

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CE CASECNAN WATER AND
ENERGY COMPANY, INC.,
Petitioner,

C.T.A. EB NO. 726
(C.T.A. Case No. 7739)

Members:

- versus -

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

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

Respondent.

JUN 26 2012

Acostopolisario
11:30 p.m.

x-----x

DECISION

Fabon-Victorino, J.:

This is a *Petition for Review*¹ of the Decision² dated December 2, 2010 and Resolution³ dated February 2, 2011, both rendered by the Court in Division in the case entitled *CE Casecnan Water and Energy Company, Inc. vs. Commissioner of*

¹ *En Banc* Case Docket, pp. 1-55.

² *En Banc* Case Docket, pp. 60-76.

³ *En Banc* Case Docket, pp. 77-78.

Internal Revenue, docketed as CTA Case No. 7739, filed by petitioner CE Casecan Water and Energy Company Inc.

The factual antecedents stated in the assailed Decision of the Court in Division are undisputed:

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Pantabangan, Nueva Ecija.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He may be served with summons, pleadings and other legal processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

Petitioner was incorporated on September 21, 1994, the primary purpose of which is to design, develop, construct, erect, assemble, commission and operate hydro-electric power plants and related facilities for the conversion into electricity of water provided by and under contract with the Philippine Government or any subdivision, instrumentality or agency thereof, or any government owned or controlled corporation, or other entity engaged in the development, supply or distribution of energy. Petitioner has been accredited and certified to as such by the Department of Energy, as evidenced by its DOE Certificate of Accreditation [No. 95-07-12 (Exhibit "B")] issued on July 20, 1995. Petitioner is a registered value added tax (VAT) taxpayer with the BIR as evidenced by its Certificate of Registration with Tax Identification Number 004-500-931-000 (Exhibit "C").

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for the first to fourth quarters of 2006, respectively:

Taxable Quarter	Date of Filing of Original Return
1 st	April 25, 2006
2 nd	July 25, 2006
3 rd	October 25, 2006
4 th	January 25, 2007

On the following dates, petitioner filed with the BIR its Amended Quarterly VAT Returns for the first to fourth quarters of 2006, reflecting its zero-rated sales, domestic purchases of non-capital, capital goods and services, services rendered by non-residents and importation of non-capital goods:

2006 Taxable Quarter	Date of Filing of Amended Return	Current Transactions					
		Zero-rated Sales (P)	Domestic Purchases-Goods Other than Capital Goods (P)	Domestic Purchases-Capital Goods (P)	Importation-Goods Other than Capital Goods (P)	Domestic Purchases-Services (P)	Services Rendered by Non-Residents (P)
1 st	February 22, 2007	1,341,558,865.27	3,581,742.21	0.00	123,680.00	150,386,858.26	1,077,238.16
2 nd	February 22, 2007	522,116,319.35	6,549,876.93	0.00	902,870.00	92,395,180.78	51,217.42
3 rd	February 22, 2007	1,192,234,577.80	7,697,153.25	2,857,142.86	2,336,042.17	76,522,257.78	0.00
4 th	July 25, 2007	1,141,214,397.86	6,928,368.33	0.00	8,136,116.67	42,472,854.83	1,113,855.75
Total		4,197,124,160.28	24,757,140.72	2,857,142.86	11,498,708.84	361,777,151.65	2,242,311.33

For the first to fourth quarters of 2006, petitioner incurred unutilized input VAT credits from its domestic purchases of non-capital goods, capital goods and services, services rendered by non-residents, and importation of non-capital goods in the total amount of P45,445,453.76:

2006 Taxable Quarter	Unutilized Input VAT Credits					Total
	Domestic Purchases-Goods Other than Capital Goods (P)	Domestic Purchases-Capital Goods (P)	Importation-Goods Other than Capital Goods (P)	Domestic Purchases-Services (P)	Services Rendered by Non-Residents (P)	
1 st	379,544.56	0.00	12,368.00	15,507,614.62	129,268.58	16,028,795.76
2 nd	785,961.65	0.00	90,287.00	11,084,959.24	6,146.09	11,967,353.98
3 rd	923,658.39	5,714.29	280,325.06	9,184,319.94	0.00	10,394,017.68
4 th	831,404.20	17,142.87	976,334.00	5,096,742.58	133,662.69	7,055,286.34
Total	2,920,568.80	22,857.16	1,359,314.06	40,873,636.38	269,077.36	45,445,453.76

Of the total accumulated input VAT of P45,445,453.76, the amount of P26,066,286.96 is attributable to petitioner's zero-rated sales of power generation services to the National Irrigation Administration for the first to fourth quarters of 2006.

