REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CBK POWER COMPANY LIMITED, Petitioner,	C.T.A. EB No. 758 (C.T.A. CASE NOS. 7771 & 7814)
	Members:
- versus -	ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 04 2012 4:20pm

x- -x

DECISION

Fabon-Victorino, J.:

In this Petition for Review filed on May 06, 2011, petitioner assails the Decision dated December 03, 2010, as well as the Resolution dated April 07, 2011, which denied its Motion for Reconsideration, both rendered by the Court in Division.

The instant appeal is an offshoot of two Petitions for Review separately filed by petitioner with the Court in Division, which were consolidated by Resolution of November 27, 2008. In CTA Case No. 7771, petitioner prayed for the refund or issuance of a tax credit certificate (TCC) of its unutilized value-added tax (VAT) in the amount of P7,559,943.44 for the period of January 1, 2006 to March 31, 2006, while in CTA Case No. 7814, in the amount of P36,246,606.28 for the period of April 1, 2006 to December 31, 2006. These alleged unutilized input VAT were from petitioner's domestic purchases of goods and services subject to VAT and attributable to its VAT zero-rated sales of power generation services to the National Power Corporation (NPC), which in turn are automatically zero-rated pursuant to Section 108 (B)(7) of the Tax Code of 1997, as amended by Republic Act (R.A.) No. 9337.

The facts, insofar as pertinent to the present action, are as follows:

Petitioner is a partnership under and by virtue of the laws of the Philippines, with principal office at the NPC Compound, Kalayaan, Laguna.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), with the authority to decide and grant refunds or tax credit as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.

Petitioner is a special purpose entity engage in all aspects of (1) the design, financing, construction, testing, commissioning, operation, maintenance, management, and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna, and (2) rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance, and management of the Caliraya, Botocan, and Kalayaan I hydroelectric power plants and their related facilities, located in the Province of Laguna. Petitioner generates electricity through its Caliraya, Botocan, and Kalayaan I hydroelectric power plants, as well as from the Kalayaan II hydroelectric power plant.

It is a registered VAT entity with TIN/VAT No. 205-760-474-000. On April 10, 2010, BIR Revenue District Office No. 55, San Pablo City, Laguna issued in its favor Certificate of Registration OCN 1RC0000050243, which was updated on May 11, 2005, through the issuance of Certificate of Registration OCN 1RC0000195405.

The Energy Regulatory Commission also issued in favour of petitioner the following Certificates of Compliance: (1) COC No. 04-02-GXT49A-0050 dated April 11, 2007; (2) COC No. 04-02-GXT49B-0051 dated February 04, 2004; (3) COC No. 04-02-GXT49C-0052 dated February 04, 2004; and (4) COC No. 05-10-GN12-13354-13373 dated April 11, 2007.

On March 17, 2006, the BIR issued BIR Ruling No. DA-146-2006 stating that petitioner is an entity engaged in hydropower generation, and that its billings and fees for the sale of electricity to NPC are subject to VAT at zero percent (0%) rate under Section 108(B)(7) of the Tax Code of 1997, as amended by R.A. No. 9337.

For the period of January 01, 2006 to December 31, 2006, petitioner filed with the BIR its Monthly VAT Declarations and Quarterly VAT Returns. Petitioner filed its Original Quarterly VAT Returns for the first, second, third, and fourth quarters of the year 2006 and Amended Quarterly VAT Returns for the four quarters of year 2006 on the following dates:

2006 Taxable Quarter	Original VAT Return (date filed)	Amended VAT Return (date filed)
1st	April 25, 2006	December 28, 2007 --------------------------

		March 31, 2008
2nd	July 25, 2006	April 18, 2008
3rd	October 20, 2006	May 07, 2008
4th	January 24, 2007	July 21, 2008

Petitioner's Amended Quarterly VAT Returns for the four quarters of year 2006 reflected/reported the following tax credits:

