**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

*EN BANC*

**CE CASECNAN WATER AND ENERGY COMPANY, INC.,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB No. 836**
**(CTA Case No. 7891)**

Present:
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:
JAN 2 8 2013

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# DECISION

**CASTAÑEDA, JR., *J.* :**

Before this Court is the petition for review filed on October 14, 2011 by petitioner CE Casecnan Water and Energy Company, Inc. (petitioner, for brevity) assailing the May 19, 2011 Resolution[1] and the September 12, 2011 Resolution[2] promulgated by the First Division of the Court of Tax Appeals (CTA First Division) in the case entitled *"CE Casecnan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue"* docketed as CTA Case No. 7891.

Petitioner prays that this Court reverse the assailed Resolutions and declare that petitioner is entitled to a refund of Fourteen Million Four Hundred Fifty-Three Thousand Four Hundred Forty and 28/100 Pesos (Php14,453,440.28), representing unutilized input value-added tax (VAT) attributable to zero-rated sales for the four quarters of calendar year (CY) 2007.

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[1] *Rollo*, pp. 66-75, penned by Former Presiding Justice Ernesto D. Acosta ( retired on December 21, 2012) and concurred in by Associate Justice Esperanza R. Fabon-Victorino, with Separate Opinion *(Rollo*, pp. 76-81*)* by Associate Justice Erlinda P. Uy.
[2] *Id.*, pp. 83-90, penned by Former Presiding Justice Acosta and concurred in by Associate Justices Uy and Fabon-Victorino.

The dispositive portion of the May 19, 2011 Resolution reads:

> WHEREFORE, in view of the foregoing, the Motion to Dismiss is hereby **GRANTED** and the Petition for Review is **DISMISSED** based on the ground of lack of cause of action, the judicial claim having been prematurely filed with this Court
>
> **SO ORDERED.**

Likewise, the dispositive portion of the September 12, 2011 Resolution provides:

> **WHEREFORE**, finding no sound reason to reverse, amend or modify the Resolution of the Court dated 19 May 2011, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

## THE FACTS

Based on the parties' Joint Stipulation of Facts and Issues[3], the following are the admitted facts[4]:

> 1. Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Pantabangan, Nueva Ecija. xxx xxx xxx
>
> 2. Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. xxx xxx xxx
>
> 3. Petitioner's primary business purpose is "to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided by and under contract with the National Irrigation Administration [NIA] (the 'Project'); provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public

[3] Division Docket, pp. 184-189.
[4] *Id.*, 184-187, Citation Omitted.

utility, or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially owned by Filipino citizens."

4. Petitioner is registered with the Bureau of Internal Revenue ("BIR") as a VAT taxpayer with Taxpayer Identification No. 004-500-931-000 and power generation as its business.

5. Under Republic Act ("R.A.") No. 9337, which took effect on 1 November 2005, sales by power generating companies, such as Petitioner, of electricity produced through renewable sources of energy, such as hydropower, will continue to be zero-rated under Section 108 (B) (7), 1997 National Internal Revenue Code, as amended (the "Tax Code") xxx xxx xxx

6. On the following dates, Petitioner filed through the BIR's electronic filing and payment system ("EFPS") its *Original* Quarterly VAT Returns for the 1st quarter to the 4th quarter of calendar year ("CY") 2007, respectively:

| Taxable Quarter | Date of Filing of *Original* Quarterly VAT Return |
|---|---|
| 1st | 23 April 2007 |
| 2nd | 25 July 2007 |
| 3rd | 25 October 2007 |
| 4th | 24 January 2008 |

7. Petitioner filed its *Final Amended* Quarterly VAT Returns for the 1st quarter to the 4th quarter of CY 2007 on 19 February 2009 through the BIR's EFPS.

8. On 20 February 2009, Petitioner filed an administrative claim for refund with the Large Taxpayers Audit and Investigation Division I of the BIR.
xxx xxx xxx

On March 30, 2009, petitioner filed its petition for review with the CTA.[5]

Pursuant to CTA Administrative Circular No. 01-2012, dated January 5, 2010, "Implementing the Fully Expanded Membership in the Court of Tax

[5] Division Docket, pp. 1- 97, with annexes.

