Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

SITEL PHILIPPINES CORPORATION (formerly CLIENTLOGIC PHILIPPINES, INC.) Petitioner,	**CTA EB CASE NO. 668** (CTA Case No. 7623) For: Refund or Issuance of a Tax Credit Certificate
-versus-	Present: ACOSTA, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA PALANCA-ENRIQUEZ FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 06 2012 ArtApolinario 1:30 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Section 18 of Republic Act 1125[1], as amended and Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised

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[1] An Act Creating the Court of Tax Appeals

Rules of the Court of Tax Appeals (RRCTA)[2], as amended, of the Decision[3] dated March 3, 2010, rendered by the Former Second Division[4] of this Court in CTA Case No. 7623, and its Amended Decision[5] dated July 23, 2010.

Petitioner Sitel Phillippines Corporation assailed both the aforesaid Decision and Amended Decision, the dispositive portions of which, respectively, read as follows:

Decision dated March 3, 2010:

> "WHEREFORE, premises considered, the present Petition for Review is hereby PARTLY GRANTED. Accordingly, respondent Commissioner of Internal Revenue is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner Sitel Philippines Corporation in the reduced amount of

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[2] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[3] En banc Docket, pp. 7-38.

[4] Penned by Associate Justice Olga Palanca-Enriquez, concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Erlinda P. Uy.

[5] En banc Docket, pp. 40-50.

P917,812.29, representing input VAT paid on capital goods purchased for the second quarter of 2005.

SO ORDERED."

Amended Decision dated July 23, 2010:

"WHEREFORE, premises considered, petitioner Sitel's 'Motion for Partial Reconsideration' is hereby PARTLY GRANTED. Accordingly, the dispositive portion of our Decision dated March 3, 2010 is hereby amended to read, as follows:

> 'WHEREFORE, premises considered, the present Petition for Review is hereby PARTLY GRANTED. Accordingly, respondent Commissioner of Internal Revenue is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner Sitel Philippines Corporation in the reduced amount of ONE MILLION SIX HUNDRED THIRTY FIVE THOUSAND SIXTY EIGHT AND 10/100 PESOS (P1,635,068.10), representing input VAT paid on capital goods purchased for the 2nd quarter of 2005 to October 31, 2005.
>
> SO ORDERED.'

SO ORDERED."

The antecedent facts are undisputed:

"8. Petitioner is engaged in the business of providing call center services from the Philippines to domestic and offshore businesses including, but not limited to, tactical telemarketing campaigns and programs and customer relationship management services.

9. Petitioner was formerly known as 'Contact World, Inc.' prior to the change in its corporate name to 'ClientLogic Philippines, Inc.' effective February 19, 2004 as evidenced by the Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission ('SEC'). On June 15, 2007, the SEC approved petitioner's application for change of name to 'Sitel Philippines Corporation' as evidenced by the Certificate of Filing of Amended Articles of Incorporation of even date.

10. Petitioner is registered with the Bureau of Internal Revenue ('BIR') as a VAT taxpayer with TIN/VAT Registration No. 208-780-708 effective December 14, 2000 and with BIR Certificate of Registration No. OCN 3RC0000244761 issued by BIR Revenue District Office No. 43 (Pasig) under the name Clientlogic Philippines, Inc., which was subsequently amended to Sitel Philippines Corporation under BIR Certificate of Registration No. OCN 3RC0000371144.

11. Petitioner is also registered with the Board of Investments as a new information technology service firm in the field of call center on pioneer status with Board of Investments Certificate of Registration No. 2001-091.

12. For the period from January 1, 2005 to December 31, 2005, petitioner filed with the BIR its Quarterly VAT Returns as follows:

Period Covered	Date filed
1st Quarter 2005	April 25, 2005
2nd Quarter 2005	July 22, 2005
3rd Quarter 2005	October 26, 2005
4th Quarter 2005	January 25, 2006

13. An Amended Quarterly VAT Return for the 1st quarter of 2005 was filed by petitioner on March 21, 2006, while the amended Quarterly VAT Returns for the 2nd, 3rd and 4th quarters of 2005 were filed on July 31, 2006.

