed to the BIR Revenue District Office (RDO) No. 49, requesting the refund or issuance of tax credit certificates of its input VAT attributable to its zero-rated sales covering the taxable periods of January 2005 to March 2005, and April 2005 to June 2005, respectively.

Considering that petitioner's claims for refund or tax credit remain unresolved by the Commissioner of Internal Revenue, petitioner filed two separate Petitions for Review before this Court, as follows:

> ***1. CTA Case No. 7581*** was filed on March 28, 2007 seeking the refund or the issuance of a tax credit certificate in the amount of P23,090,729.17, representing petitioner's input VAT paid on goods or services attributable to its zero-rated sales for the taxable period covering January 2005 to March 2005;
>
> ***2. CTA Case No. 7639*** was filed on June 8, 2007 seeking the refund or the issuance of tax credit certificate in its favor in the amount of P19,006,753.58 representing petitioner's unutilized input VAT paid on goods and services attributable to its zero-rated sales for the taxable period from April 2005 to June 2005.

In the separate Answers filed on May 28, 2007 for C.T.A. Case No. 7581 and on August 30, 2007 for C.T.A. Case No. 7639, respondent similarly interposes the following Special and Affirmative Defenses, summarized as follows:

> 1. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/ examination by the respondent's Bureau;
>
> 2. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 3. Petitioner's claim for refund or issuance of tax credit certificate in the amounts of : **P23,090,729.17 in C.T.A. Case No. 7581,** and **P19,006,753.58** in **C.T.A. Case No. 7639,** as its alleged unutilized input VAT attributable to its zero-rated sales of goods and services for the taxable periods from January to March 2005, and from April to June 2005, respectively, were not fully substantiated by proper documents;
>
> 4. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed *(sic)* refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

5. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT;

6. The amount subject of the claim for refund do not pertains in full to its input VAT attributable to its zero-rated sales of goods and services for the period covering January to March 2005;

7. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the Tax Code;

8. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund;

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue 124 SCRA 1211)***.

On July 30, 2007, this Court granted petitioner's Motion to Consolidate CTA Case No. 7581 with 7639, inasmuch as the two cases involve the same parties and common questions of law and/or facts.

After pre-trial held on October 18, 2007, the parties filed their Consolidated Joint Stipulation of Facts and Issues on October 31, 2007, which was subsequently approved in the Resolution dated November 14, 2007.

During trial, petitioner presented testimonial and voluminous documentary evidence primarily aimed at proving its supposed entitlement to the refund or issuance of a tax credit certificate representing petitioner's alleged unutilized input taxes for the period covering January 2005 to June 2005. On the other hand, respondent submitted the case for decision based on the pleadings for lack of investigation report, as the claim for refund of petitioner was still pending before the BIR Revenue District Office No. 40.

> In the Resolution dated December 2, 2009, these cases were submitted for decision taking into consideration petitioner's Memorandum filed on November 6, 2009 only as respondent failed to file her Memorandum."

On November 17, 2010, the Special Second Division promulgated its Decision dismissing the Petitions for Review docketed as CTA Case Nos. 7581 and 7639 for having been prematurely filed.

On December 2, 2010, petitioner filed a Motion for Reconsideration[4] which was subsequently denied by the Court for lack of merit per Resolution[5] promulgated on March 9, 2011.

Hence, the instant Petition for Review, where petitioner raised the following assignment of errors, viz:

> 1. The Special Second Division failed to appreciate Article VIII, Section 4(3) of the Constitution which provides that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*;
>
> 2. The doctrine laid down in the *Aichi case* that the 120-30 day rule is mandatory has been effectively abandoned by the Supreme Court in the cases of *Hitachi Global Storage Technologies Phils. Corp. vs. Commissioner of Internal Revenue, G.R. No. 174212, dated October 20, 2010, Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 172378 dated January 17, 2011, and Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 179961, dated January 31, 2011*;
>
> 3. The Special Second Division erred in applying the doctrine laid down in the *Aichi case* to the instant case considering that the factual antecedents involved are not identical;
>
> 4. The Special Second Division erred in giving retroactive application of the doctrine laid down in the *Aichi case*;
>
> 5. The Decision of the Special Second Division contradicts the doctrine that substantial justice, equity and fair play prevail over technicalities and legalism;

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[4] Annex "H" to Petition for Review, Ibid, pp. 387-405
[5] Annex "B-1" to Petition for Review, Ibid, pp. 34-38

6. The Special Second Division erred in the application of the doctrine of exhaustion of administrative remedies to the instant case;

7. The Special Second Division failed to consider that while jurisdiction is conferred by law, estoppel sets it *(sic)* when a party participates in all stages of the case before challenging the jurisdiction of the Court;

8. The 120-30 day rule mentioned in Section 112(C) of the National Internal Revenue Code of 1997 (NIRC), as amended, is directory or permissive – not mandatory.

