REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

# ***EN BANC***

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| DIAGEO PHILIPPINES, INC., ***Petitioner,*** | **C.T.A. EB NO. 806** (C.T.A. CASE NO. 7778) |
| | Present: |
| -versus- | ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ. |
| COMMISSIONER OF INTERNAL REVENUE, ***Respondent.*** | **Promulgated:** JUN 2 1 2012 lusfpalinario 9:08 a.m. |

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# DECISION

**PALANCA-ENRIQUEZ, J.:**

While the right to appeal a decision of the Commissioner to the CTA is merely a statutory remedy, nevertheless, the requirement that it must be brought within 30 days is jurisdictional. Under *Section 112 (C) of the NIRC of 1997, as amended*, the taxpayer has 30 days from receipt of the decision of the Commissioner, or from the lapse of the 120-day period within which to file an appeal with the CTA. Failure to file the judicial claim for refund/credit within the 30-day period warrants a dismissal of the claim inasmuch as no jurisdiction was acquired by the CTA.

## THE CASE

This is a Petition for Review filed by Diageo Philippines, Inc. (hereinafter "petitioner") under *Section 2, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to set aside the Resolution dated July 8, 2011 rendered by the Second Division of this Court in C.T.A. Case No. 7778, the dispositive portion of which reads, as follows:

> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration filed on May 13, 2011 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

## THE PARTIES

Petitioner is a corporation duly organized and existing in accordance with Philippine laws, with business address at 111 Technology Avenue, Laguna Technopark, Biñan, Laguna.

Respondent, on the other hand, is the duly appointed Commissioner of the Internal Revenue (hereinafter "respondent CIR"), who is authorized under the law to act on claims for refund, tax credit certificates and other matters

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involving assessment and collection of all national internal revenue taxes, fees and charges, as well as the enforcement of all forfeitures, penalties, and fines connected therewith. She holds office at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.

## THE FACTS

The facts, as culled from the records, are, as follows:

Petitioner is a corporation engaged in the business of distilling, rectifying, blending, manufacture, wholesale and exportation of alcohol products and spirits. It is a VAT registered entity whose sales are subject to zero percent (0%) VAT rate, pursuant to *Section 106* of the *National Internal Revenue Code (NIRC) of 1997, as amended.*

From October 2005 to March 2006, petitioner made purchases of various raw materials for the manufacture of alcohol products from different local suppliers. These purchases were paid by petitioner and in return official receipts were issued by suppliers. The supplier passed on to, and petitioner paid the VAT on these purchases.

From January to March 2006, petitioner manufactured alcohol products using the purchased raw materials and exported the same. During this period, petitioner paid a total of P11,442,722.60, as its creditable input VAT, which may either be attributed to the foreign export sales, or allocated proportionately

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on the basis of the volume of such export sales.

On June 28, 2007, petitioner filed a claim for tax credit or refund of its excess input VAT covering the period January to March 2006 in the amount of P11,442,722.60 attributable to its VAT zero-rated export sales for the said periods.

Alleging inaction, on April 25, 2008, petitioner filed a "Petition for Review" with the Second Division of this Court, docketed as C.T.A. Case No. 7778.

On July 7, 2008, respondent CIR filed her answer, and alleged by way of special and affirmative defenses that petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue; a claim for refund partakes of the nature of an exemption which cannot be allowed unless granted in the most categorical language; the claim for refund of creditable VAT input taxes in the amount of P11,442,722.60 for the period January 1, 2006 to March 31, 2006 must be strictly construed and petitioner has the burden of proof to show compliance with the requirements under the law, but has failed to show proof of its compliance therewith; and petitioner filed its petition for review only on April 25, 2008, more than one month after the lapse of the period allowed by law to file judicial claim for refund with this Court, thus the same was filed out of time.

After trial on the merits, on April 20, 2011, the Second Division rendered its Decision dismissing petitioner's claim for refund for having been filed late.

On May 13, 2011, petitioner filed a "Motion for Reconsideration of the Court's Resolution dated 20 April 2011" which was denied for lack of merit in the Resolution dated July 8, 2011.

Hence, this petition raising the following:

**ISSUES**

I

WHETHER OR NOT PETITIONER IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF ELEVEN MILLION FOUR HUNDRED FORTY TWO THOUSAND SEVEN HUNDRED TWENTY TWO AND 60/100 PESOS (P11,442,722.60).

