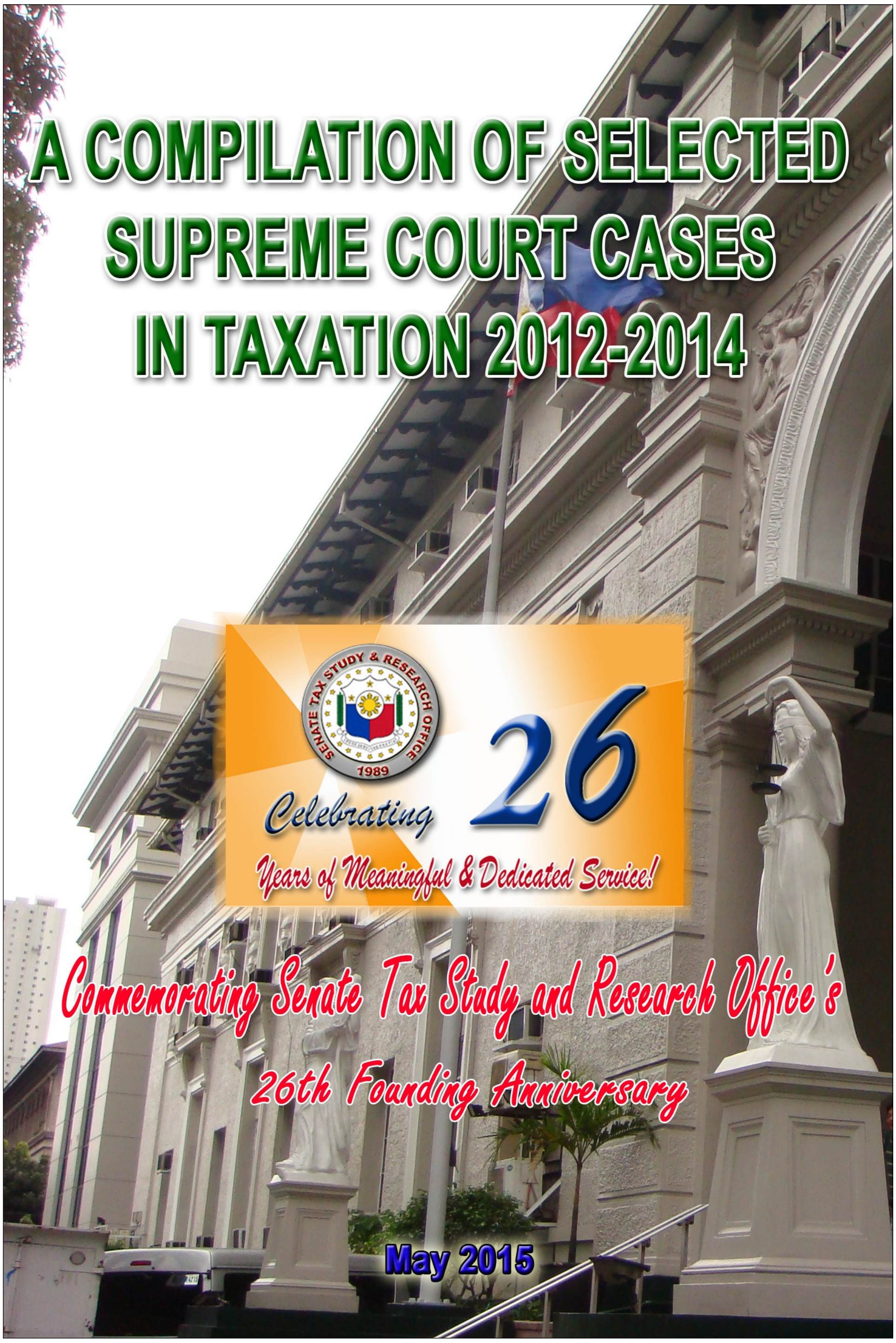
A COMPILATION OF SELECTED SUPREME COURT CASES IN TAXATION 2012-2014



SENATE TAX STUDY & RESEARCH OFFICE
1989

Celebrating 26
Years of Meaningful & Dedicated Service!

Commemorating Senate Tax Study and Research Office's
26th Founding Anniversary

May 2015

TABLE OF CONTENTS

•	Foreword	
	Sen. Sonny Angara, Chairman, Committee on Ways and Means Atty. Oscar G. Yabes, Senate Secretary Atty. Rodelio T. Dascil, STSRO Director General	4 5 6
1.	Commissioner of Customs and the District Collector of the Port of Subic, Petitioners vs. Hypermix Feeds Corp., Respondent (G.R. No. 179579, February 1, 2012).	7
2.	Lascona Land Co., Inc., Petitioner vs. Commissioner of Internal Revenue, Respondent (G.R. No. 171251, March 5, 2012).	8
3.	Commissioner of Internal Revenue, Petitioner vs. Petron Corp., Respondent (G.R. No. 185568, March 21, 2012).	12
4.	Commissioner of Internal Revenue, Petitioner vs. Pilipinas Shell Petroleum Corporation, Respondent (GR No. 188497, April 25, 2012).	17
5.	Western Mindanao Power Corporation, Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (GR No. 181136, June 13, 2012).	20
6.	Eastern Telecommunications Philippines, Inc. (ETPI), Petitioner vs. The Commissioner of Internal Revenue (CIR), Respondent (GR No. 168856, August 29, 2012).	22
7.	Fort Bonifacio Development Corp., Petitioner vs. Commissioner of Internal Revenue and Revenue District Officer, Revenue District No. 44, Taguig and Pateros, Bureau of Internal Revenue, Respondents (G.R. No. 173425, September 4, 2012).	25
8.	Asia International Auctioneers, Inc., Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 179115, September 26, 2012).	31

TABLE OF CONTENTS

9. Team Energy Corp. (formerly Migrant Pagbilao Corporation), Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 190928, January 13, 2014).	34
10. Team Energy Corp. (formerly Migrant Pagbilao Corporation), Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 197760, January 13, 2014).	35
11. Commissioner of Internal Revenue (CIR), Petitioner vs. Mindanao II Geothermal Partnership, Respondent (G.R. No. 191498, January 15, 2014).	36
12. CBK Power Company Limited, Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 189729-30, January 15, 2014).	37
13. Commissioner of Internal Revenue (CIR), Petitioner vs. Toledo Power Inc., Respondent (G.R. No. 183880, January 20, 2014).	39
14. Procter & Gamble Asia PTE Ltd., Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 202071, February 19, 2014).	40
15. (1) Silicon Philippines, Inc., (formerly Intel Philippines Manufacturing, Inc.), Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 184360 and 184361, February 19, 2014). (2) CIR, Petitioner vs. Silicon Philippines, Inc., (formerly Intel Philippines Manufacturing, Inc.), Respondent (G.R. No. 184384, February 19, 2014.).	42
16. Commissioner of Internal Revenue (CIR), Petitioner vs. Pilipinas Shell Petroleum Corporation, Respondent (G.R. No. 188497, February 19, 2014).	44
17. CS Garment, Inc., Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 182399, March 12, 2014).	47

TABLE OF CONTENTS

18. Miramar Fish Co., Inc., Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 185432, June 4, 2014).	48
19. Visayas Geothermal Power Co. (VGPC), Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 197525, June 4, 2014).	50
20. Commissioner of Internal Revenue (CIR), Petitioner vs. The Insular Life Assurance Co. Ltd., Respondent (G.R. No. 197192, June 4, 2014.)	54
21. Commissioner of Internal Revenue (CIR), Petitioner vs. Mindanao II Geothermal Partnership, Respondent (G.R. No. 189440; June 18, 2014).	57
22. Taganito Mining Corporation, Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 197591, June 18, 2014).	58

FOREWORD

Office of the Chairman
Committee on Ways & Means

The number of tax cases in the Philippines increased under the current administration especially after the Bureau of Internal Revenue's (BIR) Run After Tax Evaders (RATE) program was given a fresh boost to carry out a very clear directive from President Aquino—to not hold back in filing cases against individuals or companies suspected of having deprived the government of much-needed revenue for its social programs.

The BIR has filed more than a hundred cases against individuals and companies including large multinational corporations, professionals such as doctors and athletes, government officials, and even television and movie celebrities. Unfortunately, five years on, most of these cases are still languishing in various stages of the legal process, and to this day, not a single tax evader has been put behind bars. For the BIR, its "failure to secure a conviction is not indicative of weak cases, but rather of a legal system that goes to great lengths to protect the rights of individuals—even if they are suspected to have injured the state through acts like tax evasion."

Given these circumstances, it is important to look into and be familiar with the country's tax cases, specifically where the Supreme Court had to step in. It is important for all stakeholders, not just for lawmakers, to keep abreast of the leading tax cases to have a better appreciation of our legal system. To make the proper intervention from the legislative branch, more than the theoretical framework, we should know the right data and information. Let us all work together to enhance voluntary compliance among taxpayers and to promote public confidence in the tax system.

I congratulate the Senate Tax Study and Research Office (STSRO) on your 26th Founding Anniversary. Your relevant and informative publications that aim to promote and advance tax education are truly commendable.

Mabuhay po kayo!

Sen. SONNY ANGARA
Chairman, Committee on Ways and Means

FOREWORD

Office of the Senate Secretary

My warmest greetings to the dynamic and hardworking men and women of the Senate Tax Study and Research Office (STSRO) led by Director General Rodelio T. Dascil on the celebration of your 26th Anniversary.

For twenty six years, you have been consistently providing excellent technical support to the Committee on Ways and Means and to the honorable members of the Senate.

Your dedication and constant publication of good reference materials are very much appreciated and valued not only by the Senate technical staff, but also by the members of the academe and independent researchers.

On this momentous occasion, I join the men and women of the Senate Secretariat in wishing you more productive and meaningful years ahead.

Congratulations and Happy 26th anniversary, STSRO!

ATTY. OSCAR G. YABES
Senate Secretary

FOREWORD

Office of the Director General

To commemorate the Twenty-Sixth (26th) Founding Anniversary of the Senate Tax Study and Research Office (STSRO) on May 5, 2015, we are coming out with this booklet containing selected cases on taxation decided by the Supreme Court (SC) from 2012 up to 2014.

This collection of SC rulings/interpretations of tax laws would serve as a vital yardstick to our legislators in crafting laws that could help the country achieve its economic goals and endeavors.

It should be emphasized that STSRO was created by virtue of Resolution No. 52 adopted on May 5, 1989. As such, STSRO is the permanent technical arm of the Senate that provides research and technical assistance to the Chairperson and Members of the Committee on Ways and Means and the other Members of the Senate on tax proposals. As mandated, it assesses and monitors the relative merits of the revenue-raising system and recommends alternative sources and forms of revenue. It also identifies weaknesses and/or irregularities in the system of revenue collection and recommends improvement thereon through the conduct of surveys on tax and other fiscal matters. STSRO likewise undertakes research and studies on fiscal and budgetary issues as inputs to tax legislation as well as formulates reform proposals on tax-related issues and thereby assists in the drafting of legislative bills on taxation. Of late, the STSRO has also been involved in the study of fiscal incentives as a tool of the government in attracting foreign direct investments.