Appeals", this case was transferred to the "First Division" on January 13, 2010 from the "Second Division".[6]

On October 12, 2010, CTA First Division resolved petitioner's Formal Offer of Evidence.[7] Dissatisfied that some exhibits were not admitted, petitioner filed a Motion for Reconsideration (Re: Resolution dated October 12, 2010) on November 2, 2010.[8] Without respondent's comment/opposition thereto despite notice, the CTA First Division granted the said motion on January 12, 2011.[9]

Upon manifestation and motion of respondent's counsel that she will no longer present evidence, parties were granted a period of thirty (30) days from January 13, 2011 to file their respective Memorandum.[10] However, the submission of the parties Memoranda was deferred[11] until after CTA First Division resolved respondent's Motion to Dismiss[12] filed on January 20, 2011.

Petitioner's Comment/Opposition (Re: Respondent's Motion to Dismiss dated January 18, 2011)[13] was filed on March 3, 2011.

On May 19, 2011, respondent's Motion to Dismiss was granted and the Petition for Review was dismissed.[14]

Sans any Comment from respondent, petitioner's Motion for Reconsideration (Re: Resolution dated May 19, 2011)[15] was denied for lack of merit on September 12, 2011.[16]

On September 30, 2011, the Court *en banc* granted petitioner's "Motion for Extension of Time to File Petition".[17] Within the period given, petitioner filed petition for review *en banc*.

Respondent filed Comment (Petition for Review dated October 14, 2011) on November 25, 2011.

On January 19, 2012, petitioner filed its Memorandum. Jc

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[6] Division Docket, p. 266.
[7] *Id.*, pp. 364-365.
[8] *Id.*, p. 370.
[9] *Id.*, pp. 386-387.
[10] *Id.*, p.389.
[11] *Id.*, p. 406.
[12] *Id.*, pp.390-403.
[13] *Id.*, pp. 416-432.
[14] *Supra.*, Note 1.
[15] Division Docket, pp. 450-468.
[16] *Supra.*, Note 2.
[17] *Rollo*, p. 5.

On February 23, 2012, respondent's Manifestation stating that she is adopting the arguments in her Comment, as part of her Memorandum, was duly noted by the Court *en banc*. On the same date, the case was submitted for decision.

Hence, this decision.

## ISSUE

Petitioner submits that the assailed Resolutions, which dismissed the petition, are erroneous based on the following grounds:

1. The Petition for Review was filed within the period prescribed by law. Petitioner has basis to rely on the law as it has been legally and jurisprudentially understood at the time of the filing of its claim for refund;

2. The case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[18] effectively grants Respondent unbridled discretion to deprive a taxpayer of the right to seek judicial redress;

3. The *Aichi* case could not have validly overturned the well-settled rule on periods for filing VAT claims set forth in the case *of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue ( "Atlas")*[19] without violating the constitutional mandate that no doctrine or principle laid down by the Supreme Court may be reversed or modified except by the Supreme Court sitting *En Banc*;

4. The mandatory observance of the 120-day rule should only be applied prospectively;

5. The CTA-Division erred in disregarding the mandated applicability of the two-year prescriptive period to Petitioner's claim for VAT refund in light of the clear legislative policy and history as well as judicial pronouncements to have such period prevail over the 120/30-day period stated under Section 112 (D) of the 1997 Tax Code.

The sole issue, therefore, is whether the dismissal of the petition is proper. *Jr*

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[18] G.R. No. 184823, October 6, 2010 ("Aichi" case).
[19] G.R. No. 141104 & 148763, June 8, 2007.

## THIS COURT'S RULING

The petition is denied.

Only the timeliness of the judicial claim for refund is assailed in this petition. There is no dispute regarding the prescriptive period for filing the administrative claim for refund.

