REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

KEPCO ILIJAN CORPORATION,
Respondent.

CTA EB No. 695
(CTA Case No. 7627)

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

PROMULGATED:

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by petitioner Commissioner of Internal Revenue before the Court of Tax Appeals (CTA) *En Banc* assailing the Decision[1] dated February 2, 2010 and the Resolution[2] dated October 18, 2010 promulgated

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[1] *Rollo*, pp. 14-38. Penned by Associate Justice Lovell R. Bautista, with Associate Justice Amelia Cotangco-Manalastas, concurring and, Associate Justice Olga Palanca-Enriquez, concurring and dissenting.
[2] *Rollo*, pp. 39-55, with Associate Justice Olga Palanca-Enriquez, dissenting.

by the CTA Third Division in the case entitled "*Kepco Ilijan Corporation vs. Commissioner of Internal Revenue,*" docketed as CTA Case No. 7627.

The assailed decision PARTIALLY GRANTED the petition filed by respondent seeking the refund or issuance of a tax credit certificate in the reduced amount of P71,595,764.50 allegedly representing unutilized excess input value-added tax (VAT) incurred on importations and domestic purchases of goods and services attributable to zero-rated sales for the period covering January 1, 2005 to October 31, 2005.

THE FACTS

The facts of the case as found by the CTA Third Division are as follows: [3]

> Kepco Ilijan Corporation (Petitioner)[4] is a domestic corporation duly registered with the Securities and Exchange Commission (SEC), with principal office at 18th Floor Citibank Tower, 8741 Paseo de Roxas, Salcedo Village, Makati City. Petitioner is likewise registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR), as evidenced by its Certificate of Registration OCN No. 9RC0000163675. It is engaged in the production and sale of electricity as an Independent Power Producer (IPP), whose produced electricity is sold solely to NPC. It has a duly approved Application for VAT Zero-Rate, covering sales of electricity from January 1, 2005 to December 31, 2005.
>
> Respondent,[5] on the other hand, is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> For the first three quarters of taxable year 2005 and for October 2005, petitioner filed its Quarterly and Monthly VAT Returns showing that it incurred expenses representing importation and domestic purchases of goods and services, for which petitioner also incurred input VAT. *gr*

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[3] *Rollo*, pp. 14-17.
[4] Herein respondent.
[5] Herein petitioner.

On October 28, 2005, petitioner filed an administrative claim for refund of the amount of P63,950,558.01 with the BIR Revenue District Office No.50, representing input VAT allegedly incurred by petitioner for the first three quarters of taxable year 2005 from importations and domestic purchases of capital goods/equipment and services preparatory to its production and eventual sale of electricity to NPC. On December 7, 2005, petitioner likewise filed an administrative claim for refund of the amount of P9,761,023.29, allegedly representing input VAT it incurred for the month of October 2005 from importations and domestic purchases of capital goods and services attributable to its sale of electricity to NPC.

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period under the National Internal Revenue Code (NIRC), petitioner filed the present Petition for Review on April 24, 2007.

In his Answer filed on June 26, 2007, respondent raised the following Special and Affirmative Defenses:

> "5. Assuming but without admitting that Petitioner filed a claim for a tax credit certificate, the same is still subject to investigation by the Bureau of Internal Revenue;
>
> 6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
>
> 8. It is incumbent upon the Petitioner to show that it has complied with the provisions of Sections 112, 204 (C) and 229 of the Tax Code, as amended;
>
> 9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that it is entitled thereto, and failure to discharge said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner*, CA-GR No. Sp. 16432, March 30, 1990 cited in *Aban, Law of Basic Taxation in the Philippines*, 1st Edition, p. 206);
>
> 10. Claims for refund are construed strictly against the claimant 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 121)."

During trial, petitioner presented testimonial and documentary evidence; while counsel for respondent submitted the case for decision based on the pleadings for lack of report of investigation on petitioner's refund claim. The Court then required the parties to file their respective memorandum.

After petitioner filed its Memorandum on January 26, 2009, and considering that respondent did not file his Memorandum, the case was deemed submitted for decision on February 5, 2009.