14. The amended Quarterly VAT Return for the 1st quarter of 2006 filed by petitioner on July 31, 2006 did not carry over the amount subject of the herein claim for refund or tax credit.

15. On March 30, 2007, petitioner timely filed separate formal claims for refund or issuances of tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its unutilized input Vat arising from domestic purchases of goods and services attributable to zero-rated transactions and purchases/importations of capital goods for the 1st, 2nd, 3rd and 4th quarters of 2005, respectively, in the aggregate amount of P12,892,120.42.

16. At the time of the filing of this petition, respondent has not finally acted upon petitioner's claim for refund or tax credit."[6]

[6] Ibid. p 9-10. (As narrated by this Court's Division, based on the stipulation of the parties.)

> "In his answer, by way of special and affirmative defenses, respondent alleged that the instant Petition for Review was prematurely filed as petitioner has not yet exhausted the administrative remedies prescribed by law and jurisprudence on the actions of this nature as no decision has yet been rendered by the respondent; and in an action for refund, it is the taxpayer who has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action.
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> Petitioner presented Roela Fallar, the Financial Controller of petitioner, and Mary Ann C. Capuchino, the duly commissioned Independent Certified Public Accountant, as witnesses, and documentary evidence, xxx.
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> On the other hand, for the repeated failure of respondent's counsel to present evidence, upon manifestation of petitioner, respondent was deemed to have waived the right to present his evidence.
>
> Thereafter, petitioner was granted thirty (30) days from February 23, 2009 within which to file its memorandum, while respondent was granted (20) days from notice. Petitioner having filed its "Memorandum", without respondent's memorandum, the case was submitted for decision on May 25, 2009."[7]

On March 3, 2010 this Court's former Second Division rendered a Decision and partially granted petitioner's claim in the reduced amount of P917,812.29 out of the total claimed amount of P12,892,120.42. Petitioner moved for partial reconsideration which in an Amended Decision dated July 23, 2010 was partially granted, respondent was ordered to refund or issue a tax credit certificate in the amount of P1,635,068.10.

Dissatisfied, petitioner filed this case before this Court En Banc and submits the following issues to be resolved:

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[7] Id. (As narrated by this Court's Division.)

"a. Whether the claim for refund of input VAT for the first quarter of 2005 in the total amount of P3,767,206.89 is barred by prescription.

b. Whether the judicial interpretation laid down in the Burmeister case is applicable in this claim for refund of input VAT for 2005.

c. Whether petitioner presented sufficient evidence to prove its zero-rated sales under Section 108(b)(2) of the 1997 Tax Code prior to RA No. 9337."[8]

In resolving the case, the pivotal issue is whether the case was filed within the prescriptive period.

Thus, we are tasked to determine the application of the decisions of the Supreme Court in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue[9] *(Atlas Case)* promulgated on June 8, 2007 and the case of Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation[10] *(Mirant Case)*, promulgated on September 12, 2008.

In the Atlas Case, the Supreme Court held that *"xxx, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according*

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[8] Ibid. p. 267.
[9] G.R. Nos. 141104 & 1487636, June 8, 2007
[10] G.R. No. 172129, September 12, 2008

to the law then existing, should be made within 20 days from the end of each quarter"; while in the Mirant Case, the Supreme Court held that the two-year prescriptive period for filing a claim for tax refund under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended, applies only to erroneous payments while Section 112(A) specifically governs a claim for tax refund of unutilized input value-added tax (VAT) payments arising from zero-rated sales- that ***"[Section 112(A) of the 1997 NIRC, as amended][11] clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not".***

Petitioner asserts that its claim for a refund of input vat for the first quarter is not barred by prescription and argues[12] as follows:

1. The retroactive application of the judicial interpretation in the Mirant Case will result in great injustice and inequity.