On September 26, 2007, petitioner filed its administrative claim for refund of unutilized input VAT for the four quarters of taxable year 2006.

In view of respondent's inaction, on March 14, 2008, petitioner filed its judicial claim for refund with this Court, docketed as C.T.A. Case No. 7739.

In his Answer, respondent alleged by way of special and affirmative defenses:

"5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue;

6. The amount of P26,066,286.96 being claimed by petitioner as alleged unutilized input VAT for the first to fourth quarters of calendar year 2006 is not properly documented. To support its claim, it is imperative for the petitioner to prove the following:

a. The registration requirements of a value-added taxpayer in compliance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payments of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, Revenue Memorandum Order No. 53-98, otherwise there



would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That petitioner's administrative and judicial claims for tax refund was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

7. Petitioner exploited to its advantage Section 6 of RA No. 9136, alleging that sales of generated power are VAT zero-rated. However, in an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. (*Asiatic Petroleum Co. vs. Llanes*, 49 PHIL. 466);

8. Prescription has set in regarding petitioner's claim for refund based on Section 112(C) of the Tax Code, which states:



"Section 112. Refunds or Tax Credits of Input Tax. —

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

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

9. Hence, when petitioner filed its administrative claim for tax refund with the respondent's Large Taxpayers Audit and Investigation Division I on September 26, 2007, respondent had 120 days within which to decide on petitioner's claim for tax refund. And in case of full or partial denial of the claim or failure of respondent to act on the application within the 120-day period, petitioner has 30 days to appeal the decision or inaction with the Court of Tax Appeals. Thus, respondent had to render a decision within 120 days from 26 September 2007 or until 24 January 2008. In the event that respondent failed to act upon petitioner's claim for tax refund, petitioner has 30 days from 24 January 2008 or until 23 February 2008 to appeal the unacted claim with the Court of Tax Appeals.



10. Petitioner filed the instant petition for review with the Court of Tax Appeals only on 14 March 2008, more than one month after the lapse of the period allowed by law to file the judicial claim for tax refund with the Court of Tax Appeals. Clearly, the instant petition for review was filed out of time.

11. The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions (Agpalo, Statutory Construction, Third Edition 1995, pa. 266). For this reason, the courts construe these provisions of statutes as mandatory (ibid., citing Alvero vs. De la Rosa, 76 PHIL. 428, 434).

12. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people (Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667). Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its case.

13. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and liberally in favor of the taxing authority (Commissioner of Internal Revenue vs. Manila Mining Corp., 468 SCRA 571).

14. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with law and the rules and regulations, and the burden to prove otherwise is upon the petitioner."



Petitioner presented Leilah Yasmin E. Alpad and Jerome Antonio B. Constantino, as witnesses, and documentary evidence, marked as Exhibits "A" to "P", inclusive of their submarkings, which were all admitted by the Court.

On the other hand, respondent presented Emma A. Dulfo, as a witness, and documentary evidence, marked as Exhibits "1" to "2", inclusive of their submarkings, which were admitted by the Court.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; after which the case shall be deemed submitted for decision.

Both parties having complied thereto, the petition was deemed submitted for decision on November 03, 2009.

On April 26, 2010, petitioner filed an "Urgent Motion for Leave to Present Witness".

On April 28, 2010, the Court ordered respondent Commissioner to comment on petitioner's motion, but respondent failed to file her comment despite notice.

On July 19, 2010, the Court granted petitioner's "Urgent Motion for Leave to Present Witness" and the Resolution dated November 3, 2009 submitting the case for decision was recalled and set aside.

As additional evidence, petitioner presented Leilah Yasmin E. Alpad, as witness.