On February 2, 2010, the Court in Division rendered the assailed Decision partially granting the Petition for Review. The dispositive portion of the assailed Decision reads as follows:

> WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the reduced amount of P71,595,764.50, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales of electricity to NPC for the period covering January 1, 2005 to October 31, 2005.
>
> **SO ORDERED.**[6]

Aggrieved, herein petitioner filed a Motion for Reconsideration on February 23, 2010. The same was denied for lack of merit by the CTA Third Division in its Resolution promulgated on October 18, 2010. The dispositive portion of the assailed Resolution reads as follows:

> **WHEREFORE**, finding no reversible error committed by this Court in the assailed *Decision*, respondent's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[7]

Hence, this Petition for Review *En Banc.*

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[6] *Rollo*, pp. 30-31.
[7] *Rollo*, page 46.

THE ISSUES

In the present Petition for Review, petitioner raises the following issues:

1. WHETHER THE HONORABLE 3RD DIVISION OF THE COURT OF TAX APPEALS ERRED IN GRANTING RESPONDENT'S PETITION FOR REVIEW AND ORDERING THE REFUND OF P71,595,764.50 REPRESENTING ALLEGED UNUTILIZED EXCESS INPUT VAT FROM JANUARY TO OCTOBER 2005;[8]

2. WHETHER THE HONORABLE 3RD DIVISION OF THE COURT OF TAX APPEALS ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.[9]

THIS COURT'S RULING

The petition is meritorious.

In determining whether the CTA Third Division erred in partially granting respondent's claim for refund, the Court *En Banc* deems appropriate to determine first whether or not respondent's administrative and judicial claims for refund of unutilized input VAT for the period covering January 1, 2005 to October 31, 2005 were filed within the prescriptive period under the 1997 National Internal Revenue Code (NIRC).

Prescriptive periods for filing administrative and judicial claims on VAT refund cases.

To begin with, the applicable law to the instant claim for refund is the 1997 NIRC. The administrative claim for refund or issuance of tax credit

[8] *Rollo*, page 7.
[9] *Ibid.*

certificate of unutilized input VAT attributable to zero-rated sales is governed by Section 112 (A) of the 1997 NIRC, to wit:

> Section 112. Refunds or Tax Credits of Input Tax. —
> (A) Zero-rated or Effectively Zero-rated Sales. —Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. (emphasis ours)

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

Concomitantly, the period within which to file judicial claims is found under Section 112 (D)[10] of the 1997 NIRC, the pertinent portion of which is quoted hereunder:

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[10] Now Section 112 (C) under Republic Act (RA) No. 9337. *AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES*;

> **Sec. 112 – *Refunds or Tax Credits of Input Tax.* –**
>
> xxx xxx xxx
>
> D) *Period within which Refund or Tax Credit of Input Taxes Shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within 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.-
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> xxx xxx xxx xxx

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

Applying the same to the present case, the <u>administrative claim</u> for refund filed by respondent covering the first to third quarters of 2005 was filed on <u>October 28, 2005</u> [11] and for the month of October 2005, the administrative claim

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This law was signed on May 24, 2005. It was supposed to take effect on July 1, 2005 but its enforcement was stopped because of a temporary restraining order. The constitutionality of the law was upheld in *ABAKADA Guro Partylist officer Samson S. Alcantara et. Al. v. The Hon. Executive Secretary Eduardo Ermita*, G.R. No. 168056, October 18, 2005. The law was finally enforced on November 1, 2005. (RBSI Editorial Staff, "The National Internal Revenue Code of the Philippines," Second Edition 2006, p. 215)

[11] Paragraph 7, Joint Stipulation of Facts and Issues, Division Docket, p. 78.

was filed on December 7, 2005.[12] It is clear that the administrative claims were filed within the two-year prescriptive period. However, despite the timely filing of the administrative claims, this Court is constrained to deny respondent's refund claim on the ground that its judicial claim was filed out of time. Records show that respondent filed its Petition for Review on April 24, 2007, [13] way beyond the 30-day period from the lapse of the 120-day period for the CIR to decide the claim.

The non-observance of the 120-30 day period under Section 112 (D) of the 1997 NIRC results in prescription of judicial claim which warrants a dismissal as no jurisdiction was acquired by the CTA.