Input Tax Credits for the period January 1 to December 31, 2006						
2006 Taxable Quarter	Purchase of Capital Goods exceeding P1 Million	Domestic Purchase of Goods Other than Capital Goods	Importation of Goods Other than Capital Goods	Domestic Purchase of Services	Services Rendered by Non-Residents	Total Input Tax Credits
1st	1,870,700.70	1,821,359.38	556,816.00	4,151,387.81	968,642.68	9,368,906.57
2nd	1,346,348.83	1,209,055.88	1,152,424.00	5,797,606.67	1,199,547.36	10,704,981.94
3rd	2,998,466.11	1,425,019.73	810,906.00	10,921,541.86	302,627.14	16,458,560.84
4th	344,377.46	1,620,670.63	654,763.00	8,586,528.36	1,608,644.90	12,814,984.35
TOTAL	6,559,893.10	6,076,104.82	3,174,909.00	29,457,064.70	4,079,462.08	**49,347,433.70**

Also, based on the Amended Quarterly VAT Returns for the period January 01 to December 31, 2006, petitioner reported zero-rated sales during the period as follows:

Zero-Rated Sales for the period January 01 to December 31, 2006	
2006 Taxable Quarter	Zero-Rated Sales/Receipts
1st	1,583,390,407.46
2nd	1,648,748,033.50
3rd	1,599,882,354.64
4th	1,547,858,529.27
TOTAL	**6,379,879,324.87**

Of the total input tax reported in the Amended Quarterly VAT Returns for the period of January 1 to December 31, 2006 amounting to P49,347,433.70, petitioner seeks for the issuance of TCCs in the total amount of P43,806,549.72 (*i.e.* P7,559,943.44 for CTA Case No. 7771, and P36,246,606.28 for CTA Case No. 7814).

On March 31, 2008, petitioner filed with the BIR RDO No. 55 of Laguna an administrative claim for the issuance of a TCC in the total amount of P7,559,943.44, representing its unutilized input VAT covering the period of January 1, 2006 to March 31, 2006.

On April 23, 2008, petitioner filed with the Court in Division a Petition for Review docketed as CTA Case No. 7771, alleging inaction on the part of respondent's on its administrative claim, petitioner filed on March 31, 2008.

On July 23, 2008, petitioner filed with the BIR RDO No. 55 of Laguna another administrative claim for the issuance of a TCC in the amount of P36,246,606.28, representing unutilized input VAT for the period of April 1, 2006 to December 31, 2006. On the day following or on July 24, 2008, petitioner filed a judicial claim for issuance of TCC via Petition for Review with the Court in Division on the same claim which was docketed as CTA Case No. 7814.

By virtue of the Resolution dated November 27, 2008, CTA Case No. 7814 was consolidated with CTA Case No. 7771.

In the Resolution dated February 9, 2009, the Court in Division approved the parties' Joint Stipulation of Facts and Issues filed on February 02, 2009.

During the trial, only petitioner adduced evidence. Respondent, on the other hand, rested her case without presenting any.

In a Decision promulgated on December 03, 2010, the Court in Division dismissed the consolidated cases on ground of prematurity of the judicial claims as they were filed before the lapse of the 120-day period granted unto respondent to act on the applications for issuance of TCC pursuant to Section 112 of the Tax Code, as amended, and as laid down in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc* (*Aichi* case).[1] The dispositive portion of the Decision reads:

[1] G.R. No. 184823, October 06, 2010.

> WHEREFORE, premises considered, the instant Petitions for Review are hereby DISMISSED for having been prematurely filed.

The foregoing Decision was effectively affirmed when petitioner's Motion for Reconsideration filed on December 17, 2010 was denied in the Resolution dated April 07, 2011, in this wise:

> WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is DENIED for lack of merit.

Believing that the scale of justice should tilt in its favor, petitioner is now before the Court *En Banc*, insisting that both its administrative and judicial claims for refund were seasonably filed within two years from the date of the filing of the return and payment of the taxes due following the doctrine enunciated in *Atlas Consolidated Mining And Development Corporation v. Commissioner of Internal Revenue*[2], then prevailing at the time it filed its two Petitions for Review before the Court In Division.

Allegedly, its position also finds support in Section 3, Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals which provides that "In case of inaction of the Commissioner of Internal

[2] G.R. Nos. 141104 & 148763, June 08, 2007.

Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes."