On August 16, 2010, petitioner was granted ten (10) days to submit its Supplemental Offer of Evidence, and respondent was granted ten (10) days from receipt of a copy thereof to file her comment.

On September 6, 2010, respondent Commissioner filed her comment on petitioner's Supplemental Formal Offer of Evidence.

On September 17, 2010, the Court admitted petitioner's supplemental Exhibits "Q" to "S", and ordered both parties to file their simultaneous supplemental memoranda, within fifteen (15) days from notice; after which the case shall be deemed submitted for decision.



On October 15, 2010, the case was deemed submitted for decision after petitioner filed its *Supplemental Memorandum*⁴ on October 12, 2010, *sans* any from respondent, despite notice.

On December 2, 2010, the Court in Division rendered the assailed Decision⁵ denying petitioner's judicial claim for refund or issuance of a Tax Credit Certificate for its unutilized excess input VAT for the four quarters of taxable year 2006. The Court in Division ruled that the judicial claim for refund was filed beyond the 30-day period to appeal, reckoned from the lapse of the 120-day period granted to the Commissioner of Internal Revenue (CIR) to act on the claim.

Believing otherwise, petitioner filed a *Motion for Reconsideration*⁶ on December 20, 2010, which the Court in Division denied in its Resolution⁷ of February 02, 2011, for lack of merit.

Hence, this petition raising the following errors allegedly committed by the Court in Division, to wit:



⁴ *Rollo*, pp. 562-570.

⁵ *Supra*, see note 2.

⁶ *Rollo*, pp. 594-527.

⁷ *Supra*, see note 3.

I. The December 02, 2010 Decision and the February 02, 2011 Resolution are erroneous based on the following grounds:

- i. The Petition for Review was filed within the period prescribed by law. Petitioner has basis to rely on the law as it has been legally and jurisprudentially understood at the time of the filing of its claim for refund.**
- ii. The case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*⁸ effectively grants Respondent unbridled discretion to deprive a taxpayer of the right to seek judicial redress.**
- iii. The Aichi case could not have validly overturned the well-settled rule on periods for filing VAT claims set forth in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* ("*Atlas*")⁹ without violating the constitutional mandate that no doctrine or principle of laid down by the Supreme Court may be reversed or modified except by the Supreme Court sitting *en banc*.**
- iv. The observance of the 120-day rule should only be applied prospectively.**

II. The Court in Division likewise erred in dismissing the Petition for Review in CTA Case No. 7739 considering that the grant of the full amount of petitioner's claim for refund is warranted by petitioner's sufficient and uncontroverted evidence properly substantiating the claim for refund of unutilized input VAT amounting to

⁸ G.R. No. 184823, October 6, 2010, (the "Aichi" case).

⁹ G.R. Nos. 141104 & 148763, June 8, 2007.

Php26,066,286.96 incurred during the four quarters of calendar year 2006 and attributable to zero-rated sales.

Petitioner argues that at the time it filed its administrative and judicial claims for refund, the prevailing rules are: 1) the 120-30 day period under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, is neither mandatory nor compulsory, thus, may be dispensed with as long as both the administrative and judicial claims for refund are filed within the two-year prescriptive period prescribed under Section 229 of the same Code; and 2) Section 229 of the NIRC of 1997, as amended, which provides that a taxpayer has two years from the date of payment of tax, within which to file both the administrative and judicial claims for refund, applies to claims for refund of input VAT as well pursuant to the ruling enunciated in the *Atlas* case.

Petitioner likewise claims that the Court *En Banc* consistently ruled in favor of the timeliness of judicial appeals filed after 30 days from the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended. ✓

Allegedly, in a multitude of cases¹⁰, the Court *En Banc* did not consider the timeliness of the appeal as an issue, if ever, it simply used the two-year prescriptive period set in Section 229 of the NIRC of 1997, as amended. In support of its contention, petitioner cited *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue ("Silicon")*¹¹, where the Supreme Court allegedly did not consider compliance with the 120-30 day rule as an issue.