It is noteworthy to mention that the administrative claim and the judicial claim for the refund of its unutilized input VAT for taxable year 2007 was filed on February 20, 2009 and March 30, 2009, respectively.

As correctly found by the CTA First Division, petitioner failed to wait for the respondent's grant or denial of the claim, or even the lapse of the 120-day period provided by the NIRC. We agree that the judicial claim was filed on the 38th day after petitioner's filing of the administrative claim for refund. Pertinent portion of the May 19, 2011 Resolution provides:

> As culled from the records, petitioner timely filed its administrative claim for the refund of its unutilized input VAT for taxable year 2007 on 20 February 2009, however, it failed to wait for the respondent CIR's grant or denial of the claim, or the lapse of the 120-day period provided by the NIRC, before elevating the claim to this Court. The Petition for Review was filed on 30 March 2009, merely thirty eight days after petitioner's filing of the administrative case for refund.

Concisely, petitioner argues that its petition for review or the judicial claim is filed within the period prescribed by law following the doctrine laid down in *Atlas* case.

Petitioner's argument is untenable.

After a careful review of the assailed Resolutions as well as the grounds raised by petitioner and the arguments of both parties in the instant case, for lack of jurisdiction, We agree that the judicial claim is premature which warrants the dismissal of the petition.

*CTA has no jurisdiction when*
*the judicial claim for refund/credit*
*of input VAT was prematurely filed*

In a long line of cases[20], the CTA *en banc* consistently followed the doctrine laid down by the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* [21] which categorically states that "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."

Pertinent to this is Section 112 (C) of the 1997 NIRC, as amended, which states:

> 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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[20] *Philex Mining Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 787 (CTA Case Nos. 7933 & 7968), September 24, 2012; *Mirant (Navotas II) Corporation vs. Commissioner of Internal Revenue,* CTA EB No. 783 (CTA Case No. 7619), July 18, 2012; *Cargill Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 779 (CTA Case Nos. 6714 & 7262), June 18, 2012; *Third Millennium Oil Mills, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 729 (CTA Case No. 7583), June 7, 2012; *Philex Mining Corporation vs. Commissioner of Internal Revenue*, CTA EB No.790 (CTA Case No. 8003), May 14, 2012; *Hedcor Sibulan, Inc. vs. Commissioner of Internal Revenue*, CTA EB Case No. 774 (CTA Case No. 8125), March 14, 2012; *Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 704 (CTA Case No. 8052), February 27, 2012; *CBK Power Company Limited vs. Commissioner of Internal Revenue*, CTA EB No. 760 (CTA Case No. 7887), February 1, 2012; *CE Cebu Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 741(CTA Case No. 7395), January 12, 2012; *Sitel Philippines Corporation (formerly Clientlogic Philippines, Inc. ) vs. Commissioner of Internal Revenue*, CTA EB No. 668 (CTA Case No. 7623), January 6, 2012; *Sitel Philippines Corporation (formerly Clientlogic Philippines, Inc. ) vs. Commissioner of Internal Revenue*, CTA EB No. 644 (CTA Case No. 7423),November 11, 2011; *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 656 (CTA Case No. 7769), October 19, 2011; *Commissioner of Internal Revenue vs. CBK Power Company Limited*, CTA EB Case No. 639 (CTA Case No. 7220), July 20, 2011; *UCPB Properties, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 645 (CTA Case Nos. 6543 & 6589); *Toledo Power Company vs. Commissioner of Internal Revenue*, CTA EB No. 708 (CTA Case Nos. 7233 and 7294); *Kepco Ilijan Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 611 (CTA Case No. 6682), June 13, 2011; *Commissioner of Internal Revenue vs. Taganito Mining Corporation*, CTA EB Case No. 559 (CTA Case No. 6867), April 18, 2011; and *Miramar Fish Company, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 627 (CTA Case No. 7466), February 15, 2011.

[21] 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.

In the *Aichi* case, the Supreme Court emphasized that Section 112 (D) [now Sec. 112 (C)][22] of the NIRC provides for a specific period of 30 days within which a taxpayer should appeal the decision or inaction of the Commissioner of Internal Revenue (CIR). The 120-day period is crucial in filing such appeal. Pertinent portions of the *Aichi* case state:

> xxx xxx xxx
>
> 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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> xxx xxx xxx
>
> 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. *(Underlines Supplied).*

[22] As amended by Republic Act 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" which was enforced on November 1, 2005.

Based on the foregoing, for failure to comply with 120-30 day period provided in Sec. 112 (C) of the 1997 NIRC, as amended, no jurisdiction was acquired by the Court as held in the *Aichi* case.

*Interpretation of a law by the Court constitutes part of that law from the date it was originally passed*

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

In *Accenture, Inc. vs. Commissioner of Internal Revenue*[23], the Supreme Court clearly stated that, "It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect."

Considering that the law takes effect from the time of its effectivity and not from the time of the promulgation of a decision applying the law, the *Aichi* doctrine (which merely interprets the NIRC of 1997 which took effect on January 1, 1998) applies to petitioner's judicial claim for refund of unutilized input VAT attributable to zero-rated sales for the four quarters of calendar 2007. Thus, the *Aichi* case, not the *Atlas* case, applies in this case as correctly discussed by the CTA First Division. Pertinent portions of the assailed May 19, 2011 Resolution provide:

> Clearly, ***Atlas*** was decided using as basis the NIRC of 1977. As the old tax code did not contain a provision similar to Section 112 (C), as amended, of the 1997 NIRC, which provides for the 120-day period for the CIR to decide on a refund claim involving unutilized input VAT, the Supreme Court in the said ***Atlas*** case, applied Section 230, correlated to Section 106, of the 1977 NIRC concerning the judicial proceedings of a refund application for input VAT. Consequently, the Supreme Court ruled that **even the judicial appeal of an application for refund or tax credit of input VAT** should be filed before the expiration of two years from the date of payment of the tax or penalty.
>
> Given that ***Aichi*** is a judicial interpretation of the subsections of Section 112 of the 1997 NIRC, this Court thus

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[23] G.R. No.190102, July 11, 2012 citing *Senarillos v. Hermosisima*, 100 Phil. 501 (1956).

not belabor further the point that ***Aichi*** did not reverse ***Atlas***, a Decision by the Supreme Court interpreting provisions of the 1977 NIRC. *(Underline Supplied; Citations Omitted.)*

Based on the foregoing, We emphasize that the premature filing of a claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the court, thus, the dismissal of the Petition for Review (CTA Case No. 7891) by the CTA First Division is correct for premature filing.

**WHEREFORE,** premises considered, the Petition for Review *en banc* is **DENIED**. Accordingly, the Resolutions of the CTA First Division dated May 19, 2011 and September 12, 2011 are **AFFIRMED** on the ground of premature filing.

**SO ORDERED.**

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

**WE CONCUR:**

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

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

(I concur as to the result.)
**ESPERANZA R. FABON- VICTORINO**
Associate Justice

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

(I concur in the result.)
**AMELIA R. COTANGCO- MANALASTAS**
Associate Justice

# CERTIFICATION

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

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

REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
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*En Banc*

**CE CASECNAN WATER AND ENERGY COMPANY, INC.,**
Petitioner,

- *versus* -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB CASE NO. 836**
(CTA Case No. 7891)

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

**Promulgated :**

JAN 28 2013 Cuapphiario
8:00 p.m.

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# *DISSENTING OPINION*

*BAUTISTA, J.*

The majority of the Court sitting *En Banc* ruled that pursuant to Section 112 of the 1997 National Internal Revenue Code, as amended, a taxpayer-claimant has two (2) years after the close of the taxable quarter when the pertinent sales were made, within which to apply with the Commissioner of Internal Revenue a claim for refund or tax credit of creditable input tax. The latter, on the other hand, has one hundred and twenty (120) days from the filing of such administrative claim to grant or deny the same pursuant to Section 112(C) of the same Code.[1] And upon denial or expiration of the allowable period of one hundred twenty (120) days without any action on the part of the Commissioner, the taxpayer-claimant had only thirty (30) days to challenge the adverse decision or elevate its claim with this Court. Otherwise, the Court will be deprived of jurisdiction to entertain the case.