Contrary to the ruling of the court, that the two-year prescriptive period for both administrative and judicial claims for refund/credit of input VAT on zero-rated sales should be reckoned from the date of filing of the return and payment of the tax due and not from the close of the taxable quarter when the relevant sales or transactions were made pertaining to creditable input VAT, hinged on the Supreme Court ruling in the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation.*[3]

Petitioner as well finds flaws in the application in the present case of the ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[4] that the failure of the taxpayer to observe the 120-day required in Section 112 of the NIRC, as amended, would render the judicial claim for refund/credit of input VAT premature. If at all, both the *Mirant* and *Aichi* cases, which were promulgated on September 12,

---

[3] G.R. No. 172129, September 12, 2008.
[4] G.R. No. 184823, October 06, 2010.

2008, and October 6, 2010, respectively, or after the filing of its judicial claims for refund/credit, should be applied prospectively and should not adversely affect a party who relied on the old doctrine in good faith, such as petitioner.

Moreover, the Mirant and Aichi cases cannot prevail over petitioner's substantive rights that it already acquired under the *Atlas* case by virtue of Section 5(5), Article VIII of the 1987 Constitution which states that rules of procedure shall not diminish, increase or modify substantive rights.

Petitioner also takes the view that the application of the *Aichi* case will effectively shorten the two-year period for filing administrative and judicial claims for refund of unutilized input taxes provided in Section 112 of the NIRC, as amended, which should be read in harmony with Section 229 of the same Tax Code of 1997.

It is also erroneous to apply *Aichi case* since it is yet to gain finality. According to petitioner, per Judicial Records Office of the Supreme Court, no entry of judgment in the said case has been made.

What is more important says petitioner, is that it has sufficiently substantiated its claim for refund to be entitled thereto. It was able to establish that it is a registered VAT entity with BIR Certificate of Registration 1RC0000050243 dated April 10, 2000; that its sales of electricity to NPC are zero-rated; that the input taxes claimed were attributable to zero-rated sales and were not applied against any output tax liability; and as above discussed, its administrative and judicial claims were seasonably filed.

Petitioner banked on its presentation of the Certificate of Compliance COC No. 04-02-GXT49A-0050 dated April 11, 2007, Certificate of Compliance COC No. 04-02-GXT49B-0051 dated February 04, 2004, Certificate of Compliance COC No. 04-02-GXT49C-0052 dated February 04, 2004, and Certificate of Compliance COC No. 05-10-GN12-13354-13373 dated April 11, 2007, all issued by the Energy Regulatory Commission (ERC).

As a Contractor in the Build-Rehabilitation-Operate-and-Transfer (BROT) Agreement, it has complied with its obligation relative to the said agreement for purposes of generating electricity for the National Power Corporation (NPC).

Further lending support to its position are the string of cases where the Court ruled that sale of power generation services to NPC is effectively zero-rated, pursuant to Section 108(B)(3) of the Tax Code, as amended, in relation to Section 13 of Republic Act No. 6395. Since under its Charter, NPC is fully tax-exempt, petitioner's sale to the NPC of electricity generated through hydropower for the year 2006 is subject to VAT at zero per cent rate.

This has been confirmed in the BIR Ruling No. DA-146-2006 issued on March 17, 2006, which states that as an entity engaged in hydropower generation, petitioner's sale of electricity to NPC generated through hydropower, its billing/fees to NPC are subject to VAT at 0%.

As to the amount subject of the claim, petitioner argues that its accounting books reveal that it generated zero-rated sales of electricity to NPC amounting to P1,583,390,407.46 and P4,796,488,917.41 for the period January 1, 2006 to March 31, 2006, and April 1, 2006 to December 31, 2006, respectively.

Finally, petitioner did not incur any output tax for the year 2006 and its unutilized input taxes attributable to its zero-rated sales to the NPC for year 2006 was not carried over to the succeeding quarters of 2007.

On October 19, 2011, the instant case was deemed submitted for decision *sans* any pleading from respondent, who failed to file, despite the opportunity granted.

The Ruling of the Court *En Banc*

The crux of the controversy lies on the timeliness of petitioner's administrative and judicial actions.