It is hoped that this humble work would assist our legislators in their mandated tasks.

The cases were digested by Mr. Clinton S. Martinez, a member of our staff, while Mr. Bonifacio R. Joson put this document into one piece.

It is the ardent hope of the STSRO that this humble manuscript would be of utmost assistance to those interested in the study of taxation as a fiscal tool of the government.

Finally, as the STSRO goes about its mandated functions, it is hoped that the Mission and Vision we have enshrined will continue to guide us in the years ahead.

ATTY. RODELIO T. DASCIL, *MNSA*
Director General

1. Commissioner of Customs and the District Collector of the Port of Subic, Petitioners vs. Hypermix Feeds Corp., Respondent (G.R. No. 179579, February 1, 2012)

Facts:

At the center of controversy in this case is Customs Memorandum Order (CMO) No. 27-2003 issued by the Commissioner of Customs on November 7, 2003. Said issuance provided that, for tariff purposes, wheat shall be classified according to the following: (1) importer or consignee; (2) country of origin; (3) port of discharge. The same likewise made an exclusive list of corporations, ports of discharge, commodity descriptions and countries of origin. On these factors would depend whether wheat would be classified as food grade (3%) or feed grade (7%). The CMO also placed the procedure for protest or Valuation and Classification Review Committee (VCRC) cases.

In anticipation of the implementation of CMO 27-2003, respondent filed on December 19, 2003, a Petition for Declaratory Relief with the Regional Trial Court (RTC). Hypermix claims that said CMO: (1) was issued without observing the provisions of the Revised Administrative Code; (2) declared it to be a feed grade supplier sans the benefit of prior assessment and examination; (3) violated the equal protection clause of the 1987 Constitution; and (4) was confiscatory in nature since it had a retroactive application.

The RTC issued a twenty (20) day Temporary Restraining Order (TRO) on January 24, 2004. Subsequently the Commissioner of Customs filed a Motion to Dismiss based on the ensuing grounds: (1) that RTC is without jurisdiction because Hypermix was seeking for a judicial determination of the classification of wheat; (2) action for Declaratory Relief is improper; (3) The CMO was an internal administrative rule and not legislative in character; (4) Hypermix' assertions were speculative and premature. Finally, petitioner *"X x x likewise opposed the application for a writ of preliminary injunction on the ground that they had not inflicted any injury through the issuance x x x; and that the action would be contrary to the rule that administrative issuances are assumed valid until declared otherwise."*

The RTC and Court of Appeals (CA) decided in favor of respondent Hypermix Feeds Corporation.

Issues:

1. Did the CA decide a question of substance?
2. Did the CA make a mistake in pronouncing that the RTC acted within its jurisdiction?

Held:

The Supreme Court (SC) denied the petition and decided in favor of Hypermix Feeds Corporation, the respondent herein.

The SC first tackled the issue regarding Declaratory Relief. The court mentioned that for an action for Declaratory Relief to prosper, these requisites must be present: (1) justiciable controversy; (2) persons whose interests are adverse; (3) legal interest of the party seeking the action; and (4) issue must be ripe for judicial determination. The court ruled that the petition filed by respondent in the lower court meets the requirements.

The SC said: *"Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments."*

The court also ruled that the controversy is between two parties who have adverse interest, *i.e.*, the Commissioner of Customs is imposing the tariff rate that Hypermix is refusing to pay. On the third requirement, the SC declared: *"X x x. Respondent has adequately shown that, as a regular importer of wheat, on 14 August 2003, it has actually made shipments of wheat from China to Subic. The shipment was set to arrive in December 2003. Upon its arrival, it would be subjected to the conditions of CMO 27-2003. The regulation calls for the imposition of different tariff rates, depending on the factors enumerated therein. Thus, respondent alleged that it would be made to pay 7% tariff applied to feed grade wheat, instead of the 3% tariff on food grade wheat. In addition, respondent would have to go through the procedure under CMO 27-2003, which would undoubtedly toll its time and resources."*

The SC likewise mentioned that issue is ripe for judicial determination because litigation is forthcoming for the reason that Hypermix is not included in the list of flour millers grouped as food grade wheat importers. The court struck down CMO 27-2003 for violating the Revised Administrative Code rules on *Filing* and *Public Participation*. Furthermore, it ruled that the provision of the Memorandum is unconstitutional for being violative of the equal protection clause of the 1987 Constitution. There must be a valid classification. Moreover, the SC declared that petitioner Commissioner of Customs went beyond his powers when CMO 27-2003 limited the customs officer's duties mandated under Section 1403 of the Tariff and Customs Code of the Philippines (TCCP)[Duties of Customs Officer Tasked to Examine, Classify, and Appraise Imported Articles].

2. Lascona Land Co., Inc., Petitioner, vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 171251, March 5, 2012)

Facts:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court. The same seeks the reversal of a decision dated October 25, 2005 and resolution dated January 20, 2006 of the Court of Appeals (CA), which set aside a decision dated January 4, 2000 and resolution dated March 3, 2000 of the Court of Tax Appeals (CTA), and declared an Assessment Notice sent to petitioner Lascona Land Co., Inc. by the Commissioner of Internal Revenue (CIR) to be final, executory and demandable.

Here are the antecedent events as gathered from the case:

The CIR issued an Assessment Notice against Lascona informing the latter of its alleged deficiency income tax in the amount of P753,266.56, covering the year 1993. Petitioner herein filed a letter protest that was denied by the Officer-In-Charge (OIC) of the Regional Office of the Bureau of Internal Revenue (BIR). Thereafter, Lascona appealed the decision with the CTA, alleging that OIC was wrong in ruling that the failure to appeal to the CTA within 30 days from the expiration of the 180-day period under Section 228 of the Tax Code, rendered the assessment final and executory.

The CTA nullified the assessment, holding that Section 228 gives two choices to the taxpayer: (1) appeal to the CTA within 30 days from the lapse of the 180-day period; or (2) wait for the CIR's decision before elevating the case. The latter moved for reconsideration stating that it based its action on a Revenue Regulation. The CTA denied the CIR's motion for reconsideration (MR) for lack of merit. It said that the RR must conform with the provisions of Section 228 of the National Internal Revenue Code (NIRC), as amended.

The CIR appealed to the CA. The latter granted herein respondent's petition and declared the Assessment as final, executory and demandable. Herein petitioner's MR was denied for lack of merit.

Issues:

1. *"The Honorable Court has, in the Revised Rules of Court of Tax Appeals which it recently promulgated, ruled that an appeal from the inaction of respondent Commissioner is not mandatory."*

2. "*The Court of Appeals seriously erred when it held that the assessment has become final and demandable because, allegedly, the word 'decision' in the last paragraph of Section 228 cannot be strictly construed as referring only to the decision per se of the Commissioner, but should also be considered synonymous with an assessment which has been protested, but the protest on which has not been acted upon by the Commissioner*."

Stated differently, the main question to be settled here is, whether the Assessment has become final, executory and demandable because of non-filing by petitioner Lascona of an appeal before the CTA within 30 days from the lapse of the 180-day period as per Section 228 of the NIRC, as amended.

Held:

The SC decides that the petition of Lascona is with merit. The court quoted the pertinent provision of the Tax Code, viz:

Sec. 228. Protesting of Assessment. - x x x

X x x

"*Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.*

"Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

"If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

The SC pronounced that in cases where the CIR fails to act on a disputed assessment within the 180-day period from the date of submission of documents, a taxpayer has two (2) options: (1) file a petition for review with the CTA within 30 days after the lapse of the 180-day period; or (2) await the final decision of the CIR on the questioned assessment and appeal said final decision to the CTA within 30 days after receipt of a copy of such decision. The SC ruled that "*these options are mutually exclusive and resort to one bars the application of the other*." The SC said that the foregoing is consistent with the provisions of the Revised Rules of the CTA, to wit:

"*SEC. 3.* *Cases within the jurisdiction of the Court in Divisions. – The Court in Divisions shall exercise:*

"(a) Exclusive original or appellate jurisdiction to review by appeal the following:

"(1) Decisions of 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;

"(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, where the National Internal Revenue Code or other applicable law provides a specific period for 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 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 assessments beyond the one hundred eighty day-period above-mentioned, 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 the 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;*

Xx x." (Emphasis ours)

The SC reminded that the word "decisions" under Republic Act (RA) No. 1125 [CTA Charter], means those rendered by the CIR on the *protest* of the taxpayer against the assessment. Citing its earlier ruling, it added:

"*In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by Section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment.* ***Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide,***

and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment,*..."*

Hence, since that petitioner chose to await the final decision of the CIR, it has the right to appeal said final decision to the SC by filing a petition for review within 30 days after receipt of a copy of said document, even after the expiration of the 180-day period fixed by law for the CIR to reply on the questioned assessments.

As a final note, the SC said:

"X x x, the CIR should be reminded that taxpayers cannot be left in quandary by its inaction on the protested assessment. It is imperative that the taxpayers are informed of its action in order that the taxpayer should then at least be able to take recourse to the tax court at the opportune time. As correctly pointed out by the tax court:

"x x x to adopt the interpretation of the respondent will not only sanction inefficiency, but will likewise condone the Bureau's inaction. This is especially true in the instant case when despite the fact that respondent found petitioner's arguments to be in order, the assessment will become final, executory and demandable for petitioner's failure to appeal before us within the thirty (30) day period.

"Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved. Thus, even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure."

The petition of Lascona was granted. The Decision of the CTA dated January 4, 2000 nullifying the subject assessment, and its Resolution dated March 3, 2000 denying the MR of the CIR, were reinstated.

3. Commissioner of Internal Revenue (CIR), Petitioner vs. Petron Corp., Respondent (G.R. No. 185568, March 21, 2012)

Facts:

Respondent Petron Corporation paid its excise tax liabilities with the

Commissioner of Internal Revenue (CIR) using Tax Credit Certificates (TCCs) it received from several BOI-registered companies, in the course of its business undertakings. In a post-audit, TCCs were later on declared by the Department of Finance (DOF) as having been fraudulently obtained by the companies and likewise fraudulently transferred to Petron. The TCCs and Tax Debit Memos (TDBs) were cancelled by the DOF due to this finding. The taxes are now deemed as not having been paid and settled.

The Court of Tax Appeals' (CTA) Second Division decided in favor of the CIR. However, on appeal to the *CTA En Banc*, it ruled in favor of Petron citing the Supreme Court's (SCs) pronouncement in the case of Pilipinas Shell vs. CIR (*G.R. No. 172598, 21 December 2007, 541 SCRA 316).*

Issue:

The CTA committed error in declaring that Petron is not liable for its excise tax liabilities using the TCCs which the DOF declared as having been obtained and transferred to it fraudulently.

Held:

The SC denied CIR's Petition for lack of merit.

