EN BANC

G.R. No. 187485 (*Commissioner of Internal Revenue, v. San Roque Power Corporation*)

G.R. No. 196113 (*Taganito Mining Corporation v. Commissioner of Internal Revenue*)

G.R. No. 197156 (*Philex Mining Corporation v. Commissioner of Internal Revenue*)

Promulgated:

February 12, 2013

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DISSENTING OPINION

VELASCO, JR., *J.*:

I register my dissent to the majority opinion in G.R. No. 187485, entitled *Commissioner of Internal Revenue v. San Roque Power Corporation*, and G.R. No. 196113, entitled *Taganito Mining Corporation v. Commissioner of Internal Revenue*. However, I concur with the disposition of the case in G.R. No. 197156, entitled *Philex Mining Corporation v. Commissioner of Internal Revenue*.

The primary issue in these three (3) consolidated cases revolves around the proper period for filing the **judicial claim** for a tax refund of input tax or the issuance of a tax credit certificate (TCC).

Commissioner of Internal Revenue v. San Roque Power Corp.
(G.R. No. 187485)

In G.R. No. 187485, respondent-taxpayer San Roque Power Corporation (San Roque) filed on **March 28, 2003** an amended administrative claim for refund of input value-added tax (VAT) amounting to PhP 560,200,283.14 with the Bureau of Internal Revenue (BIR). Thirteen (13) days thereafter, or on **April 10, 2003**, San Roque filed a Petition for Review regarding the same amount with the Court of Tax Appeals (CTA).

The CTA Second Division initially denied San Roque's claim for insufficiency of supporting documents and evidence. However, on San Roque's motion, the CTA Second Division reconsidered and granted San Roque's claim, albeit at a reduced amount of PhP 483,797,599.65.

The reconsideration prompted the Commissioner of Internal Revenue (CIR) to file a Petition for Review before the CTA *En Banc* claiming that San Roque prematurely filed its judicial claim with the CTA and failed to meet the requisites for claiming a refund/credit of input VAT. The CTA *En*

Banc dismissed the CIR's petition sustaining the timeliness of San Roque's administrative and judicial claims.

The CTA *En Banc* held that the word "may" in Section 112(D) of the 1997 National Internal Revenue Code (NIRC) signifies the intent to allow a directory and permissive construction of the 120-day period for the filing of a judicial claim for refund/credit of input VAT. Hence, the filing of judicial claims for refund/credit of VAT within the said 120-day period is allowed, as long as it is made within the two-year prescriptive period prescribed under Section 229 of the 1997 NIRC.

Undaunted, the CIR elevated the controversy before this Court asserting, in the main, that San Roque's failure to wait for the lapse of the 120-day period after filing its claim with the BIR is fatal to San Roque's right to a refund/credit of input VAT. Moreover, so the CIR claimed, the refund should be spread across the 40-year life span of the capital goods and equipment of the taxpayer.

In a Resolution dated January 12, 2011, this Court affirmed the CTA Second Division's Decision, as sustained by the CTA *En Banc*, with the modification that the tax credit should be spread over the 40-year lifespan of San Roque's capital goods and equipment.

On February 11, 2011, the CIR filed a Motion for Reconsideration citing this Court's October 6, 2010 Decision in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* (*Aichi*).[1]

Taganito Mining Corp. v. CIR
(G.R. No. 196113)

In the meantime, in G.R. No. 196113, petitioner Taganito Mining Corporation (Taganito) filed with the CIR on **November 14, 2006** a claim for refund/ credit of input VAT for the period January 1, 2004 to December 31, 2004 in the total amount of PhP 8,365,664.38. On November 29, 2006, Taganito informed the CIR that the correct period covered by its claim actually spans from to January 1, 2005 to December 31, 2005.

Ninety-two (92) days after it first filed its claim for refund/credit, or on **February 14, 2007**, Taganito filed a Petition for Review with the CTA claiming that the CIR failed to act on its claim. The CTA Second Division partially granted Taganito's claim and ordered the CIR to refund the taxpayer in the amount of PhP 8,249,883.33.

When its motion for reconsideration was denied by the CTA Second Division, the CIR filed a Petition for Review with the CTA *En Banc* asserting that the 120-day period prescribed in Sec. 112(D) of the 1997

[1] G.R. No. 184823, 632 SCRA 422.

NIRC is jurisdictional so that Taganito's non-compliance thereof is fatal to its claim for refund/credit of input VAT.

Citing our Decision in *Aichi*, the *CTA En Banc* ruled that Taganito's failure to wait for the lapse of the 120-day period prescribed in Sec. 112(D) of the 1997 NIRC amounted to a premature filing of its judicial claim that violates the doctrine of exhaustion of administrative remedies.

The CTA *En Banc* denied Taganito's Motion for Reconsideration. Hence, Taganito filed the present petition.

Philex Mining Corp. v. CIR
(G.R. No. 197156)

In G.R. No. 197156, petitioner Philex Mining Corporation (Philex) filed on October 21, 2005 its Original VAT Return for the third quarter of taxable year 2005, and on December 1, 2005, its Amended VAT Return for the same quarter.

On **March 20, 2006**, Philex then filed a claim for refund/credit of input VAT in the total amount of PhP 23,956,732.44 with the One Stop Shop Center of the Department of Finance.

Almost a year and seven (7) months thereafter, or on October 17, 2007, Philex elevated its claim for refund/credit with the CTA. Ruling on the petition, the CTA Second Division denied the claim holding that while Philex's administrative claim was timely filed, its judicial claim was filed out of time. Hence, Philex's claim for refund/credit is barred by prescription.

Philex's Motion for Reconsideration was denied by the CTA Second Division. Hence, on December 2, 2009, Philex filed with the CTA *En Banc* a Petition for Review.

The CTA *En Banc* denied the motion.

Applying our pronouncements in *Aichi*, the CTA *En Banc* held that Philex only had until August 17, 2006, or thirty (30) days after the lapse of the 120-day period from the filing of its administrative claim on March 20, 2006, to file its judicial claim with the CTA. Hence, the CTA Second Division no longer had jurisdiction to entertain the petition filed by Philex 426-day late.

The denial of its claim impelled Philex to file its petition before this Court.

To resolve the primary issue common to the foregoing cases, it has been advanced that the following three (3) cases are determinative: (1) *Atlas Consolidated Mining and Development Corporation v. Commissioner of*

Internal Revenue, June 8, 2007 (*Atlas*);[2] (2) *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, September 12, 2008* (*Mirant*);[3] and (3) *Aichi*,[4] which has been cited by both the CIR and the CTA. It is then suggested that the doctrine applicable to a claim for refund or issuance of a TCC depends on the case operative at the time of filing the claim.

It is, however, submitted that in resolving the issue on the proper period for filing a **judicial claim**, only *Aichi* is relevant, and a review of the relevant legislations and regulations is necessary for a more comprehensive appreciation of the present controversy.

In *Atlas*, the period to file a judicial claim was never the issue. Instead, *Atlas* sought to define the start of the two-year period within which to file the claim and pegged it at "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 quarter."[5] Moreover, *Atlas* involved claims for refund of unutilized input VAT covering taxable years 1990 and 1992. It, therefore, construed the relevant provisions of the Tax Code of 1977,[6] as amended by Executive Order No. (EO) 273,[7] which read:

> Sec. 106. Refunds or tax credits of input tax. – x x x
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> (b) *Zero-rated or effectively zero-rated sales.* – Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
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> x x x x
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> (e) *Period within which refund or input taxes may be made by the Commissioner.* – T**he Commissioner shall refund input taxes <u>within 60 days</u> from the date the application for refund was filed with him or his duly authorized representative.** No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be. (Emphasis supplied.)

It is clear from the foregoing provisions that the Tax Code of 1977 applied in *Atlas* did not provide a period within which the judicial claim must be filed by the taxpayer after he has filed his administrative claim for refund. The correlation made by this Court of the prescriptive period in Sec. 106 with Sec. 230[8] (now Sec. 229), which states that no suit or proceeding to

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[2] G.R. Nos. 141104 & 148763, 524 SCRA 73.
[3] G.R. No. 172129, 565 SCRA 154.
[4] Supra note 1.
[5] Supra note 2, at 96.
[6] Otherwise known as Presidential Decree No. 1158.
[7] Took effect on January 1, 1988.
[8] Sec. 230. 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

claim a tax refund is allowed after the expiration of the two (2) years from the date of the payment of the tax, was, therefore, necessary and justified under the circumstances present in *Atlas*. The same correlation is not applicable to the present cases.

The period within which to file a judicial claim for the refund of VAT or the issuance of a TCC was first introduced in 1994 through Republic Act No. (RA) 7716,[9] Sec. 6 of which provided:

> Section 6. Section 106 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
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> "Sec. 106. Refunds or tax credits of creditable input tax. — (a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x.
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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 for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**." (Emphasis supplied.)

Then Secretary of Finance Roberto F. De Ocampo, however, issued **Revenue Regulation No. (RR) 7-95**, otherwise known as the "Consolidated Value-Added Tax Regulations" pursuant to his rule-making authority under Sec. 245 (now Sec. 244) of the NIRC in relation to Sec. 4, which provides:

> Section 245. **Authority of Secretary of Finance to promulgate rules and regulations**. – The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needed rules and regulations for the effective enforcement of the provisions of this Code.

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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 excessive 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 begun after the expiration of two 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." (Emphasis supplied.)

[9] An Act Restructuring the Value Added Tax (VAT) System, Widening Its Tax Base and Enhancing Its Administration and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as Amended, and for Other Purposes. Approved May 5, 1994.

The mentioned RR 7-95 became effective on January 1, 1996 and still applied the 2-year prescriptive period to judicial claims, viz:

> SEC. 4.106-2. Procedures for claiming refunds or tax credits of input tax-- (a) Where to file the claim for refund or tax credit. – Claims for refund or tax credit shall be filed with the appropriate Revenue District Office (RDO) having jurisdiction over the principal place of business of the taxpayer. However, direct exporters may also file their claim for tax credit with the One-Stop-Shop Center of the Department of Finance.
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> x x x x
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> **(c) Period within which refund or tax credit of input taxes shall be made.** – In proper cases, the Commissioner shall grant a tax credit/refund for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance subparagraphs (a) and (b) above.
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> In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise the decision will become final. However, **if no action on the claim for tax credit-refund has been taken by the Commissioner of Internal Revenue after the sixty (60) day period from the date of submission of the application *but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter*, the taxpayer may appeal to the Court of Tax Appeals.** (Emphasis supplied.)

Tax revenue regulations are "issuances signed by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, that specify, **prescribe or define rules and regulations for the effective enforcement of the provisions of the [NIRC]** and related statutes."[10] As these issuances are mandated by the Tax Code itself, they are in the nature of a subordinate legislation that is as compelling as the provisions of the NIRC it implements.[11] RR 7-95, therefore, provides a binding set of rules in the filing of claims for the refund/credit of input VAT and prevails over all other rulings and issuances of the BIR in all matters concerning the interpretation and proper application of the VAT provisions of the NIRC.

The period given to the CIR to decide a claim for input VAT refund/credit was extended from 60 days under EO 273 and RR 7-95 to 120 days under RA 8424, otherwise known as the 1997 NIRC, which became effective on January 1, 1998. Sec. 112 of RA 8424 on the refund of tax credits stated, thus:

> Section 112. Refunds or Tax Credits of Input Tax. –

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[10] <http://www.bir.gov.ph/iss_rul/issuances.htm> (visited February 5, 2013); emphasis supplied.
[11] See *BPI Leasing Corporation v. Court of Appeals*, G.R. No. 127624, November 18, 2003.

> *(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 x x x.
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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.
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> 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**.[12] (Emphasis supplied.)

Mirant was decided under the aegis of the 1997 NIRC and resolved a claim for refund/credit of input VAT for the period April 1993 to September 1996. However, it likewise did not set forth the period prescribed in **Sec. 112(D)** of the 1997 NIRC in filing the judicial claim after the administrative claim has been filed. Like in *Atlas*, the issue resolved in *Mirant* is the date from which the 2-year prescriptive period to file the claim should be counted. Applying **Sec. 112(A)** of the 1997 NIRC, this Court, in *Mirant*, modified the *Atlas* doctrine and set the commencement of the 2-year prescriptive period from the date of the close of the relevant taxable quarter. In so ruling, this Court declared in *Mirant* that the provisions of Sec. 229 of the 1997 NIRC do not apply to claims for refund/credit of input taxes because these taxes are not erroneously or illegally collected taxes:

> 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:
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> x x x x
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> 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

[12] The subheading "Period within which refund or Tax Credit of Input Taxes shall be Made" was previously under Sec. 112(D) until the effectivity of RA 9337, which deleted the subheading on "Capital Goods" in what was previously Sec. 112(B) of the NIRC.

> to instances of erroneous payment or illegal collection of internal revenue taxes.[13]

Ergo, the 2-year period set forth in Sec. 229 does not apply to judicial claims for the refund/credit of input VAT.

Sec. 4.106-2 of RR 7-95, which provided that such judicial claims for refund/credit of input VAT must be filed "before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter" **was not, however, repealed by the 1997 NIRC**. **There was no provision in RA 8424 explicitly repealing RR 7-95**.[14] Instead, Sec. 4.106-2 of RR 7-95 remained effective as the implementing rule of Sec. 112(D) that was lifted almost verbatim from Sec. 106(d) of the 1977 NIRC, as amended. At the risk of being repetitive, I quote again the pertinent provisions of Sec. 106(d) of the 1977 NIRC, as amended by RA 7716 which was approved on May 5, 1994 prior to the issuance of RR 7-95, and Sec. 112(D) of the 1997 NIRC for comparison:

Sec. 106(d), 1977 NIRC	Sec. 112(D), 1997 NIRC
Sec. 106. *Refunds or tax credits of creditable input tax.* — x x x	Section 112. *Refunds or Tax Credits of Input Tax.* – x x x
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 for creditable input taxes within sixty (60) days from the date of submission of complete documents** in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof**.**	*(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 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**	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**

[13] Supra note 3.

[14] RA 8424, Sec. 7, Repealing Clauses. – (A) The provision of Section 17 of Republic Act No. 7906, otherwise known as the "Thrift Banks Act of 1995" shall continue to be in force and effect only until December 31, 1999.

Effective January 1, 2000, all thrift banks, whether in operation as of that date or thereafter, shall no longer enjoy tax exemption as provided under Section 17 of R.A. No. 7906, thereby subjecting all thrift banks to taxes, fees and charges in the same manner and at the same rate as banks and other financial intermediaries.

(B) The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or -controlled corporations, decrees, orders or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly.

sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.	**hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**.

It is apparent that Sec. 106(d) of the 1977 NIRC, as amended, was substantially adopted and re-enacted by Sec. 112(D) of the 1997 NIRC. In other words, Sec. 106(d) of the 1977 NIRC, as amended, was **not repealed** by Sec. 112(D) of the 1997 NIRC. Thus, **RR 7-95 construing and implementing Sec. 106(d) of the 1977 NIRC, as amended by RA 7716, continued in effect under Sec. 112(D) of the 1997 NIRC.**

In *Commissioner of Internal Revenue v. American Express*,[15] We ruled that when the legislature reenacts a law that has been construed by an executive agency using substantially the same language, it is an indication of the adoption by the legislature of the prior construction by the agency:

> [U]pon the enactment of RA 8424, which substantially carries over the particular provisions on zero rating of services under Section 102(b) of the Tax Code, the principle of legislative approval of administrative interpretation by reenactment clearly obtains. This principle means that "the reenactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction."
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> The legislature is presumed to have reenacted the law with full knowledge of the contents of the revenue regulations then in force regarding the VAT, and to have approved or confirmed them because they would carry out the legislative purpose. The particular provisions of the regulations we have mentioned earlier are, therefore, re-enforced. "When a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the [l]egislature thereafter [reenacts] the provisions [without] substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose."

In fact, in this Court's January 17, 2011 Decision in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,[16] where the Court resolved a judicial claim filed on December 27, 2000 for creditable input taxes for the period October to December 1998 (after the effectivity of RA 8424 or the 1997 NIRC), this Court cited and relied on the provisions of RR 7-95, viz:

> To claim a refund of input VAT on capital goods, Section 112 (B) of the NIRC requires that:
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> x x x x

[15] G.R. No. 152609, June 29, 2005, 462 SCRA 197, 229-230.

[16] G.R. No. 172378, January 17, 2011, 639 SCRA 521. See also *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012; *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010, 612 SCRA 28.

> Corollarily, **Section 4.106-1 (b) of RR No. 7-95** defines capital goods as follows: x x x Based on the foregoing definition, we find no reason to deviate from the findings of the CTA that training materials, office supplies, posters, banners, T-shirts, books, and the other similar items reflected in petitioner's Summary of Importation of Goods are not capital goods. A reduction in the refundable input VAT on capital goods from ₱15,170,082.00 to ₱9,898,867.00 is therefore in order. (Emphasis supplied.)

Thus, this Court, I submit, cannot now assert that RR 7-95 was superseded and became obsolete upon the approval of RA 8424 or the 1997 NIRC.

Furthermore, the CIR issued Revenue Memorandum Circular No. (RMC) 49-03[17] pursuant to his rule-making power under Sec. 4 the 1997 NIRC, which states:

> Section 4. **Power of the Commissioner to Interpret tax Laws and to Decide Tax Cases**. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
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> The power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

RMC 49-03, like all other RMCs, is an issuance that publishes pertinent and applicable portions, as well as amplifications, of laws, rules, regulations and precedents issued by the BIR and other agencies/offices.[18] RMC 49-03, in particular, recognized and laid out the rules concerning the concurrent jurisdiction of the CIR and the CTA in cases of claims for VAT refunds or issuances of TCCs.

The significance and impact of RMC 49-03, dated August 15, 2003, can best be appreciated by a close reading:

> In response to request of selected taxpayers for adoption of procedures in handling refund cases that are aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law, certain provisions of RMC No. 42-2003 are hereby amended and new provisions are added thereto.
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> In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:

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[17] Prescribes amendments to RMC 42-2003 relative to the processing of claims for VAT credit/refund.

[18] <http://www.bir.gov.ph/iss_rul/issuances.htm> (visited February 5, 2013).

> 1) A-17 of Revenue Memorandum Circular No. 42-3003 is hereby revised to read as follows:
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> "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), **the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency**, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/ processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. **In the meantime, the investigating/ processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency**.
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> If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate / tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/ processing office." (Emphasis supplied.)

RMC 49-03 explicitly allowed a taxpayer to file his judicial claim with the CTA while his administrative claim for refund of the same input taxes was still pending before the BIR, i.e., without waiting for the administrative claim to be first resolved, and that both claims, judicial and administrative, could proceed simultaneously; in brief, the administrative agency and the tax court may take cognizance of and act on the claims separately.

RMC 49-03 permitted refund-seeking taxpayers to have recourse to the CTA without having to wait for the lapse of the 120-day period granted to the CIR by Section 112(D). At the same time, the BIR was to continue to exercise jurisdiction over the administrative claim for refund, even after the CTA acquired jurisdiction over the judicial claim for refund of the exact same input VAT. This RMC even provided the mechanics for dealing with situations where one claim was resolved ahead of the other, in order to

prevent conflicting outcomes or double refunds. Obviously, this RMC provided much needed and reliable guidance to taxpayers in dealing with their claims that were in peril of being time-barred.

At bottom, RMC 49-03 conclusively proves that the CIR and the CTA regarded the 120-day and 30-day periods in Sec. 112(D) as being **non-jurisdictional in nature**. It must be reiterated for emphasis that RMC 49-03 was issued and implemented under the aegis of the 1997 NIRC.

In addition, it is unarguable that **RMC 49-03 was premised on the belief of the CIR and the CTA that the two-year prescriptive period under Sec. 229 continued to be applicable to judicial claims for refund of input VAT, because otherwise, there would have been no need for, and no point in, allowing both the judicial and administrative claims to proceed simultaneously**.

Moreover, RMC 49-03 obviously demanded and necessitated the agreement and cooperation of the CTA. In other words, RMC 49-03 was meaningful, relevant, viable and enforceable only because the CTA concurred in the CIR's belief, and abided by, embraced and implemented the scheme under RMC 49-03 involving the twin-and-simultaneous jurisdiction by the CTA and the BIR over the claims for refund of one and the same input VAT.

At bottom, the only plausible explanation why the CIR issued and the BIR and CTA jointly implemented the RMC 49-03 system of handling claims, notwithstanding the existence of Sec. 112(D) of the 1997 NIRC, was that they believed that it would not conflict with Sec. 112(D), **precisely because of the continued effectivity of RR 7-95**. The CIR and the CTA were of the belief that the said two-year prescriptive period was applicable to the filing of judicial claims for refund of input VAT, and, therefore, in order to save such claims from being denied on account of late filing, they devised a system (consistent with and permissible under RR 7-95), allowing the judicial claim to be filed without awaiting the outcome of the administrative claim (or the lapse of the 120-day period), and allowing both claims to proceed simultaneously.

Needless to say, RMC 49-03 did not spring forth from sheer nothingness; it was preceded by RMC 42-03. In fact, the title of RMC 49-03 reads: "Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters."

On the other hand, RMC 42-03, dated as of July 15, 2003, has the subject title "Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters."

Obviously intended to address various concerns/difficulties **already pre-existing** at the time of its issuance, RMC 42-03 presented, in Q & A format, information needed by taxpayers in dealing with specific problematic situations involving VAT usage and VAT refund claims. Question No. 17, at the very end of RMC 42-03, reads as follows:

> Q-17: If a claim submitted to the Court of Tax Appeals for judicial determination is denied by the CTA due to lack of documentary support, should the corresponding claim pending at the BIR offices be also denied?

The question speaks of a situation where the administrative claim is still pending with, and has not been resolved by, the BIR, but the judicial claim for refund of the same taxes has already been filed with and taken cognizance of by the CTA, and has been denied on account of lack of documentary support and not on account of prematurity.

Beyond doubt, this particular scenario was not uncommon back in 2003, **and in prior years as well**, as shown by the fact that it earned a distinguished spot in the BIR's FAQ, and eventually had an entire Revenue Memorandum Circular devoted to it (i.e., RMC 49-03). This oft-repeated scenario was the result of the widespread practice among taxpayers of filing judicial claims with an eye to beating the two-year deadline under Sec. 229 of the Tax Code, coupled with the BIR and the CTA's assiduous disregard of the 120-day and 30-day periods under Sec. 112(D).

The phrasing of that question indicates that neither the BIR nor the CTA considered such judicial claims to be premature for non-compliance with the 120-day and 30-day periods; those periods were by no means deemed jurisdictional in nature. That was the official position taken by the BIR and the CTA, as reflected in their handling of the claims, and **the taxpayers and the general public cannot be faulted if they relied on the actuations and declarations of the Commissioner of Internal Revenue and the CTA**.[19]

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[19] *See*, for instance, CTA Case Nos. 7230 & 7299, *Team Sual Corporation v. Commissioner of Internal Revenue*, November 26, 2009, where the CTA's First Division intoned: "The Court *En Banc* has consistently ruled that judicial course within thirty (30) days after the lapse of the 120-dy period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Sections 112 and 229 of the 1997 NIRC, as amended. It has likewise held that if the 2-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court." (citing *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, C.T.A. EB No. 416, February 4, 2009; *Commissioner of Internal Revenue v. San*

The answer to Question No. 17 confirms the foregoing disquisition. It reads as follows:

> A-17: Generally, the BIR loses jurisdiction over the claim when it is filed with the CTA. Thus, when the claim is denied by the CTA, the BIR cannot grant any tax credit or refund for the same claim. However, cases involving tax credit/refund claims, which are archived in the CTA and have not been acted upon by the said court, may be processed by the concerned BIR office upon approval of the CTA to archive or suspend the proceeding of the case pending in its bench."

The foregoing answer would have turned out very different if prematurity had been an issue or a concern at that time. At the very least, the answer would have to be qualified, e.g., in case of non-compliance with the 120-day and 30-day periods, the CTA is bereft of jurisdiction, etc. In any event, in A-17 we can already see the nascency of the simultaneous jurisdictions of the BIR and the CTA.

As will already be obvious from just a cursory glance, the various questions and answers/solutions contained in RMC 42-03 did not simply materialize out of thin air and come into full bloom instantaneously. It was most definitely the end product of thoughtful interaction between official policy and practice on the part of the BIR and the CTA, and taxpayers' experiences gathered over time. **In other words, to acknowledge RMC 42-03 as an operative fact is to acknowledge the long history and process of policy formulation and implementation underpinning RMC 42-03, and the accumulation over time of the empirical basis thereof**.

Put another way, RMC 42-03 merely presented in clear-cut, written form the official solutions and answers to various, frequently encountered problems involving VAT usage and refund claims; these solutions and answers—crafted and refined over a period of time, being the product of what we may refer to as collective wisdom generated by the interaction of the tax agency, the tax court and taxpayers—actually antedated RMC 42-03 by many years.

It is just the same way with Q-17 and A-17—they only put in black and white what had already been the prevailing practice and understanding of the tax agency, the tax court and taxpayers in respect of judicial claims.

Now, going back to the beginning of this discussion, taxpayers ought not be prejudiced if they filed their judicial claims relying in good faith on RMC 49-03. But just as this Court cannot afford to ignore RMC 49-03, in the same way and for the very same reasons the Court likewise cannot ignore RMC 42-03 and the official policies, practices and experience that

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Roque Power Corporation, C.T.A. EB No. 408, March 25, 2009; *Commissioner of Internal Revenue v. CE Cebu Geothermal Power Company, Inc.*, C.T.A. EB No. 426, May 29, 2009).

preceded and gave birth to RMC 42-03 and eventually to RMC 49-03. And, therefore, judicial claims filed in accordance with the thrust, intendment and direction of RMC 42-03 and the solutions/answers, policies and practices that predated RMC 42-03 and formed its underlying basis, must likewise be spared. And with more reason, considering the following discussion.

On December 10, 2003, the BIR issued Ruling No. DA-489-03, addressed to the Department of Finance, holding that a taxpayer need not wait for the lapse of the 120-day period before it could seek judicial relief:

> x x x With the actions taken by herein taxpayer [Lazi Bay Resources Development, Inc.], it is your contention that the "*claimant is not yet on the right forum in violation of the provision of Section 112(D) of the NIRC*," to wit:
>
> x x x x
>
> In reply, please be informed that **a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe. **The Tax Code fixed the period of two (2) years for filing a claim for refund with the Commissioner [Sec. 112(A) in relation to Sec. 204(c)] and for filing a case in court [Section 229].** Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law. (Emphasis supplied.)

The *ponencia* claims that the permissive treatment of the 120 and 30-day periods in Sec. 112 should be reckoned from the date of the issuance of the above BIR ruling—December 10, 2003.

On this I beg to differ.

BIR Ruling No. DA-489-03 was a mere application of the still effective rule set by RR 7-95, which, as discussed, was an issuance made by the Secretary of Finance pursuant to the authority granted to him by the Tax Code. On the other hand, BIR Ruling No. DA-489-03 was issued not by the CIR, but by then **Deputy Commissioner** Jose Mario C. Buñag of the Legal & Inspection Group of BIR. It was, therefore, not an issuance authorized under Sec. 4 of the NIRC, which clearly provides that the "power to interpret the provisions of [the NIRC] and other tax laws shall be under the **exclusive** and **original** jurisdiction of the Commissioner, subject to the review by the Secretary." Neither can BIR Ruling No. DA-489-03 be considered an issuance within the delegated authority of the deputy commissioner considering that Sec. 7 of the 1997 NIRC expressly prohibits the delegation of the following powers:

(A) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(B) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau.

If this Court is set in sustaining the binding effect of BIR Ruling No. DA-489-03, it must be viewed as simply applying an already established and still effective rule provided by RR 7-95, not an issuance that established a new rule that departed from the 1997 NIRC.

For that matter, a reading of the rulings of this Court on claims for refund/credit of input VAT initiated from 1996 to 2005 made the impression that this Court was simply applying a well and long established rule that the period provided in Sec. 112(D) of the 1997 NIRC is merely discretionary and dispensable. As long as the judicial claim is filed within the 2-year period provided in Sec. 112(A), it was considered irrelevant whether the claim with the CTA is filed a day or a year after the administrative claim was filed with the CIR. The pertinent case laws on the issue are as follows:

(1) In *CIR v. Cebu Toyo Corporation*,[20] the Court gave due course to the petition of taxpayer Cebu Toyo and recognized its right to tax refund despite the fact that Cebu Toyo "did not bother to wait for the resolution of its claim by the CIR"[21] and instead filed its judicial claim on June 26, 1998, or only 88 days after filing its administrative claim on March 30, 1998.

(2) In *Philippine Geothermal, Inc v. CIR*,[22] this Court allowed a refund even if the judicial claim was filed by petitioner, "to toll the running of the two-year prescriptive period before the Court of Tax Appeals,"[23] on July 2, 1997, or **almost a year** after it filed its administrative claim on July 10, 1996.

(3) In *CIR v. Toshiba Information Equipment (Phils.), Inc.*,[24] this Court affirmed the right of respondent-taxpayer to a refund or the issuance of a TCC, "to toll the running of the two-year prescriptive period for judicially claiming a tax credit/refund,"[25] even if Toshiba filed its judicial claim on March 31, 1998, only **four days** after its administrative claim filed on March 27, 1998.

(4) In *Toshiba Information Equipment (Phils.), Inc. v. CIR*,[26] this Court ordered the refund or the issuance of a TCC in favor of petitioner Toshiba in spite of the fact that its judicial claim was on March 31, 1999,

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[20] G.R. No. 149073, February 16, 2005, 451 SCRA 447.
[21] Id.
[22] G.R. No. 154028, July 29, 2005, 465 SCRA 308.
[23] Id.
[24] G.R. No. 150154, August 9, 2005, 466 SCRA 211.
[25] Id.
[26] G.R. No. 157594, March 9, 2010, 614 SCRA 526.

just **one day** after it filed its administrative claim on March 30, 1999, "to toll the running of the two-year prescriptive period under Section 230 of the Tax Code of 1977, as amended."[27]

(5) In *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*,[28] this Court held that "petitioner is legally entitled to a refund or issuance of a tax credit certificate of its unutilized input VAT input taxes" despite the fact that its judicial claim was filed **more than a year** after its administrative claim on May 19, 1999, or on June 30, 2000 "when the two-year prescriptive period to file a refund was about to lapse without any action by the Commission of Internal Revenue on its claim."[29]

(6) Similarly, in *Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation*,[30] the Court affirmed respondent-taxpayer's right to refund/credit of input VAT even if its judicial claim was filed on July 1, 2002, or **more than a year** after its administrative claim was filed on May 10, 2001.

The common thread that runs through these cases is the cavalier treatment of the 120 and 30-day periods prescribed by Sec. 112 of the 1997 NIRC. If it is the Court's position that the prescribed periods of 120 days for administrative claim and 30 days for judicial claims are jurisdictional at the time the judicial claims were filed in these cases, then the cases should have been decided adversely against the taxpayers for filing the claim in breach of Sec. 112 of the 1997 NIRC. When these cases were entertained by the Court despite the clear departure from Sec. 112, the Court, wittingly or unwittingly, led the taxpayers to believe that the 120 and 30-day periods are dispensable as long as both the administrative and judicial claims for refund/credit of input VAT were filed within 2 years from the close of the relevant taxable quarter. Simply put, **the taxpayers relied in good faith on RR 7-95** and honestly believed and regarded the 120 and 30-day periods as merely discretionary and dispensable. Hence, noted tax experts and commentators, Victor A. Deoferio, Jr. and Victorino Mamalateo, recommended that for safe measure and to avert the forfeiture of the right to avail of the judicial remedies, taxpayers should "file an appeal with the Court of Tax Appeals, without waiting for the expiration of the 120-day period, if the two-year period is about to lapse."[31]

Unfortunately, the aforecited decisions of the Court were of no help to taxpayers in the years between 1996 and 2005—said decisions were promulgated only in 2005, 2007 and 2010. Prior to 2005, there were no decisions in point rendered by this Court, and taxpayers had for guidance only the BIR issuances then in force and effect: RR No. 7-95, later followed

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[27] Id.
[28] G.R. No. 166732, April 27, 2007, 522 SCRA 657.
[29] Id.
[30] G.R. No. 180042, February 8, 2010, 612 SCRA 39.
[31] V.A. Deoferio, Jr. and V. Mamalateo, THE VALUE ADDED TAX IN THE PHILIPPINES 261 (2000).

by RMC 42-03 on July 15, 2003, RMC 49-03 on August 15, 2003, and BIR Ruling No. DA-489-03. And of course, the prevailing practices of the BIR and the CTA.

In fact, decisions of the CTA *En Banc* in some 128 cases involving judicial claims for refund or credit of unutilized VAT, which claims were filed in the years prior to the issuance of RMC 42-03 on July 15, 2003, and RMC 49-03 on August 15, 2003, paint a revealing picture of how the BIR and the CTA themselves actually regarded the 120 and 30-day periods.

At this point, I hasten to state that, while CTA Decisions are not binding on the Court, **the actual manner in which the BIR and the CTA themselves regarded the 120 and 30-day periods—**in the course of handling administrative and judicial claims for refund/tax credit during the period in question, **as evidenced by the factual recitals in the CTA Decisions—constitutes an operative fact that cannot simply be ignored.** The truth of the matter is that, **whatever may have been the law and the regulation in force at the time, taxpayers took guidance from and relied heavily upon the manner in which the BIR and the CTA viewed the 120- and 30-day periods, as reflected in their treatment of claims for input VAT refund/credit, and these taxpayers acted accordingly by filing their claims in the manner permitted and encouraged by the BIR and the CTA.** This is a reality that even this Court cannot afford to turn a blind eye to.

Numerous decisions of the CTA in Division and *En Banc* reveal that the **BIR and CTA by their very actuations in the period between 1996 and 2005, did, in fact, permit, tolerate and encourage taxpayers to file their refund/tax credit claims without regard to the 120 and 30-day periods provided in Sec. 112(D)**. For instance, in CTA EB Case No. 43, *Overseas Ohsaki Construction Corp. v. Comm. of Internal Revenue*, petitioner therein filed on **October 23, 2001** an administrative claim for PhP 5.8 million in input VAT. The very next day, **October 24, 2001**, petitioner instituted its judicial claim. However, neither respondent CIR nor the CTA questioned petitioner's non-compliance with the 120 and 30-day periods. Trial on the merits ensued, and the CTA[32] denied the claim, but not on the ground of any jurisdictional issue, or prematurity of the judicial claim, but for failure to comply with invoicing requirements under RR 7-95.[33]

There is a host of other CTA cases that illustrate the same point, i.e., that despite non-compliance with the 120 and 30-day periods, the judicial claim was not opposed by the BIR nor rejected by the CTA on the ground of

[32] The Decision has the file name CTA_EB_CV_00043_D_2005MAY10_REF.pdf, and may be found in the CTA's official website.

[33] The Presiding Justice, Hon. Ernesto D. Acosta, submitted a concurring and dissenting opinion but likewise did not raise therein the issue of prematurity of the judicial claim or the CTA's lack of jurisdiction over the same.

prematurity of the judicial claim, or lack of jurisdiction to take cognizance thereof.[34]

On the other hand, there are also CTA *En Banc* decisions treating of the exact opposite of prematurity. There is CTA EB Case No. 24, *Intel Technology Phils., Inc. v. Comm. of Internal Revenue*, where the petitioner filed on May 6, 1999 its application for tax credit/refund of input VAT in the amount of PhP 25.5 million. On September 29, 2000, some 512 days after the filing of the administrative claim, and long "after the expiration of the one hundred twenty (120) days allowed under Section 112(D) of the Tax Code," petitioner filed its judicial claim. However, without citing the non-observance of the 120 and 30-day periods, the CTA granted a portion of the amount claimed.[35] Again, there is a litany of cases which serves to bolster the discussion and drive home the point.[36]

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[34] (1) CTA EB Case No. 53, *Jideco Mfg. Phils. Inc. v. Comm. of Internal Revenue*. -- Admin. claim filed on Oct. 23, 2002; judicial claim filed on Oct. 24, 2002 (1 day after filing of admin claim); (2) CTA EB Case No. 85, *Applied Food Ingredients Co., Inc. v. CIR*. -- Admin. claim filed on July 5, 2000; judicial claim filed on Sept. 29, 2000 (86 days after filing of admin claim); (3) CTA EB Case No. 186, *Kepco Philippines Corporation v. CIR* -- Admin. claim filed on January 29, 2001; judicial claim filed on April 24, 2001 (85 days after filing of admin claim); (4) CTA EB Case No. 197, *American Express Int'l., Inc.- Phil. Branch v. CIR.* -- Admin. claim filed on April 25, 2002; judicial claim filed on April 25, 2002 (i.e., on the same day as filing of admin claim); (5) CTA EB Case No. 226, *Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc.) v. CIR*. -- Admin. claim filed on March 18, 2003; judicial claims filed on: March 31, 2003 (for P0.21million) and on July 22, 2003 (for P0.64 million) – 13 days and 126 days, respectively, after filing of admin claim; (6) CTA EB Case No. 231, *Marubeni Philippines Corporation v. CIR* -- Admin. claim filed on March 30, 2001; amended admin claim filed on April 2, 2001; judicial claim filed on April 25, 2001 (26 days after filing of original admin claim); (7) CTA EB Case No. 14, *ECW Joint Venture, Inc. v. Comm. of Internal Revenue*, the petitioner therein filed on June 19, 2002 an administrative claim for refund of VAT. A month later, petitioner filed on July 19, 2002 its judicial claim. Neither the CIR nor the CTA raised prematurity as an issue; (8) CTA EB Case No. 47, *BASF Phils., Inc. v. Comm. of Internal Revenue*. Petitioner BASF filed on April 19, 2001 its judicial claim seeking tax credits, after having filed on March 27, 2001, or just 23 days earlier, its administrative claim.

[35] This Decision bears the file name CTA_EB_CV_00024_D_2006JAN27_REF.pdf, and may be viewed at and downloaded from the CTA's official website.

[36] (1) CTA EB Case No. 54, *Hitachi Global Storage Technologies Phils. Corp. v. CIR.* -- Admin. claim filed on August 4, 2000; judicial claim filed on July 2, 2001 (332 days after filing of admin claim). CTA EB Case No. 107, *Kepco Philippines Corporation v. CIR.* -- Admin. claims filed on Jan. 29, 2001 and Mar. 21, 2001; judicial claim filed on Mar. 31, 2002. (1 yr & 61 days, and 1 yr & 10 days, respectively, from filing of admin claims); (2) CTA EB Case No. 154, *Silicon Phils., Inc. v. CIR.* -- Admin. claim filed on Oct. 25, 1999; judicial claim filed on Oct. 1, 2001 (707 days after the filing of the admin claim); (3) CTA EB Case No. 174, *Kepco Philippines Corporation v. CIR.* -- Admin. claims filed on Oct. 1, 2001 and June 24, 2002; judicial claim filed on April 22, 2003 (569 days and 302 days, respectively, after the filing of the two admin. claims).; (4) CTA EB Case No. 181, *Intel Technology Phils., Inc. v. CIR.* -- Admin. claim filed on Aug. 26, 1999; judicial claim filed on June 29, 2001 (673 days after filing of admin claim). *Nota bene*: While the case was pending trial, petitioner received on Jan. 24, 2002 from the BIR a Tax Credit Certificate dated Jan. 21, 2002 in the amount of P4.379 million, representing part of the VAT subject of the refund claim. This proves that, during this period prior to the issuance of RMC 42-03, the BIR continued to exercise jurisdiction over the admin claim even though the CTA had already taken cognizance of the judicial claim for the same refund – in exactly the same manner as was later prescribed in RMC 49-03; (5) CTA EB Case No. 209, *Intel Phils. Manufacturing, Inc. v. CIR*. -- Admin. claim filed on August 6, 1999; judicial claim filed on March 30, 2001 (602 days after the filing of the admin claim). *Nota Bene*: During pendency of the trial, petitioner manifested on Aug. 26, 2002 that it had been granted by the Department of Finance a tax credit certificate in the sum of P9.948 million, equivalent to 50% of its total claimed input VAT on local purchases, and forming part of its refund claim. This proves that during this period before the issuance of RMC 42-03, the BIR continued to exercise jurisdiction over the admin. claim even though the CTA had already taken cognizance of the judicial claim for the same refund – in exactly the same manner as was later prescribed in RMC 49-03; (6) CTA EB Case No. 219, *Silicon Philippines, Inc. (formerly Intel Phils. Mfg., Inc.) v. CIR*. -- Admin. claim filed on August 10, 2000; judicial claim filed on June 28, 2002 (687 days after the filing of the admin claim); (7) CTA EB Case No. 233, *Panasonic Communications*

Thus, it is exceedingly clear that, historically speaking, in order to enable refund-seeking taxpayers to file their judicial claims within the two-year prescriptive period, the BIR and the CTA did in actual practice treat the 120-day and 30-day periods provided in Sec. 112(D) as merely discretionary and dispensable; and this served as guidance for the taxpayers. **The taxpaying public took heed of the prevailing practices of the BIR and CTA and acted accordingly. This is a matter which this Court must acknowledge and accept**.

In addition, there is no doubt in our mind that the guidance provided to taxpayers by actual BIR and CTA practices, as portrayed in the foregoing discussion, carried as much, if not more, weight and persuasive force as compared to the formal issuances of the BIR such as revenue regulations, RMCs and the like. Thus, adherence to the then prevailing practices of the BIR and CTA, even in the absence of formal issuances like RR 7-95, would be sufficient to clothe the taxpayer with good faith.

On May 24, 2005, RA 9337[37] was approved. It amended the VAT provisions of the 1997 NIRC. Specifically, it deleted the subsection on "Capital Goods" in Sec. 112 and so renumbered the subsection entitled "*Period within which Refund or Tax Credit of Input Taxes shall be made*" as Sec. 112(C). RA 9337 also mandated the Secretary of Finance to issue rules and regulations implementing the amended VAT provisions:

> **SEC. 23. Implementing Rules and Regulations**. - The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary Rules and Regulations for the effective implementation of this Act. Upon issuance of the said Rules and Regulations, all former rules and regulations pertaining to value-added tax shall be deemed revoked.

Pursuant to the foregoing mandate, then Secretary of Finance Cesar Purisima issued **RR 14-2005** on June 23, 2005. However, like its predecessor RR 7-95, Sec. 4.112-1(d) of RR 14-2005 likewise provided that the judicial claims for refund/credit of input VAT must be made within two (2) years from the close of the taxable quarter when the relevant sales were made:

Imaging Corp. of the Phils. (formerly Matsushita Business Machine Corp. of the Phils.) v. CIR. -- Admin. claims filed on Feb. 8, 2000 (2nd & 3rd Qs 1999, P5.2 million) and Aug. 25, 2000 (4th Q 1999 & 1st Q 2000, P6.7 million); judicial claim filed on March 6, 2001 (392 days and 193 days, respectively, after the filing of the admin. claims); (8) CTA EB Case No. 239, *Panasonic Communications Imaging Corporation of the Phils. (formerly Matsushita Business Machine Corporation of the Phils.) v. CIR.* -- Admin. claims filed on March 12, 1999 and July 20, 1999; judicial claim filed on Dec. 16, 1999 (279 days and 149 days, respectively, from and after filing of admin claims); (9) CTA EB Case No. 28, *Intel Technology Phils., Inc. v. Comm. of Internal Revenue*, the petitioner filed on May 18, 1999 its administrative claim for refund/tax credit of VAT; this was followed, some 317 days later, by the judicial claim filed on March 31, 2000.

[37] Entitled "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes." Its effectivity clause provides that it shall take effect July 1, 2005 but suspended due to a TRO filed by some taxpayers. The law finally took effect November 1, 2005 when the TRO was finally lifted by the Supreme Court. See *Abakada Guro Party List v. Ermita*, G.R. Nos. 168056, etc., September 1, 2005, 469 SCRA 1.

> **SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax.–** x x x
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> x x x x
>
> (d) **Period within which refund or tax credit certificate/refund of input taxes shall be made**
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, **if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application *but before the lapse of the two (2) year period from the close of the taxable quarter when the sales were made***, the taxpayer may appeal to the CTA. (Emphasis supplied.)

This was remedied by **RR 16-2005**, otherwise known as the "Consolidated Value-Added Regulations of 2005," which superseded RR 14-2005 and became effective on **November 1, 2005**. The prefatory statement of RR 16-2005 provides:

> Pursuant to the provisions of Secs. 244 and 245 of the National Internal Revenue Code of 1997, as last amended by Republic Act No. 9337 (Tax Code), in relation to Sec. 23 of the said Republic Act, these Regulations are hereby promulgated to implement Title IV of the Tax Code, as well as other provisions pertaining to Value-Added Tax (VAT). **These Regulations supersedes Revenue Regulations No. 14-2005 dated June 22, 2005**. (Emphasis supplied.)

Sec. 4.112-1 of RR 16-2005 more faithfully reflected Sec. 112 of the 1997 NIRC, as amended by RA 9337, and deleted the reference to the 2-year period in conjunction with the filing of a judicial claim for refund/credit of input VAT, viz:

> **SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax.–** x x x
>
> x x x x
>
> **(d) Period within which refund or tax credit certificate/refund of input taxes shall be made**
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, **if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.** (Emphasis supplied.)

All doubts on whether or not the 120 and 30-day periods are merely discretionary and dispensable were erased when the Court promulgated *Aichi* on October 6, 2010. There, the Court is definite and categorical that the prescriptive period of 120 and 30 days under Sec. 112 of the 1997 NIRC is mandatory and jurisdictional. *Aichi* explained that the 2-year period provided in **Sec. 112(A)** of the 1997 NIRC refers **only** to the prescription period for the filing of an **administrative claim** with the CIR. Meanwhile, the **judicial claim** contemplated under said **Sec. 112(C)** must be filed within a **mandatory and jurisdictional period** of thirty (30) days after the taxpayer's receipt of the CIR's decision denying the claim, or within thirty (30) days after the CIR's inaction for a period of 120 days from the submission of the complete documents supporting the claim. Hence, the period for filing the judicial claim under Sec. 112(C) may stretch out beyond the 2-year threshold provided in Sec. 112(A) as long as the administrative claim is filed within the said 2-year period. *Aichi* explained, thus:

> Section 112 (D) [now Section 112 (C)] 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 x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA**. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.
>
> 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.
>
> x x x x
>
> 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.[38] (Emphasis supplied.)

The Court should not turn a blind eye to the subordinate legislations issued by the Secretary of Finance (and RMCs issued by the CIR) and the various decisions of this Court as well as the then prevailing practices of the BIR and the CTA suggesting that the taxpayers can dispense with the 120 and 30 day-periods in filing their judicial claim for refund/credit of input VAT so long as both the administrative and judicial claims are filed within two (2) years from the close of the relevant taxable quarter. I humbly submit that in deciding claims for refund/credit of input VAT, the following guideposts should be observed:

(1) For judicial claims for refund/credit of input VAT filed from January 1, 1996 (effectivity of RR 7-95) up to October 31, 2005 (prior to effectivity of RR 16-2005), the Court may treat the filing of the judicial claim within the 120 day (or 60-day, for judicial claims filed before January 1, 1998), or beyond the 120+30 day-period (or 60+30 day-period) as permissible provided that both the administrative and judicial claims are filed within two (2) years from the close of the relevant taxable quarter. Thus, the 120 and 30-day periods under Sec. 112 may be considered merely discretionary and may be dispensed with.

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[38] Supra note 1.

(2) For judicial claims filed from November 1, 2005 (date of effectivity of RR 16-2005*)*, the prescriptive period under Sec. 112(C) is mandatory and jurisdictional. Hence, judicial claims for refund/credit of input VAT must be filed within a mandatory and jurisdictional period of thirty (30) days after the taxpayer's receipt of the CIR's decision denying the claim, or within thirty (30) days after the CIR's inaction for a period of 120 days from the submission of the complete documents supporting the claim. The judicial claim may be filed even beyond the 2-year threshold in Sec. 112(A) as long as the administrative claim is filed within said 2-year period.

(3) RR 16-2005, as fortified by our ruling in *Aichi*, must be applied PROSPECTIVELY in the same way that the ruling in *Atlas* and *Mirant* must be applied prospectively.[39]

Sec. 246 of the 1997 NIRC expressly forbids the retroactive application of rules and regulations issued by the Secretary of Finance, viz:

> SEC. 246. **Non-Retroactivity of Rulings.** – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application** if the revocation, modification or reversal will be prejudicial to the taxpayers x x x. (Emphasis supplied.)

Hence, **this Court, I maintain, is duty-bound to sustain and give due credit to the taxpayers' bona fide reliance on RR Nos. 7-95 and 14-2005, RMC Nos. 42-03 and 49-03**, along with guidance provided by the then prevailing practices of the BIR and the CTA, prior to their modification by RR 16-2005.

Such prospective application of the latter revenue regulation comports with the simplest notions of what is fair and just—the precepts of due process. The Court has previously held that "in declaring a law or executive action null and void, or, by extension, no longer without force and effect, **undue harshness and resulting unfairness must be avoided**."[40] Such pronouncement can be applied to a change in the implementing rules of the law. The reliance on the previous rules, in particular RR Nos. 7-95 and 14-2005, along with RMC Nos. 42-03 and 49-03, and the guidance provided by the then prevailing practices of the BIR and the CTA, most certainly have had irreversible consequences that cannot just be ignored; the past cannot always be erased by a new judicial declaration.[41]

It can also be said that the government is estopped from asserting the strict and mandatory compliance with Sec. 112(C) and RR 16-2005 against

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[39] See also *Co v. Court of Appeals*, G.R. No. 100776, October 28, 1993, 227 SCRA 444, 448-455; citing *Ilagan v. People*, January 29, 1974, 55 SCRA 361.

[40] *Hacienda Luisita, Incorporated v. Luisita Industrial Park Corporation*, G.R. No. 171101, July 5, 2011, 653 SCRA 154. Emphasis supplied.

[41] Id.

taxpayers who had relied on RR 7-95 and RR 14-2005, as well as RMC Nos. 42-03 and 49-03, and the guidance of the then prevailing practices of the BIR and the CTA. While the exception to the rule on non-estoppel of the government is rarely applied, the Court has emphasized in *Republic of the Philippines v. Court of Appeals*[42] that this rule cannot be used to perpetrate injustice:

> The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, like all general rules, this is also subject to exceptions, viz.:
>
> > "Estoppel against the public are little favored. They should not be invoked except in rare and unusual circumstances and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, **the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations x x x, the doctrine of equitable estoppel may be invoked against public authorities** as well as against private individuals."

Indeed, denying claims for the issuance of TCCs or refund of unutilized input VAT amounting to millions, if not billions, of hard-earned money that rightfully belongs to these taxpayers on the facile ground that the judicial claim was not timely filed in accordance with a **later** rule, virtually sanctions the perpetration of injustice.

And since RR 16-2005, as clarified by our ruling in *Aichi*, is to be applied prospectively, based on and reckoned from the aforestated cut-off date of November 1, 2005, I accordingly vote as follows:

1. In *CIR v. San Roque Power Corporation*, the motion for reconsideration and the petition of the CIR is **DENIED**.

San Roque filed its administrative claim for refund of VAT for taxable year 2001 on April 10, 2003 and, barely two weeks after, it filed its judicial claim with the CTA; this was clearly within the 120-day waiting period for administrative claims. However, since both administrative and judicial claims were filed during the effectivity of RR 7-95, San Roque can claim in good faith that it was led by RR 7-95, as well as the guidance of the then prevailing practices of the BIR and the CTA, to believe that the 120 and 30-day periods are dispensable considering that in San Roque's case, its administrative and judicial claims were both filed within 2 years from the close of the relevant taxable quarter.

2. In *Taganito Mining Corporation v. CIR*, the petition is **DENIED**.

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[42] G.R. No. 116111, January 21, 1999, 301 SCRA 366.

Taganito filed its judicial claim on February 14, 2007, 92 days after it filed its administrative claim with the CIR and within the 120-day waiting period. Since its judicial claim was filed after November 1, 2005 when RR 16-2005 took effect and superseded RR 14-2005 and RR 7-95, Taganito cannot validly claim reliance in good faith on the revenue regulations that considered the 120 and 30-day periods in Sec. 112(C) dispensable so long as the claims are filed within the 2-year period.

3. In *Philex Mining Corp v. CIR*, the petition is likewise **DENIED**.

The administrative claim for VAT for the third quarter of 2005 was filed on March 20, 2006 while the judicial claim was filed on October 17, 2007, one year and three months after the lapse of the 120-day period under Sec. 112(C), and 17 days after the lapse of the 2-year prescriptive period in Section 112(A). The judicial claim is, therefore, belatedly filed under both the superseded RR Nos. 7-95 and 14-2005, and the effective RR 16-2005.

PRESBITERO J. VELASCO, JR.
Associate Justice