REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE No. 736

(CTA Case No. 7628)

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

Promulgated:

JAN 1 0 2012 ~~Apolinario~~ 2:00 p.m.

X- X

DECISION

Casanova, J.:

This is an appeal to the Court of Tax Appeals (CTA) *En Banc* by way of a verified Petition for Review[1], under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking the reversal of the Decision[2] dated October 19, 2010 (Assailed Decision) and the Resolution[3] dated February 23,

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[1] Petition for Review, CTA En Banc Rollo, pp. 1-46.
[2] Annex "A" to Petition for Review, *Ibid.*, pp. 48-59.
[3] Annex "B" to Petition for Review, *Ibid.*, pp. 60-65.

2011 (Assailed Resolution), both rendered by the CTA Former Second Division.

The facts of the case, as found by the CTA Former Second Division are briefly narrated as follows[4]:

> "Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the 18th Floor Citibank Tower, 8741 Paseo de Roxas, Salcedo Village, Makati City. Petitioner is likewise a Value Added Tax (VAT)-registered taxpayer engaged in the production and sale of electricity (as an independent power producer) and sells electricity solely to the NPC as its only customer.
>
> Respondent is the duly appointed Commissioner of Internal Revenue, vested under appropriate laws with authority to carry out all functions, duties and responsibilities of the said Office, including *inter alia*, the power to decide, approve and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes and holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.
>
> For the period of January to October of the calendar (taxable) year 2005, petitioner incurred expenses representing purchases of goods and services for which it incurred an input VAT in the total amount of P11,262,584.47. The aforementioned expenses represent the costs incurred by petitioner as it produced and sold electricity to the NPC from January 1, 2005 to October 31, 2005.
>
> On 22 December 2004, petitioner filed with respondent an application for zero-rated sales for its sale of electricity for the taxable year 2005, which application was duly approved. On 28 October 2005, petitioner filed with respondent, through Revenue District Office No. 50, the appropriate claim for refund of the input VAT incurred for the first three (3) quarters of calendar (taxable) year 2005. On 07 December 2007, petitioner also filed with respondent, through Revenue District Office No. 50, the appropriate claim for refund of the input VAT incurred for the month of October 2005.
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> Petitioner timely filed with respondent its quarterly VAT returns for the first three (3) quarters of the taxable year 2005 as well as the monthly returns for October of the taxable year 2005.
>
> To date, respondent has not acted on petitioner's claims for refund nor issued a TCC relative to said claims. Hence, this Petition for Review was filed on April 25, 2007.

[4] Decision, CTA En Banc Rollo, pp. 48-59.

In the Answer filed on July 16, 2007, respondent alleged the following Special and Affirmative Defenses:

> '6. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
> 7. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
> 8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
> 9. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the 1997 Tax Code including Revenue Regulations No. 5-87 as amended by Revenue Regulation Nos. 3-88 and 7-95, as amended.
> 10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)**.'

On November 6, 2009, the case was submitted for decision upon petitioner's submission of its Memorandum on November 3, 2009, *sans* respondent's Memorandum.

The issues, as jointly stipulated by the parties, are the following:

> '1. Whether or not petitioner has an unutilized input VAT in the amount of P11,262,584.47 for the year 2005.
> 2. Whether or not petitioner's unutilized input VAT on domestic purchases of goods and services for the year 2005 have been applied against its output taxes for the succeeding taxable quarters/years.
> 3. Whether or not the sale of electricity by petitioner solely to the NPC, which respondent admits to be exempt from the payment of all taxes, whether direct or indirect, is subject to a VAT rate of zero (0%) or otherwise called a zero-rated transaction.
> 4. Whether or not the petitioner's claim for refund/tax credit of unutilized input VAT attributable to its zero-rated sales for the year 2005 is substantiated by documentary evidence.

> 5. Whether or not petitioner is entitled to the refund of the amount of P11,262,584.47 representing the input VAT incurred for the period of January to October 2005 from its sale of electricity solely to the NPC."