II

WHETHER OR NOT THE VESTED RIGHTS OF PETITIONER WOULD BE IMPAIRED BY THE RETROACTIVE APPLICATION OF THE AICHI RULING.

III

WHETHER OR NOT THE PETITION FOR REVIEW WAS TIMELY FILED.

Without necessarily giving due course to the Petition for Review, on August 18, 2011, the Court required respondent CIR to file her comment, within ten (10) days from notice.

Despite notice, respondent CIR failed to file her comment.

On October 13, 2011, this Court gave due course to the Petition for Review and ordered the parties to file their simultaneous memoranda, within thirty (30) days from notice.

On November 17, 2011, petitioner filed its "Memorandum". Respondent CIR failed to file her memorandum; hence, on January 18, 2012, the petition was deemed submitted for decision.

## THE COURT *EN BANC'S* RULING

The petition has no merit.

***Timeliness of the filing of the Petition for Review in C.T.A. Case No. 7778***

At the outset, We deem it necessary to first discuss the timeliness of the filing of the Petition for Review in C.T.A. Case No. 7778.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc, ("Aichi case"), 632 SCRA 442-444*, the Supreme Court ruled, as follows:

> "***The filing of the judicial claim was premature***
>
> However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:
>
> SEC. 112. Refunds or Tax Credits of Input Tax.–

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> x x x x
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> (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 tax on the application within the period prescribed above, the taxpayer affected may, within (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. *(Emphasis supplied.)*

Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application for tax refund/credit,' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.' The phrase 'within two (2) years xxx apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

With regard to Commissioner of Internal Revenue vs. Victorias Milling, Co., Inc. relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."

Pursuant to the above ruling, the periods provided under *Section 112 (D) of the NIRC of 1997, as amended*, are crucial in filing an appeal with the CTA.

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The Aichi case clarified the provisions of *Section 112 (A) of the NIRC of 1997, as amended*, that the phrase "within two (2) years xxx apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. On the other hand, *Section 112 (D)[now Section 112 (C)]* provides for the period within which to file the judicial claim with the CTA, which is, within thirty (30) days from the receipt of the decision of the CIR denying the claim, or from the expiration of the 120-day period.

Applying the Aichi ruling, records show that petitioner filed its administrative claim on June 28, 2007 for the refund of its unutilized input VAT for the period covering January to March 2006, which is well within the prescribed two (2) year period after the close of the taxable quarter when the sales were made, or from March 31, 2006. Pursuant to *Section 112 (C)*, petitioner CIR had 120 days or until October 26, 2007, within which to decide petitioner's administrative claim. Within thirty (30) days from the lapse of the 120 day period, or from October 26, 2007 until November 25, 2007, petitioner may appeal the CIR's inaction on its claim for refund to the CTA. However, petitioner filed its Petition for Review with the Second Division only on April 25, 2008, which is five (5) months way beyond the prescribed period. It is clear, therefore, that the Petition for Review in C.T.A. Case No. 7778 was

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belatedly filed, which warrants the outright dismissal of the petition, as the Second Division has not acquired jurisdiction over the same.

Petitioner cannot now raise the timeliness of the filing of its judicial claim in view of its compliance with *Section 229 of the NIRC of 1997, as amended*. In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, 565 SCRA 172-173*, the Supreme Court ruled that a taxpayer cannot avail of either *Sections 204 (C)* or *229 of the NIRC of 1997, as amended*, in cases involving a claim for refund of any unutilized creditable input VAT. Both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes. It must be stressed that a refund of unutilized input VAT is not an erroneously, illegally, or wrongfully collected tax.

As regards petitioner's contention that the retroactive application of the Aichi ruling would impair its vested rights, it must be stressed that the Aichi case is a mere reiteration of what *Section 112 of the NIRC of 1997, as amended*, provides and does not establish a rule which is not familiar to petitioner; hence, petitioner cannot claim that it is legally impossible to comply with such doctrine as such was still non-existent at the time petitioner filed its Petition for Review. Basic is the rule of statutory construction that when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language *(Tawang Multi-purpose Cooperative vs. La Trinidad Water District,646 SCRA 33, citing Security Bank and Trust Company vs. Regional Trial Court of Makati, Branch 61, 263 SCRA 488)*.

Moreover, once the Supreme Court has interpreted a law, such interpretation becomes a part of the law itself. 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. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one, which is the situation in this case *(Eagle Realty Corporation vs. Republic of the Philippines, 594 SCRA 558)*. Considering that in the Aichi case, the Supreme Court interpreted the provisions of the *NIRC of 1997, as amended*, particularly *Sections 112 (A)*, prescribing the period to apply the claim for refund/credit within two years after the close of the taxable quarter when the sales were made, and *112 (D)*, prescribing the period to appeal to the CTA, the decision or inaction of the Commissioner, then such judicial interpretation constitutes part of the *NIRC of 1997* as of the date it took effect. Settled is the rule that judicial interpretation of the law retroacts to the date when the said law became effective. Thus, the ruling in the Aichi case retroacts to the date when *Section 112 of the NIRC of 1997* took effect on January 1, 1998.

At any rate, the ruling in the Aichi case partakes of the nature of a procedural rule. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. Nor is the retroactive application of procedural statutes constitutionally objectionable. The reason is that as a general rule, no vested right may attach to, nor arise from procedural laws *(Spouses Valenzuela, et al. vs. Court of Appeals, et al., 363 SCRA 787)*.

Finding no reversible error, we affirm the assailed Resolution dated July 8, 2011 rendered by the Second Division in C.T.A. Case No. 7778.

**WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit. Accordingly, the assailed Resolution dated July 8, 2011 rendered by the Second Division in C.T.A. Case No. 7778 is hereby **AFFIRMED**.

**SO ORDERED**.

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Associate Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

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

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

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

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

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

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

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

**ERNESTO D. ACOSTA**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
QUEZON CITY

*En Banc*

**DIAGEO PHILIPPINES, INC.,**
Petitioner,

-*versus*-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB CASE NO. 806**
(CTA Case No. 7778)

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

**Promulgated:**
JUN 21 2012 ~~AAApolinario~~ 9:08 a.m.

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## *SEPARATE OPINION*

*BAUTISTA, J.:*

During the pendency of the case at bench, the then prevailing ruling in this Court, is that, the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return;[1] not from the close of the quarter;[2] not even within thirty (30) days from receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.[3]

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[1] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[2] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.

However, while the above statement is my considered view, I must vote to deny the present Petition for Review.

Based on the records of the case, petitioner filed its administrative claim before respondent, on June 28, 2007, for tax credit/refund of its excess input tax covering the period from January to March 2006, in the amount of ₱11,442,722.60, attributable to its zero-rated export sales; and due to alleged inaction, it filed a Petition for Review with this Court on April 25, 2008.

Section 112(A) of the 1997 National Internal Revenue Code ("NIRC"), as amended, which provides that a value-added tax ("VAT")-registered person, whose sales are zero-rated, may apply for the issuance of tax credit certificate or refund, must be construed with Section 114(A), in relation to Section 229 of the same Code, *scilicet*:

> SEC. 114. *Return and Payment of Value-Added Tax* –
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> (A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.
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> xxx xxx xxx
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> 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 written claim therefore, 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.

In not a few cases did this Court rule that the two (2)-year prescriptive period for filing a claim for VAT refund or tax credit should not be counted from the close of the quarter, but from the date of filing of the VAT Return, for it is only during that time that the VAT liability or refundability can be determined. The Supreme Court affirmed in this wise:

> It is true that unlike corporate income tax, which is reported and paid on installment every quarter but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT the taxpayer may apply against its output VAT; how much output VAT it is due to pay for the quarter or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/ credit. xxx.
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> xxx, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter.[4]

Further, in the computation of the two (2)-year period, a year is equivalent to three hundred sixty five (365) days, regardless of whether it is a regular year or a

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[4] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007.

leap year.[5]

However, the records are bereft of evidence that petitioner filed its claims within the prescribed period. Petitioner's assertion that it has duly filed its Quarterly VAT Return on February 2, 2007, and hence, it has until February 2, 2009, within which to file its claim, deserves scant consideration.

It should be stressed that the subject claim covers the period from January to March 2006, and Section 114(A) of the 1997 NIRC, as amended, expressly provides that the return shall be filed "within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis."

For the subject period of claim, petitioner merely proffered its Amended Quarterly VAT Return.[6] Without the introduction of its Original VAT Return, it cannot be ascertained whether the claim for the said quarter was timely filed. Hence, the same should be disallowed.

Accordingly, I vote that the Petition for Review be **DENIED** for insufficiency of evidence.

**LOVELL R. BAUTISTA**
Associate Justice

[5] National Marketing Corporation *v.* Tecson, 139 Phil. 584 (1960), *citing People v. Del Rosario, 97 Phil 70, 71 (1955).*
[6] *Exhibit "G."*