Republic of The Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

HYDER CONSULTING MIDDLE EAST LTD. MANILA ROHQ,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 727
(CTA Case No. 8120)

For: Refund

Present:
ACOSTA, PJ,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:

OCT 08 2012 Apolinario 1:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 2(a)(1), Rule 4,* in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA),*[1] *as amended,* of the

[1] Rule 4, 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 Divisions in the exercise of its exclusive appellate jurisdiction over:

Resolution dated November 10, 2010[2] and the Resolution dated February 07, 2011[3] rendered by the First Division of this Court, the dispositive portions of which, respectively, read as follows:

Resolution dated November 10, 2010:

"WHEREFORE, the Motion to Dismiss dated July 22, 2010, filed by respondent, is hereby GRANTED. Consequently, the Petition for Review dated June 23, 2010, filed by petitioner Hyder Consulting Middle East Ltd. Manila ROHQ, is hereby DISMISSED for lack of cause of action, without prejudice.

SO ORDERED."

Resolution dated February 07, 2011:

"WHEREFORE, premises considered, the Motion for Reconsideration dated November 22, 2010 filed by petitioner is hereby DENIED, for lack of merit.

SO ORDERED."

The antecedent facts are as follows:

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

x x x x x x x x x

Rule 8, SEC. 4. *Where to appeal; mode of appeal.* – x x x

(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.

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[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy, *En Banc* Docket, pp. 30-36.

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy, *En Banc* Docket, pp. 15-21.

Petitioner Hyder Consulting Middle East Ltd. Manila ROHQ ("Hyder") is a duly registered Regional Operating Headquarters organized and existing under and by virtue of Philippine Laws holding office at the 9th Floor, Tower II, The Enterprise Paseo de Roxas Street, Makati City. It is registered with the Bureau of Internal Revenue as a Value-Added Tax ("VAT") taxpayer.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR") vested with the authority to act as such, including the powers to decide, approve and grant claims for issuance of tax credit certificate or refunds of overpaid internal revenue taxes as provided by law. She holds office at the Bureau of Internal Revenue, ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

For the period of April 1, 2008 to June 30, 2008, Hyder filed before the BIR its quarterly VAT return for the 1st Quarter, where it declared as input VAT for the said period the amount of One Million Fifty Nine Thousand Eight Hundred Forty Pesos and Twenty One Centavos (₱1,059,840.21).

On June 23, 2010, one week before the expiration of the 2-year prescriptive period,[4] Hyder filed an administrative claim for refund of its

[4] SEC. 112. Refunds or Tax Credits of Input Tax. -(A) Zero-Rated or Effectively Zero-Rated Sales. - any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x

unutilized input VAT in the total amount of One Million Fifty Nine Thousand Eight Hundred Forty Pesos and Twenty One Centavos (₱ 1,059,840.21) for the said quarter with the BIR.

On June 29, 2010, or barely six (6) days after Hyder filed its administrative claim for refund, a Petition for Review dated June 23, 2010 was filed before this Court. It argued that since CIR has not yet rendered a decision on its application for refund from the time it filed an administrative claim on June 23, 2010, and within the period to file a judicial claim expiring on June 30, 2010 by citing Section 229[5] of the National Internal Revenue Code of 1997 ("1997 Tax Code"), the Petition for Review before this Court is proper.

On July 28, 2010, CIR filed a Motion to Dismiss[6] on the grounds that the Petition for Review was prematurely filed and there was neither denial nor inaction on her part that could be assailed before this Court. She invoked Section 112 (C)[7] of the 1997 Tax Code, and *Steag State Power, Inc., vs.*

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[5] SEC. 229. Recovery of Tax Erroneously or Illegally Collected. –

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> 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: xxx

[6] Division Docket pp. 138-145.

[7] SEC. 112. Refunds or Tax Credits of Input Tax. – xxx

> 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

Commissioner of Internal Revenue[8] (*the "Steag State Case*"), and contended that since Hyder filed its judicial claim before the lapse of the 120 day period for her to act upon its application, the filing of the judicial claim therefore is premature. Moreover, CIR argued that a judicial claim for refund may only be filed once there is a denial or inaction on her part. She stressed that Section 229[9] of the 1997 Tax Code is not applicable in this case because the 2-year period stated therein pertains only to applications for refund of taxes *erroneously or illegally collected*, and not for refund of *unutilized input VAT*, as in the case of Hyder.