The SC cited Article 21 of Executive Order (EO) No. 226 (Omnibus Investment Code of 1987), defining a tax credit, to wit:

> *Article 21. "Tax credit" shall mean any of the credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or the Board, if so delegated by the Secretary of Finance. The tax credit certificates including those issued by the Board pursuant to laws repealed by this Code but without in any way diminishing the scope of negotiability under their laws of issue are transferable under such conditions as may be determined by the Board after consultation with the Department of Finance. The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the National Government; Provided, That the tax credits issued under this Code shall not form part of the gross income of the grantee/ transferee for income tax purposes under Section 29 of the National Internal Revenue Code and are therefore not taxable: Provided, further, That such tax credits shall be valid only for a period of ten (10) years from date of issuance.*

The Court also defined a Tax Credit Certificate (TCC), viz:

> *B. Tax Credit Certificate — means a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in*

accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed by the provisions of these Regulations (Revenue Regulation [RR] No. 5-2000).

The SC proclaimed that Petron is a transferee in good faith and for value of the subject TCCs. The SC said: "From the records, we observe that the CIR had no allegation that there was a deviation from the process for the approval of the TCCs, which Petron used as payment to settle its excise tax liabilities for the years 1995 to 1998." Moreover, the Joint Stipulation entered into by the CIR with Petron negates its allegation of fraud in the transfer and issuance of the TCCs.

Alluding to the *Petition for Review on Certiorari*, the SC declared:

"*The fundamental rule is that the scope of our judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact. It is basic that where it is the sufficiency of evidence that is being questioned, there is a question of fact. Evidently, the CIR does not point out any specific provision of law that was wrongly interpreted by the CTA En Banc in the latter's assailed Decision. Petitioner anchors its contention on the alleged existence of the sufficiency of evidence it had proffered to prove that Petron was involved in the perpetration of fraud in the transfer and utilization of the subject TCCs, an allegation that the CTA En Banc failed to consider. We have consistently held that it is not the function of this Court to analyze or weigh the evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion. Such an exception does not obtain in the circumstances of this case*."

To further stress its point on the payment by Petron of its tax liabilities using the TCCs, the Court adverted:

"*The Liability Clause of the TCCs reads:*

"Both the TRANSFEROR and the TRANSFEREE shall be jointly and severally liable for any fraudulent act or violation of the pertinent laws, rules and regulations relating to the transfer of this TAX CREDIT CERTIFICATE.

"The scope of this solidary liability, as stated in the TCCs, was clarified by this Court in Shell, as follows:

> *"The above clause to our mind clearly provides only for the solidary liability relative to the transfer of the TCCs from the original grantee to a transferee. There is nothing in the above clause that provides for the liability of the transferee in the event that the validity of the TCC issued to the original grantee by the Center is impugned or where the TCC is declared to have been fraudulently procured by the said original grantee.* ***Thus, the solidary liability, if any, applies only to the sale of the TCC to the transferee by the original grantee****. Any fraud or breach of law or rule relating to the issuance of the TCC by the Center to the transferor or the original grantee is the latter's responsibility and liability. The transferee in good faith and for value may not be unjustly prejudiced by the fraud committed by the claimant or transferor in the procurement or issuance of the TCC from the Center. It is not only unjust but well-nigh violative of the constitutional right not to be deprived of one's property without due process of law. Thus, a re-assessment of tax liabilities previously paid through TCCs by a transferee in good faith and for value is utterly confiscatory, more so when surcharges and interests are likewise assessed.*
>
> *"A transferee in good faith and for value of a TCC who has relied on the Center's representation of the genuineness and validity of the TCC transferred to it may not be legally required to pay again the tax covered by the TCC which has been belatedly declared null and void, that is, after the TCCs have been fully utilized through settlement of internal revenue tax liabilities. Conversely, when the transferee is party to the fraud as when it did not obtain the TCC for value or was a party to or has knowledge of its fraudulent issuance, said transferee is liable for the taxes and for the fraud committed as provided for by law*."

The CIR propounds that TCCs are subject to post-audit procedures. The SC decided otherwise. It said:

> "*We held in Petron v. CIR (Petron), which is on all fours with the instant case, that TCCs are valid and effective from their issuance and are not subject to a post-audit as a suspensive condition for their validity. Our ruling in Petron finds guidance from our earlier ruling in Shell, which categorically states that a TCC is valid and effective upon its issuance and is not subject to a post-audit. The implication on the instant case of the said earlier ruling is that Petron has the right to rely on the validity and effectivity of the TCCs that were assigned to it. In finally determining their effectivity in the settlement of respondent's*

excise tax liabilities, the validity of those TCCs should not depend on the results of the DOF's post-audit findings."

The next issue tackled by the Court involves the doctrine of Estoppel. The CIR insists that the government is not stopped from collecting the tax liabilities of Petron that accrued as a result of the declaration of invalidity of the TCCs; that the government should not be blamed for the inimical acts of its employees. The Court proclaimed:

> "*We recognize the well-entrenched principle that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. As an exception, however, this general rule cannot be applied if it would work injustice against an innocent party*." (Emphasis supplied)

Finally, it was decided by the SC:

> "*In the light of the main ruling in this case, we affirm the CTA En Banc Decision finding Petron to be an innocent transferee for value of the subject TCCs. Consequently, the Tax Returns it filed for the years 1995 to 1998 are not considered fraudulent. Hence, the CIR had no legal basis to assess the excise taxes or any penalty surcharge or interest thereon, as respondent had already paid the appropriate excise taxes using the subject TCCs*."

The Court affirmed *in toto* the CTA En Banc decision of December 3, 2008, which reversed and set aside the proclamation of the Second Division. Hence, Petron is absolved from any deficiency excise tax liability for taxable years 1995 to 1998.

With respect to estoppel, it has been declared: "*When a party has, by his declaration, act or omission, intentionally and deliberately led the other to believe a particular thing true, and to act, upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it*." (De Castro vs. Ginete, 27 SCRA 623).

In the case of PNB vs. CA 94 SCRA 357, the SC referring to the doctrine of estoppel, proclaimed: "*The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied upon*." [Cited in Jose Agaton Sibal: Philippine Legal Encyclopedia]

4. Commissioner of Internal Revenue (CIR), Petitioner vs. Pilipinas Shell Petroleum Corporation, Respondent (GR No. 188497, April 25, 2012)

Facts:

Respondent Pilipinas Shell Petroleum Corporation (Shell) filed a claim for refund of the excise taxes it paid on petroleum products it sold to international carriers of foreign registry for their use or consumption outside the Philippines, with the Large Taxpayers Audit & Investigation Division II of the Bureau of Internal Revenue (BIR). No action was taken by the BIR, prompting Shell to file a petition for review with the Court of Tax Appeals (CTA). The CTA ruled in favor of respondent.

Issues:

Three questions are to be resolved in this case:

1. "*Section 148 of the National Internal Revenue Code expressly subjects the petroleum products to an excise tax before they are removed from the place of production*."

2. "*The only specific provision of the law which grants tax credit or tax refund of the excise taxes paid refers to those cases where goods locally produced or manufactured are actually exported which is not so in this case*."

3. "*The principles laid down in Maceda vs. Macaraig, Jr. and Philippine Acetylene Co. vs. CIR are applicable to this case*."

Held:

The claim for refund was denied.

Respondent asserts that it is entitled to a claim for tax refund since those petroleum products it sold to international carriers are not subject to excise tax. The Supreme Court (SC) ruled in favor of petitioner, stating that:

> "*Under Chapter II "Exemption or Conditional Tax-Free Removal of Certain Goods" of Title VI, Sections 133, 137, 138, 139 and 140 cover conditional tax-free removal of specified goods or articles, whereas Sections 134 and 135 provide for tax exemptions. While the exemption found in Sec. 134 makes reference to the nature and quality of the goods manufactured (domestic denatured alcohol) without regard to the tax status of the buyer of the said goods, Sec. 135 deals with the tax treatment of a specified article (petroleum products) in relation to its buyer or consumer. Respondent's failure to make this important distinction apparently led it to mistakenly assume that the tax exemption under Sec. 135 (a) "attaches to the goods themselves" such that the excise tax should not have been paid in the first place*."

The SC made mention of BIR Revenue Regulation (RR) No. 8-96 which states that: "*The specific tax on petroleum products locally manufactured or produced in the Philippines shall be paid by the manufacturer, producer, owner or person having possession of the same, and such tax shall be paid within* fifteen (15) days *from date of removal from the place of production."* "X x x . *The Excise tax imposed on petroleum products under Sec. 148 is the direct liability of the manufac-turer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers*."

Alluding to its ruling in the case of *Commissioner of Internal Revenue vs. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005, 478 SCRA 61, 72, citing *Commissioner of Internal Revenue vs. Tours Specialists Inc.*, the SC said:

> "*An excise tax is basically an indirect tax. Indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered*."

In the case of *Maceda*, the Court ruled that the tax exemption privileges being enjoyed by the National Power Corporation (NPC) cannot be used by oil companies to shift the tax burden to NPC. The oil companies remain liable to pay the tax thereon. The SC stressed:

> "*In view of all the foregoing, the Court rules and declares that the oil companies which supply bunker fuel oil to NPC have to pay the taxes imposed upon said bunker fuel oil sold to NPC. By the very nature of indirect taxation, the economic burden of such taxation is expected to be passed on through the channels of commerce to the user or consumer of the goods sold.* ***Because, however, the NPC has been exempted from both direct and indirect taxation, the NPC must be held exempted from absorbing the economic burden of indirect taxation. This means, on the one hand, that the oil compa-nies which wish to sell to NPC absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes.*** *This means also, on the other hand, that the NPC*

may refuse to pay that part of the "normal" purchase price of bunker fuel oil which represents all or part of the taxes previously paid by the oil companies to BIR. If NPC nonetheless purchases such oil from the oil companies – because to do so may be more convenient and ultimately less costly for NPC than NPC itself importing and hauling and storing the oil from overseas – NPC is entitled to be reimbursed by the BIR for that part of the buying price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR."

Referring to international carriers, the Court said that the exemption from tax given under Section 135(a) is based on international understanding that fuel used for international air services should be exempt from tax. "*The provisions of the 1944 Convention of International Civil Aviation or the 'Chicago Convention', which form binding international law, requires the contracting parties not to charge duty on aviation fuel already on board any aircraft that has arrived in their territory from another contracting state.* Moreover, citing Presidential Decree (PD) No. 1359 (Amending Sec. 134 of the 1977 Tax Code), the SC said: "X x x. *Founded on the principles of international comity and reciprocity, P.D. No. 1359 granted exemption from payment of excise tax but only to foreign international carriers who are allowed to purchase petroleum products free of specific tax provided the country of said carrier also grants tax exemption to Philippine carriers. Both the earlier amendment in the 1977 Tax Code and the present Sec. 135 of the 1997 NIRC did not exempt the oil companies from the payment of excise tax on petroleum products manufactured and sold by them to international carriers.*"

Finally, the Court reminded the parties that:

"*Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed*[1] *nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.*"

The Petition for review on Certiorari filed by the CIR was granted. The claim for refund or credit filed by Shell was denied.

The Bureau of Internal Revenue (BIR) is headed by a Commissioner. The Commissioner of Internal Revenue (CIR) has the power to interpret tax laws and decide tax cases, subject to review and appeal, where warranted. Under Section 2 of the Tax Code, it is provided:

> *"SEC. 2. **Powers and Duties of the Bureau of Internal Revenue**. - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws*."

The cases discussed in this issue emphasize the pertinence of Section 244 of the National Internal Revenue Code (NIRC), as amended. Said section stipulates:

> *"SEC. 244. **Authority of Secretary of Finance to Promulgate Rules and Regulations**. - 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."*

Also prominently mentioned in the next two (2) cases is the importance of imprinting the words "***zero-rated***" on the invoice of taxpayers, as required in the Revenue Regulations issued by the Secretary of Finance, for value-added tax (VAT)-registered taxpayers.

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5. Western Mindanao Power Corporation, Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (GR No. 181136, June 13, 2012)

Facts:

Petitioner Western Mindanao Power Corporation (WMPC) filed a Petition for Review under Rule 45 of the Revised Rules of Court praying for the reversal of the 15 November 2007 Decision and 9 January 2008 Resolution of the Court of Tax Appeals (CTA) En Banc (No. 272). The same upheld the CTA Second Division's denial of the Petition for Refund of WMPC of unutilized input VAT for the reason that the official receipts (OR) it issued did not contain the phrase "***zero-rated***" as required under Revenue Regulation (RR) No. 7-95 (Emphasis supplied).

WMPC is engaged in the production and sale of electricity and registered with the BIR as a VAT taxpayer. Petitioner alleges that it sells its product exclusively to the National Power Corporation (NPC). Pursuant to its Charter (RA 6395) the NPC is exempt from the payment of all forms of taxes, duties, fees and imposts. Under the NIRC, as amended, a VAT-registered taxpayer may apply for the issuance of a tax credit or refund of creditable input tax due or paid and attributable to zero-rated or effectively zero-rated sales. Hence, WMPC filed with the CIR applications for a tax credit certificate (TCC) of its input VAT. The CIR was not acting on its application prompting the petitioner to file on 28 September 2008 a Petition for Review with the CTA, fearing that its action might be barred.

The CIR filed its Comment on the CTA Petition stating that WMPC was not entitled to the tax refund because of its failure to comply with the Invoicing requirements under the Tax Code, in relation to RR 7-95.

The CTA 2nd Division dismissed the Petition holding that the submitted Quarterly VAT Returns did not reflect any zero-rated or effectively zero-rated sales. Moreover, it discovered that WMPC's VAT invoices and ORs did not contain on their face the phrase "zero-rated". The CTA En Banc upheld the Division's Decision observing that: "*X x x, a closer examination of the returns clearly shows that the same do not reflect any zero-rated or effectively zero-rated sales allegedly incurred during the said periods*."

Issue:

"*Whether the CTA En Banc seriously erred in dismissing the claim of petitioner for a refund or tax credit on input tax on the ground that the latter's Official Receipts do not contain the phrase 'zero-rated'.*"

Held:

The Supreme Court (SC) denied the Petition of WMPC. The SC said:

> "*Being a derogation of the sovereign authority, a statute granting tax exemption is strictly construed against the person or entity claiming the exemption. When based on such statute, a claim for tax refund partakes of the nature of an exemption. Hence, the same rule of strict interpretation against the taxpayer-claimant applies to the claim*."

The SC also said that a taxpayer involved in zero-rated or effectively zero-rated sale may apply for the issuance of a TCC, or a refund of the creditable input tax paid or due, related to the sale. It added:

> "*In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. Hence, the mere fact that petitioner's application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing*

them."

The SC further stated:

"*Under the NIRC, a creditable input tax should be evidenced by a VAT invoice or official receipt, which may only be considered as such when it complies with the requirements of RR 7-95, particularly Section 4.108-1. This section requires, among others, that "(i)f the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt.*" (Underscoring provided)

The Court also ruled that RR 7-95 does not constitute an undue expansion of the scope of the law it seeks to implement on the allegation that the statutory requirement for printing the phrase "zero-rated" on VAT ORs appears only pursuant to RA 9337. The SC pronounced that said RR "*proceeds from the rule-making authority granted to the Secretary of Finance by the NIRC for the efficient enforcement of the same Tax Code and its amendments*."

The SC took cognizance of the findings of the CTA that WMPC failed to substantiate the presence of its effectively zero-rated sales to NPC for the periods of the 3rd and 4th quarters of 1999 and the whole of 2000.

Finally, the Supreme Court emphasized that:

"*It must also be noted that the CTA is a highly specialized court dedicated exclusively to the study and consideration of revenue-related problems, in which it has necessarily developed an expertise. Hence, its factual findings, when supported by substantial evidence, will not be disturbed on appeal. We find no sufficient reason to exempt the present case from this general rule*."

6. Eastern Telecommunications Philippines, Inc. (ETPI), Petitioner vs. The Commissioner of Internal Revenue (CIR), Respondent (GR No. 168856, August 29, 2012)

Facts:

Petitioner Eastern Telecommunications Philippines, Inc. (Eastern) is a corporation engaged in the telecommunications business pursuant to a legislative franchise. It has several international service agreements with non-resident telecommunications companies. It handles incoming services for non-resident telecom companies and relays the same to its intended recipients within the country. Additionally, it made various interconnection pacts with local carriers for the acceptance of foreign calls relayed by it and the distribution of said calls to the local end-receiver. Due to this, Eastern earns foreign currency revenues which are remitted inwardly. ETPI filed its quarterly VAT returns on time for 1999, but the same were later amended on February 22, 2001. The BIR and Petitioner both confirmed the truth of the entries under Excess Input VAT in their Joint Stipulation of Facts and Issues, dated June 13, 2001. Said excess is equivalent to P23,070,911.75. ETPI filed an administrative claim for refund and/or tax credit of the said excess input taxes attributable to zero-rated transactions.

To toll the running of the period, ETPI filed a Petition for Review with the CTA on March 26, 2001. The CTA Division denied the Petition, finding that Eastern failed to imprint the word "zero-rated" on the face of its invoices or receipts, in contravention of RR No. 7-95. ETPI likewise failed to substantiate its taxable and exempt sales. On appeal to the CTA En Banc, the latter dismissed the petition, ruling *"X x x that in order for a zero-rated taxpayer to claim a tax credit or refund, the taxpayer must first comply with the mandatory invoicing requirements under the regulations. One such requirement is that the word "zero-rated" be imprinted on the invoice or receipt. According to the CTA En Banc, the purpose of this requisite is to avoid the danger that the purchaser of goods or services may be able to claim input tax on the sale to it by the taxpayer of goods or services despite the fact that no VAT was actually paid thereon since the taxpayer is zero-rated. Also, it agreed with the conclusion of the CTA-Division that ETPI failed to substantiate its taxable and exempt sales."*

Issues:

Eastern interposes the following grounds for the grant of its Petition:

I

"*The CTA En Banc erred when it sanctioned the denial of petitioner's claim for refund on the ground that petitioner's invoices do not bear the imprint 'zero-rated,' and disregarded the evidence on record which clearly establishes that the transactions giving rise to petitioner's claim for refund are indeed zero-rated transactions under Section 108(B)(2) of the 1997 Tax Code."*

II

"*The CTA En Banc erred when it denied petitioner's claim for refund based on petitioner's alleged failure to substantiate its taxable and exempt sales."*

III

"*Petitioner presented substantial evidence that unequivocally proved petitioner's zero-rated transactions and its consequent entitlement to a refund/tax credit*."

IV

"*In civil cases, such as claims for refund, strict* *compliance with technical rules of evidence is not required. Moreover, a mere preponderance of evidence will suffice to justify the grant of a claim*."

The main question to be answered in this case is whether the absence of the imprint of the word "zero-rated" on the invoices or receipts of Eastern is fatal to its claim for tax refund for excess input VAT.

Held:

As with other cases decided by the Supreme Court (SC) involving the same issue, it decided that the failure to imprint the word "**zero-rated**" is fatal to a party's claim for refund. The SC ruled that the Tax Code explicitly grants the Secretary of Finance the authority to promulgate the necessary rules and regulations for the proper enforcement of the provisions of the NIRC, as amended. The Court said: "*Such rules and regulations 'deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.'*" The requirements under the RR are:

> *"Sec. 4.108-1. Invoicing Requirements. All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:*
>
> *"1. the name, TIN and address of seller;*
>
> *"2. date of transaction;*
>
> *"3. quantity, unit cost and description of merchandise or nature of service;*
>
> *"4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;*
>
> *"5. <u>the word "zero-rated" imprinted on the invoice covering zero-rated sales</u>; and*
>
> *"6. the invoice value or consideration."* (Underscoring supplied)

To negate ETPI's assertion that there is no need to substantiate the amounts of its taxable and exempt sales because its quarterly VAT returns, which clearly show the amounts of taxable sales, zero-rated sales and exempt sales, were not refuted by the CIR, the SC declared that:

> "*ETPI should be reminded of the well-established rule that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government. This is because taxes are the lifeblood of the nation. Thus, the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim. Unfortunately, ETPI failed to discharge this burden*."

The SC mentioned that the CIR is right in asserting that ETPI is into mixed transactions and, hence, its claim for refund covers not only its zero-rated sales but also its taxable domestic and exempt sales. Eastern should have presented the pertinent documents to validate all entries in its return. Only its zero-rated sales were supported with assistive documents.

The SC finally stressed that:

> "*The Court finds no cogent reason to disturb the decision of the tax court. The CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems. As such, its findings of fact are accorded the highest respect and are generally conclusive upon this Court, in the absence of grave abuse of discretion or palpable error. Its decisions shall not be lightly set aside on appeal, unless this Court finds that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority.*"

Petition is denied.

7. Fort Bonifacio Development Corp., *Petitioner* vs. Commissioner of Internal Revenue (CIR) and Revenue District Officer, Revenue District No. 44, Taguig and Pateros, Bureau of Internal Revenue, Respondents (G.R. No. 173425, September 4, 2012)

Facts:

Three (3) parties are directly involved in this case. Petitioner Fort Bonifacio Development Corporation (FBDC), is a domestic entity duly registered and engaged in the development and sale of real property. BCDA or the Bases Conversion Development Authority, created under Republic Act (RA) No. 7227, owns forty five percent (45%) of FBDC's issued and outstanding capital stock. Bonifacio Land Corporation (BLC) owns fifty five percent (55%) of the remaining issued and outstanding capital stock.

On February 8, 1995 FBDC bought from the government a part of the Fort Bonifacio reservation. Said portion is now known as the Fort Bonifacio Global City (FBGC).

On January 1, 1996, RA 7716 was passed restructuring the value-added tax (VAT) scheme by amending some provisions of the Tax Code. Said amendatory law extended the scope of VAT to real properties which are held primarily for sale or held for lease, in the ordinary course of trade or business.

FBDC, on September 19, 1996, submitted to the Bureau of Internal Revenue (BIR) an inventory of its real properties, the book value thereof totaling *P71,227,503,200.00*. Relying on Section 105 of the old Tax Code, petitioner filed a claim with the BIR of transitional input tax credit in the amount of *P5,698,200,256.00*. In October of the same year, FBDC began selling its lot at FBGC.

Petitioner garnered the sum of P3,685,356,365.95 from its sales and lease of lots covering the first quarter of 1997. Of said amount, FBDC's payable VAT totaled ₱368,535,653.00. Petitioner paid said amount in cash (₱359,652,009.47) and via its unutilized input tax credit (₱8,883,644.48) on purchases of goods and services.

On November 17, 1998, thinking that its transitional input tax credit was not used in computing its output VAT for the first quarter of 1997, petitioner filed with the BIR a claim for refund of the sum of P359,652,009.47. A *Petition for Review* was elevated to the Court of Tax Appeals (CTA) on November 17, 1998, due to the inaction of the BIR. The Court of Tax Appeals (CTA) denied FBDC's petition stating that: "X x x *the benefit of transitional input tax credit comes with the condition that business taxes should have been paid first*." The Court of Appeals (CA) affirmed the decision of the CTA.

Issue:

Whether FBDC has the right to refund the amount of P359,652,009.47 erroneously paid as output VAT for the initial quarter of 1997.

Held:

The Supreme Court (SC) decided in favor of petitioner FBDC. The court ruled that "*prior payment of taxes is not required for a taxpayer to avail of the 8% transitional input tax credit*." The SC said that there is nothing in the letter of the old Section 105 (now Sec. 111) that requires previous payment of taxes as a necessary condition for one to avail of the 8% (now 2%) transitional input tax credit.

Section 105 of the old Tax Code states:

> "*SEC. 105. **Transitional Input Tax Credits**. A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.*"

The ruling said that "X x *x limiting the value of the beginning inventory only to goods, materials, and supplies, where prior taxes were paid, was not the intention of the law. Otherwise, it would have specifically stated that the beginning inventory* *excludes goods, materials, and supplies where no taxes were paid*." Citing the Concurring Opinion of retired Justice Consuelo Ynares-Santiago, the SC explained: *"If the intent of the law were to limit the input tax to cases where actual VAT was paid, it could have simply said that the tax base shall be the actual value-added tax paid. Instead, the law as framed contemplates a situation where a transitional input tax credit is claimed even if there was no actual payment of VAT in the underlying transaction. In such cases, the tax base used shall be the value of the beginning inventory of goods, materials and supplies."* The SC added that prior payment of taxes is not required to avail of the transitional input tax credit because it is not a tax refund per se but tax credit. The SC went on to cite provisions of the NIRC, as amended, allowing tax credits sans the previous payment of taxes (Sections 110; 111[B]; 112[A]; 28[B][5][b]).

The SC rationalized:

> "*It is apparent that the transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer. At the very beginning, the VAT-registered taxpayer is obliged to remit a significant portion of the income it derived from its sales as output VAT. The transitional input tax credit mitigates this initial diminution of the taxpayer's income by affording the opportunity to offset the losses incurred through the remittance of the output VAT at a stage when the person is yet unable to credit input VAT payments."*

In addition to the Tax Code, the SC also mentioned Tax Treaties entered into by the Philippines with other countries, explaining that:

> *"Under the treaties in which the tax credit method is used as a relief to avoid double taxation, income that is taxed in the state of source is also taxable in the state of residence, but the tax paid in the former is merely allowed as a credit against the tax levied in the latter. Apparently, payment is made to the state of source, not the state of residence. No tax, therefore, has been previously paid to the latter."*

Under the New Tax Code, the SC cited the following example in support of its decision:

> *"X x x. If the goods or properties are not acquired from a person in the course of trade or business, the transaction would not be subject to VAT under Section 105. The sale would be subject to capital gains taxes under Section 24 (D), but since capital gains is a tax on passive income it is the*

seller, not the buyer, who generally would shoulder the tax.

If the goods or properties are acquired through donation, the acquisition would not be subject to VAT but to donor's tax under Section 98 instead. It is the donor who would be liable to pay the donor s tax, and the donation would be exempt if the donor s total net gifts during the calendar year does not exceed P 100,000.00. If the goods or properties are acquired through testate or intestate succession, the transfer would not be subject to VAT but liable instead for estate tax under Title III of the New NIRC. If the net estate does not exceed P 200,000.00, no estate tax would be assessed.

In finally disposing of this particular issue, the SC said *"X x x, we find petitioner entitled to the 8% transitional input tax credit provided in Section 105 of the old NIRC. The fact that it acquired the Global City property under a tax-free transaction makes no difference as prior payment of taxes is not a pre-requisite."*

On another issue, the SC said that Section 4.105-1 of Revenue Regulation (RR) No. 7-95 is inconsistent with Section 105 of the old National Internal Revenue Code (NIRC), as amended, as the same contravenes its provision, in relation to Section 100, which defines "goods or properties". They have declared in a previous ruling that said RR is a nullity, in so far as it limits the transitional input tax credit to the value of the improvement of the real properties. The applicable proviso provides:

"SEC. 100. Value-Added Tax on Sale of Goods or Properties. (a) Rate and Base of Tax. There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

"(1) The term "goods or properties" shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

"(A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; x x x"

The SC added, reminding that:

"While administrative agencies, such as the Bureau of Internal Revenue, may issue regulations to implement statutes, they are without authority to limit the scope of the statute to less than what it provides, or extend or expand the statute beyond its terms, or in any way modify explicit provisions of the law. Indeed, a quasi-judicial body or an administrative agency for that

matter cannot amend an act of Congress. Hence, in case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails."

The Court recapitulated that the 8% (now 2%) transitional input tax credit should not be limited to the value of the improvements on the real property but should also include the value of the real properties. Thus, a refund in the sum of P359,652,009.47 in favor of petitioner Fort Bonifacio Development Corporation was granted.

In relation to the above, cited below are the present provisions of the Tax Code concerning the case:

SEC. 106. Value-Added Tax on Sale of Goods or Properties. -

(A) Rate and Base of Tax. - *There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: Provided, That the President, upon recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied.*

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifths percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

(1) The term "goods" or "properties" shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include: (a) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; (b) The right or the privilege to use patent, copyright, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right; (c) The right or the privilege to use in the Philippines of any industrial, commercial or scientific equipment; (d) The right or the privilege to use motion picture films, tapes and discs; and (e) Radio, television, satellite transmission and cable television time.

*The term "**gross selling price**" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The* *excise tax, if any, on such goods or properties shall form part of the gross selling price.*

***SEC. 111. Transitional/ Presumptive Input Tax Credits**. - **(A) Transitional Input Tax Credits**.- A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.*

***(B) Presumptive Input Tax Credits**. - Persons or firms engaged in the processing of sardines, mackerel and milk, and in manufacturing refined sugar and cooking oil and packed noodle-based instant meals, shall be allowed a presumptive input tax, creditable against the output tax, equivalent to four percent (4%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.*

*As used in this Subsection, the term "**processing**" shall mean pasteurization, canning and activities which through physical or chemical process alter the exterior texture or form or inner substance of a product in such manner as to prepare it for special use to which it could not have been put in its original form or condition.*

It has been opined that: "*The transitional input tax credit aims to avoid any inequity or potential burden resulting from the change in status of a person who becomes liable to VAT for the first time or elects to be a VAT-registered person without recognizing the VAT it/he paid on related inputs before becoming VAT-registered*." (De Leon, Hector S.: The National Internal Revenue Code Annotated, p. 147) In the case of *CIR vs. Cebu Toyo Corp.,* GR No. 149073 [February 17, 2005], the SC discussed the difference between zero rating and exemption, viz:

> *(a) A zero-rated sale is a taxable transaction but does not result in an output tax while an exempted transaction is not subject to the output tax;*
>
> *(b) The input VAT on the purchases of a VAT-registered person with zero-rated sales may be allowed as tax credits or refunded while the seller in an exempt transaction is not entitled to any input tax on his purchases despite the issuance of a VAT invoice or receipt.*

(c) Persons engaged in transactions which are zero-rated, being subject to VAT, are required to register while registration is optional for VAT-exempt persons. (Cited in Vitug and Acosta: Tax Law and Jurisprudence, p.246)

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8. Asia International Auctioneers, Inc., Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 179115, September 26, 2012)

Facts:

This is a Petition for Review filed by Asia International Auctioneers, Inc. (AIA) for its alleged failure to protest on time the Commissioner of Internal Revenue's (CIR) tax assessment.

AIA is a corporation engaged in the importation of used motor vehicles and heavy equipment which it sells to the public via auction. It operates inside the Subic Special Economic Zone (SSEZ). Petitioner received from the CIR a Formal Letter of Demand with an assessment for deficiency value-added tax (VAT) and excise tax, inclusive of penalties and interest, in the amount of P106, 870,235.00 for auctions it previously conducted. For failure of the CIR to act on its protest, AIA filed a Petition for Review at the Court of Tax Appeals (CTA). The CIR filed its Answer of said petition. Subsequently, the CIR filed a Motion to Dismiss citing lack of jurisdiction for alleged failure of AIA to timely file its protest, rendering the assessment final and executor. The CIR denied having received the protest letter. AIA submitted evidence to prove its claim.

The CTA First Division decided in favor of the CIR saying that:

> *"while a mailed letter is deemed received by the addressee in the course of the mail, still, this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter indeed was received by the addressee."*

The CTA En Banc affirmed the Ruling of the First Division.

On January 30, 2008, AIA filed a Manifestation and Motion with Leave to Defer or Suspend further proceedings on the ground that it had availed of the Tax Amnesty Program under Republic Act (RA) No. 9480, also known as the Tax Amnesty Act of 2007. A Certification of Qualification on said availment issued by the Bureau of Internal Revenue (BIR) was submitted by AIA.

Issue:

What is the effect of a Tax

Amnesty law on a pending collection case?

Held:

The Supreme Court (SC) at the outset discussed the nature of a tax amnesty law.

> "*A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violating a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.*
>
> *"A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority."*

The SC denied the petition for being moot and academic due to the availment of AIA of the provisions of RA 9480 or the Tax Amnesty Law of 2007. The deficiency taxes of AIA are deemed fully settled.

The CIR alleges that AIA cannot avail itself of the provisions of the amnesty law because it is considered a *withholding agent* for the deficiency taxes, as stated under Section 8(a) of the law, to wit:

"*Section 8. Exceptions. The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:*

"(a) ***Withholding agents with respect to their withholding tax liabilities****;*

"(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

"(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

"(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

"(e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

"(f) Tax cases subject of final and executory judgment by the courts. (Emphasis supplied)

The SC found the argument of the CIR untenable. Said the court:

"*The CIR did not assess AIA as a withholding agent that failed to withhold or remit the deficiency VAT and excise tax to the BIR under relevant provisions of the Tax Code. Hence, the argument that AIA is "deemed" a withholding agent for these deficiency taxes is fallacious.*

"Indirect taxes, like VAT and excise tax, are different from withholding taxes. To distinguish, in indirect taxes, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on the same entity, the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely collects, by withholding, the tax due from income payments to entities arising from certain transactions and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be "deemed" as withholding taxes merely because they constitute indirect taxes. Moreover, records support the conclusion that AIA was assessed not as a withholding agent but, as the one directly liable for the said deficiency taxes."