When respondent's judicial claim was filed, it was made beyond the prescriptive period allowed by law, hence, warrants a dismissal inasmuch as no jurisdiction was acquired by the court. This in consonance with the principles and doctrines laid down in the recent cases promulgated by the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* [14] *(Aichi)* and *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Corporation, Inc.)* [15] (*Mirant*) which are applicable to the present case. In the mentioned cases, the Supreme Court reckoned the two-year prescriptive period for filing an administrative claim for refund from the

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[12] *Ibid.*
[13] Petition for Review, Division Docket, pp. 1-53.
[14] G.R. No. 184823, October 6, 2010, 632 SCRA 422. The *Aichi* case became final as per Supreme Court's Resolution dated December 6, 2010.
[15] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

close of the taxable quarter when the relevant sales were made. The pertinent portion of the Supreme Court's ruling in *Aichi* states:

> ***Unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made***
>
> In computing the two-year prescriptive period for claiming a refund/credit of unutilized input VAT, the Second Division of the CTA applied Section 112(A) of the NIRC, which states:
>
> > SEC. 112. Refunds or Tax Credits of Input Tax. –
> >
> > (A) Zero-rated or Effectively Zero-rated Sales – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. (Emphasis supplied.)
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> The CTA *En Banc,* on the other hand, took into consideration Sections 114 and 229 of the NIRC, which read:
>
> > SEC. 114. Return and Payment of Value-Added Tax. –
> >
> > (A) In General. – Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return of the amount of his gross**

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> **sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
>
> Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.
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> x x x x
>
> SEC. 229. Recovery of tax erroneously or illegally collected. –
>
> No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied.)

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

> **The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes**." xxx (emphasis ours)
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> xxx xxx xxx
>
> In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. **To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.** (emphasis ours)
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> xxx xxx xxx

Also, the *Aichi* case mentioned that the Commissioner has one hundred twenty (120) days from submission of complete documents to rule on the refund claim. Thereafter, the aggrieved party's judicial recourse is to appeal before the CTA within thirty (30) days from receipt of the decision denying the refund claim or upon the expiry of the one hundred twenty (120) day period in case of the Commissioner's inaction to the refund claim. The non-observance of the 120-day period is fatal to the filing of a judicial claim with the CTA as held in the said decision, to wit:

> ***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. —

xxx xxx xxx

> (D) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within 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 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 52 has no legal basis. *gr*

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." **The phrase "within two (2) years xxx apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.** This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC 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.

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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.[16] (emphasis ours)

The Supreme Court is the ultimate arbiter whose decisions all other courts should take bearings.

[16] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., supra*, note 14.

We note the ruling of the Supreme Court in the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue* [17] penned by then Associate Justice Renato Corona (now Chief Justice) that all rulings of the Supreme Court on questions of law are conclusive and binding on all courts. All courts must take their bearings from the decisions of the Supreme Court. Thus, We do not presume to reverse the current decision of the Supreme Court on the ground that a new ruling or doctrine violates any constitutional provision absent any pronouncement from it as such. It should be noted that the Supreme Court, by tradition and in our system of judicial administration has the last word on what the law is; it is the final arbiter of any justifiable controversy. Indeed, there is only one Supreme Court from whose decisions all other courts should take bearings.[18]

The Court has time and again stated that the rule on *stare decisis* promotes stability in the law and should, therefore, be accorded respect. However, blind adherence to precedents, simply as precedent, no longer rules. More important than anything else is that the court is right, thus its duty to abandon any doctrine found to be in violation of the law in force. [19]

Judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or

[17] G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781.
[18] *Commissioner of Internal Revenue vs. Michel J. Lhuiller Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178 citing the case of *GSIS vs. Court of Appeals*, 334 Phils. 163, 175, 266 SCRA 187 (1997).
[19] *Commissioner of Internal Revenue vs. Philippine Long Distance Telephone Company,* G.R. No. 140230, December 15, 2005, 478 SCRA 61.

interpretation of a pre-existing one.

It should be noted that the judicial claim in *Aichi* was filed on September 30, 2004 or prior to the promulgation of the *Mirant* case, a date earlier than the judicial claim of herein respondent (April 24, 2007 for herein respondent). Yet, the Supreme Court applied outright the ruling in *Mirant* when it decided the *Aichi* case. Hence, We see no reason why We should depart from the recent *Aichi* and *Mirant* rulings.