In her COMMENT/OPPOSITION (To Petitioner's Petition for Review),[6] filed on May 13, 2011, respondent counter-argues that: (1) prior to the promulgation of the *Aichi case*, there has never yet been a pronouncement by the Supreme Court construing or interpreting the pertinent portions of Section 112 of the 1997 NIRC. Hence, the doctrine laid down by the Supreme Court in the said case is a clear judicial interpretation of Section 112 of the 1997 NIRC, and it did not overturn any prior ruling; (2) the premature filing of petitioner of its judicial appeal before this Honorable Court on March 28, 2007 in CTA Case No. 7581, and on June 8, 2007 in CTA Case No. 7639 divest the CTA of its jurisdiction over the subject matter of this case since petitioner failed to comply with the legal requirements to perfect an appeal within the statutory or reglementary period, which requirement is not only mandatory but also jurisdictional. Thus, the lack of jurisdiction of this Honorable Court over the subject matter of this case cannot be cured by the mere silence, acquiescence, or even by express consent of the parties; and, (3) settled is the rule that courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleading; or not even suggested by counsel, recognized the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.

[6] En Banc Rollo, pp. 431-439

We find the Petition bereft of merit.

Petitioner contends that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."

This contention is erroneous.

The *Aichi case* did not modify or reverse the doctrine laid down in the Atlas case. It must be stressed that the doctrines laid down by the Supreme Court in the *Atlas*[7] *and Aichi*[8] *cases* were based on the application and interpretation of two different laws i.e. the *Atlas case* was an interpretation of the provisions under the 1977 National Internal Revenue Code (NIRC) while the *Aichi case* was an application and interpretation of the 1997 NIRC, as amended.

It must be emphasized that 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.[9]

Thus, the judicial interpretation of the provisions of the 1997 NIRC, as amended, particularly Section 112(A) and 112(D)(now C), made by the Supreme Court in the Aichi case retroacts to the date when the 1997 NIRC, as amended, took effect on January 1, 1998.

Petitioner, likewise, contends that the 120-day rule laid down in the Aichi case (i) is not mandatory but merely permissive or directory; (ii) should be applied prospectively and cannot be applied to the instant case as the factual antecedents involved are not identical; and (iii) has been effectively abandoned by the Supreme Court in the more recent rulings in the cases of *Hitachi Global Storage Technologies Phils. Corp. vs. Commissioner of Internal Revenue*

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[7] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 141104 & 148763, June 8, 2007

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

[9] Eagle Realty Corporation vs. Republic of the Philippines, G.R. No. 151424, July 31, 2009

("Hitachi"),[10] *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue ("Silicon"),*[11] *and, Kepco Philippines Corporation vs. Commissioner of Internal Revenue ("Kepco").*[12]

We do not agree.

Petitioner's argument that the 120-day rule in the *Aichi case* is not merely permissive or directory and not mandatory had long been settled otherwise by the Supreme Court in the *Aichi case.*

The Supreme Court ruled as follows:

"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:

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, **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

[10] G.R. No. 174212, October 20, 2010
[11] G.R. No. 172378, January 17, 2011
[12] G.R. No. 179961, January 31, 2011

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.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section

306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

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."

Going now to petitioner's contention that the Aichi case should be applied prospectively and should not be applied in the instant case as the factual antecedents are not identical, We find the same to be without merit.