The CIR further contends that being an accredited investor/taxpayer located at the SSEZ, AIA should have taken advantage of RA 9399 rather than RA 9480. The SC did not agree with this view. The SC stressed:

"*RA 9399 was passed prior to the passage of RA 9480. RA 9399 does not preclude taxpayers within its coverage from availing of other tax amnesty programs available or enacted in futuro like RA 9480. More so, RA 9480 does not exclude from its coverage taxpayers operating within special economic zones. As long as it is within the bounds of the law, a taxpayer has the liberty to choose which tax amnesty program it wants to avail."*

Finally, the SC took judicial notice of the Certification of Qualification issued by a BIR employee. The court said:

"Lastly, the Court takes judicial notice of the "Certification of Qualification" issued by Eduardo A. Baluyut, BIR Revenue District Officer, stating that AIA "has availed and is qualified for Tax Amnesty for the Taxable Year 2005 and Prior Years" pursuant to RA 9480. In the absence of sufficient evidence proving that the certification was issued in excess of authority, the presumption that

it was issued in the regular performance of the revenue district officer's official duty stands."

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9. Team Energy Corp. (formerly Migrant Pagbilao Corporation), Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 190928, January 13, 2014)

Facts:

Petitioner asserts that it filed its judicial claim for refund timely or within the two-year period prescribed under the National Internal Revenue Code, as amended, involving its 2002 value-added tax (VAT) returns. The dates are as follows: 1st Quarter – April 25, 2002; 2nd Quarter – July 23, 2002; 3rd Quarter - October 25, 2002; 4th Quarter - January 27, 2002. Petitioner filed its administrative claim for 2002 on December 22, 2003.

Issue:

Whether petitioner timely filed its judicial claim for refund of input VAT for the first quarter of 2002.

Held:

The SC decided in favor of petitioner Team Energy Corporation. The Court ruled:

"X x x, it is clear that the two-year prescriptive period provided in Section 112 (A) of the NIRC of 1997, as amended, should be counted not from payment of the tax, but from the close of the taxable quarter when the sales were made."

With respect to the thirty (30)-day period under paragraph (C), the Court ruled:

"There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.

"First, x x x. In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit 'within two (2) years,' which means at anytime within two years. X x x"

"Second, x x x. In short, the two-year prescriptive period in Section 112 (A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. X x x."

"Third, x x x. The taxpayer can file his administrative claim for refund or credit at any time within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is till filed on time.

The Commissioner will have 120 days from such filing to decide the claim. X x x."

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10. Team Energy Corp. (formerly Migrant Pagbilao Corporation), Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 197760; January 13, 2014)

Facts:

Petitioner filed with the Bureau of Internal Revenue (BIR) its Quarterly VAT Returns for the first three quarters of 2005 on April 25, 2005; July 26, 2005; and October 25, 2005. It filed its Monthly VAT Declaration for the month of October on November 21, 2005, which was amended on May 24, 2006.

"*On December 20, 2006, petitioner filed an administrative claim for cash refund or issuance of tax credit certificate corresponding to the input VAT reported in its Quarterly VAT Returns for the first three quarters of 2005 and Monthly VAT Declaration for October 2005 in the amount of P80,136,251.60, citing as legal bases Section 112 (A), in relation to Section 108 (B)(3) of the NIRC of 1997, Section 4.106-2(c) of Revenue Regulations No. 7-95, Revenue Memorandum Circular No. 61-2005, and the case of Maceda v. Macaraig.*"

Issue:

Whether or not the Court of Tax Appeals (CTA) has jurisdiction to take cognizance of the case.

Held:

In this case, petitioner relied on BIR Ruling No. DA-489-03 when it filed its judicial claim on April 18, 2007 or after the ruling's issuance and before the *Aichi* case was promulgated by the SC. Hence, *"even though petitioner's claim was prematurely filed without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the x x x case as it was filed within the period exempted from the 120-30-day mandatory period*."

The SC, in deciding in favor of petitioner, ruled that "*BIR Ruling No. DA-489-03 is a general interpretative rule because it is a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance*." It is a general interpretative rule. It is an equitable estoppel in favor of taxpayers. Ponente: Peralta, J.

The case was remanded to the CTA for the determination of the amount refundable.

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11. Commissioner of Internal Revenue (CIR), Petitioner vs. Mindanao II Geothermal Partnership, Respondent (G.R. No. 191498, January 15, 2014.)

Facts:

"On 6 October 2005, Mindanao II filed with the Bureau of Internal Revenue (BIR) an application for the refund or credit of accumulated unutilized creditable input taxes. In support of the administrative claim for refund or credit, Mindanao II alleged, among others, that it is registered with the BIR as a value-added taxpayer and all its sales are zero-rated under the EPIRA law. It further stated that for the second, third, and fourth quarters of taxable year 2004, it paid input VAT in the aggregate amount of P7,167,005.84, which were directly attributable to the zero-rated sales. The input taxes had not been applied against output tax."

Under the Tax Code [Sec. 112(D), 1997], the CIR had a period of 120 days to act on the claim. The administrative claim remained unresolved up to a certain period of time. Pursuant to said proviso, Mindanao II could not treat the inaction as a denial of its claim, in which case the former would have 30 days to file an appeal to the CTA (March 5, 2006). Mindanao did not file an appeal within the 30-day period.

"*Mindanao II believed that a judicial claim must be filed within the two-year prescriptive period provided under Section 112(A) and that such time frame was to be reckoned from the filing of its Quarterly VAT Returns for the second, third, and fourth quarters of taxable year 2004, that is, from 26 July 2004, 22 October 2004, and 25 January 2005, respectively. Thus, on 21 July 2006, Mindanao II, claiming inaction on the part of the CIR and that the two-year prescriptive period was about to expire, filed a Petition for Review with the CTA docketed as CTA Case No. 6133.*

"On 8 June 2007, while the application for refund or credit of unutilized input VAT of Mindanao II was pending before the CTA Second Division, this Court promulgated Atlas Consolidated Mining and Development Corporation v. CIR (Atlas). Atlas held that the two-year prescriptive period for the filing of a claim for an input VAT refund or credit is to be reckoned from the date of filing of the corresponding quarterly VAT return and payment of the tax.

"On 12 August 2008, the CTA Second Division rendered a Decision ordering the CIR to grant a refund or a tax credit certificate, but only in the reduced amount of P6,791,845.24, representing unutilized input VAT incurred for the second, third and fourth quarters of taxable year 2004."

Issue:

"The resolution of this case hinges on the question of compliance with the following time requirements for the grant of a claim for refund or credit of unutilized input VAT: (1) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT; and (2) the 120+30 day

period for filing an appeal with the CTA."

Held:

The Court denied respondent's claim for tax refund or credit in the amount of P6,791,845.24.

The SC submitted the following ruling regarding the proper interpretation of the periods found under Section 112, in relation to Section 229 and 230, of the National Internal Revenue Code (NIRC), as amended:

"*A.* ***Two-Year Prescriptive Period***

"*1. It is only the administrative claim that must be filed within the two-year prescriptive period.*

"2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made.

"3. The only other rule is the Atlas ruling, which applied only from 8 June 2007 to 12 September 2008. Said ruling states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax.

"B. ***120+30 Day Period***

"1. The taxpayer can file the judicial appeal in one of two ways: (1) within thirty (30) days after the CIR denies the claim within the 120-day period; or (2) within thirty (30) days from the lapse of the 120-day period, if the CIR does not act within the 120-day period.

"2. The thirty (30)-day period always applies, whether it is denied or there is inaction of the CIR.

"3. The thirty (30)-day period to appeal is both mandatory and jurisdictional, as a general rule.

"4. As an exception to the general rule, premature filing is allowed only if filed between December 10, 2003 and October 5, 2010, when BIR Ruling No. DA-489-03 was still in force.

"5. Late filing is prohibited, even during the time when the above Ruling was in force."

12. CBK Power Company Limited, Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 189729-30, January 15, 2014.)

Facts:

"Petitioner filed its administrative claims for the issuance of tax credit

certificates for its alleged unutilized input taxes on its purchase of capital goods and alleged unutilized input taxes on its local purchases and/or importation of goods and services, other than capital goods, pursuant to Sections 112(A) and (B) of the NIRC of 1997, as amended, with BIR Revenue District Office (RDO) No. 55 of Laguna, as follows:

Period Covered	*Date Of Filing*
1st quarter of 2005	*30-Jun-05*
2nd quarter of 2005	*15-Sep-05*
3rd quarter of 2005	*28-Oct-05*

"Alleging inaction of the Commissioner of Internal Revenue (CIR), petitioner filed a Petition for Review with the CTA on 18 April 2007."

The CTA En Banc decided that petitioner's judicial claim for the 1st, 2nd, and 3rd quarters of 2005 were filed late.

Issue:

> "*Petitioner's assigned errors boil down to the principal issue of the applicable prescriptive period on its claim for refund of unutilized input VAT for the first to third quarters of 2005*."

Held:

The SC pronounced that petitioner's sales to NPC are effectively subject to zero percent (0%) VAT.

Administrative Claim. -

"*Pursuant to Section 112(A), petitioner's administrative claims were filed well within the two-year period from the close of the taxable quarter when the effectively zero-rated sales were made, to wit*:

Period Covered	**Close of the Taxable Quarter**	**Last day to File Adminis-trative Claim**	**Date of Filing**
1st quarter 2005	31-Mar-05	31-Mar-07	30-Jun-05
2nd quarter 2005	30-Jun-05	30-Jun-07	15-Sep-05
3rd quarter 2005	30-Sep-05	30-Sep-07	28-Oct-05

Judicial Claim. –

"Likewise, while petitioner filed its administrative and judicial claims during the period of applicability of BIR Ruling No. DA-489-03, it cannot claim the benefit of the exception period as it did not file its judicial claim prematurely, but did so long after the lapse of the 30-day period following the expiration of the 120-day period. Again, BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim, but not its late filing.

"As this Court enunciated in San Roque, petitioner cannot rely on Atlas either, since the latter case was promulgated only on 8 June 2007. Moreover, the doctrine in Atlas which reckons the two-year period from the date of filing of the return and payment of the tax, does not interpret ? expressly or impliedly ? the 120+30 day periods. Simply stated, Atlas referred only to the reckoning of the prescriptive period for filing an administrative claim.

"For failure of petitioner to comply with the 120+30 day mandatory and jurisdictional period, petitioner lost its right to claim a refund or credit of its alleged excess input VAT.

"With regard to petitioner's argument that Aichi should not be applied retroactively, we reiterate that even without that ruling, the law is explicit on the mandatory and jurisdictional nature of the 120+30 day period."

As a final note, the SC stressed:

> *"X x x, equity, which has been aptly described as "a justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Section 112 is a positive rule that should preempt and prevail over all abstract arguments based only on equity. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit."*

The Petition was denied by the SC.

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13. Commissioner of Internal Revenue (CIR), Petitioner vs. Toledo Power Inc., Respondent (G.R. No. 183880, January 20, 2014)

Facts:

Toledo Power, Inc. (TPI) seeks, from the Bureau of Internal Revenue (BIR), a refund or issuance of a tax credit certificate (TCC) for unutilized input value-added tax (VAT) attributable to its zero-rated sales of power generation services to several entities.

The BIR has not ruled upon said claim, hence TPI went to the Court of Tax Appeals (CTA). The latter ordered the BIR to refund TPI the amount of P8,088,151.07 only for the 3rd and 4th quarters of 2001.

Issue:

1. Whether TPI complied with the 120+30 day rule; and
2. Whether TPI complied with the invoicing requirements.

Held:

The Supreme Court (SC) decided that:

In a nutshell, the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT, as provided in Section 112 of the Tax Code, are as follows:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.

The SC added: "*Clearly, therefore, TPI's refund claim of unutilized input VAT for the third quarter of 2001 was denied for being prematurely filed with the CTA, while its refund claim of unutilized input VAT for the fourth quarter of 2001 may be entertained since it falls within the exception provided in the Court's most recent rulings.*"

As to the invoicing requirements, the SC ruled that the words "zero-rated" appeared on the VAT invoices/ official receipts presented by TPI in support of its claim for refund.

The BIR was ordered to refund or issue tax credit certificate in favor of TPI only for the fourth quarter of 2001.

14. Procter & Gamble Asia PTE Ltd., Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 202071, February 19, 2014)

Facts:

"This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Tax Appeals (CTA) En Banc Decision and Resolution in CTA EB No. 746, which denied petitioner's claim for refund of

unutilized input value-added tax (VAT) for not observing the mandatory 120-day waiting period under Section 112 of the National Internal Revenue Code.

"On 26 September and 13 December 2006, petitioner filed administrative claims with the Bureau of Internal Revenue (BIR) for the refund or credit of the input VAT attributable to the former's zero-rated sales covering the periods 1 July-30 September 2004 and 1 October-31 December 2004, respectively.

"On 2 October and 29 December 2006, petitioner filed judicial claims docketed as CTA Case Nos. 7523 and 7556, respectively, for the aforementioned refund or credit of its input VAT. Respondent filed separate Answers to the two cases, which were later consolidated, basically arguing that petitioner failed to substantiate its claims for refund or credit."

Issue:

Whether the 120-day waiting period, reckoned from the filing of the administrative claim for the refund or credit of unutilized input VAT before the filing of the judicial claim, is not jurisdictional.

Held:

The SC said:

"On 3 June 2013, we required respondent to submit its Comment, which it filed on 4 December 2013. Citing the recent case CIR v. San Roque Power Corporation, respondent counters that the 120-day period to file judicial claims for a refund or tax credit is mandatory and jurisdictional. Failure to comply with the waiting period violates the doctrine of exhaustion of administrative remedies, rendering the judicial claim premature. Thus, the CTA does not acquire jurisdiction over the judicial claim.

"Respondent is correct on this score. However, it fails to mention that San Roque also recognized the validity of BIR Ruling No. DA-489-03. The ruling expressly states that the "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."

"The Court, in San Roque, ruled that equitable estoppel had set in when respondent issued BIR Ruling No. DA-489-03. This was a general interpretative rule, which effectively misled all taxpayers into filing premature judicial claims with the CTA. Thus, taxpayers could rely on the ruling from its issuance on 10 December 2003 up to its reversal on 6 October 2010, when CIR v. Aichi Forging Company of Asia, Inc. was promulgated.

"The judicial claims in the instant petition were filed on 2 October and 29 December 2006, well within the ruling's period of validity. Petitioner is in a position to "claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity.

***"WHEREFORE**, the petition is **GRANTED**. The Decision and Resolution of the Court of Tax Appeals En Banc* in CTA EB No. 746 are **REVERSED** and **SET ASIDE**. This case is hereby **REMANDED** to the CTA First Division for further proceedings and a determination of whether the claims of petitioner for refund or tax credit of unutilized input value-added tax are valid."

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15. (1) Silicon Philippines Inc., (formerly Intel Philippines Manufacturing, Inc.), Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 184360 and 184361, February 19, 2014)

(2) CIR, Petitioner vs. Silicon Philippines Inc., (formerly Intel Philippines Manufacturing, Inc.), Respondent (G.R. No. 184384, February 19, 2014)

Facts:

"For the 1st quarter of 1999, Silicon seasonably filed its Quarterly VAT Return on April 22, 1999 reflecting, among others, output VAT in the amount of P145,316.96; input VAT on domestic purchases in the amount of P20,041,888.41; input VAT on importation of goods in the amount of P44,560,949.00; and zero–rated export sales in the sum of P929,186,493.91.

"On August 6, 1999, Silicon filed with the CIR, through its One–Stop–Shop Inter–Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF), a claim for tax credit or refund of P64,457,520.45 representing VAT input taxes on its domestic purchases of goods and services and importation of goods and capital equipment which are attributable to zero–rated sales for the period January 1, 1999 to March 31, 1999.

"Due to the inaction of the CIR, Silicon filed a Petition for Review with the CTA on March 30, 2001, to toll the running of the two–year prescriptive period. The petition was docketed as CTA Case No. 6263.

"The CIR filed its Answer dated June 1, 2001 raising, among others, the following special and affirmative defenses: (1) that Silicon failed to

show compliance with the substantiation requirements under the provisions of Section 16(c)(3) of Revenue Regulations No. 5–87, as amended by Revenue Regulations No. 3–88; and (2) that Silicon has not shown proof that the alleged domestic purchases of goods and services and importation of goods/capital equipment on which the VAT input taxes were paid are attributable to its export sales or have not yet been applied to the output tax for the period covered in its claim or any succeeding period and that the alleged total foreign exchange proceeds have been accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas."

Issue:

"The issues raised in the three petitions boil down to (1) whether the CTA En Banc correctly denied Silicon's claim for refund or issuance of a tax credit certificate for its input VAT for its domestic purchases of goods and services and importation of goods/capital equipment attributable to zero–rated sales for the period January 1, 1999 to March 31, 1999; and (2) whether the CTA En Banc correctly ordered the CIR to refund or issue a tax credit certificate in favor of Silicon for the reduced amount of P2,139,431.00 representing Silicon's unutilized input VAT attributable to its zero–rated sales for the period April 1, 2000 to June 30, 2000."

"Notwithstanding the above issues, we emphasize that when a case is on appeal, this Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case.

"In the present case, while the parties never raised as an issue the timeliness of Silicon's judicial claims, we deem it proper to look into whether the petitions for review filed by Silicon before the CTA were filed within the prescribed period provided under the Tax Code in order to determine whether the CTA validly acquired jurisdiction over the petitions filed by Silicon."

Held:

"After a careful perusal of the records in the instant case, we find that Silicon's judicial claims were filed late and way beyond the prescriptive period. Silicon's claims do not fall under the exception mentioned above. Silicon filed its Quarterly VAT Return for the 1st quarter of 1999 on April 22, 1999 and subsequently filed on August 6, 1999 a claim for tax credit or refund of its input VAT taxes for the same period. From August 6, 1999, the CIR had until December 4, 1999, the last day of the 120–day period, to decide Silicon's claim for tax refund. But since the CIR did not act on Silicon's claim on or before the said date, Silicon had until January 3, 2000, the last day of the 30–day period to file its judicial claim. However, Silicon failed to file an appeal within 30 days from the lapse of the 120–day period, and it only filed its petition for review with the CTA on March 30, 2001 which was ***451 days late****. Thus, in consonance with our ruling in Philex in the San Roque ponencia, Silicon's judicial claim for tax credit or refund should have been*

dismissed for having been filed late. The CTA did not acquire jurisdiction over the petition for review filed by Silicon.

"Similarly, Silicon's claim for tax refund for the second quarter of 2000 should have been dismissed for having been filed out of time. Records show that Silicon filed its claim for tax credit or refund on August 10, 2000. The CIR then had 120 days or until December 8, 2000 to grant or deny the claim. With the inaction of the CIR to decide on the claim which was deemed a denial of the claim for tax credit or refund, Silicon had until January 7, 2001 or 30 days from December 8, 2000 to file its petition for review with the CTA. However, Silicon again failed to comply with the 120+30 day period provided under Section 112(C) since it filed its judicial claim only on June 28, 2002 or ***536 days late****. Thus, the petition for review, which was belatedly filed, should have been dismissed by the CTA which acquired no jurisdiction to act on the petition.*

"Courts are bound by prior decisions. Thus, once a case has been decided one way, courts have no choice but to resolve subsequent cases involving the same issue in the same manner.

"As this Court has repeatedly emphasized, a tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund by showing that he has strictly complied with the conditions for the grant of the tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. Noncompliance with the mandatory periods, nonobservance of the prescriptive periods, and non adherence to exhaustion of administrative remedies bar a taxpayer's claim for tax refund or credit, whether or not the CIR questions the numerical correctness of the claim of the taxpayer. For failure of Silicon to comply with the provisions of Section 112(C) of the NIRC, its judicial claims for tax refund or credit should have been dismissed by the CTA for lack of jurisdiction."

Hence, for being filed out of time, Silicon's judicial claims for refund were dismissed.

16. Commissioner of Internal Revenue (CIR), Petitioner vs. Pilipinas Shell Petroleum Corporation, Respondent (G.R. No. 188497, February 19, 2014)

Facts:

Respondent in this case sold aviation fuel to international carriers and paid the excise tax thereon. Shell now seeks a refund of the same relying on Section 135 of the Tax Code.

Quoting the decision:

1) "Respondent argues that a plain reading of Section 135 of the NIRC reveals that it is the petroleum products sold to international carriers which are exempt from excise tax for which reason no excise taxes are deemed to have been due in the first place.

2) "Respondent also contends that our ruling that Section 135 only prohibits local petroleum manufacturers like respondent from shifting the burden of excise tax to international carriers has adverse economic impact as it severely curtails the domestic oil industry.

3) "Lastly, respondent asserts that the imposition by the Philippine Government of excise tax on petroleum products sold to international carriers is in violation of the Chicago Convention on International Aviation ("Chicago Convention") to which it is a signatory, as well as other international agreements (the Republic of the Philippines' air transport agreements with the United States of America, Netherlands, Belgium and Japan)."

Issue:

Are the above arguments tenable?