While it is true that respondent's judicial claim was filed even before the *Aichi* case was promulgated, however, this does not mean that the doctrine laid down in *Aichi* should only be applied prospectively. As held in *Cemco Holdings, Inc. vs. National Life Insurance Company of the Philippines, Inc.,*[20] citing *Serrano vs. National Labor Relations Commission,*[21] the argument on the prospective application of a new ruling 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 respondents view of the principle of prospective**

[20] G.R. No. 171815, August 7, 2007, 529 SCRA 355.
[21] G.R. No. 117040, Resolution dated May 4, 2000, 331 SCRA 331,342-343.

> **application of new judicial doctrines would turn the judicial function into a mere academic exercise with the result that the doctrine laid down would be no more than a dictum and would deprive the holding in the case of any force.**
>
> **Indeed, when the Court formulated the Wenphil doctrine, which we reversed in this case, the Court did not defer application of the rule laid down imposing a fine on the employer for failure to give notice in a case of dismissal for cause. To the contrary, the new rule was applied right then and there.** xxx (emphasis ours)

It should 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. [22]

The law takes effect from the time of its effectivity and not from the time of the promulgation of a decision applying the law. Considering that the applicable law here is the NIRC of 1997 which took effect on January 1, 1998, [23] petitioner is very well within its coverage. Notably, it is only upon the effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. [24] The validity and obligatory force of a law proceed from the fact that it has first been promulgated. [25]

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[22] *Eagle Realty Corporation vs. Republic*, G.R. No. 151424, Resolution dated July 31, 2009, 594 SCRA 555.
[23] *Commissioner of Internal Revenue vs. Michel J. Lhuiller Pawnshop, Inc., supra*, note 18.
[24] *Abakada Guro Party List, et.al. vs. Cesar V. Purisima*, et.al. , G.R. No. 166715, August 14, 2008, 562 SCRA 251.
[25] *Mighty Corporation vs. E. & J. Gallo Winery*, G.R. No. 154342, July 14, 2004, 434 SCRA 473.

The words of the law are clear, plain, and free from ambiguity, hence, it must be given its literal meaning and applied without any interpretation.

It is nonetheless clear that Section 112 of NIRC of 1997, standing alone, provides that input VAT payments attributable to zero-rated or effectively zero-rated sales not otherwise applied against output tax may be administratively claimed **within two years after the close of the taxable quarter when the sales were made** while judicial claim may be filed **within thirty (30) days from the receipt of the CIR's decision denying the claim or after the expiration of the one hundred twenty day (120)-period**.

The law is clear and unambiguous. Under the *verba legis* rule, if the words of the law are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without any interpretation, [26] the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. [27] All that has to be done is to apply it in every case that falls within its terms. [28] More so, it is not within the province of the Court to inquire into the wisdom of the law, for indeed, we are bound by the words of the statute. [29]

The CTA is a court of special jurisdiction and can only take *gc*

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[26] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159610, June 12, 2008, 554 SCRA 398.
[27] *Carmelino F. Pansacola vs. Commissioner of Internal Revenue*, G.R. No. 159991, November 16, 2006, 507 SCRA 81 citing the case of *Allied Brokerage Corporation vs. Commissioner of Customs,* No. L-27641, August 31, 1971, 40 SCRA 555, 559, 560.
[28] *Ibid.*
[29] *Commissioner of Customs vs. Manila Star Ferry, Inc.*, G.R. Nos. L-31776-78, October 21, 1993, 227 SCRA 317.

cognizance of such matters as are clearly within its jurisdiction.

Since the CTA is a specialized court of limited jurisdiction, [30] we can only take cognizance of such matters as are clearly within our jurisdiction *i.e.*, exclusive appellate jurisdiction on decisions/rulings or inaction of the CIR.[31] The law conferring jurisdiction on the CTA is Section 7 of Republic Act No. 1125, as amended by RA 9282, to wit:

> Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**; (emphasis ours)

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

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[30] *Southern Cross Cement Corporation vs. Philippine Cement Manufacturers Corporation,* G.R. No. 158540, July 8, 2004, 434 SCRA 65.

[31] *Visayas Geothermal Power Company vs. Commissioner Internal Revenue,* CTA EB Case Nos. 520 & 521 (CTA Case No. 7394), May 9, 2011.

