REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AIR LIQUIDE PHILIPPINES, INC.,
Petitioner,

CTA EB No. 704
(CTA Case No. 8052)

-versus-

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 2 7 2012 Apolinario 1:30 p.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

Assailed in this Petition for Review filed on 6 December 2010 before the Court *en banc* are the Resolutions promulgated on 1 September 2010[1] and 12 November 2010,[2] granting Respondent's Motion to Dismiss and denying

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[1] *Rollo*, pp. 26-37. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta, concurring. Associate Justice Erlinda P. Uy registered her Separate Opinion.
[2] *Rollo*, pp. 43-53.

Petitioner's Motion for Reconsideration, respectively, in the case entitled, *Air Liquide Philippines, Inc., vs. Commissioner of Internal Revenue,*" docketed as CTA Case No. 8052 before the CTA First Division.

The dispositive portion of the 1 September 2010 Resolution provides:

> WHEREFORE, premises considered, the Motion to Dismiss dated May 13, 2010, filed by respondent Commissioner of Internal Revenue, is GRANTED. Consequently, the Petition for Review filed by Air Liquide Philippines Inc. is hereby DISMISSED, without prejudice.
>
> SO ORDERED.[3]

On the other hand, the dispositive portion of the 12 November 2010 Resolution provides:

> WHEREFORE, the Motion for Reconsideration dated September 20, 2010, filed by petitioner is hereby DENIED for lack of merit.
>
> SO ORDERED.[4]

THE FACTS

The facts as alleged by the petitioner in its Petition for Review *en banc* are as follows:

Petitioner is a domestic corporation duly registered with and authorized by the Securities and Exchange Commission ("SEC") to engage in the manufacture, production, purchase, wholesale, importation, marketing and generally deal in all kinds of industrial, medical and specialty liquid gases, other chemicals and their residual components with principal place of business at Lot 37, DBP Avenue FTI Complex, Taguig, Metro Manila represented by its Vice-President for Finance,

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[3] *Rollo*, pp. 36-37.
[4] *Rollo*, p. 53.

Purchasing, Administration, and Information Technology ("IT"), Mr. Joffrey G. Manaid, as shown by the Secretary's Certificate dated 3 December 2010 attached and made an integral part of the Verification and Certification of Non-Forum Shopping.[5]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), presently Kim Jacinto-Henares, with principal office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City where she may be served with this Honorable Court's processes.[6]

Petitioner is registered with the BIR as a Value-Added Tax ("VAT") entity under Certificate of Registration Number OCN 9RC000057089,[7] effective March 9, 2006.[8]

Petitioner alleges that in the course of its operations, petitioner sells its products and renders certain related services to entities that are registered with the Philippine Economic Zone Authority ("PEZA"), Subic Bay Metropolitan Authority ("SBMA"), and Board of Investments ("BOI").[9]

For the 1st Quarter of 2008 or for the period of January to March 2008, petitioner generated VAT zero-rated sales of goods and services to PEZA-, SBMA-, and BOI-registered entities pursuant to Section 106(A)(2)(a)(5) of the National Internal Revenue Code ("NIRC") and Sec. 108(B)(3) of the NIRC as implemented

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[5] *Rollo*, p. 2.
[6] *Id.*, at p. 3.
[7] Division *Rollo*, p. 17.
[8] *Rollo*, p. 3.
[9] *Id.*

by Sections 4.106-5(a)(5) and 4.108-5(b)(3) of Revenue Regulations No. 16-05, as amended ("RR-16-05").[10]

Petitioner's VAT zero-rated sales for the 1st quarter of 2008 amounted to One Hundred Nine One Thousand (sic) One Hundred Ninety Seven Thousand Two Hundred Fifty Seven Pesos and Fifty Seven Centavos (Php191,197,257.57) as shown in petitioner's Quarterly VAT Return for the 1st quarter of 2008, duly received by the BIR.[11]

Meanwhile, for the 1st quarter of 2008, petitioner paid input VAT on domestic purchases of goods and services amounting to Php18,616,715.48 which purchases are attributable to its sales of goods and services to PEZA-, SBMA- and BOI- registered entities as shown by Schedule of Purchases for the 1st quarter of 2008 (or January to March, 2008).[12]

Also, petitioner paid input VAT on importation of goods also attributable to its sales of goods and services to PEZA-, SBMA-, and BOI-registered entities, in the amount of Php2,843,716.00 as shown by Schedule of Importation for the 1st quarter of 2008 (January to March, 2008).[13]

Petitioner filed with respondent, through the Revenue District Office No. 121 ("RDO 121"), on 23 December 2009, an application for refund, through the issuance of tax credit certificate, of its unutilized input VAT for the 1st quarter of 2008.[14]

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[10] *Id.*
[11] *Id.*, at p. 3.
[12] *Id.* at p. 4.
[13] *Id.*
[14] *Id.*, at p. 6.

To date, respondent has not yet acted on petitioner's application for refund of input VAT for the 1st quarter of 2008.[15]

On 30 March 2010, petitioner filed a Petition for Review with CTA covering its judicial claim for refund or issuance of tax credit certificate of the excess/unutilized input Value-Added Tax ("VAT") during the 1st Quarter of 2008. It was denominated as *"Air Liquide Philippines, Inc. v. Commissioner of Internal Revenue"* docketed as CTA Case No. 8052 and raffled to the First Division of the CTA.[16]

On 14 and 15 April 2010, summonses were issued and personally served upon the Solicitor General and respondent, respectively. Respondent filed a Motion for an Extension to File Answer dated 26 April 2010.[17]

The CTA-First Division, in an Order dated 6 May 2010, granted an additional period of fifteen days or until 15 May 2010 within which respondent should file an Answer. Respondent instead filed a *Motion to Dismiss*[18] dated 13 May 2010.[19]

Respondent moved to dismiss the Petition on the ground that a condition precedent for filing claim was not complied with. She argued that petitioner filed the judicial claim prior to the lapse of the 120-day period set forth under Section 112 (C) of the NIRC which rendered the action premature and subject to dismissal on the ground of lack of cause of action.[20]

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[15] *Id.*
[16] Annex "C"; *Rollo*, p. 54.
[17] *Rollo*, p. 7.
[18] Annex "D"; *Rollo*, p. 145.
[19] *Rollo*, pp. 6-7.
[20] *Id.*, p. 7.

Petitioner filed a *Comment/Opposition* to the Motion to Dismiss dated 9 June 2010. Petitioner seeks to deny the Motion to Dismiss filed by respondent on the ground that the subject Petition was filed within the prescriptive period provided for by law and in accordance with prevailing jurisprudence. It stated that, as pronounced by the Supreme Court in the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* the same was filed on time or well-within the two (2)-year prescriptive period from the close of the taxable quarter or until 30 March 2010. Furthermore, non-exhaustion of administrative remedies finds no application in the case since immediate judicial recourse is imperative to protect its interest knowing that the two (2)-year prescriptive period was about to lapse.[21]

In a Resolution promulgated on 1 September 2010, the CTA-First Division granted the Motion to Dismiss on the ground of prematurity, to wit:

> *The record reveals that petitioner's administrative claim for refund for the first quarter of the taxable year 2008 was seasonably filed on 23 December 2009 or within the two-year prescriptive period. Upon denial or the expiration of the allowable period of 120 days without any action on the part of respondent, petitioner, within 30 days from notice of such denial or expiration of 120 days, may invoke this Court's competence by filing a corresponding Petition for Review. Any action filed prior to such condition precedent is considered premature justifying an order or dismissal for lack of cause of action.*
>
> *Undoubtedly, the administrative claim for refund was seasonably filed by petitioner on 23 December 2009. Under the obtaining circumstances, petitioner had 120 days or until 22 April 2010 to process the claim. Thereafter, petitioner had 30 days from notice of adverse ruling or expiration of the allowable period 120 days or until 22 May 2010 to file a Petition for Review with this Court.*
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> *However, petitioner hastily filed the instant Petition for Review on 30 March 2010 or before the 120-day period expired on 22 April*

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[21] *Rollo,* p. 7.