There is no denying that in CTA Case No. 7771, petitioner's administrative claim for issuance of a TCC in the total amount of P7,559,943.44, representing its unutilized input taxes for the period January 1, 2006 to March 31, 2006 was filed with the BIR RDO No. 55 of Laguna on **March 31, 2008**, pursuant to Section 112(A) of the NIRC of 1997, as amended. Due to alleged inaction of respondent, petitioner elevated its claim via a Petition for Review to the Court in Division barely 23 days thereafter or on **April 23, 2008**.

Subsequently or on **July 23, 2008**, petitioner filed a similar administrative claim for issuance of TCC before the same office, this time for the total amount of P36,246,606.28, representing its unutilized input taxes for the period April 1, 2006 to December 31, 2006, invoking the provision of Section 112 (A) of the NIRC, as amended. The following day or on **July 24, 2008**, petitioner filed a Petition for Review allegedly to toll the running of the two(2) year prescriptive period. The case was docketed as CTA Case No. 7814.

Section 112 of the 1997 NIRC, reads as follows:

> **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 of 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.

(B) Cancellation of VAT Registration. - A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) 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.

(D) Manner of Giving Refund. - Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit.

Plain from the foregoing provision that any VAT-registered taxpayer whose sales are zero-rated or effectively zero-rated is allowed by law to apply with respondent for refund or issuance of tax credit certificate of its creditable and unutilized input tax attributable to such sales **within two(2) years after the close of the taxable quarter** when the relevant sales were made. Note that the two-year prescriptive period pertains to the filing of the application for refund/credit with respondent and does not include judicial recourse as held in both Mirant and Aichi cases.

From the filing of complete documents in support of the administrative action, respondent has **120 days** to either grant or deny such application for refund/credit. Upon receipt of the adverse decision or the lapse of the 120-day period without any action from respondent, the aggrieved taxpayer may within 30 days appeal to the CTA by way of the petition for review the adverse decision or inaction of respondent.

Under the obtaining circumstances, there is no reason for the Court *En Banc* to deviate from the ruling of the Court in Division that while petitioner's application for issuance of TCC covering the first quarter of 2006 was seasonably filed on March 31, 2008, or within two years from the close of the taxable quarter when the relevant sales were made, its judicial action docketed as CTA Case No. 7771 was prematurely filed on April 23, 2008, or barely 23 days after it sought administrative relief from respondent who still had 197 days to act on her level.

As for the rest of the quarters of 2006, obviously the administrative claim for issuance of TCC for the 2nd quarter of 2006 was belatedly filed on July 23, 2008. By express provision of Section 112 (A) of the NIRC, as amended, the same should have been filed on June 30, 2008. In fine, the administrative claim for issuance of TCC for the 3rd and 4th quarters of 2006 was seasonably filed with respondent on July 23, 2008.

This is definitely not true insofar as petitioner's judicial actions are concerned. Both CTA Case Nos. 7771 and 7814 were prematurely filed on April 23, 2008 and July 24, 2008, respectively, simply because petitioner sprinted to the Court for judicial intervention even before the lapse of the 120-day period required under Section 112 (C) of the NIRC, as amended. By so doing, petitioner effectively deprived respondent of the opportunity to determine the merit of its claim.

Basic is the rule that under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted. If remedy is available within the administrative machinery, this should be resorted to before recourse can be made to courts. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court. The non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[5] In another case it was held that the party with and administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but must also pursue it to its appropriate conclusion before seeking judicial intervention.[6] To be sure, petitioner utterly failed in this regard.

---

[5] National Electrification Administration v. Val L. Villanueva, G.R. No. 168203, March 9, 2010.
[6] Heirs of Tabia v. Court of Appeals, G.R. Nos. 129377 and 129399, February 22, 2007.

Anent the alleged erroneous non-application of the *Atlas case*[7] in this petition, suffice it to say that this issue had long been put to rest. It is now settled that the *Atlas* case was resolved by the Supreme Court using the old Tax Code of 1977, which was the law then enforced. In rendering the decision, the Supreme Court construed and applied Sections 106, 110, and 230 (now Section 229), of the 1977 Tax Code as the said case involved a claim for refund/tax credit of input VAT on purchases of capital goods and on zero-rated sales for the taxable quarters of the years 1990 and 1992. In contrast, the transactions or sales subject of the instant claim for refund/tax credit were consummated during the taxable year 2006. Thus, Republic Act No. 8424 or the Tax Reform Act of 1997 which took effect on January 1, 1998, is the pertinent law in this case. In other words, the Atlas case resolved under the old Tax Code of 1977 is not applicable in the case at bar.