2. In filing the instant petition, petitioner relied in good faith upon the prevailing judicial interpretation under the Atlas Case that the two-year prescriptive period is reckoned from the filing of the quarterly Vat return.

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[11] Emphasis supplied.
[12] En Banc Docket, p.268.

3. The long-held interpretation of the two-year prescriptive period discussed in the Atlas case cannot be abrogated by the Mirant case, which was decided by the Supreme Court only in Division.

In sum, petitioner posits that prior to September 12, 2008 (promulgation of Mirant Case) or at the time of the filing of the petition (docketed in the Division level), the prevailing doctrine was the Atlas Case, reconciling the provisions of Section 112 (A) and Section 229 of the Tax Code. Petitioner avers that it relied in good faith in the Atlas Case and in support thereof cites several decisions[13] of this Court applying the Atlas Case, thus, the inequity attributed in the alleged retroactive application of the Mirant Case. Likewise, petitioner contends that the Atlas case which was decided by a Division cannot be overturned by the Mirant case which was also decided by a Division considering that no doctrine of law laid down by the Supreme Court in a decision rendered En Banc or in a Division may be modified or reversed except by the court sitting En Banc.

We are not persuaded.

The important dates which gave rise to the filing of a petition for review before this Court are as follows:

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[13] Ibid. pp. 283-289

1. Petitioner filed its Quarterly VAT Returns for the taxable year 2005 on-

Period Covered	End of taxable Qtr.	Date filed
1st Quarter 2005	March 31, 2005	April 25, 2005
2nd Quarter 2005	June 30, 2005	July 22, 2005
3rd Quarter 2005	Sept. 30, 2005	October 26, 2005
4th Quarter 2005	Dec. 31, 2005	January 25, 2006

2. On March 30, 2007, petitioner filed an application for the issuance of a tax credit or tax refund of its unutilized input VAT arising from domestic purchases of goods and services attributable to zero-rated transactions and purchases/importations of capital goods for the 1st, 2nd, 3rd and 4th quarters of 2005, respectively, in the aggregate amount of P12,892,120.42.

3. On April 19, 2007, petitioner filed a Petition for Review and it was raffled to this Court's Division docketed as CTA Case No. 7623.

As to the applicable law, paragraphs (A) and (C), Section 112 of the NIRC, as amended, read:

> "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: Provided, finally, that for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sale.

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(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 Subsections (A).

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)

Based on the foregoing, petitioner's application for the issuance of a tax credit or refund of creditable input tax for the four (4) quarters of the taxable year 2005 on March 30, 2007 was filed within the two (2) year prescriptive period[14], pursuant to Section 112 (A) of the 1997 NIRC,

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Period Covered	End of taxable Qtr.	2 yr period	Claim for tax refund/ Tax credit*	120th day	30 day period	Petition for Review was filed**
1st Quarter	March 31, 2005	March 31,2007	March 30,2007	July 29, 2007	Aug. 26, 2007	April 19, 2007
2nd Quarter	June 30, 2005	June 30, 2007	March 30,2007	July 29, 2007	Aug. 26, 2007	April 19, 2007
3rd Quarter	Sept. 30, 2005	Sept. 30, 2007	March 30,2007	July 29, 2007	Aug. 26, 2007	April 19, 2007
4th Quarter	Dec. 31, 2005	Dec. 31, 2007	March 30,2007	July 29, 2007	Aug. 26, 2007	April 19, 2007

as amended. However, petitioner filed the Petition for Review docketed as CTA Case No. 7623, on April 19, 2007, or 20 days after the filing of its application for a tax refund or tax credit, an obvious non-compliance of the 120-30 day period under Section 112 (C) of the 1997 NIRC, as amended. Corollary, non-compliance of this 120-30 day period should have warranted the dismissal of the petition before the Former Second Division of this Court since no jurisdiction was acquired pursuant to the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.[15](herein referred as the Aichi Case).