We quote, with approval, the following excerpts from the Assailed Resolution, to wit:

> "First, it is relevant to stress that by tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is, and that its decisions applying or interpreting the laws or the Constitution form part of the legal system of the country, all other courts should take their bearings from the decisions of this Court.[13] In fact, it is the duty of lower courts to obey the decisions of the Supreme Court and render obeisance to its status as the apex of hierarchy of courts.[14]
>
> Accordingly, this Court cannot deviate from the pronouncement of the Supreme Court in the *Aichi case* which set forth the outright application of the provisions under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. Hence, the application by this Court of the *Aichi case* interpreting the provisions of the NIRC of 1997, as amended, is clearly justified."

In *Eagle Realty Corporation vs. Republic of the Philippines, et al.*,[15] the Supreme Court ruled, thus:

"Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's

[13] Caram Resources Corp. vs. Judge Maximo C. Contreras, MeTc, Branch 61, Makati, Metro Manila, A.M. No. MTJ-93-849, October 26, 1994
[14] Commissioner on Higher Education vs. Atty. Felina S. Dasig, G.R. No. 172776, December 17, 2008
[15] Supra, note 9

> construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect."

Likewise, in *Cemco Holdings, Inc. vs. the National Life Insurance Company of the Philippines, Inc.,*[16] the following ruling of the Supreme Court is most instructive, 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.
> >
> > 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.
> >
> > 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

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

> 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.'"

Admittedly, the factual milieu in the *Aichi case* is different from the instant case. But, the difference lies only in the time lapsed from the filing of the administrative claim to the filing of the judicial claim. In the *Aichi case*, the administrative and judicial claims were filed simultaneously while in the instant case, there was a waiting period of six (6) days (for CTA Case No. 7581) and thirty seven (37) days (for CTA Case No. 7639) from the filing of the administrative claim to the filing of the judicial appeal. The fact remains that, in both the *Aichi case* and the case at bench, the judicial appeal was filed even before the mandatory 120 days had lapsed.

Petitioner's argument that the doctrine laid down in the *Aichi case* had effectively been abandoned by the Supreme Court in the cases of *Hitachi, Silicon* and *Kepco*, likewise, deserves scant consideration.

The *Hitachi, Silicon and Kepco cases* are not on all fours with the *Aichi case* as the issue involved in the latter is different from the issues in the aforementioned three cases.

The *Hitachi, Silicon and Kepco cases* dealt with, among others, compliance with the printing of the words "Zero-rated" on the claimants' VAT official receipts and/or the invoicing requirements prescribed under Section 4.108-1 of the Revenue Regulation No. 7-95.

Clearly, therefore, the doctrine laid down by the Supreme Court in the *Aichi case* is still the prevailing doctrine regarding the mandatory observance of the 120-30 day rule prescribed under Section 112(C) of the 1997 NIRC, as amended.

Finally, petitioner further posits that its failure to exhaust administrative remedies will not divest this Court of jurisdiction to take cognizance of the claim; and respondent's failure to raise this defense in her Answer may be considered as a waiver thereof.

We do not agree.

In the Aichi case, the High Court succinctly ruled as follows:

"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.

x x x x x x x x x

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." (Underscoring supplied)

Section 7 of Republic Act (RA) No. 1125, as amended by RA 9282 enumerates the cases/instances falling within the jurisdiction of this Court. Section 7 provides thus:

"**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 Code 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 Code provides a specific period of action, in which case the inaction shall be deemed a denial**; x x x" (Emphasis ours)

Pursuant to the afore-quoted legal provisions, the CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the CIR in cases of refunds of internal revenue taxes. Where the NIRC provides a specific period of action, the CIR's inaction shall be deemed a denial.

In the instant case, a specific period is provided under Section 112(C) of the NIRC of 1997, as amended, i.e the 120-day period within which the CIR shall render a decision. When no decision is made after the 120-day period, the taxpayer-claimant has 30 days within which to file an appeal with the CTA. Since there was neither a showing that a decision was rendered by the CIR on petitioner's administrative claim nor that the 120-day period had already lapsed, there is nothing yet to be reviewed by the CTA. Thus, the 120-day period is crucial in filing an appeal with the CTA.[17]

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:

> "x x x. 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.**" (Emphasis ours)

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[17] Supra, Note 8

[18] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007

Also, in the case of Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,[19] 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, thus:

> "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."[20]