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

However, I maintain that the factual milieu present in the case at bench supports the application of the *then prevailing jurisprudence at the time the claims were made.*

I find the ruling in the case of *Chavez v. NHA*,[2] as aptly discussed by the Supreme Court *En Banc*, instructive:

> The "operative fact" doctrine is embodied in *De Agbayani v. Court of Appeals*, wherein it is stated that a legislative or executive act, prior to its being declared as unconstitutional by the courts, is valid and must be complied with, thus:
>
>> As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.
>>
>> Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such

[2] G.R. No. 164527, August 15, 2007.

legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. **This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.**

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. **The past cannot always be erased by a new judicial declaration.** The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* and the decision in *Manila Motor Co., Inc. v. Flores*. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.*[3]

This doctrine was reiterated in the more recent case of *City of Makati v. Civil Service Commission*,[4] wherein we ruled that:

[3] No. L-23127, April 29, 1971, 38 SCRA 429, 434-435; *cited in supra, note 2.*
[4] G.R. No. 131392, February 6, 2002, 376 SCRA 248, 257; *cited in supra, note 2.*

> Moreover, we certainly cannot nullify the City Government's order of suspension, as we have no reason to do so, much less retroactively apply such nullification to deprive private respondent of a compelling and valid reason for not filing the leave application. **For as we have held, a void act though in law a mere scrap of paper nonetheless confers legitimacy upon past acts or omissions done in reliance thereof.** Consequently, the existence of a statute or executive order prior to its being adjudged void is an operative fact to which legal consequences are attached. It would indeed be ghastly unfair to prevent private respondent from relying upon the order of suspension in lieu of a formal leave application.

The principle was further explicated in the case of *Rieta v. People of the Philippines*,[5] thus:

> In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter Bank*[6] to wit:
>
>> The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. x x x It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to [the determination of its

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[5] G.R. No. 147817, August 12, 2004, *citing Tañada v. Tuvera, April 24, 1985, 136 SCRA 27; cited in supra, note 2.*
[6] 308 US 371, 374 [1940]; *cited in supra, note 5.*

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

Therefore, while rulings of the Supreme Court are laws in their own right for they interpret what the law says or mean,[7] and that pursuant to Article 8 of the Civil Code which expressly provides that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines"; nonetheless, the same is still subject to Article 4 of the same Code which states that "laws shall have no retroactive effect unless the contrary is provided." It follows then that the principle of prospectivity of statutes, original or amendatory, shall also apply to judicial decisions, which although, in themselves, are not laws are nevertheless evidence of what the law means.[8]

Guided by the principle that rulings of the court modifying or reversing a doctrine or principle, operates prospectively, and rights

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[7] Philippine Veterans Affairs Office *v.* Segundo, G.R. No. L-51570, August 15, 1988, 164 SCRA 365.
[8] Filoteo, Jr. *v.* Sandiganbayan, G.R. No. 79543, October 16, 1996, 263 SCRA 222.

acquired under such doctrine or principle prior to its modification or reversal may not be affected thereby,[9] I hereby find the administrative and judicial claims filed on February 20, 2009, and March 30, 2009, respectively, made within the required period at the time the actions were performed - from the close of the relevant quarter,[10] and not within thirty (30) days from receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.[11]

For emphasis, the latter ruling was clearly promulgated *after* the taxpayer-claimant had faithfully relied and complied with the then Court's ruling at the time it filed its claim.

Accordingly, I vote that the Petition for Review be **GRANTED**. The Petition for Review, docketed as CTA Case No. 7891 should be **REINSTATED**, and be **GIVEN ITS DUE COURSE.**

**LOVELL R. BAUTISTA**
Associate Justice

[9] People *v.* Jabinal, G.R. No. 30061, February 27, 1974, 55 SCRA 607.
[10] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[11] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.