In the Aichi Case, reiterating the "Mirant Case"[16], the Supreme Court categorically held that unutilized input VAT must be claimed within two (2) years after the close of the taxable quarter when the sales were made and expound that the 120-30 day period is crucial in filing an appeal before this Court. The pertinent portion thereof states:

> "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

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* Petitioner's formal claims for refund or issuances of tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its unutilized input Vat arising from domestic purchases of goods and services attributable to zero-rated transactions and purchases/importations of capital goods was filed within the two year period

** It was filed before the lapse of the 120 day period.

[15] G.R. No. 184823, October 6, 2010.

[16] CIR vs. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2008

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.

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.

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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 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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> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
>
> In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."

Thus, it is very clear that in claiming a tax refund or tax credit under Section 112 of the NIRC of 1997, as amended, the taxpayer should apply for the refund/credit of unutilized input VAT within two (2) years after the close of the taxable quarter when the sales were made. Thereafter, the CIR has 120 days, from the date of the submission of the complete documents within which to grant or deny the claim. If the CIR during the 120-day period decides or after the 120-day period fails to act on the application for a tax refund/credit, the remedy of the taxpayer is to appeal the decision or inaction of the CIR to this Court within 30 days. Therefore, violation of Section 112(D) of the NIRC [Now Section 112 (C) of the 1997 NIRC, as amended] would lead to the denial of petitioner's appeal or petition, notwithstanding the timely filing of the application for a tax refund or tax credit, as there is no decision ruling or inaction of the CIR for this Court "to review".

The Court of Tax Appeals is a court of special jurisdiction and it can only take cognizance of such matters as are clearly within its jurisdiction.[17] In claiming a tax refund, pursuant to Section 7 of Republic Act (R.A.) No. 9282, amending R.A. No. 1125, otherwise known as the *Law Creating the Court of Tax Appeals*[18] *and* Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals [19],

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[17] Rizal Commercial Banking Corp. vs. CIR, G.R. No. 168498, April 24, 2007, 522 SCRA 144; CIR vs. Josefina Leal, G.R. No. 113459, November 18, 2002.

[18] 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;
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> > (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;
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[19] RULE 4
Jurisdiction of the Court

decisions/rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal[20]. Precisely, this Court has exclusive appellate jurisdiction

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SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

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[20] Lucas G. Adamson, Therese June D. Adamson, and Sara S. De Los Reyes, in their capacities as President, Treasurer and Secretary of Adamson Management Corporation

thereon and in relation to Section 112 of the 1997 NIRC, this Court's jurisdiction is not concurrent with that of the respondent CIR.

Jurisdiction is defined as the power and authority of a court to hear, try and decide a case. [21] Concomitantly, decisions, rulings or inaction of the Commissioner of Internal Revenue in relation to section 112 of the 1997 NIRC are non sine qua non requirement before this Court's Division can acquire jurisdiction to entertain an appeal[22].

This Court being a Court of limited jurisdiction, its jurisdiction to take cognizance of a case (jurisdictions over the subject matter, among others, decisions, rulings or inaction of the Commissioner of Internal Revenue in cases involving refunds) is conferred by law, it cannot be waived by respondent CIR, and it may also be raised at any stage of the proceedings[23].

To reiterate, the instant petition docketed as CTA Case No. 7623 and which was raffled before this Court's Former Second Division was

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vs. Court of Appeals and Liwayway Vinzons-Chato, in her capacity as Commissioner of the Bureau of Internal Revenue, G.R. No. 120935 &G.R. No. 124557. May 21, 2009.

[21] Veneracion v. Mancilla, G.R. No. 158238, July 20, 2006, 495 SCRA 712, 726; Platinum Tours and Travel, Inc. v. Panlilio, G.R. No. 133365, September 16, 2003, 411 SCRA 142, 146; United BF Homeowner's Association v. BF Homes, Inc., G.R. No. 124873, July 14, 1999, 310 SCRA 304, 317; Zamora v. CA, G.R. No. 78206, March 19, 1990, 183 SCRA 279, 283.
[22] Rizal Commercial Banking Corp. vs. CIR, G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[23] Dy v. NLRC, G.R. No. L-68544, October 27, 1986, 145 SCRA 211, 220 citing Calimlim v. Ramirez, G.R. No. L-34362, November 19, 1982, 118 SCRA 399.

prematurely filed. Considering that there was no decision, ruling or inaction of the Commissioner of Internal Revenue, said petition should be dismissed on the ground that this Court's former Second Division failed to acquire jurisdiction to entertain the case in accordance with the Aichi Case.

As to the application of the Atlas Case and the Mirant Case, suffice it to say that the Mirant Case did not overturn the Atlas Case. Both cases involve the application of two (2) Tax Codes. The Mirant Case is an interpretation of the 1997 NIRC. The Atlas Case is an interpretation of the 1977 NIRC.

We find the discussion of this Court's Former Second Division in the Amended Decision to be appropriate and correct, to wit:

> "It must be emphasized that in the Mirant Case, promulgated on September 12, 2008, the Supreme Court only applied the law, specifically, Section 112(A) of the NIRC of 1997, as amended, which took effect on January 1, 1998.xxx.
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> Petitioner's contention that Section 112(A) of the NIRC of 1997, as amended, should be construed in conjunction with Sections 204(C) and 229 of the same code, which allows claims for refund to be made within two (2) years after payment of the tax, is bereft of merit. The Supreme Court expressly ruled in the Mirant case that the provisions of Sections 204 (C) and 229 of the NIRC of 1997, as amended, reckoning the two-year prescriptive period from the date of the payment of the tax or penalty, apply only to instances of erroneous payment or illegal collection of internal revenue taxes. On the other hand, Section 112 of the NIRC of 1997, as amended, specifically, applies to claims for refund or tax credit of input VAT.

> Considering that the rule regarding the period to file claims for refund or tax credit certificate of input tax, which is "two (2) years after the close of the taxable quarter", has been effective and existing as early as January 1, 1998, the Mirant Case, therefore, did not overturn any existing law. The ruling in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 524 SCRA 73, counting the two-year prescriptive period not from the close of the quarter when the zero-rated sales were made, but from the date of filing of the quarterly VAT return and payment of the tax due 20 days thereafter, invoked by petitioner, was an interpretation of the 1977 Tax Code, and not of the NIRC of 1997, as amended.
>
> Petitioner's contention that new doctrines enunciated by Courts cannot be applied retroactively if it impairs vested rights, is likewise devoid of merit. The ruling in the Mirant Case, which held that the two-year period for filing the claim for input Vat refund or tax credit certificate is reckoned from the close of the taxable quarter when the relevant sales pertaining to input VAT were made, has already been enforced as early as January 1, 1998, upon the effectivity of the NIRC of 1997, as amended. Settled is the rule that judicial interpretation becomes part of the law as of the date that law was originally passed since in this case, such construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. Such judicial doctrine does not amount to the passage of a new law, but consist merely of a construction or interpretation of a pre-existing one, and that is precisely the situation obtaining in this case (Senarillos vs. Hermosisima, 100 Phil. 501)"

Indeed, the Atlas Case was an interpretation of the 1977 NIRC, prior to its amendment by Republic Act (Rep. Act) No. 7716[24] which took effect on January 1, 1996 while the Mirant Case was that of the 1997 NIRC or the application and interpretation of the amendatory provisions of Rep. Act No. 8424 otherwise known as Tax Reform Act of 1997 which took effect on 1 January 1998.

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[24] An Act Restructuring The Value-Added Tax (VAT) System, Widening Its Tax Base And Enhancing Its Administration, and For These Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as Amended, and For Other Purposes.

Significantly, when Rep. Act No. 7716 and Rep. Act No. 8424 were enacted, specifically in a claim for refund and tax credit of input tax, the legislature had expressly provided the period within which to appeal to this Court- which is thirty (30) days from the receipt of the decision denying the taxpayer's claim or after the expiration of a given period (60 days under Rep. Act No. 7716 and now120 days as amended by Rep. Act No. 8424). Accordingly the Atlas Case which harmonized Section 106 with the two-year prescriptive period for instituting a suit or proceeding for recovery of tax erroneously or illegally paid under the Tax Code of 1977 is no longer necessary and applicable due to the legislative intent of Rep. Act No. 7716 and Rep. Act No. 8424 providing the taxpayer 30 days to appeal to this court after receipt of the decision denying the claim or after the lapse of 120 days as to the inaction of the CIR.

Consequently, having discussed the applicability of the ruling in the Mirant Case which was reiterated in the Aichi Case and the lack of jurisdiction of this Court's former Second Division, we deemed it not necessary to discuss the other issues raised by petitioner for being moot.

WHEREFORE premises considered, the instant petition for review docketed as CTA EB No. 668 is **DENIED.** The Decision of the former Second Division of this Court in CTA Case No. 7623, dated March 3, 2010 and its Amended Decision, dated July 23, 2010, are hereby **REVERSED** and **SET ASIDE.** Accordingly, CTA Case No. 7623 is hereby **DISMISSED** for having been prematurely filed. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

(with Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

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

(with Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

See attached Dissenting Concurring Opinion

OLGA PALANCA-ENRIQUEZ
Associate Justice

(concurs with the Concurring and Dissenting Opinion of PJ Acosta)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(concurs with the Concurring and Dissenting Opinion of PJ Acosta)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

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

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SITEL PHILIPPINES CORPORATION (formerly CLIENTLOGIC PHILIPPINES, INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 668
(CTA Case No. 7623)

Present:

ACOSTA, *PJ.*
CASTAÑEDA, Jr.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JAN 06 2012

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CONCURRING AND DISSENTING OPINION

Acosta, PJ:

Although I concur in the final disposition of the case, I respectfully dissent to the ground relied upon by the majority Decision, penned by the Honorable Justice Cielito N. Mindaro-Grulla, in denying the instant petition for review that consequently reversed and set aside the Court in Division's Decision and Amended Decision dated 03 March 2010 and 23 July 2010, respectively.

With all due respect to my esteemed colleagues, I cannot subscribe to their position that the Court has no jurisdiction over a *prematurely filed judicial claim* for a refund of unutilized input Value Added Tax (VAT) attributable to zero-rated or effectively zero-rated sales under Section 112 of the National Internal Revenue Code

(NIRC). It is my humble opinion that this Court has jurisdiction to entertain such a refund case for excess/unutilized input VAT albeit prematurely elevated from the administrative level.

The majority subscribes to the view that the absence of a decision from the Commissioner of Internal Revenue (CIR) prior to the lapse of the one hundred twenty (120) days to decide the claim in the administrative level, pursuant to Section 112 (C), as amended, of the NIRC, does not constitute *inaction on the part the CIR* that will allow the claim to be elevated to this Court in accordance with Republic Act No. 1125[1], as amended by Republic Act No. 9282, and the 2005 Rules of the Court of Tax Appeals, as amended. This view of the majority thus leads to the conclusion that the Court does not have jurisdiction over a prematurely filed judicial refund claim under Section 112 of the NIRC, which is accordingly in line with the pronouncement of the Honorable Supreme Court in the case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*** (GR No. 184823, 06 October 2010).

I beg to disagree.

The Petition for Review before the Court in Division was filed on 19 April 2007, twenty days after its timely administrative claim with the Bureau of Internal Revenue (BIR) on 30 March 2007. From the bare facts, it is evident that the judicial claim was filed before the issuance of an adverse decision by the BIR, or the lapse of the one hundred twenty (120) day period mandated by Section 112 (C), as amended, of the NIRC, which covers refund claims of this nature, *viz*:

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[1] An Act Creating the Court of Tax Appeals, 16 June 1954.

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

...(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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(Underscoring supplied.)

In not joining the majority in its disposition of the case, I advance the view that the failure of petitioner to comply with the above subsection does not rob this Court of jurisdiction over the claim for refund as such merely constitutes a violation of the doctrine of exhaustion of administrative remedies.