On November 10, 2010, the First Division of this Court rendered a Resolution[10] granting the Motion to Dismiss, consequently denying Hyder's Petition for Review. The Court *a quo* ratiocinated that Hyder violated the rule on exhaustion of administrative remedies when it immediately filed a judicial claim before this Court when there was yet neither a denial of its claim nor

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creditable input taxes within one hundred twenty (120) days from the date of submission of compete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

[8] CTA Case Nos. 7458 and 7554, August 27, 2009.
[9] *Supra* note 5.
[10] *Supra* note 2.

inaction on the part of CIR within the 120-day period accorded to her under Section 112 of the 1997 Tax Code.

The First Division held, as follows:

> "Under the circumstances, respondent had 120 days from June 23, 2010 or until October 21, 2010, within which to rule on petitioner's claim for refund. Failing any action on the part of respondent, petitioner has 30 days from the expiration of the 120-day period or until November 20, 2010 to seek recourse from the Court.
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> In this case however, petitioner instituted this appeal on June 29, 2010 or barely six (6) days after the administrative claim for refund was filed on June 23, 2010, effectively depriving respondent of the opportunity to act on the administrative claim for refund within the time frame accorded to her in Section 112 of the NIRC, as amended. During the relevant period, neither was there a denial of the claim nor inaction on the part of respondent that could be a subject of an appeal before this Court." [11]

The First Division also clarified that the application of Section 112 of the 1997 Tax Code, as invoked by CIR is correct, since it specifically governs applications for refund of *excess and unutilized value added tax* while Section 229 of the same Code, as cited by Hyder upon filing its judicial claim, covers claims for refund of *erroneously or illegally assessed or collected taxes*, hence, the inapplicability of the latter section in its case. In addition, the First Division emphasized that the 2-year period under Section 112 (A) applies only to *administrative claim* and not to judicial claim.

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[11] *Supra* note 2.

As an ending note, the First Division cited the Supreme Court Ruling in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[12] (*the "Aichi Case*") which states 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."
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> XXX XXX XXX
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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.
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> 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.

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[12] G.R. No. 184823, October 06, 2010. The *Aichi Case* became final as per Supreme Court's Resolution dated December 6, 2010.

> 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."

Aggrieved, Hyder filed its Motion for Reconsideration[13] on November 26, 2010. It argued that the Court erred in dismissing its Petition by applying the *Aichi Case*. It reasoned out that the *Aichi Case* was only promulgated on October 06, 2010, while its Petition for Review was filed on June 29, 2010, prior to the promulgation of the said Supreme Court Decision, hence, it should not be given retroactive effect. Moreover, the assailed Decision[14] of the First Division was promulgated only on November 10, 2010, which states that it only had until November 20, 2010 within which to file a Petition for Review. However, Hyder received the Decision only on November 19, 2010, or one (1) day before the last day given by the First Division to file a new Petition for

[13] *En Banc* docket pp. 22-29.
[14] *Supra* note 2.

Review. Hence, on ground of equity, Hyder also prays to admit the Motion for Reconsideration as its new Petition for Review.

In denying Hyder's motion, the First Division applied the rule laid down in *Eagle Realty vs. Republic of the Philippines,*[15] and held that, "Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect." Since the *Aichi Case* merely interprets the provision of Section 112 of the 1997 Tax Code, which is already in effect as early as January 1, 1998, the ruling in the said Case must be applied as of the date the 1997 Tax Code was originally passed. The taxable year involved in Hyder's claim is 2008, which is obviously governed by the 1997 Tax Code, hence the applicability of *Aichi*.

On Hyder's prayer to allow the continuation of its Petition, the First Division ruled that since Hyder was not able to file its Petition on or before November 20, 2010, it failed to file its Petition for Review within the reglementary period. Consequently, the Resolution[16] of the First Division already became final and conclusive. When the Resolution became final, the First Division was no longer in the position to exercise jurisdiction to review it.

[15] G.R. No. 151424, July 31, 2009.
[16] *Supra* note 2.

The same Division also reminded Hyder that observance of the prescriptive period to file the Petition is not only mandatory but also jurisdictional.

Hence, this Petition for Review[17] was filed before the Court *En Banc* on February 24, 2011.

The issues raised are the following:

1. Whether the *Aichi* Ruling as to the mandatory compliance with the 120-day period should be applied prospectively, hence, should not be applied in this case at bar; and
2. Whether this Court should allow the continuation of this Petition and admit Hyder's Motion for Reconsideration as its new Petition for Review.

Hyder solely relies on the ruling of the First Division in the case of *Team Energy vs. Commissioner of Internal Revenue,*[18] *(the "Team Energy Case*") and states that it would not have any problem with the retroactive application of the *Aichi Case* as basis for denying its Petition for Review for being premature if not for the particular ruling made by the said Division in the *Team Energy Case.*

The First Division in the *Team Energy* case cited by Hyder held that-

> "although there is a recent case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly SOUTHERN*

[17] *En Banc* Docket, pp. 1-14
[18] CTA Case Nos. 7229 and 7298, October 5, 2009.

ENERGY QUEZON, INC.), wherein the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the *Mirant Case.* To apply said ruling in the present case will in effect be giving the new doctrine retroactive application thereby impairing vested rights."

Hyder points out that the First Division cannot simply deny its Petition by applying the *Aichi* Ruling retroactively, when in fact, the very same Division held in the *Team Energy Case* that a retroactive application of a new doctrine will impair vested rights.

On its theory of prospective application of the *Aichi* Ruling, Hyder argues that the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue,*[19] (*the "San Roque Case*") which was promulgated on November 11, 2009, should apply, and not the *Aichi Case*, which was promulgated after the filing of its Petition for Review. It quoted the *San Roque Case*, to wit:

"On *19 June 2002*, 25 October 2002, 27 February 2003, and 29 May 2003, *petitioner filed with the BIR* four separate *administrative claims for refund of Unutilized Input VAT paid for the period January to March 2002*, April to June 2002, July to September 2002, and October to December 2002, respectively. x x x

x x x x x x x x x

On 30 May 2003 and 31 July 2003, petitioner filed two letters with the BIR to amend its claims for tax refund or credit for the first and fourth quarter of 2002, respectively. x x x

Respondent failed to act on the request for tax refund or credit of petitioner, which prompted the latter to file on 5 April 2004, x x x"

[19] G.R. No. 180345, November 11, 2009.

We are not persuaded.

It is observed that the *Team Energy Case* cited by Hyder had not yet been passed upon by this Court *En Banc* when the Petition for Review was filed before the First Division, hence, it cannot be relied upon by petitioner. As a matter of fact, a Court *En Banc* Decision[20] was subsequently promulgated and applied instead the *Aichi Case*, consequently modifying the Division's Decision. The Court *En Banc* held:

> "With the above cited ruling [*Aichi*], the argument that the *Mirant* decision should only be applied prospectively and should not be made to apply to judicial claims for refund of excess input VAT pending with the courts at the time of issuance of the *Mirant* decision has been put to rest. It bears stressing that the *Mirant* ruling was affirmed and applied outright in *Aichi* case notwithstanding the fact that the claim for refund involved the third quarter of the taxable year 2002 (July 1, 2002 to September 30, 2002) and both its administrative and judicial claims were still pending prior to the promulgation of *Mirant.* Hence, We see no reason why We should depart from the *Aichi* ruling considering the periods involved in the said case were earlier than the periods in the present case, yet, the Supreme Court applied the *Mirant* ruling without any qualifications."

Evidently, between the *Team Energy Case* decided by the First Division, and the *Team Energy Case* decided by the Court *En Banc*, the latter shall prevail. The Court *En Banc* has the power to review and modify Decisions and Resolutions of this Court in Division.[21] The fact that the Court

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[20] *Commissioner of Internal Revenue vs. Team Energy Corporation,* CTA EB No. 603, April 08, 2011.

[21] 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 Divisions in the exercise of its exclusive appellate jurisdiction xxx

En Banc Decision was promulgated after the filing of Hyder's Petition is of no moment since it is a basic rule that one cannot rely on a Decision which has not yet attained finality. As pointed out, the *Team Energy Case* cited by Hyder is not conclusive as it was brought to the *En Banc* for Its review, and it was eventually amended.

Hyder, states that the *Steag State Case* does not apply since it has not yet been passed upon by the Supreme Court when its Petition was filed before this Court. If this is true, then the *Team Energy Case* decided by the First Division should also hold no water in its situation because it cannot be considered as the concluding statement of this Court as to the said case. As pointed out earlier, the Division's *Team Energy* Decision cannot be relied upon by any party litigant as such has not attained finality until it is reviewed by this Court *En Banc.*

Hyder asserts the alleged misplaced application of the *Aichi* Ruling in this case. It insists that "the reckoning period laid down in the *Aichi Case* should be prospective and should affect only petitions to be filed after said decision."[22] Nonetheless, a careful perusal would show that the judicial claim in the *Aichi Case* was filed on September 30, 2004. This was even prior to the

[22] Petition for Review filed by Hyder before the Court *En Banc* on February 24, 2011, par. 11, p. 4; *En Banc* Docket, p.4.

claims of herein petitioner. Yet, the Supreme Court, applied outright the 120-30 day ruling in *Aichi* and dismissed the Petition of Aichi Forging Company of Asia upon the promulgation of the Decision of the Supreme Court based on prematurity.[23]

Significantly, on the application of the *Aichi* ruling as it should be in this case, the First Division aptly said that, "Judicial interpretation becomes part of the law *as of the date that law was originally passed*."[24] Considering that the claim for refund in this case involved the taxable year 2008, the applicable law is Section 112 of 1997 Tax Code, which took effect on January 1, 1998, the same law applied in the *Aichi Case*.

Furthermore, the *Aichi Case* has been decided by no less than the Supreme Court from whose decisions all other courts should take their bearings.[25] 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.[26] Such judicial doctrine does not amount to

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[23] *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, CTA EB Case Nos. 690 and 718, April 04, 2012.

[24] *Cemco Holdings, Inc., vs. National Life Insurance Company,* G.R. No. 171815, August 7, 2007, citing *Serrano vs. National Labor Relations Commission*, 387 Phil. 345, 357 (2000).
[25] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* CTA EB Case No. 736, January 10, 2012, citing *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003.
[26] *Ibid.*

the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, as is the situation in this case.[27]

The *San Roque Case* cited by Hyder cannot even be said to be the correct jurisprudence because the interpretation of the mandatory 120-day period for CIR to act upon the administrative claims was not even presented as an issue in the said case. The mandatory provision of Section 112 of the 1997 Tax Code was not raised as a question in that case for the Supreme Court to clarify on the matter unlike what was held in the *Aichi Case.*

In the *San Roque Case*, CIR was accorded the 120-day mandatory period to act upon the request for the tax refund. It is noted that San Roque filed its administrative claim on June 19, 2002, and the judicial claim was filed on April 05, 2004. Thus, San Roque gave CIR 120 days to resolve its administrative claim for a tax refund before it filed its judicial claim before this Court. In this case, CIR was not provided such mandatory period to act upon Hyder's claim for a refund, hence, the *San Roque Case* cannot be considered as on all fours with this case.

Accordingly, this case should finally be dismissed on the ground of lack of jurisdiction. As correctly held by the First Division in its second Resolution,[28] c

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[27] *Roos Industrial Construction Inc. and Oscar Tocmo vs. NLRC and Jose Martillos,* G.R. No. 172409, Feb. 4, 2008 *citing Columbia Pictures, Inc. vs. Court of Appeals,* 329 Phil. 875, 907-908.
[28] *Supra* note 3.

when Hyder failed to file a Petition for Review on November 20, 2010, the questioned first Resolution[29] became final and executory, and which deprives this Court of jurisdiction to alter the judgment, much less to entertain this very Petition for Review.[30] The primordial issue in any claim for a refund of unutilized input VAT is the timeliness of the filing of such claim, both in the administrative and judicial levels.[31]

Apparently, Hyder filed its judicial claim without waiting for the lapse of the 120-day period provided for under Section 112 of the 1997 Tax Code. It should have filed its Petition for Review between October 22, 2010[32] and November 20, 2010. Unfortunately, such was not the case. As a result, petitioner's failure to file the Petition for Review within the 30-day period after the mandatory 120-day period negates this Court with jurisdiction over this case. As its Petition was filed out of time, there is no case over which this Court may acquire jurisdiction. This 30-day period within which to file the Petition for Review is jurisdictional and failure to comply therewith would bar the appeal and it would deprive this Court of its jurisdiction to entertain this very Petition. Such period is not merely directory but mandatory and it is

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[29] *Supra* note 2.
[30] *En Banc* Docket, p. 20, citing *Sehwani, Incorporated vs. In-N-Out Burger,* G.R. No. 171053, October 15, 2007.
[31] *Commissioner of Internal Revenue vs. Keihin-Everett Forwarding Co. Inc.,* CTA EB Case No. 692, February 07, 2012.
[32] *Supra* note 11.

beyond the power of the courts to extend the same.[33] Well-settled is the rule that the perfection of an appeal *in the manner* and *within the reglementary period* allowed by law is not only mandatory but also jurisdictional. [34] A Motion for Reconsideration is not the mode of appeal[35] in filing a judicial claim for refund before this Court. A Motion for Reconsideration is not a Petition for Review. Thus, "a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as *non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.*"[36]

Significantly, in the case of *Videogram Regulatory Board vs. Court of Appeals,*[37] the Supreme Court held that -

> "x x x *There are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review,* for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules. *The rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly*

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[33] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, Resolution dated April 24, 2007, 522 SCRA 144, citing *Chan Kian vs. Court of Tax Appeals,* 105 Phil. 904, 906 (1959).
[34] *Tiger Construction and Development Corporation vs. Abay, et. al.,* G.R. No. 164141, February 26, 2010, citing *Estoesta, Sr. v. Court of Appeals,* G.R. No. 74817, November 8, 1989, 179 SCRA 203, 211-212.

[35] *Supra* note 1, Rule 8, SEC. 4. x x x

(a) 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.

[36] *Supra* note 12.
[37] G.R. No. 106564, November 28, 1996.

> *followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional and the failure to perfect the appeal renders the judgment of the court final and executory.* Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case. xxx *After all, a denial of a petition for being time-barred is a decision on the merits.*" [Emphasis supplied.]

As early as in the case of *Caltex vs. Commissioner of Internal Revenue*,[38] the Supreme Court has already ruled that, "In the absence of any decision or ruling which may be the subject of an appeal or petition for review to the Court of Tax Appeals, said court has no case to take cognizance of."[39]

Hyder seeks to persuade this Court to apply the technical rules liberally by allowing the Petition to continue through its Motion for Reconsideration, citing the case of *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation (the "Ironcon Case")*.[40]

We must rule that the reliance of Hyder in the *Ironcon Case* is very well misplaced. The issue raised in *Ironcon* was the propriety of the admission of exhibits offered only after trial. Thus, the Supreme Court relaxed the rules on technicality as to the admission of the exhibits. However, the jurisdiction of this Court in the *Ironcon Case* was not submitted as an issue at all. Hence, a liberal approach as to want of jurisdiction is not acceptable because

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[38] G.R. No. L-20462, June 30, 1965.
[39] Citing *CNS Estate, Inc. vs. Commissioner of Customs*, G.R. No. L-18773, January 31, 1964.
[40] G.R. No. 180042, February 08, 2010.

jurisprudence is replete with cases stating that failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[41] Failure of petitioner to file its Petition for Review within the period prescribed by law renders the decision final, with the result that no court can exercise jurisdiction to review said final decision.[42] Consequently, whatever liberality to be applied by this Court is considered to be useless as no case so to speak is pending before It in the first place.

Moreover, the *Ironcon Case* cannot be said to apply on all fours with this case since the taxpayer in *Ironcon* complied with the mandatory 120-day period. A reading of the facts in the *Ironcon Case* shows that the administrative claim was filed on May 10, 2001, while the judicial claim was filed after more than a year, which was on June 01, 2002. In this case, however, Hyder failed to heed the required 120-day period, hence, the irrelevance of the *Ironcon Case* to it.

While existing jurisprudence adopts liberality on procedural matters, the fact remains that the First Division did not acquire jurisdiction to hear the case because Hyder failed to file the Petition on time, and thus, the First Division,

[41] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,* G.R. No. 167606, August 11, 2010, 628 SCRA 96.
[42] *Supra* note 34, citing *Uy vs. Court of Appeals*, 286 SCRA 343, 351 (1998).

as well as the Court *En Banc,* has no jurisdiction to act on the judicial claim filed by Hyder.

Suffice it to say 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.[43] The Supreme Court, in numerous cases, has repeatedly called the attention of party litigants that the rule on liberal construction does not mean that procedural rules are to be ignored or disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism or whimsicality in the settlement of disputes.[44] The rule on liberal construction was never intended to forge a bastion for a violation of due process.[45] The relaxation of procedural rules was never intended to be a license for erring litigants to violate the rules with impunity.[46]

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to the parties'

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[43] *Fishwealth Canning Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179343, January 21, 2010.
[44] *Abrenica vs. Abrenica,* G.R. No. 169420, September 22, 2006; *Reyes vs. Fil-Estate Properties, Inc.,* G.R. No. 148967, February 09, 2007; *Garcia Jr. vs. Court of Appeals,* 546 SCRA 595, February 26, 2008.
[45] *Rizal Security & Protective Services, Inc., vs. Maraan,* 546 SCRA 23, February 18, 2008.
[46] *Marohomsalic vs. Cole,* 547 SCRA 98, February 27, 2008.

substantive rights. Like all rules, they are required to be followed except only for the ***most persuasive of reasons*** as when "transcendental matters" of life, liberty or state security are involved.[47] What constitutes good and sufficient cause that would merit suspension of the rules is ***discretionary upon the courts***.[48]

Given the fact that this Court has no jurisdiction to give due course to this instant Petition due to failure of Hyder to file its judicial claim by way of a Petition for Review within the prescribed period, it is but proper for this Court to dismiss this case. The discussion of the other issues, if any, is deemed unnecessary considering this Court's finding that the judicial claim for refund was filed beyond the prescriptive period.

WHEREFORE, premises considered, the Petition for Review dated February 24, 2011 filed by Petitioner is **DENIED** for lack of merit. The two (2) Resolutions dated November 10, 2010 and February 7, 2011, both rendered by the First Division of this Court, are hereby **AFFIRMED.**

SO ORDERED.

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

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[47] *Mindanao Savings Loan Association vs. Vicenta Vda. De Flores,* G.R. No. 142022, September 7, 2005.
[48] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation,* G.R. No. 159593, October 12, 2006.

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

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
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 among the members of the Court *En Banc* before the case was assigned to the writer for the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

HYDER CONSULTING MIDDLE EAST LTD., MANILA RQHQ,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 727
(CTA Case No. 8120)

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

Promulgated:

OCT 0 8 2012 *(signature)* 1:10 p.m.

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DISSENTING OPINION

BAUTISTA, J.:

While the Court *En Banc* denied the Petition for Review for lack of merit, and accordingly, affirmed the assailed Resolutions, dismissing the claim for refund/credit due to lack of cause of action; this *ponencia* is of view that the factual circumstances present in the case at bench supports the application of ***the then prevailing jurisprudence at the time the claim was made.***

Based on the records of the case, one week before the lapse of the two (2)-year prescriptive period pursuant to Section 112 of the 1997 National Internal Revenue

Code, as amended,[1] petitioner filed its administrative claim for refund of its unutilized input tax in the total amount of ₱1,509,840.21 covering the period from April 1, 2008 to June 30, 2008, on June 23, 2010; and barely six days after it filed its administrative claim, petitioner filed a Petition for Review before this Court on June 29, 2010. All during the aforementioned dates, the then controlling doctrine is the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]*.[2]

I submit that the ruling in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[3] is more in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code, as amended, nonetheless, it would be the height of injustice to impose a new ruling, on the basis of the so-called "adherence to precedence," for the same is clearly ***promulgated after the taxpayer-claimant had faithfully relied and complied with the Court's former ruling***. Further, the same would run counter with the use of the word *"may"* in Section 112(C) of the same Code, which indicates that the judicial recourse within thirty (30) days after the lapse of the one hundred twenty (120)-day period is directory and permissive, and not mandatory nor jurisdictional as long as the claim is made within the two (2)-year

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[1] 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.
[2] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] G.R. No. 184823, October 6, 2010.

prescriptive period under Sections 112[4] and 229[5] of the 1997 National Internal Revenue Code, as amended.[6]

Therefore, it must be borne in mind that no claim can be had, whether in the administrative or judicial *fora*, beyond the two (2)-year period provided under Section 112 of the 1997 National Internal Revenue Code, as amended.

Stated differently, 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 to this Court.[7]

In the landmark case of *Albino S. Co, v. Court of Appeals, et al.*,[8] the Supreme Court aptly penned the following disquisitions, to wit:

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[4] SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

[5] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

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

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

[8] G.R. No. 100776, October 28, 1993, 277 SCRA 444.

The principle of prospectivity of statutes, original or amendatory, has been applied in many cases. These include: *Buyco v. PNB, 961 2 SCRA 682 (June 30, 1961)*, holding that Republic Act No. 1576 which divested the Philippine National Bank of authority to accept back pay certificates in payment of loans, does not apply to an offer of payment made before effectivity of the act; *Largado v. Masaganda, et al., 5 SCRA 522 (June 30, 1962)*, ruling that RA 2613, as amended by RA 3090 on June, 1961, granting to inferior courts jurisdiction over guardianship cases, could not be given retroactive effect, in the absence of a saving clause; *Larga v. Ranada, Jr., 64 SCRA 18*, to the effect that Sections 9 and 10 of Executive Order No. 90, amending Section 4 of PD 1752, could have no retroactive application; *People v. Que Po Lay, 94 Phil. 640*, holding that a person cannot be convicted of violating Circular No. 20 of the Central, when the alleged violation occurred before publication of the Circular in the Official Gazette; *Baltazar v. C.A., 104 SCRA 619*, denying retroactive application to P.D. No. 27 decreeing the emancipation of tenants from the bondage of the soil, and P.D. No. 316 prohibiting ejectment of tenants from rice and corn farmholdings, pending the promulgation of rules and regulations implementing P.D. No. 27; *Nilo v. Court of Appeals, 128 SCRA 519*, adjudging that RA 6389 which removed "personal cultivation" as a ground for the ejectment of a tenant cannot be given retroactive effect in the absence of a statutory statement for retroactivity; *Tac-An v. CA, 129 SCRA 319*, ruling that the repeal of the old Administrative Code by RA 4252 could not be accorded retroactive effect; *Ballardo v. Borromeo, 161 SCRA 500*, holding that RA 6389 should have only prospective application; (*see also Bonifacio v. Dizon, 177 SCRA 294 and Balatbat v. CA, 205 SCRA 419*).

The prospectivity principle has also been made to apply to administrative rulings and circulars, to wit: *ABS-CBN Broadcasting Corporation v. CTA, Oct. 12, 1981, 108 SCRA 142*, holding that a circular or ruling of the Commissioner of Internal Revenue may not be given retroactive effect adversely to a taxpayer; *Sanchez v. COMELEC, 193 SCRA 317*, ruling that Resolution No. 90-0590 of the Commission on Elections, which directed the holding of recall proceedings, had no retroactive application; *Romualdez v. CSC, 197 SCRA 168*, where it was ruled that CSC Memorandum Circular No. 29, s. 1989 cannot be given retrospective effect so as to entitle to permanent appointment an employee whose temporary appointment had expired before the Circular was issued.

The principle of prospectivity has also been applied to judicial decisions which, "although in themselves not laws, are nevertheless evidence of what the laws mean, . . . (this being) the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or

interpreting the laws or the Constitution shall form a part of the legal system . . .'" *(Boldfacing supplied.)*

Applying the above disquisitions, I find the administrative and judicial claims filed within the prescribed period.

Accordingly, I vote that the Petition for Review be **GRANTED**. The Petition for Review, docketed as CTA Case No. 8120 should be **REINSTATED** and be **GIVEN DUE COURSE**.

LOVELL R. BAUTISTA
Associate Justice