> *2010. Obviously, the instant Petition lacks cause of action as it was prematurely filed, hence dismissible on such ground.*[22]

Petitioner seasonably filed a *Motion for Reconsideration*[23] of the Resolution dismissing the Petition for Review dated 20 September 2010. The Motion emphasized that petitioner clearly acted in accordance with the prescriptive period provided for by law and prevailing jurisprudence. It further emphasized that the said Petition was not given the same treatment as those decided upon in precedent cases as part and parcel of taxpayer's constitutional right to due process and equal protection of law following the rationale behind the *doctrine of stare decisis.*[24]

A *Comment/Opposition*[25] to petitioner's Motion for Reconsideration dated 13 October 2010 was filed by respondent.[26]

On 29 October 2010, petitioner seasonably filed its *Reply*[27] to respondent's Comment/Opposition. Petitioner anchored its position on prevailing jurisprudence at the time of filing of both the administrative and judicial claims. Petitioner furthered that the recent *Aichi case* dated 6 October 2010 requires prospective application from the time of its finality.[28]

In resolving the Motion for Reconsideration, a Resolution[29] promulgated on 12 November 2010 was issued by the CTA-First Division which denied the Motion for Reconsideration filed by petitioner, subject of the instant Petition for Review.[30]

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[22] *Rollo*, at p. 8.
[23] Annex "F"; *Rollo*, p. 158.
[24] *Rollo*, p. 8.
[25] *Rollo*, p. 173.
[26] *Id.*, at note 24.
[27] Annex "H"; *Rollo*, p. 177.
[28] *Rollo*, p. 9.
[29] Annex "B"; *Rollo*, p. 43.
[30] *Rollo*, p. 9.

On 4 January 2011, the Court *en banc* required the respondent to file a comment. However, respondent failed to file the same.

In a Resolution dated 1 March 2011 of the Court *en banc*, the parties were required to submit their respective Memoranda. However, only the petitioner submitted its Memorandum, thus, on 18 May 2011 the Court *en banc* issued a Resolution submitting the case for decision.

Hence, this instant Petition for Review before the Court *en banc.*

THE ISSUES

In its present Petition for Review, petitioner raises the following issues[31] to wit:

A.

A JUDICIAL CLAIM FOR REFUND/TAX CREDIT IS COVERED BY THE TWO (2)-YEAR PERIOD PROVIDED IN SECTION 229 OF THE NIRC AS EXCESS INPUT VALUE-ADDED TAX ("VAT") PAYMENTS FALL WITHIN THE SCOPE OF *"ERRONEOUSLY"* OR *"EXCESSIVELY"* COLLECTED.

B.

THE HONORABLE CTA-FIRST DIVISION GRAVELY ERRED IN DENYING DUE COURSE TO THE JUDICIAL CLAIM FOR REFUND/ISSUANCE OF TAX CREDIT CERTIFICATE OF THE PETITIONER COVERING THE 1ST QUARTER OF 2008, AS THE PETITION HAS BEEN SEASONABLY FILED.

C.

CLAIMS FOR REFUND/ISSUANCE OF TAX CREDIT CERTIFICATE OF EXCESS/UNUTILIZED INPUT VAT ARE GROUNDED ON THE PRINCIPLE OF UNJUST ENRICHMENT.

D.

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[31] *Supra,* at note 30.

PROSPECTIVE APPLICATION OF JUDICIAL DETERMINATIONS PROMULGATED BY THE SUPREME COURT IS PROPER WITH RESPECT TO PENDING CTA CASES.

E.

CLAIMS FOR REFUND/ISSUANCE OF TAX CREDIT CERTIFICATE IS NOT A GAME OF TECHNICALITY.

The abovementioned issues boil down to the sole issue of whether the Petition for Review before the Court in Division should be dismissed on the ground that it was prematurely filed.

THIS COURT'S RULING

The Petition is unmeritorious.

In order to ascertain petitioner's entitlement to a refund of unutilized input VAT, the Court deems it appropriate to initially determine the threshold issue of whether or not the petitioner faithfully observed the prescriptive periods for filing administrative and judicial claims for refund of unutilized input VAT under the National Internal Revenue Code of 1997 ("NIRC").

Prescriptive periods for filing administrative and judicial claims under the NIRC.

The administrative claim for refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sales is provided by Section 112(A) of the NIRC, to wit:

> 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**

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> **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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> xxx xxx xxx

By virtue of the afore-quoted provision, an application for refund of unutilized input VAT attributable to zero-rated sales may be made within two (2) years after the close of the taxable quarter when the sales were made. Such period, however refers *only* to applications for refund/tax credit filed before the Commissioner of Internal Revenue ("CIR") and not for purposes of filing a judicial claim before the Court of Tax Appeals.

In the same vein, the period within which to file judicial claims is provided under Sec. 112(C) of the NIRC, which provides:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (C) *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 Subsection (A) 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

Thus, a claim for refund before this Court shall be filed within a period of thirty (30) days reckoned from the receipt of the decision of the CIR or in case of the latter's inaction, upon the expiration of the one hundred and twenty (120)-day period to decide the administrative claim. These periods are mandatory and failure to comply with such periods will necessarily result in the denial of the claim.

Applying Sec. 112(A) and (C) of the NIRC to the case at bar, the petitioner filed its administrative claim for refund for the 1st quarter of 2008 on 23 December 2009, thus, giving the CIR until 22 April 2010 to decide on petitioner's administrative claim. However, without waiting for the lapse of the one hundred twenty-day period to decide, petitioner filed its judicial claim before this Court on 30 March 2010, which is twenty-three (23) days earlier than what is prescribed by law. Notwithstanding the timely filing of the administrative claim, the Court is constrained to deny petitioner's claim for refund on the ground of premature filing.

Non-observance of the periods provided under Sec. 112(C) of the NIRC will warrant the dismissal of the judicial claim on the ground of prematurity since this Court has yet no jurisdiction over the case.

Because of the petitioner's premature invocation of its judicial claim, this Court is not yet clothed with jurisdiction to take cognizance on the same. The cases of *Commissioner of Internal Revenue, vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[32] ("Mirant") and *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[33] ("Aichi") squarely applies. In *Aichi* and *Mirant*, the Supreme Court reckoned the two-year prescriptive period for filing an administrative claim for refund from the close of the taxable quarter when the relevant sales were made. Said the High Court in the case of *Aichi*:

> ***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

[32] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[33] G.R. No. 184823, October 6, 2010, 632 SCRA 422. *Aichi* case became final per Supreme Court's Resolution dated December 6, 2010.

accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That were the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. (Emphasis supplied.)

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

SEC. 114. Return and Payment of Value-Added Tax. –

(A) In General. – Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer:** Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

x x x x

SEC. 229. Recovery of tax erroneously or illegally collected. –

No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue 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 <u>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.</u> (Emphasis and underlining ours)

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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. **<u>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.</u>** (Emphasis ours)

The *Aichi* ruling likewise said that the Commissioner has a period of one hundred twenty (120) days reckoned from the submission of complete documents to act on the claim for refund. Judicial recourse before this Court is allowed within a period of thirty (30) days from receipt of the decision, either denying the claim for refund or upon the expiration of the one hundred twenty (120) day period in case of CIR's inaction on the claim for refund. Failure to observe the 120 day-period is fatal on the judicial claim:

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> ***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:
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> > 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 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 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.

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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.**[34] (Emphasis ours)

While it is true that petitioner's judicial claim was filed before the* Aichi *case was promulgated, this does not mean that the doctrine laid down in* Aichi *should only be applied prospectively.

In the case of *Cemco Holdings, Inc., vs. National Life Insurance Company of the Philippines, Inc.,*[35] the High Court had the occasion to strike down the argument that the new doctrine pronounced by the Court should only be applied prospectively:

> [While] a judicial interpretation becomes a part of the law as of the date the law was originally passed, this is subject to the qualification that when the 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.**
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> **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**

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[34] *Supra*, at note 33.
[35] G.R. No. 171815, August 7, 2007, 529 SCRA 355, 375-376. Citing the case of *Serrano vs. National Labor Relations Commission,* 387 Phil. 345, 357; 331 SCRA 331, 342-343 (2000).

> **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 (emphasis supplied)

It bears stressing 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.[36]

The law takes effect from the time it becomes effective 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 1 January 1998,[37] petitioner's claim falls 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.[38] The validity and obligatory force of a law proceed from the fact that it has first been promulgated.[39]

***The Supreme Court is the ultimate arbiter. The* Aichi *ruling must be applied outright under the principle of* stare decisis.**

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

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[36] *Eagle Realty Corporation vs. Republic,* G.R. 151424, July 31, 2009, 594 SCRA 555, 558, citing *Senarillos vs. Hermosisima,* 101 Phil. 561 (1956).
[37] *Commissioner of Internal Revenue vs. Michel J. Lhuiller Pawnshop, Inc.,* G.R. No. 150947, July 15, 2003, 406 SCRA 178 citing the case of *GSIS vs. Court of Appeals,* 334 Phil. 163, 175, 266 SCRA 187 (1997).
[38] *Abakada Guro Party List vs. Purisima,* G.R. No. 166715, August 14, 2008, 562 SCRA 251.
[39] *Mighty Corporation vs. E & J Gallo Winery,* G.R. No. 154342, July 14, 2004, 434 SCRA 473.

justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[40]

Moreover, we adhere to the principle *Stare decisis et non quieta movere.* Stand by the decision and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[41]

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

Since the CTA is a specialized court of limited jurisdiction,[42] 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.[43] The law conferring jurisdiction on the CTA is Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, to wit:

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[40] *Id.,* at note 37.
[41] *Grand Placement and General Services Corporation vs. Court of Appeals,* G.R. No. 142358, January 31, 2006, 481 SCRA 189, 203-204 citing the case of *Negros Navigation Co., Inc. vs. Court of Appeals,* 346 Phil. 551, 563; 281 SCRA 534, 542-543 (1997).
[42] *Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp., et. al.,* G.R. 158540, July 8, 2004, 434 SCRA 65.
[43] *Commissioner of Internal Revenue vs. Taganito Mining Corporation,* CTA EB No. 559 (CTA Case No. 6867) April 18, 2011.

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 for action in which case the inaction shall be deemed a denial;** (emphasis ours)

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

In this case, Section 112(C) of the NIRC of 1997, as amended, 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. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also to pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[44]

The case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,*[45] should be applied by analogy in this case. It provides:

> **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)

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

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[44] *Asia International Auctioneers, Inc. vs. Parayno, Jr.,* G.R. No. 163445, December 18, 2007, 540 SCRA 536, 552.
[45] G.R. 168498, April 24, 2007, 522 SCRA 144, 152-153 citing the case of *Chan Kian vs. Court of Tax Appeals*, 105 Phil. 904, 906 (1959).

perfection of 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 law."[46] **If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.**[47]

At this juncture, there was neither a showing that a decision was rendered by the CIR or that the 120-day period has already lapsed. Evidently, there is nothing yet to be reviewed by the CTA. Thus, the 120-day period is crucial in filing an appeal with the CTA.[48] We reiterate the ruling that "a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."[49]

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review is **DISMISSED.** Accordingly, the Resolutions dated 1 September 2010 and 12 November 2010 of the Court in Division are hereby **AFFIRMED**. Petitioner's

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[46] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,* G.R. No. 167606, August 11, 2010, 628 SCRA 96, 105.
[47] *Ker & Company, Ltd., vs. The Court of Tax Appeals, et. al,* G.R. No. L-12396, January 31, 1962, 4 SCRA 160, 163.
[48] *Supra*, at note 33.
[49] *Id.*

claim for refund in the amount of P21,460,431.48 is **DENIED** on the ground that the judicial claim for the first quarter of 2008 was prematurely filed.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
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

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Wellness 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

AIR LIQUIDE PHILIPPINES, INC., Petitioner,	**EB CASE NO. 704** **(C.T.A. CASE NO. 8052)**
- versus -	Members: **ACOSTA, *PJ,*** **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **PALANCA-ENRIQUEZ,** **FABON-VICTORINO,** **MINDARO-GRULLA, *and,*** **COTANGCO-MANALASTAS, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 2 7 2012

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SEPARATE CONCURRING OPINION

I am in conformity with the majority's decision finding petitioner's claim for refund over its excess input VAT for the 1st quarter of 2008 to be premature after it failed to comply with the 120-30 day period required in Section 112 (C) of the 1997 NIRC, as amended.

Apropos, I wish to state that said prematurity is a violation of the doctrine of exhaustion of administrative remedies.

It is already well settled that non-exhaustion of administrative remedies is not jurisdictional. It only renders the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[1] The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel,* the case is susceptible of dismissal for lack of cause of action.[2]

Considering that the CIR seasonably raised the defense of lack of cause of action in her Motion to Dismiss, said defense has not been waived. Accordingly, the claim for refund should be dismissed.

ERNESTO D. ACOSTA
Presiding Justice

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[1] *Carale vs. Abarintos*, GR No. 120704, March 3, 1997.
[2] *Paat vs. Court of Appeals*, G.R. No. 111107, January 10, 1997.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

AIR LIQUIDE PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 704
(CTA Case No. 8052)

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

Promulgated:
FEB 2 7 2012 *apolinario 1:30 p.m.*

x---x

DISSENTING OPINION

BAUTISTA, J.:

Basic is the rule 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] Therefore, I maintain that the factual circumstances present in the

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[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.

case at bench supports the application of *the then prevailing jurisprudence at the time the claim was made.*

When petitioner filed its administrative claim on December 23, 2009, and the subsequent Petition for Review on March 30, 2010, the then controlling doctrine is that of the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]*,[2] for the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[3] has yet to be promulgated on October 6, 2010. Clearly, the latter doctrine was promulgated *after* the taxpayer-claimant had had faithfully relied and complied with the former ruling.

Albeit the latter ruling is more in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code, as amended, it would be the height of injustice to impose a new ruling, on the basis of the so-called "adherence to precedence."

Further, the same would run counter with the use of the word *"may"* in Section 112(C) of the 1997 National Internal Revenue Code, as amended, which 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 claim is made within the two (2)-year prescriptive period under Sections 112[4] and 229[5] of the 1997 NIRC.[6]

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[2] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] G.R. No. 184823, October 6, 2010.
[4] 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:

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.[7]

With the pronouncements made in the cases of *Commissioner of Internal Revenue v. Toledo Power, Inc.*,[8] and *Commissioner of Internal Revenue v. San Roque Power Corporation*,[9] 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 provided under Section 112 of the 1997 NIRC, as amended.

Applying the foregoing, petitioner had until two (2) years from the close of the taxable quarter of the year 2008, within which to file *both* its administrative and judicial claims.

In sum, I find the claims to be made within the prescribed period.

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.

5 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.

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

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

8 CTA EB No. 321 (CTA Case Nos. 6805 & 6851), May 7, 2008.

9 CTA EB No. 408 (CTA Case No. 6647), March 25, 2009.

Accordingly, I vote that the Petition for Review, claiming for refund or issuance of tax credit certificate of excess/unutilized input value-added tax for the period covering the first (1st) quarter of the year 2008 be **GIVEN DUE COURSE**.

LOVELL R. BAUTISTA
Associate Justice