The rule on exhaustion of administrative remedies before resorting to the courts means that there should be an orderly procedure which favors a preliminary administrative sifting process, particularly with respect to matters peculiar within the competence of the administrative agency, avoidance of interference with functions of such administrative agency by withholding judicial action until the administrative process has run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance.[2] A party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to

[2] *Abe-Abe vs. Manta*, L-4827, 31 May 1979.

give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to court action.[3]

Unlike a lack of jurisdiction, the non-exhaustion of administrative remedies is *not at all times fatal* to the claimant.

In the case of *Castro vs. Gloria*, GR No. 132174, 20 August 2001, the Supreme Court, citing the case of *Vidad vs. RTC of Negros Oriental*, Branch 42[4], declared that—

> Non-exhaustion of administrative remedies implies absence of cause of action. Where a remedy is available within the administrative machinery, this should be resorted to before recourse can be made to the courts. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. (Underscoring supplied.)

Therefore the failure to exhaust available administrative remedies will not rob the courts of its jurisdiction over a case as the same is tantamount only to a judicial petition *lacking a cause of action*. In our jurisdiction, the defense of lack of cause of action is not jurisdictional in nature and may be deemed waived if not timely raised in a Motion to Dismiss or in the Answer.[5]

In the case of *Iloilo City Zoning Board of Adjustment and Appeals vs. Gegato Abecia Funeral Homes, Inc.*, GR No. 157118, 08 December 2003, the Supreme Court established that the premature invocation of the court's intervention is only fatal to *one's cause of action*. The case though is susceptible of dismissal for such failure to state a cause of action absent any finding of waiver or estoppel, *viz*:

> The settled rule is that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of

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[3] *Commissioner of Internal Revenue vs. Rosemarie Acosta*, GR No. 154068, 03 August 2007.
[4] 227 SCRA 221.
[5] Sec. 1, Rule 9 of the Rules of Court.

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> administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the 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 failure to state a cause of action. This doctrine of exhaustion of administrative remedies is not without practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[6]

In disregarding ***Aichi***'s, *supra*, pronouncement on the Court's lack of jurisdiction based on the ground of a premature filing of a judicial claim, I submit and choose to echo past jurisprudence and authority which laid to rest the issue of non-exhaustion of administrative remedies, which, are established doctrines not only in taxation but also in other fields of law. It is my humble opinion that the statement by the Supreme Court in ***Aichi*** that the 'Court has no jurisdiction' is stated in its broadest and generic sense. The Court cannot very well do away with these established doctrines by cutting corners and declaring succinctly that it has no jurisdiction over a case without strict legal basis. In the absence of any waiver or estoppel, a premature recourse to the courts is dismissible. Otherwise, the Court acquires jurisdiction and may properly act on the petition.

Notably, in the instant case, there was the absence of waiver by respondent of the defense of non-exhaustion of administrative remedies or the lack of a cause of

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[6] Citing *Paat v. Court of Appeals*, 334 Phil. 146, 152–153 (1997)

action, as she submitted the said issue in her Special and Administrative Defenses contained in her Answer, *viz*:

> ...(9) The instant Petition for Review was prematurely filed as Petitioner has not exhausted the administrative remedies prescribed by law and jurisprudence on the actions of this nature as no decision has as yet been rendered by the Respondent.

Without touching on this Court's jurisdiction, the premature filing of the Petition for Review exposes it to an attack that it lacks or fails to state a cause of action, which defense is waivable at the election of the opposing party. Upon a finding that there was no waiver of said defense or estoppel, the petition is susceptible of dismissal. This waiver or estoppels from the part of respondent is lacking in the instant case and thus the claim of petitioner should properly be dismissed on the ground that it states no cause of action.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA COTANGCO- MANALASTAS
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SITEL PHILIPPINES CORPORATION (Formerly Clientlogic Philippines, Inc.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 668
(CTA Case No. 7623)

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

Promulgated:
JAN 06 2012 1:30 p.m.

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DISSENTING OPINION

BAUTISTA, J.:

Based on the records of the case, from the period covering January 1, 2005 to December 31, 2005, petitioner filed with the Bureau of Internal Revenue, its value-added tax ("VAT") returns as follows:

PERIOD COVERED	DATE FILED
1st Quarter 2005	April 25, 2005
2nd Quarter 2005	July 22, 2005
3rd Quarter 2005	October 26, 2005
4th Quarter 2005	January 25, 2006

On March 30, 2007, petitioner then filed claims for refund or issuance of tax credit certificate with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its unutilized input VAT arising from domestic purchases of goods and services attributable to zero-rated transactions and purchases/importations of capital goods for the first (1^{st}), second (2^{nd}), third (3^{rd}), and fourth (4^{th}) quarters of the taxable year 2005.

Thereafter, on April 19, 2007, petitioner then filed a Petition for Review, docketed as CTA Case No. 7623, and raffled to the Former Second Division of the Court.

From the foregoing, it can be noted that at that time, the reckoning of the two (2)-year prescriptive period, the then prevailing doctrine advocated in law and jurisprudence, is from the date of filing of the relevant return,[1] and not from the close of the pertinent quarter.[2]

Albeit I agree that the latter 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 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

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[1] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[2] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.

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.[3] Nonetheless, this Court should not decide a case by merely adhering to precedence; idolatrous reverence for precedent, simply as precedent, no longer holds true.[4] Therefore, this Court cannot merely impose a ruling that was yet to be enunciated at the time a claim was lodged in Our forum.

Further, in not a few instances did this Court hold that the use of the word *"may"* in Section 112(D) 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[5] and 229[6] of the 1997 NIRC, as amended.[7]

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[3] 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.*

[4] Philippine Trust Company and Smith, Bell and Co. *v.* Mitchell, 59 Phil. 30, 36.

[5] 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.

[6] 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.

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.[8]

In sum, contrary to the disquisitions made by the Court *En Banc*, I find the Petition for Review filed with the Former Second Division of the Court made within the period provided under the 1997 NIRC, as amended, and therefore, the claimant-taxpayer is entitled to a refund or issuance of a tax credit certificate of unutilized input value-added tax arising from its domestic purchases of goods and services attributable to zero-rated transactions, and purchases /importations of capital goods for the taxable year 2005, subject to verification/substantiation of the amount of the claim.

Accordingly, I vote for the **GRANT** of the Petition for Review, subject to the verification of petitioner's unutilized input value-added tax arising from its domestic purchases of goods and services attributable to zero-rated transactions, and purchases /importations of capital goods for the taxable year 2005.

LOVELL R. BAUTISTA
Associate Justice

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.

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

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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SITEL PHILIPPINES CORPORATION (formerly CLIENTLOGIC PHILIPPINES, INC.), ***Petitioner,*** -versus- COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**C.T.A. EB NO. 668** **(C.T.A. CASE NO. 7623)** Present: ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ. **Promulgated:** JAN 06 2012 [handwritten signature] 1:30 p.m.

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SEPARATE CONCURRING OPINION

PALANCA-ENRIQUEZ, J.:

In our Amended Decision dated July 23, 2010, I partially granted petitioner's claim for refund for taxable year 2005. However, in view of the recent ruling of the Supreme Court in the case *Commissioner of*

[initials]

Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010, which categorically ruled that to apply the two-year prescriptive period to judicial claims would render nugatory *Section 112(C) of the NIRC of 1997, as amended*, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR - within 30 days from the receipt of the decision or the lapse of the 120-day period for the CIR to decide, and that the premature filing of the claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA, I am constrained to change my stand in C.T.A. Case No. 7623, and vote to dismiss the Petition for Review in C.T.A. Case No. 7623 for having been prematurely filed.

Accordingly, I concur with the *ponente*, and vote to deny the Petition for Review filed by petitioner Sitel Philippines Corporation in C.T.A. EB No. 668.

OLGA PALANCA-ENRIQUEZ
Associate Justice