In sum, We find no cogent reason and justification to disturb the findings and conclusion spelled out in the Assailed Resolution, promulgated on March 9, 2011 and Decision, promulgated on November 17, 2010 of the CTA Special Second Division, to warrant the reversal thereof.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the Decision dated November 17, 2010, and Resolution dated March 9, 2011 of the CTA Special Second Division are hereby **AFFIRMED** *in toto*.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(Concurs with the Dissenting Opinion
of Justice Manalastas)
ERNESTO D. ACOSTA
Presiding Justice

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[19] G.R. No. 167606, August 11, 2010, 628 SCRA 96
[20] Ibid

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

(With Separate Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(Concurs with the Dissenting Opinion of Justice Manalastas)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PROCTER & GAMBLE ASIA, PTE. LTD.,
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-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 742
(CTA Case Nos. 7581 & 7639)

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

Promulgated:
SEP 2 1 2012 Cuspolinario 2:00 p.m.

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DISSENTING OPINION

BAUTISTA, J.:

Based on the records of the case, for the period covering January to March 2005, petitioner filed its administrative claim on March 22, 2007, and for the period covering April to June 2005, it filed its administrative claim on May 2, 2007, to which it filed Petitions for Review, on March 28, 2007, docketed as CTA Case No. 7581, and on June 8, 2007, docketed as CTA Case No. 7639, respectively; during which, the then prevailing ruling in this Court – the reckoning of the two (2)-year prescriptive period – is from the filing of the pertinent return;[1] not from the close of the quarter;[2] not even within thirty (30) days from receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.[3]

At the time petitioner lodged its claims before this forum, in not a few cases did this Court rule that the two (2)-year prescriptive period for filing a claim for value-added tax refund or tax credit should not be counted from the close of the quarter, but from the date of filing of the return, for it is only during that time that the liability or refundability can be determined.[4]

In the oft-cited case of *Chicot County Drainage District v. Baxter States Bank*,[5] a compelling rationalization of the prospectivity principle of judicial decisions had been well set forth as follows:

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

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[1] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[2] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.
[4] *Supra*, note 1.
[5] 308 US 371, 374 [1940].

> an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.[6]

Also, the Supreme Court aptly elucidated the prospectivity principle of judicial decisions in the case of *Co. v. Court of Appeals*,[7] wherein it ruled that when a doctrine 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.

Admittedly, the latter rulings wherein the reckoning of the two (2)-year prescriptive period is from the close of the quarter for filing the administrative claim,[8] and within thirty (30) days from receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon for filing the judicial claim,[9] are more in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code, as amended; however, it would be the height of injustice to impose a new ruling, on the basis of the so-called "adherence to precedence," for the same is clearly promulgated *after* the taxpayer-claimant had faithfully relied and complied with the Court's ruling at the time it filed its claims.

Further, with the pronouncements made in the cases of *Commissioner of Internal Revenue v. Toledo Power, Inc.*,[10] and *Commissioner of Internal Revenue v. San*

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[6] 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, supra note 5.*
[7] G.R. No. 100776, October 28, 1993, 277 SCRA 444.
[8] *Supra*, note 2.
[9] *Supra*, note 3.
[10] CTA EB Case No. 321 (CTA Case Nos. 6805 & 6851), May 7, 2008.

Roque Power Corporation,[11] it must be borne in mind that no claim can be had, whether in the administrative or judicial *fora,* beyond the two (2)-year period; 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 expiration of the one hundred twenty (120)-day period before the taxpayer can lodge its appeal with this Court.[12]

Guided by the doctrine that rulings of the court modifying or reversing a doctrine or principle, operates prospectively, and rights acquired under such doctrine or principle prior to its modification or reversal may not be affected thereby,[13] I find the Petitions for Review, docketed as CTA Case No. 7581 and CTA Case No. 7639, *made within the prescribed period in force at the time the actions were made.*

Accordingly, I vote that the Petition for Review be **GRANTED.** The Petitions for Review docketed as CTA Case No. 7581 and CTA Case No. 7639 should be **REINSTATED.**

LOVELL R. BAUTISTA
Associate Justice

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[11] CTA EB Case No. 408 (CTA Case No. 6647), March 25, 2009.
[12] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB Case No. 426, May 29, 2009.
[13] People *v.* Jabinal, G.R. No. 30061, February 27, 1974, 55 SCRA 607.

REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

EN BANC

PROCTER & GAMPLE ASIA, PTE. LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 742
(CTA Case Nos. 7581 & 7639)

Present:

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

Promulgated:

SEP 2 1 2012 2:00 p.m.

x -- x

DISSENTING OPINION

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* by way of a *Petition for Review*[1] filed on March 23, 2011 by petitioner Procter & Gamble Asia, Pte. Ltd., pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503,[2] is the *Resolution*[3] promulgated by the Special Second Division on March 9, 2011. Petitioner prays for the setting aside the assailed *Resolution* dated March 9,

[1] *Rollo*, pp. 1-32.
[2] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes."
[3] *Rollo*, pp. 34-38.

2011 and to have the consolidated petitions, docketed as CTA Case Nos. 7581 & 7639, remanded to the Special Second Division of this Court for decision on the merits.

With due respect, I dissent from the majority decision dismissing the instant Petition for Review.

In the challenged *Resolution*[4] issued on March 9, 2011, the Court *a quo* affirmed its Decision[5] dated November 17, 2010. The Court *a quo* ruled that the premature filing of petitioner's judicial claim failed to effectively clothe this Court with jurisdiction to take cognizance of petitioner's claim for refund or tax credit for the first and second quarters of calendar year 2005.

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

In this case, records show that:

2005 Taxable Quarter	CTA Case No.	Administrative Claim Filed	End of 120 Days for the BIR Commissioner to Decide the Claim	Date Judicial Claim Filed
January to March	7581	March 22, 2007	July 20, 2007	March 28, 2007
April to June	7639	May 2, 2007	August 30, 2007	June 8, 2007

Indeed, the petitions were filed prematurely. In both the judicial claims filed with the Court *a quo,* in CTA Case No. 7581, and in CTA Case No. 7639, petitioner failed to wait for the decision of the respondent on its claim, or the lapse of the 120

[4] *Supra*, Note 3.
[5] *Supra*, Note 4.

days from the filing of its administrative claim, before filing its judicial claim pursuant to Section 112 (C) of the NIRC of 1997, as amended.

Notably, the premature filing of judicial claim for refund of unutilized input VAT, for having failed to comply with the 120-30 day period mandated under Section 112(C) of the NIRC of 1997, as amended, is a violation of the doctrine of exhaustion of administrative remedies. This failure to observe the doctrine of exhaustion of administrative remedies is fatal to one's cause of action, and thus, in the absence of any waiver or *estoppel*, the case is susceptible of dismissal for *lack of cause of action*[6]. It bears to stress, however, that failure to exhaust administrative remedies does not affect the jurisdiction of the court. Non-exhaustion of administrative remedies only renders the action premature, that the claimed cause of action is not ripe for judicial determination.[7]

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

Records of this case show that respondent, indeed, failed to allege in her Answers the premature filing of petitioner's judicial claims for refund as one of her special and affirmative defenses, thus, applying the above stated precept in this

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

[7] Merida Water District, et al. vs. Francisco Bacarro, et al., G.R. No. 165993, September 30, 2008 citing *Rosario v. Court of Appeals*, G.R. No. 89554, July 10, 1992, 211 SCRA 384, 387; *Carale v. Abarintos*, G.R. No. 120704, March 3, 1997, 269 SCRA 132, 141.

particular instance, respondent is **deemed to have waived** the premature filing of petitioner's judicial claims as a ground for dismissal.

In sum, the premature filing of respondent's judicial claims amounts to failure to observe the *doctrine of exhaustion of administrative remedies*; said failure, however, does not affect the jurisdiction of the court but only renders the action premature or not ripe for judicial determination; thus, since respondent failed to allege in her Answers the premature filing of Procter and Gamble's judicial claims for refund, such defense is therefore **deemed waived**. Hence, the Court *a quo* may aptly exercise its jurisdiction and give due course to petitioner's consolidated petitions for review, docketed as CTA Case Nos. 7581 & 7639, pertaining to petitioner's claim for refund/ tax credit covering the first and second quarters of calendar year 2005.

In light of the foregoing, I vote that the subject Petition for Review be **GRANTED** and that the consolidated Petitions for Review, docketed as CTA Case Nos. 7581 & 7639 be **REMANDED** to the Special Second Division of this Court for decision on the merits.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice