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

***EN BANC***

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| **WNS GLOBAL SERVICES PHILIPPINES, INC.,** Petitioner, | **CTA EB NO. 1453** (CTA Case No. 9061) |
| | Present: |
| - versus - | Del Rosario, *PJ*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: DEC 27 2017 11:50 a.m. |

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## RESOLUTION

**CASTAÑEDA, JR., *J.*:**

For resolution of the Court *En Banc* is petitioner's Motion for Reconsideration (Re: Decision dated 12 May 2017), filed on June 9, 2017, *sans* respondent's comment.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is **DISMISSED**. Accordingly, the Resolutions dated October 29, 2015 and April 8, 2016, respectively, are **AFFIRMED**.

**SO ORDERED."**[1]

Petitioner argues in the instant motion that:

> **"I. As a matter of substantial justice and equity and due to the peculiarity of the instant case, an exception to the doctrine of immutability of judgment necessitates second review, closer look and kind consideration of the Honorable Court *En Banc* on the attending circumstances of the instant case.**
>
> **II. The First Judicial Claim filed on 8 August 2011 was timely filed and conformed to the 120+30 day period provided under Section 112(C) of the NIRC.**
>
> **III. Even if the reckoning point of the 120-day period is on 1 July 2011, the Second Judicial Claim filed on 28 May 2015 was still timely filed because the running of the 120-day period was tolled upon filing of the judicial claim on 8 August 2011.**
>
> **IV. With all due respect to the Honorable Court *En Banc*, Article 1155 of the New Civil Code is not applicable in the instant case."**[2]

After careful consideration of the foregoing, the Court *En Banc* finds petitioner's arguments untenable.

**The principle of *stare decisis* requires this Court to follow the decision of the Supreme Court in G.R. No. 211739**

Petitioner agrees with this Court that the decision of the Supreme Court in G.R. No. 211739 has already attained finality under the doctrine of finality of judgment or immutability of judgment. However, petitioner argues that there are some recognized exceptions to this rule, such as when the case involves significant, far-reaching or of transcendental importance.

However, it must be stressed that the principle of *stare decisis* requires this Court to follow the decision of the Supreme Court in G.R. No. 211739. In *Carmelo F. Lazatin, et al. v. Hon. Aniano A. Desierto as*

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[1] Decision, Court *En Banc* Docket, p. 343.
[2] Motion for Reconsideration (Re: Decision dated 12 May 2017), Grounds for Reconsideration, Court *En Banc* Docket, pp. 349-350.

*Ombudsman, and Sandiganbayan, Third Division,*[3] the Supreme Court explained the principle of *stare decisis* in this wise:

> "The doctrine of *stare decisis* enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.
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> In *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, the Court expounded on the importance of the foregoing doctrine, stating that:
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> The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:
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> Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same**, even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be decided alike**. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, **the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.**"

Based on the above-quoted doctrine, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. *gz*

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[3] G.R. No. 147097, June 5, 2009.

Applying the pronouncement of the Supreme Court in this case, this Court is therefore bound to apply the ruling of the Supreme Court in G.R. No. 211739, in relation to the doctrine of finality of judgment or immutability of judgment.

As such, the Court *En Banc* finds no error when it ruled that:

> "On this score, *We* revisit the decision of this Court in *WNS Philippines, Inc. v. Commissioner of Internal Revenue* (First Judicial Claim). In petitioner's First Judicial Claim, this Court sustained the findings of the CTA 1st Division and concluded that petitioner's administrative claim was prematurely filed. Thus:
>
> > 'A perusal of the documents reveals that petitioner submitted its documents twice. The first was when it filed its administrative claim on March 11, 2011. And the second was on July 1, 2011, when it submitted additional documents in support of its application for refund. This only shows that on March 11, 2011, the documents submitted by petitioner were not complete. For if petitioner finds the documents submitted on March 11, 2011 are already complete, petitioner would not have submitted additional documents on July 1, 2011. xxx
> >
> > Based on the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue*, where it adopted the ruling in *CIR vs. Aichi Forging Company of Asia, Inc*, the Supreme Court held that the 120-day period provided in Section 112(C) is mandatory and jurisdictional. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity.
> >
> > In the instant case, petitioner filed its administrative claim for refund of unutilized input VAT for fiscal year ended March 31, 2010 in the amount of Php21,818,942.57 with Revenue District Office ('RDO') No. 47, on March 11, 2011. Subsequently, on July 1, 2011, petitioner submitted additional documents to completely support its application for refund with the same RDO. Following the instructions of the Supreme Court in the aforesaid consolidated cases and Section

> 112(C) of the NIRC of 1997, as amended, respondent has 120 days from July 1, 2011, or until October 29, 2011, to act on petitioner's claim. However, petitioner filed the instant Petition for Review on August 8, 2011, or before the 120-day period had lapsed. Therefore, the Court has no jurisdiction to entertain the Petition for Review for it was prematurely filed.'

Consequently, this Court's Decision in petitioner's First Judicial Claim was sustained by the Supreme Court in G.R. No. 211739, which became final as per Entry of Judgment dated February 9, 2015. In other words, the findings of the CTA 1st Division, which was sustained by this Court and consequently by the Supreme Court, had already attained finality under the doctrine of finality of judgment or immutability of judgment. xxx

xxx xxx xxx

Considering the foregoing, *We* rule that the 120+30 day period in Section 112(C) of the NIRC of 1997, as amended, shall be counted from July 1, 2011."

**The filing of petitioner's judicial claim on August 8, 2011 did not toll the running of the 120-day period**

Petitioner asserts that it did not resort to a wrong remedy, its available remedy being an appeal to the decision or inaction of respondent within the 120-day period.

Petitioner is incorrect.

In a long line of decisions decided by the Supreme Court, it has been consistently held that the 120+30 day period under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, is mandatory and jurisdictional.[4] In fact, the Supreme Court emphasized in *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[5] that "the 120/30-day prescriptive periods are mandatory and jurisdictional, and are not mere technical

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[4] *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015; *Taganito Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 198076, November 19, 2014; *Commissioner of Internal Revenue v. Dash Engineering Philippines, Inc.*, G.R. No. 184145, December 11, 2013; *Hedcor, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207575, July 15, 2015; and *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No.173241, March 25, 2015.

[5] Id.

requirements. The Court should not establish the precedent that noncompliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements."

Considering the mandatory and jurisdictional nature of the 120+30 day period under Section 112(C) of the NIRC of 1997, as amended, the premature filing of petitioner's judicial claim on August 8, 2011, or before the lapse of the 120-day period, is obviously a wrong remedy. Hence, the Court *En Banc* likewise finds no error when it ruled that:

> "Considering that the 120+30 day period shall be counted from July 1, 2011, the CTA 1st Division is correct when it held that:
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> > 'The CTA has exclusive appellate jurisdiction to review on appeal decisions of the CIR in cases involving refunds of internal revenue taxes. Moreover, if the CIR fails to decide within the 120-day period provided by law, such inaction shall be deemed a denial of the application for tax refund which the taxpayer can elevate to the CTA through a petition for review.
> >
> > A perusal of the records shows that petitioner filed with the BIR the administrative claim for refund of its accumulated excess input VAT for fiscal year 2009 on March 11, 2011 and submitted documents in support of the claim on July 1, 2011. Considering that petitioner appealed the alleged inaction of respondent on its administrative claim for refund, petitioner must file the judicial claim within 30 days from the expiration of the 120-day period provided by law. However, the instant petition was only filed on May 28, 2015, or almost 4 years after the expiration of the 120-day period.
> >
> > The Court cannot give credence to petitioner's argument that it had until June 1, 2015 within which to file its judicial claim. The filing of the judicial claim on August 8, 2011 did not toll the running of the 120+30 day period provided under Section 112(C) of the NIRC of 1997, as amended.
> >
> > In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*, the Supreme Court stressed the mandatory and jurisdictional nature of the

120+30 day period provided under Section 112(C) of the NIRC.

Likewise, the Court *En Banc*, in the case of *Hyder Consulting Middle East Ltd. Manila ROHQ vs. Commissioner of Internal Revenue*, ruled that the resort to a wrong remedy will not toll the running of the prescriptive period to file the judicial claim for a refund before this Court, to wit:

xxx xxx xxx

In this case, petitioner prematurely filed its judicial claim on August 8, 2011. Such wrong remedy did not toll the running of the prescriptive period to file the judicial claim for a refund before this Court. Thus, the instant Petition for Review filed by petitioner on May 28, 2015 was clearly filed out of time. The Court therefore has no jurisdiction over the instant petition.'

Thus, the CTA 1st Division committed no error when it held that the petition was belatedly filed on May 28, 2015, or almost 4 years after the expiration of the 120-day period. Meanwhile, it is also correct that a wrong remedy, *i.e.*, premature filing, will not toll the running of the prescriptive period to file the judicial claim for refund. Considering the foregoing, *We* see no cogent reason to disturb the findings of the CTA 1st Division."

**The pronouncement of this Court applying Article 1155 of the New Civil Code is a mere *obiter dictum***

Finally, petitioner asserts that Article 1155 of the New Civil Code is not applicable to the instant case. On this score, it is noteworthy that in the assailed Decision, the Court *En Banc* categorically ruled that the running of the prescriptive period was not tolled when petitioner filed its judicial claim on August 8, 2011. At any rate, the Court *En Banc* expressed its opinion that even if the prescriptive period was tolled, the case still would not have prospered due to premature filing.

Based on the foregoing, it is obvious that the opinion expressed by the Court *En Banc* is a mere *obiter dictum* which is not necessary for the determination of the instant case. To be clear, the Supreme Court explained in *Land Bank of the Philippines v. Federico Suntay*[6] the nature of an *obiter dictum* in this wise:

> "An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law that is *not necessary* in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause *by the way*, that is, *incidentally* or *collaterally*, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*."[7]

Thus, the Court *En Banc* maintains that the 120+30 day period is counted from July 1, 2011. Consequently, the premature filing of petitioner's judicial claim on August 8, 2011, or before the lapse of the 120-day period, is obviously a wrong remedy which did not toll the running of the 120-day period. As such, the denial of the instant motion is in order.

**WHEREFORE**, the instant Motion for Reconsideration (Re: Decision dated 12 May 2017) is **DENIED**, for lack of merit.

**SO ORDERED.**

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

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

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[6] G.R. No. 188376, December 14, 2011.
[7] Id., citing *Delta Motors Corporation v. C.A.*, G.R. No. 121075, July 24, 1997, 276 SCRA 212, 223; *Office of the Ombudsman v. Court of Appeals*, G.R. No. 146486, March 4, 2005, 452 SCRA 714, 733-734; and *City of Manila vs. Entote*, No. L-24776, June 28, 1974, 57 SCRA 497, 508-509.

**CAESAR. A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice