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:
OCTOBER 08, 2013

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DISSENTING OPINION

VELASCO, JR., *J.*:

Before Us are the Motions for Reconsideration filed by San Roque Power Corporation (San Roque) in G.R. No. 187485 and the Commissioner of Internal Revenue (CIR) in G.R. No. 196113.

As before, the sole issue for resolution is the application of Section 112 (C) of the National Internal Revenue Code of 1997 (1997 NIRC),[1] which requires the lapse of 120 days after the filing of an administrative claim for Value–Added Tax (VAT) refund before a judicial claim for the refund of the same tax can be successfully instituted within 30 days from expiration of the said 120-day period, viz:

> SEC. 112. **Refunds or Tax Credits of Input Tax. –**
>
> x x x x
>
> (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) thereof.
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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. (Underscoring supplied.)

[1] Previously Section 112 (D) of the 1997 Tax Code.

In his Resolution denying the motions at bar, Justice Carpio reiterates the Decision dated February 12, 2013. He explained that the period in Section 112 (C) must be construed as mandatory from January 1, 1998 until December 10, 2003. From December 11, 2003, the 120≤30 day period is discretionary until October 5, 2010. Then, from October 6, 2010 onwards, the 120≤30 day period is again mandatory.

Justice Carpio ratiocinated that under the 1997 NIRC, in the filing of judicial claims for the refund of excess input VAT or the issuance of a tax credit certificate (TCC), the observance of the 120≤30 day-provided in Section 112 (C) of the 1997 Tax Code is mandatory. However, since the Bureau of Internal Revenue (BIR) issued BIR Ruling No. DA-489-03 Re: Lazi Bay Resources Development, Inc. (*Lazi Bay* ruling) on December 10, 2003, which provided the contrary position, taxpayers can rely on this BIR ruling until its reversal in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[2] (*Aichi*) promulgated on October 6, 2010. In other words, Justice Carpio is of the position that Section 112 (C) must be considered mandatory from the effectivity of the 1997 NIRC on January 1, 1998, except the period between December 10, 2003 and October 6, 2010.

Chief Justice Sereno in her Separate Dissenting Opinion, in the meantime, would advance the application of the mandatory nature of the period in Section 112 (C) from the date of promulgation of *Aichi* on October 6, 2010. She is of the considered view that due process and equity demands that taxpayers, who relied on the various Court of Tax Appeals (CTA) and BIR Opinions promulgated prior to *Aichi* allowing the discretionary treatment of the period, must be exempted from the mandatory application of Section 112 (C). Thus, Section 112 (C) is not mandatory during the period between January 1, 1998 (the date of effectivity of the 1997 NIRC) and October 6, 2010 (the date of promulgation of *Aichi*).

Justice Leonen, on the other hand, states in his Separate Opinion the observation that the strict and mandatory application of the 120≤30 day-period must be reckoned from the date of the effectivity of the 1997 NIRC. He posits that the construction made by this Court in *Aichi* should be read into and considered part of Section 112 (C) from the moment it became effective on January 1, 1998.

In my previous Dissent, I submitted that for judicial claims for refund/credit of input VAT filed from January 1, 1996 (effectivity of Revenue Regulation No. [RR] 7-95) up to October 31, 2005 (prior to effectivity of RR 16-2005), the Court may treat the period provided for the filing of judicial claims as permissible provided that both the administrative and judicial claims are filed within two (2) years from the close of the

[2] G.R. No. 184823, October 6, 2010.

relevant taxable quarter. Then, for judicial claims filed from November 1, 2005 (date of effectivity of RR 16-2005) and thereafter, the prescriptive period under Section 112 (C) is mandatory.

I explained that RR 7-95 was clear that both the administrative and judicial claims must be filed within 2 years from the close of the relevant taxable quarters. Hence, taxpayers were led to believe that the 120≤30 day-period (or 60≤30 as the case may be) is immaterial provided that the 2-year prescriptive period is observed. RR 7-95 remained in effect even after the effectivity of the 1997 NIRC on January 1, 1998, as shown by the various issuances of the Secretary of Finance, BIR (RMC 42-03, RMC 49-03, BIR Ruling No. DA-489-03), and the decisions of the CTA, which have mostly been affirmed by this Court.

It was only on November 1, 2005, when RR 16-2005 took effect, that the import of Section 112 (C) was clarified and the standing rule enunciated in RR 07-95 was effectively repealed.

Hence, the discretionary treatment of the 120≤30 day-period in Section 112 (C) must be allowed during the period from January 1, 1996 until October 31, 2005 in recognition of the prevailing rule laid down in RR 7-95, as exemplified by the ruling in BIR Ruling No. DA-489-03, that allowed the simultaneous filing of administrative and judicial claims for the refund of excess VAT. Thereafter, or from November 1, 2005 onwards, the 120≤30 day period must be strictly applied and is mandatory pursuant to the letter of Section 112 (C), as correctly implemented by RR 16-2005 and recognized in *Aichi*.

I maintain my position.

BIR Ruling No. DA-489-03 is an evidence of the rule and practice observed after the effectivity of the 1997 NIRC that allowed the discretionary treatment of the 120≤30 day period; it is not an aberrant ruling that should justify the suspension of an otherwise mandatory rule

It is the contention of movant San Roque, which filed its judicial claim for VAT refund on April 10, 2003, or 13 days after filing its administrative claim, that the prevailing rule and practice observed by the BIR and the CTA at the time it filed its judicial claim sanctioned the discretionary treatment of Section 112 (C) of the 1997 NIRC. Hence, the relaxation of the strict and mandatory application of the said provision must not, as argued, be reckoned from the issuance of *Lazi Bay* in December 2003 but from the time that the BIR set in black and white the rule

mandating the strict and mandatory observance of the 120≤30 day period in said Section 112 (C).

On this point, I agree with the movant San Roque and vote to grant its Motion for Reconsideration.

Lazi Bay was not an isolated adjudication that deviated from an otherwise fixed and strict observance of the 120≤30 day period stated in Section 112 (C). Instead, it should be taken as a reflection of the prevailing rule and practice carried over from Republic Act No. (RA) 7716,[3] by RR 7-95,[4] which considered the period as non-obligatory and discretionary.[5]

RR 7-95 was promulgated pursuant to the power of the Secretary of Finance provided in Section 245 in relation to Section 4 of the 1977 NIRC, as amended by RA 7716. Section 245 of the 1977 NIRC defined the authority of the Secretary of Finance to promulgate rules and regulations, viz:

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[3] RA 7716, entitled "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" (dated May 5, 1994), amended Presidential Decree 1158, otherwise known as the 1977 Tax Code, and first introduced the period within which to file a judicial claim for the refund of VAT or the issuance of a TCC. Section 6 of which stated:

> 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, xxx
> xxx xxx xxx
> "(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 and underscoring supplied.)

[4] Entitled "Consolidated Value-Added Tax Regulations" issued on December 9, 1995 and effective January 1, 1996. It implemented RA 7716, RA 8241 entitled "An Act Amending Republic Act No. 7716, Otherwise Known As The Expanded Value-Added Tax Law And Other Pertinent Provisions Of The National Internal Revenue Code As Amended" (dated December 10, 1996); and RA 8424, as amended, entitled "An Act Amending The National Internal Revenue Code, As Amended, And For Other Purposes" (effective January 1, 1998), specifically, Sections 105, 106, 106(A), 106(B), 106(C), 106(D), 107, 107(A), 107(B), 108, 108(A), 108(B), 108(C), 109, 110, 110(A), 110(B), 110(C), 111, 111(A), 111(B), 112, 112(A), 112(B), 112(C), 112(D), 112(E), 113, 113(A), 113(B), 114, 114(A), 114(B), 114(C), 115, 115(a), 115(b) and 236 and Title IV of the NIRC of 1997.

[5] Section 4.106-2 of RR 07-95 provided that taxpayers applying for input VAT refund/issuance of TCCs must file their judicial claims before the lapse of two (2) years from the date of filing of the VAT return for taxable years. This reference to the 2-year period in the filing of the judicial claim for refund/issuance of TCC led to the discretionary treatment of the period given to the CIR to resolve the administrative claim in order to toll the running of the 2-year prescriptive period.

> SEC. 245. The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code. x x x

Meanwhile, Section 4 of the 1977 NIRC, as amended, specified the provisions that must be contained in rules and regulations, not just in rulings of the BIR. Among other things, the 1977 NIRC required that "[t]he **conditions** to be observed by revenue officers, provincial fiscals and other officials respecting the institution and **conduct of legal actions and proceedings**"[6] must be defined in a revenue regulation, not just an issuance of the BIR. Certainly, therefore, the specification of the details regarding the observance of the prescriptive period for the filing of judicial claims is within the power of the Secretary of Finance, not the CIR.

This delineation of the rule-making powers of the tax authorities was reiterated in Sections 244 and 245, in relation to Sections 4 and 7, of the 1997 NIRC. Section 244 of the 1997 NIRC, again, defined the authority of the Secretary of Finance to promulgate rules and regulations, and Section 245 enumerated the specific provisions that must be contained in a revenue regulation:

> SEC. 244. The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.
>
> SEC. 245. The rules and regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing or defining:
>
> xxx xxx xxx
>
> (d) The conditions to be observed by revenue officers respecting the institutions and conduct of legal actions and proceedings;

In turn, Section 4 of the 1997 NIRC provides that the CIR has the "power to interpret the provisions of the [1997 Tax] Code x x x <u>subject to the review by the Secretary of Finance</u>." Ergo, **the interpretation of the Secretary of Finance, as embodied in revenue regulations, prevails over rulings issued by the CIR**, who is only empowered, at most, "to recommend the promulgation of rules and regulations by the Secretary of Finance."[7]

Given the limited power vested on the CIR in relation to the rule-making power reposed on the Secretary of Finance, the CIR cannot amend and reverse a revenue regulation by the mere expedience of issuing a ruling. Thus, **<u>if this Court is bent on upholding the effectivity of BIR Ruling No. DA-489-03 in *Lazi Bay,* it must be taken as an application of a rule</u>**

[6] Section 4(C), 1977 Tax Code. Emphasis supplied.
[7] Section 7(a), 1997 Tax Code.

already laid down and specified by the Secretary of Finance in RR 7-95, and not as an isolated application that deviated from an un-interpreted provision of law.

The fact that then Deputy Commissioner for Legal & Inspection Group Jose Mario Buñag, instead of the CIR, issued BIR Ruling No. DA-489-03 is yet another proof that it is not to be construed as a departure from a rule or provision of law but an application of a rule already laid down in RR 7-95 and prevailing at the time of its issuance. Section 7 of the 1997 NIRC specifically prohibits the delegation of the power "to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau."[8] Hence, the *Lazi Bay* ruling can only be taken as an indication of a prevailing rule laid down by the Secretary of Finance and affirmed and resonated in the Revenue Memorandum Circulars (RMCs) issued by the CIR himself, such as RMC No. 42-03 and RMC 49-03.

Indeed, RR 7-95 prevails over a mere BIR Ruling. Note that a revenue regulation is published before its effectivity so that taxpayers are notified of its effects and the consequences of the failure to abide thereby. This is not so with respect to BIR Rulings. Instead, the rulings are addressed and transmitted to the parties who applied for the issuance of the BIR's opinion; other taxpayers are not notified by publication in a newspaper of general circulation of its import and consequence. Unless they conduct a thorough and in-depth investigation, they will not be informed of the opinion of the BIR as embodied in the ruling. As between RR 7-95, a revenue regulation and the BIR ruling in *Lazi Bay*, therefore, reliance on the former is more in accord with due process.

Further, to facilitate the sanctioned non-compulsory and discretionary treatment of the 120≤30 day period for the filing of judicial claims, RMC No. 42-03 was issued on July 15, 2003 to address, among others, the rule regarding **simultaneously filed and pending administrative and judicial claims**. Note that RMC No. 42-03 did not mandate the dismissal of a judicial claim filed while an administrative claim is still pending on the ground of prematurity. Instead, RMC No. 42-03 contemplated a situation that allowed the exercise by the CTA and the CIR of concurrent jurisdiction over the claim for refund/issuance of TCC, viz:

> 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?*
>
> 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,

[8] Section 7 (b), 1997 Tax Code.

> 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

This situation was later clarified by RMC No. 49-03 dated August 15, 2003 entitled "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." This RMC was intended as a "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**."[9] And yet, RMC 49-03 allowed for the *simultaneous* processing of the administrative and judicial claims for input VAT refund/issuance of TCC by the BIR and the CTA, respectively, and NOT the dismissal of the judicial claim on the ground of prematurity.[10]

Clearly, the period referred to by the CIR in issuing RMC 49-03 is the period laid down in Section 112 (C)[11] of the 1997 NIRC, as interpreted and enforced by RR 7-95, i.e., "the two (2) year period from the date of filing of the VAT return for the taxable quarter."[12] Hence, taxpayers were allowed to treat the 120-day period as non-compulsory and merely discretionary so long as the 2-year period is observed and complied.

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[9] Emphasis and underscoring supplied.

[10] In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:

> I.) *A-17 of Revenue Memorandum Circular No. 42-2003 is hereby revised to read as follows*:
>
> *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.*
>
> *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.

[11] Previously Section 112 (D) of the 1997 Tax Code.

[12] Section 4.106-2 of RR 7-95.

BIR Ruling No. DA-489-03 in *Lazi Bay* simply echoed this rule laid down in RR 7-95 and affirmed by RMC Nos. 42-03 and 49-03 when the Deputy Commissioner stated that:

> [A] 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**. <u>The Tax Code fixed the period of two (2) years</u> <u>filing a claim for refund with the Commissioner</u>** [Sec. 112(A) in relation to Sec. 204(c)] ***<u>and</u>*** **<u>for filing a case in court</u>** [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.[13]

Hence, the prevailing rule even after the effectivity of the 1997 NIRC was to treat the 120≤30-day period as non-mandatory since RR 7-95 was not affected and remained in effect.

Also worthy of note is that the provision that RR 7-95 interpreted and enforced virtually remained the same; Section 106(d) of the 1977 NIRC, as amended, was substantially adopted and re-enacted by Section 112 (C) of the 1997 NIRC.[14] It is a hornbook rule that when the legislature reenacts a law that has been construed by an executive agency using substantially the same language, <u>it is an indication of the adoption by the legislature of the prior construction by the agency</u>.[15] The almost verbatim reproduction of Section 106(D) of the 1977 NIRC by Section 112(C) of the 1997 NIRC is therefore an implied recognition by the legislature of the propriety of the

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[13] Emphasis and underscoring supplied.

[14] Section 106 (D), 1997 NIRC	Section 112 (C), 1997 NIRC
Sec. 106. *Refunds or tax credits of creditable 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 <u>sixty (60) days</u> 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<u>, within thirty (30) days</u> 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.	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 certificate for creditable input taxes <u>within one hundred twenty (120) days</u> 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, <u>within thirty (30) days</u> 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.

[15] *Commissioner of Internal Revenue v. American Express*, G.R. No. 152609, June 29, 2005, 462 SCRA 197, 229-230.

interpretation made by the Secretary of Finance of the proper prescriptive period in filing judicial claims for input VAT refund/issuance of TCCs.

The continuing application of RR 7-95 in interpreting the provisions of the 1997 NIRC is also acknowledged by the Secretary of Finance, the BIR, the CTA, and this Court. To implement Section 5 of the 1997 NIRC, RR No. 19-99[16] issued on December 27, 1999 or almost two (2) years after the 1997 NIRC became effective, stated thus:

> SECTION 2. Coverage. — Beginning January 1, 2000, general professional partnerships, professionals and persons described above shall be governed by the provisions of Revenue Regulation No. 7-95, as amended, otherwise known as the "Consolidated Value-Added Tax Regulations." x x x[17]

Numerous BIR rulings rendered after the effectivity of the 1997 NIRC regarding tax incidents that occurred after January 1, 1998 similarly applied the relevant provisions of RR 7-95.[18]

Even this Court in resolving claims for refund of input VAT paid after January 1, 1998 recognized the effectivity of RR 7-95 in interpreting the provisions of the 1997 Tax Code. In *Hitachi Global Storage Technologies Philippines, Corp. v. Commissioner of Internal Revenue*,[19] this Court, speaking through Justice Carpio, sustained the denial of an application for refund of input VAT for the four taxable quarters of 1999 on the ground of petitioner-taxpayer's failure to comply with the provisions of RR 7-95. Citing *Panasonic v. Commissioner of Internal Revenue*,[20] We explained that

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[16] Implementing Section 5 of Republic Act No. 8424, Otherwise Known as the Tax Reform Act of 1997, and Other Pertinent Provisions of the National Internal Revenue Code of 1997, Imposing Value-Added Tax (VAT) on Sale of Services by Persons Engaged in the Practice of Profession or Calling and Professional Services Rendered by General Professional Partnerships; Services Rendered by Actors, Actresses, Talents, Singers and Emcees; Radio and Television Broadcasters and Choreographers; Musical, Radio, Movie, Television and Stage Directors; and Professional Athletes, beginning January 1, 2000

[17] Underscoring supplied.

[18] ITAD RULING NO. 145-03, September 26, 2003, addressed to Synertronix Inc.; ITAD RULING NO. 131-03, August 18, 2003, addressed to Bernaldo Mirador Law Offices; ITAD RULING NO. 103-03, July 24, 2003, addressed to Baniqued & Baniqued Attorneys at Law; ITAD RULING NO. 211-02 dated ITAD RULING NO. 211-02, addressed to Terumo (Philippines) Corporation; ITAD RULING NO. 185-02, October 21, 2002, addressed to Fuji Plastic Industry Phils., Inc.; ITAD RULING NO. 147-02 dated ITAD RULING NO. 147-02, addressed to Sycip Gorres Velayo & Co.; ITAD RULING NO. 136-02 dated August 5, 2002, addressed to Noritake Porcelana Mfg., Inc.; ITAD RULING NO. 066-02 dated April 24, 2002 addressed to Castillo & Poblador Law Offices; ITAD RULING NO. 040-02 dated ITAD RULING NO. 040-02 addressed to Punongbayan & Araullo; ITAD RULING NO. 128-01 dated December 21, 2001 addressed to December 21, 2001; ITAD RULING NO. 116-01 dated ITAD RULING NO. 116-01 addressed to Punongbayan & Araullo; ITAD RULING NO. 086-01 dated October 10, 2001 addressed to Castillo Laman Tan Pantaleon & San Jose Law Offices; BIR RULING [DA-(S40M-023) 560-08] dated December 19, 2008 addressed to Platon Martinez Flores San Pedro Leaño; BIR RULING [DA-330-98] dated July 17, 1998 addressed to Sycip Gorres Velayo; VAT RULING NO. 016-05 dated August 26, 2005 addressed to SyCip Gorres Velayo & Co.; VAT RULING NO. 020-02 dated April 1, 2002 addressed to Joaquin Cunanan & Co.

[19] G.R. No. 174212, October 20, 2010.

[20] G.R. No. 178090, February 8, 2010.

RR 7-95 gained the status of a legislative act that binds the taxpayers and this Court:

> On 4 August 2000, Hitachi filed an administrative claim for refund or issuance of a tax credit certificate before the BIR. The claim involved P25,023,471.84 representing excess input VAT attributable to Hitachi's zero-rated export sales for the four taxable quarters of 1999.
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> On 2 July 2001, due to the BIR's inaction, Hitachi filed a petition for review with the CTA …
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> x x x x
>
> We already settled the issue of printing the word "zero-rated" on the sales invoices in Panasonic v. Commissioner of Internal Revenue. In that case, we denied Panasonic's claim for refund of the VAT it paid as a zero-rated taxpayer on the ground that its sales invoices did not state on their face that its sales were "zero-rated." We said:
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> > But **when petitioner Panasonic made the export sales subject of this case, i.e., from April 1998 to March 1999, the rule that applied was Section 4.108-1 of RR 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, which the Secretary of Finance issued on December 9, 1995 and took effect on January 1, 1996**. It already required the printing of the word "zero-rated" on invoices covering zero-rated sales. **When R.A. 9337 amended the 1997 NIRC on November 1, 2005, it made this particular revenue regulation a part of the tax code**. This conversion from regulation to law did not diminish the binding force of such regulation with respect to acts committed prior to the enactment of that law.
> >
> > Section 4.108-1 of **RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1997 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments**. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word "zero-rated" on the face of the invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect. (Emphasis supplied)
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> Likewise, in this case, **when Hitachi filed its claim for refund or tax credit, RR 7-95 was already in force**.[21]

It is, therefore, inaccurate to state that before the issuance of BIR Ruling DA-489-03 in *Lazi Bay* on 10 December 2003, there was ***no*** administrative practice, rule or ruling rule followed by the BIR that supported simultaneous filing of claims and that prior to the *Lazi Bay* ruling, the BIR considered the 120≤30 day period mandatory. Rather, the *Lazi Bay* ruling is one of the outcomes and tangible evidence of such practice, as made concrete by RR 7-95, that allowed the simultaneous filing of claims.

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[21] Emphasis and underscoring supplied.

Similarly, as pointed out by movant, the fact that this Court, like the CTA and the BIR, has passed upon the issue of the prescriptive period for filing the judicial claim *sub silencio* is also a glaring evidence of the sanctioned rule and practice that allowed for the discretionary and non-mandatory treatment of the 120≤30 day period in Section 112(C) of the 1997 NIRC.

A review of a sampling of twenty (20) CTA *En Banc* Decisions involving judicial claims for VAT refund filed between 1998 to 2003 will conclusively show that the CIR and the CTA completely ignored and considered as a non-issue the mandatory compliance of the 120≤30 day period. For convenience, I summarized in the table below the pertinent data culled from 20 CTA *En Banc* Decisions:

CTA EB Case No.	**Case Title**	**Date of Administrative Claim**	**Date of Judicial Claim**	**Comment**
14	*ECW Joint Venture, Inc. v. CIR*	June 19, 2002	July 19, 2002	Case was decided on the merits. CIR and CTA said nothing about prematurity of judicial claim or CTA's lack of jurisdiction.
43	*Overseas Ohsaki Construction Corp. v. CIR*	Oct. 23, 2001	Oct. 24, 2001	-ditto-
47	*BASF Phils., Inc. v. CIR*	Mar. 27, 2001	Apr. 19, 2001	-ditto-
53	*Jideco Mfg. Phils. Inc. v. CIR*	Oct. 23, 2002	Oct. 24, 2002	-ditto-
85	*Applied Food Ingredients Co. v. CIR*	July 5, 2000	Sep. 29, 2000	-ditto-
186	*Kepco Phils. Corp. v. CIR*	Jan. 29, 2001	Apr. 24, 2001	-ditto-
197	*American Express Int'l Inc. – Phil. Branch. CIR*	Apr. 25, 2002	Apr. 25, 2002	-ditto-
226	*Mirant (NavotasII) Corporation (formerly, Southern Energy Navotas II Power, Inc.) v. CIR)*	Mar. 18, 2003	Mar. 31, 2003 & Jul. 22, 2003	-ditto-
231	*Marubeni Phils. Corp. v. CIR*	Mar. 30, 2001	Apr. 25, 2001	-ditto-
24	*Intel Technology Phils., Inc. v. CIR*	May 6, 1999	Sep. 29, 2000	CTA EB explicitly noted that the judicial claim was filed long after the lapse of the 120≤30 day period under Sec. 112. However, no mention was made about the prescription or the CTA's lack of jurisdiction. The case was decided on the merits.
28	*Intel Technology Phils., Inc. v. CIR*	May 18, 1999	Mar. 31, 2000	Case was resolved on the merits. No one raised the issue of violation of Sec. 112 or the CTA's lack of jurisdiction.

54	*Hitachi Global Storage Technologies Phils. Corp. v. CIR*	Aug. 4, 2000	July 2, 2002	-ditto-
107	*Kepco Phils. Corp. v. CIR*	Oct. 25, 1999	Oct. 1, 2001	-ditto-
154	*Silicon Phils., Inc. v. CIR*	Oct. 25, 1999	Oct. 1, 2001	-ditto-
174	*Kepco Phils. Corp. v. CIR*	Oct. 1, 2001 & June 24, 2002	Apr. 22, 2003	-ditto-
181	*Intel Technology Phils., Inc. v. CIR*	Aug. 26, 1999	Jun. 29, 200	-ditto-
209	*Intel Phils. Mfg., Inc. v. CIR*	Aug. 6, 1999	Mar. 30, 2001	-ditto-
219	*Silicon Phils., Inc. v. CIR*	Aug. 10, 2000	June 28, 2002	-ditto-
233	*Panasonic Communications Imaging Corp, of the Phils. v. CIR*	Feb. 8, 2000 & Aug. 25, 2000	Mar. 6, 2001	-ditto-
239	*Panasonic Communications Imaging Corp, of the Phils. v. CIR*	Mar. 12, 1999 & Jul. 20, 1999	Dec. 16, 1999	-ditto-

Although CTA Decisions are not binding legal precedents, their factual recitals are nothing less than indelible records of, and incontrovertible proof as to, the manner in which both the BIR and the CTA regarded the 120≤30 day period, and the manner in which they actually handled administrative and judicial claims for refund/tax credit during the period in question. And the narrations of facts and case antecedents culled from the CTA En Banc Decisions establish 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≤30 day period in Section 112.

It is also necessary to point out that the February 12, 2013 Decision in these consolidated cases, in contrast, cited only one solitary decision rendered by the Court of Appeals (CA), not the CTA, as supposed proof that the BIR, in the years between 1998 and 2003, allegedly took the position that the 120≤30 day period was mandatory and jurisdictional.

While sheer number of cases is not always determinative of an issue, in this particular case, the large number of CTA EB Decisions containing factual recitals which prove that the BIR and the CTA did not observe the 120≤30 day period most certainly carry far more weight than a single solitary CA case allegedly showing the opposite.

Also deserving of a closer look are the Decisions of this Court in the following cases, involving similarly situated but "more fortunate" judicial claims which were decided earlier, prior to the promulgation of the Decision in these consolidated cases on February 12, 2013 embodying the Court's new interpretation of the 120≤30 period requirement:

1) *CIR v. Cebu Toyo Corporation,* G.R. No. 149073, February 16, 2005;
2) *CIR v. Toshiba Information Equipment,* G.R. No. 150154, August 9, 2005;
3) *CIR v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.),* G.R. No. 159593, October 12, 2006;
4) *Intel Phils. v. CIR,* G.R. No. 166732, April 27, 2007;

5) *CIR v. Ironcon Builders & Development Corp.,* G.R. No. 180042, February 8, 2010.
6) *Mirant Sual Corporation (formerly, Southern Energy Philippines, Inc.) v. CIR,* G.R. No. 167315, February 10, 2010.
7) *Hitachi Global Storage Technologies Phils. Corp. v. CIR,* G.R. No. 174212, October 20, 2010.
8) *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR,* G.R. No. 172378, January 17, 2011.
9) *Kepco Philippines Corp. v. CIR,* G.R. No. 179961, January 31, 2011;
10) *Microsoft Philippines, Inc. v. CIR,* G.R. No. 180173, April 6, 2011;
11) *Southern Philippines Power Corporation v. CIR,* G.R. No. 179632, October 19, 2011;
12) *Western Philippines Power Corporation v. CIR,* G.R. 181136, June 13, 2012;
13) *Eastern Telecom Phils., Inc. v. CIR* G.R. No. 168856, August 29, 2012;
14) *Silicon Philippines, Inc. v. CIR, (Formerly Intel Philippines, Inc.) v. CIR,* G.R. No. 179904, February 6, 2013 [This is an unsigned Resolution of the Court's Second Division];
15) *Intel Technology Philippines, Inc. v. CIR,* G.R. No. 172613, February 13, 2013 [This is an unsigned Resolution of the Court's Second Division].

An examination of the narration of facts in each case of the above-listed cases shows that each case pertains to a judicial claim for refund of excess unutilized input VAT pursuant to Section 112 of the 1997 NIRC, and these judicial claims were all filed with the CTA within the period starting from January 1, 1998 to December 10, 2003, the so-called period of strict enforcement of the 120≤30 day period according to this Court's February 12, 2013 Decision in the present consolidated cases. Without exception, each of the above-listed judicial claims did not comply with the 120≤30 day period requirement. But in every instance and notwithstanding that the narrations of facts very clearly and unmistakably showed that these claims failed to comply with the aforesaid requirement, this Court nonetheless either granted those judicial claims or else denied them on grounds other than such non-compliance. Notably, in every single occasion, the Court let pass said non-compliance *sans* comment.

What is more, seven (7) of the foregoing Decisions and two (2) Resolutions mentioned above were promulgated after *Aichi* was promulgated on October 6, 2010, yet unlike San Roque, those nine judicial claims were not subjected to the *Aichi* ruling and the retroactive application of the Court's new interpretation. In other words, even in the post-*Aichi* scenario, the Court still refrained from denying outright these claims for their failure to strictly comply with the 120≤30 day period in recognition and cognizance of the prevailing practice after the effectivity of the 1997 NIRC and pre-RR 16-2005 that allowed the discretionary treatment of the period.

The mandatory application of the 120<30 day period was set in black and white only after the effectivity of RR 16-2005.

The policy requiring the mandatory observance of the 120≤30 day period before the filing of a judicial claim for VAT refund was set and made clear only upon the effectivity of RR 16-2005 on November 1, 2005. RR 16-2005 abolished once and for all the standing rule provided in RR 7-95 when it deleted any 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
>
> **(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.)

Since, similar to RR 7-95, RR 16-2005 was promulgated pursuant to Sections 244 and 245 of the 1997 Tax Code,[22] it embodies a legislative rule that deserves the deference and respect due the law it implements. For this reason, from the effectivity of RR 16-2005 on November 1, 2005, all taxpayers are bound to strictly observe the 120≤30 day period provided in Section 112 (C) and there was no need to wait for the promulgation of a decision like *Aichi* in view of the existence of a clear legislative rule that finally repealed all other rulings that may have clouded the mandatory nature of the 120<30 day period.

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[22] In relation to Section 23 of RA 9337 which states: Value-Added Tax (VAT) Reform Act, effective July 1, 2005. "SECTION 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."

Like all laws and regulations, RR 16-2005 applies prospectively and not retroactively to the date of the effectivity of the 1997 Tax Code. As this Court explained in *BPI Leasing Corporation v. Court of Appeals*,[23] the rule on prospectivity of laws encompasses revenue regulations implementing the 1997 NIRC:

> The Court finds the questioned revenue regulation to be legislative in nature. Section 1 of Revenue Regulation 19-86 plainly states that it was promulgated pursuant to Section 277 of the NIRC. Section 277 (now Section 244) is an express grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC. In *Paper Industries Corporation of the Philippines v. Court of Appeals*, the Court recognized that the application of Section 277 calls for none other than the exercise of quasi-legislative or rule-making authority. Verily, it cannot be disputed that Revenue Regulation 19-86 was issued pursuant to the rule-making power of the Secretary of Finance, thus making it legislative, and not interpretative as alleged by BLC.
>
> x x x x
>
> **The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication**. In the present case, there is no indication that the revenue regulation may operate retroactively. Furthermore, there is an express provision stating that it "shall take effect on January 1, 1987," and that it "shall be applicable to all leases written on or after the said date." Being clear on its prospective application, it must be given its literal meaning and applied without further interpretation. Thus, BLC is not in a position to invoke the provisions of Revenue Regulation 19-86 for lease rentals it received prior to January 1, 1987.[24]

The rule and practice observed between 1996 and November 2005 that allowed the non-mandatory application of the 120<30 day is an operative fact that must be considered in resolving judicial claims filed during the period. Hence, justice and fairness dictate that the tax claimants who relied on RR 07-95, and the practice observed by the BIR, the CTA and this Court be given relief

In line with the prospective application of RR 16-2005, no one can argue with the February 12, 2013 Decision where it declared that "[t]his court is applying *Mirant* and *Aichi* prospectively," on account of its sound basis in hornbook doctrine, law and jurisprudence, apart from being fully justified by considerations of fairness and equity. However, the Decision immediately departed from the doctrinal norm of prospectivity by retroactively applying the new interpretation thus causing the denial of San Roque's claim, while in the same breath announcing that the Court shall

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[23] G.R. No. 127624, November 18, 2003.
[24] Emphasis supplied.

apply *Mirant* and *Aichi* prospectively. We can avoid such jarring dissonance by applying the new Doctrine from the moment when the strict application of the period had been put in ink by RR 16-2005.

The Decision of February 12, 2013 and the Resolution employ retroactivity to backdate the Court's new interpretation of the 120≤30 day period under Section 112. This is a dangerous precedent. The retroactivity of application of a new judicial interpretation must be seen for what it is – a corrective tool that must be used in a very controlled, restricted manner and only for very necessary, limited situations and occasions. It is not a tool to be employed lightly; extreme need therefor must be first established. For it is capable of destroying established contractual rights and relationships and causing drastic, massive damage.

The narration of case facts and antecedents of the Decisions and Resolutions of this Court and the CTA enumerated above speak to the principle of operative fact, inasmuch as they all bear witness that for years prior to the effectivity of RR 16-2005 in November 2005, in the process of resolving judicial claims for refund of input VAT, the BIR, the CTA and this Court all paid scant attention to the 120≤30 day period requirement in Section 112. This operative fact cannot be denied and ignored if this Court is to be true to its role as the vanguard of truth and ultimate dispenser of justice in this country. As this Court once said: "[t]he actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to its invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official."[25]

Thus, in arriving at a judicious ruling on a "difficult question of law," this Court should give premium to the good faith of the taxpayers in relying on a valid revenue regulation that has taken the proper agencies too long to update. On this point, I quote with approval a portion of the sound observation made by San Roque in its Supplemental MR:

> Respondent deferentially submits that fairness and evenhandedness will opt for a prospective application of the new interpretation, given the unalterable fact that taxpayers had taken their cue from the policies, and procedures of the tax agency and the tax court, (which policies, issuances and procedures enjoyed what amounts to the tacit approval of the High Court), and had filed their claims accordingly, and <u>now are in no position to undo what had been done years before</u>.

[25] *Francisco Serrano de Agbayani v. Philippine National Bank et al.*, G.R. No. L-23127 April 29, 1971; citing *Chicot County Drainage Dist. v. Baxter States Bank* 308 US 371, 374 (1940).

> The pragmatic application of the principle of operative fact calls to mind a kindred tenet *viz.*, the legal maxim "Cursus curia est lex curiae," which means the "practice of the court is the law of the court" [Also written as "cursus buriae est lex curiae," the practice of the court is the law of the court. 3 Burst. 53; Broom, Leg. Max. (3d London Ed.)126; 12 C.B. 414; 17 Q. B. 86; 8 Exch. 199; 2 Maule & S. 25; 15 East, 226; 12 Mees. & W. 7; 4 Mylne & C. 635; 3 Scott, N. R. 599.] Of Ancient vintage, this principle or maxim declares that historically, the customs of the Court, are as binding as the law. Herbert Broom explains the significance of the maxim in this manner:
>
> > "Where a practice has existed it is convenient to adhere to it, because it is the practice even though no reason can be assigned for it; for an inveterate practice in the law generally stands upon principles that are founded in justice and convenience. Hence, if any necessary proceeding in an action be informal, or be not done within the time limited for it, or in the manner prescribed by the practice of the court, it may be set aside for irregularity." [*Broom, Herbert, A Selection of Legal Maxims Classified and Illustrated,* (London: Sweet & Maxweel Limited, 1845)
>
> The "operative fact" principle would suggest that due recognition be given to the fact that the non-observance of the 120≤30 day period requirement has been the consistent, long-standing practice or the "*cursus curiae*" of the CTA, the CIR and the CA (with the tacit approval of this Honorable Court) for over a decade and a half, and that the binding effect thereof cannot simply be made to vanish by waving a new judicial interpretation.[26]

Thus, if, as the Decision declares, "[t]axpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law," there is more reason to maintain that refund seekers should not be prejudiced, penalized nor castigated for having taken guidance from the policies, pronouncements, issuances and actuations of the BIR and the CTA, which actuations have direct bearing on a difficult question of law.

It is clear from the provisions of the Civil Code that good faith possession of a right can spring from a difficult question of law:

> Article 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.
>
> x x x x
>
> Mistake upon a doubtful or difficult question of law may be the basis of good faith.

[26] Supplemental Motion for Resolution, pp. 16-17.

This Court is, therefore, duty-bound to actively refrain from actions that may be perceived as elevating strict adherence to procedural rules and technicalities over and above the taxpayer's clear, substantive legal right to the refund sought. We must remain cognizant of the taxpayer's good faith compliance with procedures approved and sanctioned by the BIR and the CTA and accepted by this Court, and avoid creating obstacles to defeat the taxpayer's substantive right to refunds.

Consistent with the principle of operative fact and the basic notions of fairness and equity, the strict and mandatory application of Section 112 (C) must be reckoned from the day the rule was set clarified and set in black and white—on the effectivity of RR 16-2005 on November 1, 2005. In net effect, all claims for refund of input VAT filed and commenced after November 1, 2005 must strictly observe the period provided in Section 112(C) of the 1997 Tax Code. Since San Roque filed its judicial claim in April 2003, or more than two (2) years *before* the effectivity of RR 16-2005, its claim for input VAT should be granted regardless of its failure to take into account the period provided in Section 112 (C).

Premature filing of a judicial claim before the lapse of 120 days from the filing of the administrative claim does not deprive the CTA of jurisdiction

The non-mandatory treatment of the 120≤30 day period prior to November 1, 2005 should hold especially true for taxpayers like movant San Roque, that had filed its judicial claim within the 120 days, and not after the lapse of the period.

The prematurity in filing, unlike the late filing, of the judicial claim cannot serve to deprive the CTA of its jurisdiction as it is axiomatic that the jurisdiction of courts is determined by law.[27] The discretion is, therefore, with the CTA to dismiss without prejudice, upon proper motion, a judicial claim prematurely filed by a taxpayer. This Court cannot, contrary to RA 1125 which vested upon the CTA its jurisdiction, declare the immediate deprivation of such jurisdiction to consider and evaluate the legitimacy of a taxpayer's claim on the feeble ground that the taxpayer has failed to patiently await the lapse of the period given to the CIR to act.

At most, the prematurity of the filing of the judicial claim for the refund of VAT is a ground for the dismissal without prejudice of the claim that can be waived by the BIR and disregarded by the CTA, if the tribunal is inclined to rule on the substantial aspect of the claim. It is not for this Court to pre-empt the decision of the CTA on the exercise of the jurisdiction it has been conferred by law.

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[27] *Heirs of Juanita Padilla v. Magdua*, G.R. No. 176858, September 15, 2010.

In the case of San Roque, when both the CTA Second Division and the CTA En Banc looked into the substance of the movant-taxpayer's claim and eventually decided to grant it, despite San Roque's premature filing thereof, **the tax tribunal was acting with the jurisdiction** it has been granted under RA 1125, as amended,[28] which states that:

> SEC. 7. ***Jurisdiction.*** – The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review appeal, as herein provided:
>
> x x x x
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue provided a specific period of action, in which case the inaction shall be deemed a denial.

The act of the CTA in granting San Roque's claim based on the merits of its claim is a further indication of the long-observed practice allowing the premature filing of judicial claims. In fact, in applying the foregoing provision of RA 1125, the presently observed and still effective Revised Rules of the Court of Tax Appeals[29] did not mention the period provided in Section 112 (C). Instead, it still underscores the two (2) year period contemplated in RR 7-95:

> Rule 4
> JURISDICTION OF THE COURT
>
> Sec. 3. *Cases within the jurisdiction of the Court in Divisions*. -
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> x x x x
>
> (2) Inaction by the Commissioner of Internal Revenue involving disputed assessments, refunds of internal revenue, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides as specific period of action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty-day period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of the Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessment beyond the one hundred eighty day-

[28] An Act Creating the Court of Tax Appeals.
[29] A.M. No. 05-11-07-CTA, Effective November 22, 2005 (last amended as of 15, 2008)

> period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court **prior to the expiration of the two-year period** under Section 229 of the National Internal Revenue Code;
>
> x x x x
>
> Rule 8
> PROCEDURE IN CIVIL CASES
>
> Sec. 3. *Who may appeal; period to file petition –*
>
> (a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes xxx xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, **the taxpayer must file a petition within the two-year period prescribed by law from payment or collection of the taxes**.[30]

We cannot, therefore, deny the movant's claim for refund solely based on the prematurity of its judicial filing, which in the first place has been instigated by the taxpayer's good faith reliance on a revenue regulation issued by the Secretary of Finance, the practice observed by the BIR and the CTA, and the silent tolerance by this Court.

While, indeed, the lifeblood of our country is the taxes due from the taxpayers, the heart of this nation beats in rhyme with justice and fairness that deplore the sacrifice of a substantial right in the altars of procedure. Let us therefore look into the merits of the movant's rights and give credit to its good faith passing over of the period provided in Section 112 (C) of the 1997 NIRC.

Hence, all claims for input VAT refund/issuance of TCC filed after November 1, 2005 must strictly observe the 120≤30 day period provided in Section 112 (C) of the 1997 NIRC. Meanwhile, all judicial claims filed prior to the same date are allowed to rely on the practice sanctioned by RR 7-95, as exemplified by BIR Ruling No. DA-489-03 in *Lazi Bay*.

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[30] Emphasis and underscoring supplied.

For all the foregoing, I vote to **GRANT** the Motion for Reconsideration filed by San Roque Power Corporation in G.R. No. 187485, and **DENY** the Motion for Reconsideration of the Commissioner of Internal Revenue in G.R. No. 196113.

PRESBITERO J. VELASCO, JR.
Associate Justice