On October 19, 2010, the CTA Former Second Division promulgated the Assailed Decision dismissing the petitioner's claim for being filed out of time due to failure to comply with the prescribed period in filing judicial claim for refund/credit of its unutilized input VAT pursuant to Section 112(D) of the National Internal Revenue Code (NIRC) of 1997, as amended, and as enunciated by the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[5] (Aichi case).

Petitioner filed its Motion for Reconsideration[6] on November 5, 2010. On November 9, 2010, the CTA Former Second Division issued a Resolution[7] ordering respondent to comment on petitioner's Motion for Reconsideration. Respondent failed to comply with such order. On February 23, 2011, the CTA Former Second Division denied petitioner's Motion for Reconsideration for lack of merit.

Hence, the present Petition for Review before this Court.

Petitioner raised the following issues before this Court:

> WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND WAS TIMELY FILED.
>
> WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF PHP11,262,584.47 REPRESENTING UNUTILIZED INPUT TAX FOR 2005.

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[5] G.R. No. 184823, October 6, 2010.
[6] Annex "C" to Petition for Review, CTA En Banc Rollo, pp. 66-92.
[7] Division Docket, p. 579.

On April 6, 2011, the CTA Former Second Division issued a Resolution[8] ordering respondent to file her Comment to the subject petition. Respondent failed to file her Comment.[9]

On May 26, 2011, the CTA *En Banc* issued a Resolution[10] giving due course to the present petition and requiring the parties to submit their respective memorandum. Petitioner submitted its Memorandum[11] on July 1, 2011, while, respondent failed to file her Memorandum.[12]

On September 6, 2011, the instant case was submitted for decision.[13]

The crux of the issue in the case at bench lies in the timeliness of petitioner's claim for refund/tax credit certificate. This Court deems it appropriate to determine first this issue as this proves to be pivotal to the resolution of the issue on petitioner's entitlement to the claim for refund/tax credit certificate.

After a careful and thorough evaluation of the arguments raised by petitioner, this Court finds no merit in the present petition.

Petitioner argues that it seasonably filed both its administrative and judicial claims and that the CTA properly acquired jurisdiction over the latter pursuant to the then prevailing rule and/or interpretation of relevant legal provisions that claims for refund of unutilized input VAT credits should be filed before the CTA within two (2) years from the filing of the quarterly VAT returns.

The issue on the prescriptive period for filing claims for refund has been settled by the Supreme Court of the Philippines in the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.* [14] whereby the Court categorically ruled that the reckoning of the two (2) year period for filing a claim for refund or

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[8] Rollo, pp. 94-95.
[9] *Id.*, p. 96.
[10] *Id.*, pp. 98-99.
[11] *Id.*, pp. 100-164.
[12] *Id.*, p. 165.
[13] *Id.*, pp. 167-168.
[14] G.R. No. 172129, September 12, 2008.

issuance of tax credit certificate is from the close of the taxable quarter when the sales were made, pursuant to Section 112 (A) of the 1997 NIRC, as amended by RA 9337. This was affirmed by the Supreme Court in the Aichi case, where it was held that:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as 'both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.' We explained that:
>
> The above proviso [Section 112 (A) of the NIRC] 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**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed."

We affirm the findings of the CTA Former Second Division that the Mirant ruling is applicable to the case at bench and that both administrative claims filed by petitioner were filed within the two-year prescriptive period.

However, the same cannot be said of petitioner's judicial claim. The facts of the case reveal that petitioner's claim for refund/tax credit certificate was filed before the CTA only on April 25, 2007[15], way beyond the period prescribed in Section 112 (D) of the 1997 NIRC, as amended, which provides:

> **Sec. 112. Refunds or Tax Credits of Input Tax.-**
>
> xxx xxx xxx
>
> (D) ***Period Within Which Refund or Tax Credit of Input Taxes Shall Be Made.-*** In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim within the Court of Tax Appeals.-
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> xxx xxx xxx

Petitioner argues that the 120-30 day rule is merely permissive and directory. It is neither mandatory nor jurisdictional. It is petitioner's contention that this position is affirmed by the Supreme Court in the case of

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Taxable Quarter/Month (Year 2005)	Close of Taxable Quarter	End of the Two (2) year period	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim	End of 120-day period fron the date of submission of complete documents in support of the administrative claim	End of the 30-day period from the expiration of the 120-day period (in case of inaction by the CIR)
1s	03/31/2005	04/02/07	10/28/2005	04/25/07	02/25/06	03/27/06
2nd	06/30/2005	07/02/07				
3rd	09/30/2005	10/01/07				
4th	12/31/2005	12/31/07	12/07/05		04/06/06	05/06/06

Malana, et. al. v. Tappa, et. al.,[16] when it ruled that the use of the word "may" in a statute denotes that the provision is merely permissive and indicates a mere possibility, an opportunity or an option.

We do not agree.

The Supreme Court, in the Aichi case, ruled that the 120-day period is crucial in filing an appeal with the CTA, to wit:

> "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.
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> 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.
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> 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.

[16] G.R. No. 181303, September 17, 2009, *citing* De Ocampo v. Secretary of Justice, G.R. No. 147932, January 25, 2006, Melchor v. Gironella, G.R. No. 151138, February 16, 2005; Social Security Commission vs. Court of Appeals, G.R. No. 152058, September 27, 2004.

> 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.
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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.
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> xxx xxx xxx"

Applying the said ruling in the case at bench, we affirm the dismissal of petitioner's judicial claim for being filed beyond the prescriptive period provided under Section 112 (D) of the 1997 NIRC, as amended. The CTA Former Second Division was correct in holding that it has no jurisdiction to hear the instant Petition for Review.

Sections 112 (A) & (D) of the 1997 NIRC are clear in providing the prescriptive period for the filing of administrative and judicial claims. It is a well-settled rule that when the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[17] The Aichi case merely applied the clear provisions of the law.

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[17] Manuel G. Abello, Jose C. Concepcion, Teodoro D. Regala, Avelino V. Cruz, vs. Commissioner of Internal Revenue and Court of Appeals, G.R. No. 120721. February 23, 2005 *citing* Rizal Commercial Banking Corporation vs. Intermediate Appellate Court, G.R. No. 74851, December 9, 1999.

Furthermore, the Aichi case has been decided by no less than the Supreme Court, the highest Court in the land. There is only one Supreme Court from whose decisions all other courts should take their bearings.[18] As it is the final arbiter of all justifiable controversies, its decisions deserve utmost respect and adherence. Hence, this Court has no other recourse but to uphold the ruling of the Supreme Court in the Aichi case as it is applicable to the case at bench.

Finally, as regards the contention of petitioner on the retroactive application of the doctrine in the Aichi case, it is likewise settled that the law takes effect from the time of its effectivity. It is only upon effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute.[19] The provisions of Section 112 have been effective as of January 1, 1998 when the said law took place. The fact that the cases interpreting the same were promulgated years after its effectivity does not mean that the Court implements a retroactive application of law.

The discussion of the other issues is deemed unnecessary considering this Court's finding that the judicial claim for refund/tax credit certificate was filed beyond the prescriptive period.

In sum, the *CTA En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the Assailed Decision dated October 19, 2010 and the Assailed Resolution dated February 23, 2011, both promulgated by the CTA Former Second Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon by the Court.

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[18] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947. July 15, 2003.

[19] Abakada Guro Party List (formerly AASJS) Officers/Members Samson S. Alcantara, Ed Vincent S. Albano, Romeo R. Robiso, Rene B. Gorospe and Edwin R. Sandoval vs. Hon. Cesar V. Purisima, in his capacity as Secretary of Finance, Hon. Guillermo L. Parayno, Jr., in his capacity as Commissioner of the Bureau of Internal Revenue, and Hon. Alberto D. Lina, in his capacity as Commissioner of Bureau of Customs, G.R. No. 166715, August 14, 2008.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the October 19, 2010 Decision and the February 23, 2011 Resolution of the CTA Former Second Division are hereby **AFFIRMED** ***in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation 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

KEPCO PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 736
(CTA Case No. 7628)

Present:

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

Promulgated:

JAN 10 2012 2:00 p.m.

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DISSENTING OPINION

BAUTISTA, J.:

The Court *En Banc* dismissed the Petition for Review filed by Kepco Philippines Corporation ("Kepco") on the ground that the judicial claim was filed out of time, citing Section 112(C) of the 1997 National Internal Revenue Code ("NIRC"),[1] wherein the taxpayer has thirty (30) days from the expiration of the one hundred twenty (120)-day allotted to the Commissioner of Internal Revenue ("CIR") to decide

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

the claim for refund. The Court *En Banc*, thus, held that petitioner allowed the said period within which to file a Petition for Review with the Court to lapse.

With all due respect to my esteemed colleagues, I must dissent on the Decision made by the Court *En Banc*.

While the majority affirmed that Kepco filed its administrative claim for refund within the two (2)-year prescriptive period provided under the law, it however decided that the judicial claim was filed belatedly, applying the doctrine in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[2] The Court *En Banc* ruled that Kepco has thirty (30) days to file its Petition for Review, counting from the expiration of the one hundred twenty (120) days allotted to the CIR to decide on the claim.

However, it is my opinion that the declaration of the two (2)-year prescriptive period under Section 112 of the 1997 NIRC must be in accordance with Section 229 of the same Code. Thus, the judicial recourse to this Court allowed by Section 112(C) of the 1997 NIRC is merely directory and permissive, and not mandatory nor jurisdictional, for so long as it is made within the settled two (2)-year prescriptive period.[3]

A taxpayer-claimant *may* file an appeal within thirty (30) days, either from the lapse of the one hundred twenty (120)-day period within which the CIR shall decide

[2] G.R. No. 184823, dated October 6, 2010.
[3] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB No. 416, February 4, 2009.

on the claim, or after the receipt of the decision denying the same, so long as it is within the two (2)-year prescriptive period.

Section 112 (C) of the 1997 NIRC 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.

The cited provision will show that it contains the word "may," thus indicating that it is merely permissive and operates to confer discretion.[4] It gives the taxpayer-claimant an option to pursue the claim with this Court, provided that the claim is filed within the prescriptive period.

The same issue had been thoroughly addressed in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[5] to wit:

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[4] Bersabal *v.* Salvador, G.R. No. L-35910, July 21, 1978, 84 SCRA 176, *citing Dizon v. Encarnacion, G.R. No. L-18615, December 24, 1963, 9 SCRA 714.*
[5] CTA EB No. 408 (CTA Case No. 6647), March 25, 2009.

It bears stressing that the use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Section 229 of the NIRC. It is a well-settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.

Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year prescriptive period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated in this wise:

> "It appears therefore, **that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case**. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
>
> Incidentally, **the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal.** The law fixed the same period — two years — for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be

> made in court. Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Boldfacing supplied.*)

Therefore, there is no need to wait for the denial of the claim by the CIR or even his inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court,[6] for claims for refund or tax credit, both in the administrative and judicial fora must be filed within the 2-year period.[7] Beyond that period, the taxpayer can no longer appeal to this Court.[8]

Based on the records of the case, petitioner filed its Quarterly Value-Added Tax ("VAT") Returns for the period covering January 1 to October 31 of the taxable year 2005 on April 25, 2005, July 26, 2005, October 25, 2005, and November 21, 2005. Kepco then filed its administrative claim for refund with the CIR on October 28, 2005 for the first three (3) quarters, and on December 7, 2005 for the month of October.

The CIR, failing to act on the said claim for refund, Kepco filed a Petition for Review with the Court in Division on April 25, 2007. It is therefore clear that both the

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[6] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.
[7] Commissioner of Internal Revenue *v.* Victorias Milling Co., Inc., No. L-24108, January 3, 1968, 22 SCRA 12.
[8] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.

administrative and judicial claim were filed within the two (2)-year period allowed under the law.

Accordingly, I vote that the Petition for Review filed by Kepco Philippines Corporation, docketed as CTA EB Case No. 736, be **GIVEN DUE COURSE.**

LOVELL R. BAUTISTA
Associate Justice