In this case, Section 112 (D) of the NIRC provides specific period of action *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 has 30 days within which to file an appeal with the CTA. If the taxpayer failed to do so, the taxpayer loses his right of judicial recourse. On the other hand, when a judicial claim is filed without awaiting the lapse of the 120-day period and there is no decision yet, the CTA acquires no jurisdiction as there is no decision or inaction to speak of.

Also, the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* [32] should be applied by analogy to the present case. The pertinent portion of the ruling states:

> **The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal**, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction** to entertain and determine the correctness of the assessments. **Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.** (emphasis ours) [33]

The Supreme Court ruled that the **30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction**. This

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[32] G.R. No. 168498, Resolution dated April 24, 2007, 522 SCRA 144.
[33] *Ibid.*

applies to cases of refund under Section 112 where the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA.

Similarly in the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,* [34] the Supreme Court reiterated that "It has been ruled that **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law." [35]

At this point, the 120-day period within which the CIR should act on the administrative claim had already lapsed without any decision, hence, considered a denial of the claim. From the lapse of the 120-day period, respondent has 30 days within which to file its judicial claim. More than one year had lapsed (for the first to third quarters of 2005) and short of one year (for the month of October 2005) before the judicial claim was filed on April 24, 2007. Thus, the 120-day period is crucial in filing an appeal with the CTA.[36] "A taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due

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[34] G.R. No. 167606, August 11, 2010, 628 SCRA 96.
[35] *Ibid.*
[36] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., supra*, note. 14.

process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."[37]

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **GRANTED.** Accordingly, the Decision of CTA Third Division dated February 2, 2010 and the Resolution dated October 18, 2010 are hereby reversed and set aside. Petitioner's refund claim of P73,711,581.30 is **DENIED** on the ground that the judicial claim for the period covering January 1, 2005 to October 31, 2005 was filed out of time.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[37] *Ibid.*

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

KEPCO ILIJAN CORPORATION,
Respondent.

CTA EB CASE NO. 695
(CTA Case No. 7627)

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

Promulgated:
NOV 15 2011 4:50 pm

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DISSENTING OPINION

BAUTISTA, J.:

As one of the members of the Third Division of the Court and as the *ponente* of the assailed Decision dated February 2, 2010, and Resolution dated October 18, 2010, now before the Court *En Banc*, I maintain that the factual circumstances present in the case at bench should make this Court consider the principle which states that "where there has been justifiable reliance on Our decisions, and those who have so relied may be substantially harmed if retroactive effect is given, where the purpose of the new rule can be adequately effectuated without giving it retroactive operation, or where retroactive operation might greatly burden the administration of justice, then it is Our duty to apply the new rule prospectively."[1]

When respondent filed its claims before petitioner on October 28, 2005 and December 7, 2005, and the Petition for Review before the Third Division of this Court on April 24, 2007, claiming for refund of unutilized input value-added tax attributable to zero-rated sales for the period covering January 1, 2005 to October 31, 2005, the then prevailing doctrine, is that the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return,[2] and not from the close of the quarter.[3]

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

However, 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 when the sales were made.

Albeit I agree that the aforesaid ruling is 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

[1] Magtoto *v.* Manguera, *et al.*, G.R. Nos. L-37201-02, L-37424, and L-38929, March 3, 1975, 63 SCRA 4, Concurring Opinion penned by Justice Felix Q. Antonio, with Justices Antonio P. Barredo and Cecilia Muñoz-Palma, concurring.
[2] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[3] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.

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.

It is true that this Court has the duty to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.[4] Nonetheless, this Court should not decide a case by merely adhering to precedence; idolatrous reverence for precedent, simply as precedent, no longer holds true.[5] Therefore, this Court cannot merely impose a ruling that was yet to be enunciated at the time a claim was lodged in Our forum.

As the Supreme Court aptly ruled, "the final authority of this Court rests upon public respect for its decisions; that public respect is based upon an image which represents this Court as declaring legal principles with an authority and certainty that the people may place upon it their *bona fide* reliance and reasonable expectations."[6]

With this, prior determinations deemed to have finality and acted upon accordingly, demands examination. The effect of a subsequent ruling as to invalidity may have to be considered in various aspects. It may have consequences which cannot just be ignored.[7]

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

Likewise, the use of the word *"may"* under 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, as amended;[10] otherwise, this Court will be deprived of jurisdiction to entertain the case.[11]

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

LOVELL R. BAUTISTA
Associate Justice

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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.

[11] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.