Petitioner also questions the ruling in the *Aichi* case saying that it effectively grants respondent unbridled discretion to deprive a taxpayer of the right to seek judicial redress. If the 120-day period is deemed mandatory, and the said period commences from the submission of complete documents, respondent will have unrestricted power to prolong if not suspend the running of the 120-day period on the premise that claimant is yet to submit "complete documents". Incessant requirement for more documents will not be remote if only to prevent claimant from taking judicial relief. In fact, Revenue Memorandum Circular (RMC) No. 029-09¹² grants respondent



¹⁰ *En Banc* Case Docket, pp. 41-45.

¹¹ G.R. No. 172378, January 17, 2011.

¹² Clarifying Certain Issues Relative to the Processing of Claims for Tax Credit/Refund.

and her subordinates grounds to indefinitely suspend the running of the 120-day period.

Petitioner also opines that the *Aichi* case, decided by the First Division of the Supreme Court, could not validly overturn the doctrine laid down in the *Atlas* case without violating Article VIII, Section 4(3) of the Constitution, which expressly provides that "*no doctrine or principle of law laid down by the court in a decision rendered en banc or in a division may be modified or reversed except by the court sitting en banc.*"

Granting *in gratia argumenti* that the *Aichi* case validly overturned the *Atlas* case, the *Aichi* case should be applied prospectively lest it would penalize claimants, such as petitioner, who relied on the prevailing jurisprudence when it filed its Petition for Review.

Lastly, petitioner contends that it has presented sufficient and uncontroverted evidence to prove its entitlement to refund its excess unutilized input tax for the four quarters of taxable year 2006. ✓

In her *Comment* filed on May 6, 2011, respondent argues that petitioner's reliance in the doctrine laid down in *Atlas* case is misplaced. The *Atlas* ruling is based on the provisions of the NIRC of 1977 while the *Aichi* ruling, on the provisions of the NIRC of 1997. Thus, the *Aichi* ruling did not violate the provision of Article VIII, Section 4(3) of the Constitution, since it involved an interpretation of different sets of law.

Respondent as well concludes that petitioner's judicial claim has prescribed as it was filed beyond the period provided in Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended, depriving the Court of jurisdiction to determine it.

Finally, the *Aichi* doctrine is not affected by the *Silicon* ruling as they are not in all fours.

On September 06, 2011, the instant petition was submitted for decision, after petitioner filed its *Memorandum* on July 11, 2011 and respondent, her *Manifestation* filed on June 1, 2011, adopting the arguments in her *Comment* dated May 6, 2011, as her *Memorandum*. 

THE COURT EN BANC'S RULING

The instant petition must fail.

While the Petition for Review appears to be checkered with substantive and procedural issues, the crux of the controversy lies on the timeliness of the filing of petitioner's claim for refund or issuance of tax credit certificate of its unutilized input VAT for the four quarters of taxable year 2006, both in the administrative and judicial levels. Pertinent therefore, is the provision of Section 112 of the NIRC of 1997, as amended, specifically paragraph (A) and (C) thereof, which reads:

Section 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.

xxx

xxx

xxx

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

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

In other words, a VAT-registered person, such as petitioner, has two **(2) years after the close of the taxable quarter when the pertinent sales were made**, within which to apply with the CIR a claim for refund or tax credit of creditable input tax that remains unutilized. The CIR, on the other hand, has **120 days from the date of submission of complete documents in** ✓

support of the application for refund or tax credit of input tax to grant or deny the same, pursuant to Section 112(C) of the NIRC of 1997, as amended. Upon notice of denial or expiration of the allowable period of 120 days without any action on the part of the CIR, the VAT-registered person has **30 days, within which to appeal the adverse decision or the inaction of the CIR with the Court of Tax Appeals.**

In the *Aichi* case, the Supreme Court finally settled the issue of prescription insofar as the filing of an administrative claim for unutilized input VAT refund/credit before the CIR and its subsequent judicial appeal before the CTA. The pertinent portion of the said decision reads:

"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* [G.R. No. 172129, September 12, 2008, 565 SCRA 154], 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.



xxx

xxx

xxx

. . . 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.

xxx

xxx

xxx

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 . . . 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)¹³ 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

¹³ Now Subsection (C) of Section 112 of the NIRC of 1997.

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." (*Underscoring supplied*)

With the foregoing principle, the Court *En Banc* agrees with the Court in Division that petitioner's administrative claim for refund for the four (4) quarters of taxable year 2006 was filed within the two (2)-year prescriptive period on September 26, 2007.

It appears that respondent failed to act on petitioner's administrative claim within the allowable period of 120 days which lapsed on January 24, 2008, reckoned from September 26, 2007, which is presumed to be the date of submission of complete documents in support of the administrative claim for refund.

This incident gave birth to petitioner's right to challenge such inaction within the reglementary period of 30 days reckoned from the expiration of the period granted by law, or until February 23, 2008. The record shows however, that petitioner filed with the Court in Division its Petition for Review covering



the four (4) quarters of taxable year 2006 only on March 14, 2008, or way beyond the prescribed period to appeal. At that time, the Court in Division no longer had the competence to entertain the appeal.

The 30-day period to appeal the adverse decision or inaction of petitioner is explicitly mandated in Section 11 of Republic Act No. 9282,¹⁴ which amended Republic Act No. 1125 (The Law Creating the Court of Tax Appeals), to wit:

"SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action** as referred to in Section 7(a)(2) herein.

"Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of

¹⁴ An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for other purposes.

inaction as herein provided, from the expiration of the period fixed by law to act thereon." xxx xxx xxx (Boldfacing supplied)

It bears stressing that an appeal is neither a natural nor constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it.¹⁵ The perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. And failure to perfect an appeal within the reglementary period deprived the court - otherwise competent - of jurisdiction to hear and determine it.

In the 1996 case of *Videogram Regulatory Board v. Court of Appeals*¹⁶, the Supreme Court, no less, chronicled the inviolability of the period of perfecting an appeal, in this fashion:

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 followed as they are**



¹⁵ *Air France Philippines v. Leachon*, 472 SCRA 439, 442-443 [2005].

¹⁶ G.R. No. 106564, November 28, 1996.

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. These periods are carefully guarded and lawyers are well-advised to keep track of their applications. After all, a denial of a petition for being time-barred is a decision on the merits. (*Boldfacing supplied*)

Indeed, the timeliness of an appeal is a jurisdictional caveat that not even the Supreme Court can trifle with.¹⁷ Precisely this Court, in a number of cases, echoed the ruling in *Aichi Case* that a taxpayer claimant 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 judicial claims will result in the denial of the relief sought. Contrary to petitioner's claim, the 120-30 day period under Section 112(C) of the NIRC of 1997, as amended, is mandatory and may not be dispensed.



¹⁷ *BA vs. Gerochi, Jr.* 230 SCRA 9 [1994].

On the contention that the *Aichi* case could not validly overturn the doctrine laid down in the *Atlas* case without violating Article VIII, Section 4(3) of the Constitution, suffice it to say that the Court *En Banc* has extensively discussed the rationale of its contrary ruling in the case of *Marubeni Philippines Corporation vs. Commissioner of Internal Revenue*.¹⁸ The pertinent portion of the Decision reads:

"A careful analysis of the above-mentioned cases *Atlas*, *Mirant* and *Aichi* clearly shows that **the *Atlas* Case was an interpretation by the Supreme Court of the 1977 NIRC, prior to its amendment by R.A. 7716; while the *Mirant* and *Aichi* cases was an interpretation of the 1997 NIRC or the application and interpretation of the amendatory provisions of Tax Reform Act of 1997.**

Significantly, it is emphasized that the premise of the Supreme Court's ruling in the *Atlas* Case was anchored on the need to harmonize the provisions on Refund or Tax Credits of Input Tax under Section 106 (now Section 112) with the two-year prescriptive period for instituting a suit or proceeding for the Recovery of Tax Erroneously or Illegally paid under Section 230 (now Section 229) of the Tax Code of 1977, as amended, citing the cases of *ACCRA Investments Corporation v. Court of Appeals and Commissioner of Internal Revenue v. TMX Sales, Inc.* As previously discussed, prior to the effectivity of R.A. No. 7716 and R.A. No. 8424, there was no specific provision on judicial claim for unutilized input Vat/credit under Section 106 of the NIRC of 1977, hence, there is the need to harmonize the provisions of Section 106 with Section 230 of the Tax Code.



¹⁸ CTA EB No. 557 (CTA Case No. 6469), March 23, 2011.

It was in the advent of R.A. No. 7716 and R.A. 8424 when the legislature specifically provided for a judicial recourse with the Court of Tax Appeals in claiming unutilized input VAT refund/credit under Section 106(D) of the NIRC of 1977 (now Section 112 of the NIRC of 1997) within which the period of thirty (30) days reckoned from the receipt of the decision of the CIR denying the claim or after the expiration of a given period (now 120 days).

Accordingly, petitioner cannot blindly invoke the doctrine enunciated in Atlas case in the instant case. As discussed above, the need to harmonize the provisions of Section 106 and Section 230 of the Tax Code of 1977 is no longer necessary nor applicable due to the clear legislative intent embodied in the provisions of R.A. No. 7716 and R.A. 8424, which delineated specific amendatory provision for the prescriptive period in claiming and judicial claims for unutilized input VAT refund/credit.

Further, contrary to petitioner's argument that the prevailing doctrine should still be the Atlas Case because the Mirant Case was decided merely by the Second Division of the Supreme Court and not En Banc; therefore, the Mirant Case cannot validly overturn the Atlas Case doctrine without violating Article VIII, Section 4(3) of the Constitution, it is worthy of emphasis that the Mirant Case did not overturn the Atlas Case. As pointed out earlier, Section 106 of the 1977 Tax Code was amended and restructured by R.A. No. 7716 and further amended by R.A. No. 8424. Hence, the Atlas Case doctrine, which is an interpretation of Section 106 of the 1977 Tax Code prior to the aforesaid amendments, is no longer applicable because the legislature clearly delineated both administrative and judicial claims for unutilized input VAT refund/credit in one provision of the Tax Code, and that is Section 106 of the 1977 Tax Code, as amended by R.A. No. 7716 (now Section 112 of the NIRC of 1997).



xxx

xxx

xxx

Thus, the Mirant Case should be read in relation to the prospectivity principle of statutes considering that it was an interpretation of the prevailing and applicable law, i.e., R.A. No. 7716 as amended by R.A. No. 8424. This is in consonance with the Supreme Court's pronouncement in Senarillos v. Hermosisima, et al. 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. 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, as is the situation in this case."

xxx

xxx

xxx.

Concomitantly, there is no merit in petitioner's contention that it should not be penalized for relying and observing the existing laws, prevailing rule and jurisprudence (due to the long line of Court of Appeals and Court of Tax Appeals cases allegedly applying the Atlas Case doctrine) considering that petitioner anchored its claim under Section 112 of R.A. 8424 and in which case, the Mirant and Aichi Cases are the leading jurisprudence in interpreting the said provision." (*Emphases supplied*)

Like the *Mirant* Case, the *Aichi* case should be read in relation to the prospectivity principle of statutes considering that it was an interpretation of the prevailing and applicable law, viz, R.A. No. 7716, as amended by R.A. No. 8424. ✓

The interpretation of the law by the Highest Tribunal is part of the law as of the date of its original passage since the Court's interpretation merely establishes contemporary legislative intent that the construed law purports to carry into effect.¹⁹ Also, by tradition in our system of judicial administration, the Supreme Court, as the Final Arbiter of any justiciable controversy,²⁰ has the last word on what the law is. Its decision becomes a judicial precedent to be followed in subsequent cases brought before the court for determination. There is only one Supreme Court from whose decisions all other courts should take bearings.²¹

Finally, the determination of what documents need to be submitted in support of an application for refund/tax credit belongs to the taxpayer-claimant and not to respondent. The prerogative to decide whether additional documents need be submitted to ensure favorable action from respondent is always on the taxpayer-claimant. The latter is in the best position to ascertain the merit of its documents being the party who shall be benefited or adversely affected by their production or lack thereof. To be sure, the apprehension that the Aichi Case will grant respondent unbridled discretion to prolong or suspend the

¹⁹ *Philippine Constitution Association vs. Enriquez*, G.R. No. 113105, August 19, 1994.

²⁰ *Dante Nacuray et, al. v. NLRC*, 270 SCRA 59.

²¹ *Commissioner of Internal Revenue vs. Michael J. Lhuiller Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178 citing the case of *GSIS vs. Court of Appeals*, 334 Phils. 163, 175.

running of the 30-day period to seek judicial redress on the premise that complete documents are yet to be submitted, is without any legal mooring, if not speculative.

Besides, this is no longer a novel issue. The Court *En Banc* in the case of *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*,²² has ruled that although submission of complete documents is desirable, non-submission thereof in the administrative level is NOT fatal to a claim for refund. The pertinent portion of the decision reads:

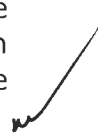
Non-submission of supporting documents in the administrative level is not fatal to a claim for refund

Section 112 (D)²³ of the NIRC provides:

SEC. 112. Refunds of Tax Credits of Input Tax. —

xxx xxx xxx

(D) Period within which Refund or Tax Credit of Input of 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.



²² C.T.A. EB Case No. 474 (C.T.A. Case Nos. 6792 and 6837) September 1, 2009.

²³ Now Section 112(C) of the NIRC of 1997.

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 the Court of Tax Appeals.

xxx xxx xxx

A careful reading of the above-quoted provision reveals that although the submission of the complete supporting documents is necessary for the granting of refund or tax credit certificate, the non-submission of the same with the petitioner does not make the administrative claim for refund or tax credit certificate invalid or pro forma, the effect of which makes the judicial appeal dismissible for lack of jurisdiction. What is clearly required is that the taxpayer must elevate its claim before the Court within 30 days from receipt of the denial of its claim for refund/tax credit or after the expiration of the 120-day period granted to respondent to decide on the taxpayer's, which must all be done within two years from payment of the tax or penalty.

In the same light, respondent's non-compliance with the requirements listed under RMO No. 53-98 is not fatal. The requirements listed under RMO No. 53-98 refer mainly to the requirements for refund of tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim for refund or tax credit. However, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. In this connection, it may not be amiss to mention that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.
(Emphasis supplied)



In fine, the non-submission of complete documents at the administrative level will not bar this Court from receiving, evaluating and appreciating evidence adduced before it during the trial on the merits. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court.²⁴ The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.²⁵ The CTA, being a court of record, the cases filed before it are litigated de novo and party litigants should prove every minute aspect of their cases.

Finally, it bears stressing that an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such burden convincingly.²⁶ It is unfortunate that respondent failed to discharge said burden in this case.

✓

²⁴ *Commissioner of Internal Revenue vs. Visayas Geothermal Power Company, Inc.*, CTA EB Case No. 282 (CTA Case Nos. 6790 & 6838), November 20, 2007, citing *Jideco Manufacturing Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6552, September 16, 2004.

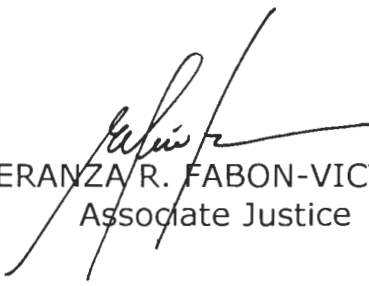
²⁵ *Supra*, note 23.

²⁶ *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, February 16, 2007.

In light of the foregoing disquisitions, a discussion on the remaining issues becomes unnecessary.

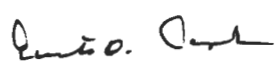
WHEREFORE, the Petition for Review is hereby **DENIED**, for lack of merit. Accordingly, the impugned Decision of the Court in Division dated December 02, 2010 and its Resolution dated February 02, 2011, in CTA Case No. 7739, are hereby **AFFIRMED**.

SO ORDERED.



ESPERANZA R. FABON-VICTORINO
Associate Justice

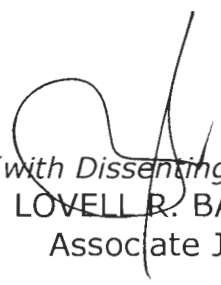
WE CONCUR:



ERNESTO D. ACOSTA
Presiding Justice



JUANITO C. CASTAÑEDA, JR.
Associate Justice



(with Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice



ERLINDA P. UY
Associate Justice



CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CE CASECNAN WATER AND ENERGY
COMPANY, INC.,
Petitioner,

CTA EB CASE NO. 726
(CTA Case No. 7739)

-versus-

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

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JUN 26 2012

W. H. Polinaro
11:30 p.m.

x-----x

DISSENTING OPINION

BAUTISTA, J.:

I maintain 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*.

Basic is the rule that "where there has been justifiable reliance on Our decisions, and those who have so relied may be substantially harmed if retroactive effect is given, where the purpose of the new rule can be adequately effectuated without giving it retroactive operation, or where retroactive operation might greatly



DISSENTING OPINION

CTA EB Case No. 726 (CTA Case No. 7739)

Page 2 of 4

burden the administration of justice, then it is Our duty to apply the new rule prospectively.”¹

And in not a few instances did this Court rule that the date of filing of the relevant return is the determinative factor.

The rulings in the cases of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]*,² and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,³ are 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 wherein after a taxpayer-claimant had faithfully relied and complied therein, this Court will only nullify the same on the basis of the so-called “adherence to precedence.”

It is true that this Court has the duty to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts.⁴ Still, this Court should not decide a case by merely adhering to precedence; idolatrous reverence for precedent, simply as precedent, no longer holds true.⁵

Therefore, this Court cannot merely impose a ruling that was yet to be enunciated at the time a claim was lodged in Our forum. As the Supreme Court aptly ruled, “the final authority of this Court rests upon public respect for its decisions; that public respect is based upon an image which represents this Court as

¹ *Magtoto v. Manguera, et al.*, G.R. Nos. L-37201-02, L-37424, and L-38929, March 3, 1975, 63 SCRA 4, Concurring Opinion penned by Justice Felix Q. Antonio, with Justices Antonio P. Barredo and Cecilia Muñoz-Palma, concurring.

² G.R. No. 172129, September 12, 2008, 565 SCRA 154.

³ G.R. No. 184823, October 6, 2010.

⁴ *Commission on Higher Education v. Atty. Felina S. Dasig*, G.R. No. 172776, December 17, 2008, 574 SCRA 227, citing *Albert v. Court of First Instance of Manila*, No. L-26364, May 29, 1968, 23 SCRA 948, 961.

⁵ *Philippine Trust Company and Smith, Bell and Co. v. Mitchell*, 59 Phil. 30, 36.



declaring legal principles with an authority and certainty that the people may place upon it their *bona fide* reliance and reasonable expectations.”⁶

Hence, prior determinations deemed to have finality and acted upon accordingly, demands examination. The effect of a subsequent ruling as to invalidity may have to be considered in various aspects. It may have consequences which cannot just be ignored.⁷ Even the taxpayer-claimant itself could not have foreseen that after it had filed its claims before the administrative and judicial *fora*, a subsequent ruling, either modifying or overruling a previous one, would be issued that would put to naught its claims.

Therefore, when respondent filed its administrative claim on September 26, 2007, and the subsequent judicial claim before this Court on March 14, 2008, the then prevailing doctrine, is that the reckoning of the two (2)-year prescriptive period is from the filing of the pertinent return,⁸ and not from the close of the quarter.⁹

Based on the records of the case, petitioner filed its relevant returns for the taxable year 2006 on the following dates: April 25, 2006, July 25, 2006, October 25, 2006, and January 25, 2007. Petitioner, thus, had until two (2) years from the aforementioned dates, within which to file *both* its administrative and judicial claims.

⁶ *Supra*, note 1.

⁷ *Albino S. Co v. Court of Appeals, et al.*, G.R. No. 100776, October 28, 1993, 277 SCRA 444, citing *Chicot County Drainage District v. Baxter States Bank*, 308 US 371, 374 [1940].

⁸ *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

⁹ *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]*, G.R. No. 172129, September 12, 2008, 565 SCRA 154.



DISSENTING OPINION

CTA EB Case No. 726 (CTA Case No. 7739)

Page 4 of 4

In sum, I find the administrative and judicial claims filed within the prescribed two (2)-year period. I therefore vote to apply the ruling in force at the time the action was made.

Accordingly, I vote that the Petition for Review be **GIVEN DUE COURSE**.



LOVELL R. BAUTISTA
Associate Justice