On the contention that non-application of the two-year period prescribed under Section 229 of the NIRC is flawed, this too belongs to legal history. The Court *En Banc* cannot agree more with the Court in Division when it ruled as follows:

---

[7] Atlas Consolidated Mining And Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 08, 2007.

By a plain reading of the foregoing provision, the 2-year prescriptive period for filing the application for refund/credit of input tax on zero-rated sales shall be determined from the close of the quarter when such sales were made. The Supreme Court, in the *Aichi* case, reinforced the doctrine laid down in the *Mirant* case, that the 2-year prescriptive period is reckoned from the close of the taxable quarter when the relevant sales or transactions were made, and significantly gave the said doctrine a retroactive application considering that the High Court applied the same to the *Aichi* case notwithstanding the fact that the claim for refund was filed on September 30, 2004, approximately 4 years before the *Mirant* case was promulgated. In the *Aichi* case[8], the Supreme Court explained as follows:

x x x

> The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissionier 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

[8] *Supra* note 38.

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.

Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable

To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:

Sec. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —

xxx xxx xxx

(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

xxx xxx xxx

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, of any sum alleged to have been excessively or in any manner wrongfully 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.

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.

MPC's creditable input VAT not erroneously paid

For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-

> tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the equation.
>
> xxx xxx xxx
>
> Considering the foregoing discussion, **it is clear that Sec. 112 (A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT**, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes. (Emphasis supplied.)
>
> In view of the foregoing, we find that the CTA En Banc erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.

Clearly, Sections 114(A) and 229 of the NIRC are inapplicable in claims for refund of unutilized input VAT attributable to zero-rated or effectively zero rated sales. This doctrine enunciated in the *Mirant*[9] case and reiterated in the *Aichi* case[10], laid down the parameters in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT.

This judicial interpretation of the Supreme Court of the above cited provisions constitutes part of the law of the land as of the date of its original passage. This is so since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[11]

With regard the suggested prospective application of both the *Mirant* and *Aichi* cases, the words of the Supreme Court on the matter is instructive, thus:

> In *Serrano v. National Labor Relations Commission*, an argument was raised similar to the case under consideration. Private respondent therein argued that the new doctrine pronounced by the Court should only be applied prospectively. Said postulation was ignored by the Court when it ruled:
>
> > While a judicial interpretation becomes a part of the law as of the date that law was originally passed, this is subject to the qualification that when a doctrine of this Court is overruled and a different view is

---

[9] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2008.

[10] Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 06, 2010.

[11] Eagle Realty vs. Republic of the Philippines, G.R. No. 151424, July 31, 2009; Castro v. Hon. Deloria, el al., G.R. No. 163586, January 27, 2009.

> adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.
>
> It is apparent that private respondent misconceived the import of the ruling. The decision in Columbia Pictures does not mean that if a new rule is laid down in a case, it should not be applied in that case but that said rule should apply prospectively to cases arising afterwards. Private respondent's view of the principle of prospective application of new judicial doctrines would turn the judicial function into a mere academic exercise with the result that the doctrine laid down would be no more than a dictum and would deprive the holding in the case of any force.
>
> Indeed, when the Court formulated the Wenphil doctrine, which we reversed in this case, the Court did not defer application of the rule laid down imposing a fine on the employer for failure to give notice in a case of dismissal for cause. To the contrary, the new rule was applied right then and there. x x x.[12]

On the contention that the *Aichi* case has not gained finality, obviously, petitioner failed to verify its information. The case history of G.R. No. 184823 reveals that the Entry of Judgment was issued in the said case on January 26, 2011. Hence, the decision in the *Aichi* case became final and executory as of January 26, 2011.

---

[12] Cemco Holdings, Inc. vs. National Life Insurance Company, G.R. No. 171815, August 7, 2007.

WHEREFORE, the Petition for Review filed by petitioner CBK Power Company Limited on May 06, 2011, is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

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

(I maintain my *Dissenting Opinion* as promulgated in the Decision dated December 3, 2010, and Resolution dated April 7, 2011)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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