Held:

In deciding in favor of respondent, the Court emphasized:

"Indeed, the avowed purpose of a tax exemption is always "some public benefit or interest, which the law–making body considers sufficient to offset the monetary loss entailed in the grant of the exemption." The exemption from excise tax of aviation fuel purchased by international carriers for consumption outside the Philippines fulfills a treaty obligation pursuant to which our Government supports the promotion and expansion of international travel through avoidance of multiple taxation and ensuring the viability and safety of international air travel. In recent years, developing economies such as ours focused more serious attention to significant gains for business and tourism sectors as well. Even without such recent incidental benefit, States had long accepted the need for international cooperation in maintaining a capital intensive, labor intensive and fuel intensive airline industry, and recognized the major role of international air transport in the development of international trade and travel.

"Under the basic international law principle of pacta sunt servanda, we have the duty to fulfill our treaty obligations in good faith. This entails harmonization of national legislation with treaty provisions. In this case, Sec. 135(a) of the NIRC embodies our compliance with our undertakings under the Chicago Convention and various bilateral air service agreements not to impose excise tax

on aviation fuel purchased by international carriers from domestic manufacturers or suppliers. In our Decision in this case, we interpreted Section 135 (a) as prohibiting domestic manufacturer or producer to pass on to international carriers the excise tax it had paid on petroleum products upon their removal from the place of production, pursuant to Article 148 and pertinent BIR regulations. Ruling on respondent's claim for tax refund of such paid excise taxes on petroleum products sold to tax–exempt International carriers, we found no basis in the Tax Code and jurisprudence to grant the refund of an "erroneously or illegally paid" tax.

"X x x.

We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, we agree that there is a need to reexamine the effect of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention.

"The Chicago Convention, which established the legal framework for international civil aviation, did not deal comprehensively with tax matters. Article 24 (a) of the Convention simply provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements (ASAs) between individual countries.

"The importance of exemption from aviation fuel tax was underscored in the following observation made by a British author in a paper assessing the debate on using tax to control aviation emissions and the obstacles to introducing excise duty on aviation fuel, thus:

"Without any international agreement on taxing fuel, it is highly likely that moves to impose duty on international flights, either at a domestic or European level, would encourage 'tankering': carriers filling their aircraft as full as possible whenever they landed outside the EU to avoid paying tax. Clearly this would be entirely counterproductive. Aircraft would be travelling further than necessary to fill up in low–tax jurisdictions; in addition they would be burning up more fuel when carrying the extra weight of a full fuel tank.

"With the prospect of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local

manufacturers or sellers at still high prices, the practice of "tankering" would not be discouraged. This scenario does not augur well for the Philippines' growing economy and the booming tourism industry. Worse, our Government would be risking retaliatory action under several bilateral agreements with various countries. Evidently, construction of the tax exemption provision in question should give primary consideration to its broad implications on our commitment under international agreements.

"In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. We therefore hold that respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135 (a) of the NIRC."

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17. CS Garment, Inc., Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 182399, March 12, 2014)

Facts:

Petitioner CS Garment, Inc is a domestic corporation registered with PEZA. Petitioner received five (5) formal demand letters with Assessment Notices from the Bureau of Internal Revenue (BIR) Regional Office. Within the 30-day period under the law, petitioner filed a formal written protest with respondent. Within the 60-day period, CS Garment submitted additional documents.

The case was raffled to the 2nd Division of the Court of Tax Appeals (CTA) for decision. Under the ruling, the 2nd Division: "*X x x cancelled respondent's assessment against CS Garments for deficiency expanded withholding taxes for CY 1998 amounting to P47,880.00, and partially cancelled the deficiency DST assessment amounting to P1,963.00. However, the Second Division upheld the validity of the deficiency income tax assessments by subjecting the disallowed expenses in the amount of P14,851,478.83 and a portion of the undeclared local sales P1,541,936.60 (amounting to P1,500,000.00) to income tax at the special rate of 5%. The remainder of undeclared local sales of P1,541,936.06 (amounting to P41,936.60) was subjected to income tax at the rate of 34%. The Second Division found that total tax liability of CS Garments amounted to P2,029,570.12, plus 20% delinquency interest pursuant to Section 249(C)(3).*"

Petitioner appealed to the CTA En Banc. The latter affirmed the Decision and Resolution of the CTA 2nd Division. While on appeal to the Supreme Court (SC), petitioner filed a Manifestation and Motion stating that it had availed of the government's tax amnesty program of 2007.

Issue:

"The threshold question before this Court is whether or not CS Garment is already immune from paying the deficiency taxes stated in the 1998 tax assessments of the CIR, as modified by the CTA."

Held:

"We cull from the aforementioned provisions that neither the law nor the implementing rules state that a court ruling that has not attained finality would preclude the availment of the benefits of the Tax Amnesty Law. Both R.A. 9480 and DOF Order No. 29-07 are quite precise in declaring that

"[t]ax cases subject of final and executory judgment by the courts" are the ones excepted from the benefits of the law. In fact, we have already pointed out the erroneous interpretation of the law in Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue, viz:

"The BIR's inclusion of "issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer" as one of the exceptions in RMC 19-2008 is misplaced. RA 9480 is specifically clear that the exceptions to the tax amnesty program include "tax cases subject of final and executory judgment by the courts." The present case has not become final and executory when Metrobank availed of the tax amnesty program.

"While tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority, it is also a well-settled doctrine that the rule-making power of administrative agencies cannot be extended to amend or expand statutory requirements or to embrace matters not originally encompassed by the law.1âwphi1 Administrative regulations should always be in accord with the provisions of the statute they seek to carry into effect, and any resulting inconsistency shall be resolved in favor of the basic law. We thus definitively declare that the exception "[i]ssues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer" under BIR RMC 19-2008 is invalid, as the exception goes beyond the scope of the provisions of the 2007 Tax Amnesty Law."

18. Miramar Fish Co. Inc., Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 185432, June 4, 2014)

Facts:

Petitioner is a duly organized corporation under Philippine laws. It is registered with the Bureau of Internal Revenue (BIR) and Board of Investments (BOI). Miramar filed its administrative claim for refund in years

2003 and 2004 with the BIR. The latter did not take action on the claims, hence Miramar filed a Petition for Review with the Court of Tax Appeals (CTA) on March 30 2004.

The CTA denied the petition stating that Miramar failed to imprint the word "zero-rated" on the invoices or receipts.

Issue:

Is Miramar entitled to the issuance of a tax credit certificate (TCC)?

Held:

The SC ruled that petitioner filed its judicial claim for refund insofar as to the four quarters of taxable year 2002 beyond the 30-day period. The Court explained:

> *"We summarize the rules on the determination of* ***the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code****, as follows:*
>
> *"(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.*
>
> *"(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period.* ***If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by in action.***
>
> *"(3)* ***A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.***
>
> *"(4)* ***All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods."***

In denying the Petition for Review on Certiorari, the Court stressed:

"By way of reiteration, the CTA has no jurisdiction over petitioner's judicial appeal covering its refund claim for taxable year 2002 on the ground of prescription, consistent with the ruling in the San Roque case. While as to its refund claim for taxable year 2003, the same shall likewise be denied for failure of petitioner to comply with the

mandatory invoicing requirements provided for under Section 113 of the NIRC of 1997, as amended,

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19. Visayas Geothermal Power Company (VGPC), Petitioner vs. Commissioner of Internal Revenue (CIR), Respondent (G.R. No. 197525, June 4, 2014)

Facts:

Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue (BIR), Ormoc City District Office, "*x x x on the ground that it was entitled to recover excess and unutilized input VAT payments for the four quarters of taxable year 2005, pursuant to Republic Act (R.A.) No. 9136, which treated sales of generated power subject to VAT to a zero percent (0%) rate starting June 26, 2001.*" RA 9136 is the Electric Power Industry Reform Act of 2001 (EPIRA). Subsequently, while the above claim was pending, VGPC filed its judicial claim with the CTA.

The CTA Second Division partially granted the petition, reducing the amount to the one that was substantiated. The CTA En Banc reversed and set aside the decision and resolution and dismissed the original petition for review for having been filed prematurely.

Issue:

I

The CTA En Banc erred in finding that the 120-day and 30 -day periods prescribed under Section 112(D) of the 1997 Tax Code are jurisdictional and mandatory in the filing of the judicial claim for refund. The CTA-Division should take cognizance of the judicial appeal as long as it is filed with the two-year prescriptive period under Section 229 of the 1997 Tax Code.

II

The CTA En Banc erred in finding that Aichi prevails over and/or overturned the doctrine in Atlas, which upheld the primacy of the two-year period under Section 229 of the Tax Code. The law and jurisprudence have long established the doctrine that the taxpayer is duty-bound to observe the two-year period under Section 229 of the Tax Code when filing its claim for refund of excess and unutilized VAT.

III

The CTA En Banc erred in finding that Respondent CIR is not estopped from questioning the jurisdiction of the CTA. Respondent CIR, by her actions and pronouncements, should have been precluded from questioning the jurisdiction of the CTA-Division.

IV

The CTA En Banc erred in applying Aichi to Petitioner VGPC's claim for refund. The novel interpretation of the law in Aichi should not be made to apply to the present case for being contrary to existing jurisprudence at the time Petitioner VGPC filed its administrative and judicial claims for refund.

Held:

1. Judicial claim is not premature. –

"It has been definitively settled in the recent En Banc case of CIR v. San Roque Power Corporation (San Roque), that it is Section 112 of the NIRC which applies to claims for tax credit certificates and tax refunds arising from sales of VAT-registered persons that are zero-rated or effectively zero-rated, which are, simply put, claims for unutilized creditable input VAT.

"Thus, under Section 112 (A), the taxpayer may, within 2 years after the close of the taxable quarter when the sales were made, via an administrative claim with the CIR, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Under Section 112(D), the CIR must then act on the claim within 120 days from the submission of the taxpayer's complete documents. In case of (a) a full or partial denial by the CIR of the claim, or (b) the CIR's failure to act on the claim within 120 days, the taxpayer may file a judicial claim via an appeal with the CTA of the CIR decision or unacted claim, within 30 days (a) from receipt of the decision; or (b) after the expiration of the 120-day period.

***"The 2-year period under Section 229 does not apply to appeals before the CTA in relation to claims for a refund or tax credit for unutilized creditable input VAT**. Section 229 pertains to the recovery of taxes erroneously, illegally, or excessively collected. San Roque stressed that "input VAT is not 'excessively' collected as understood under Section 229 because, at the time the input VAT is collected, the amount paid is correct and proper." It is, therefore, Section 112 which applies specifically with regard to claiming a refund or tax credit for unutilized creditable input VAT."*

2. Atlas doctrine has no relevance to the 120+30 day period for filing judicial claim. –

"Although the core issue of prematurity of filing has already been resolved, the Court deems it proper to discuss the petitioner's argument that the doctrine in Atlas, which

allegedly upheld the primacy of the 2-year prescriptive period under Section 229, should prevail over the ruling in Aichi regarding the mandatory and jurisdictional nature of the 120+30 day period in Section 112.

"In this regard, it was thoroughly explained in San Roque that the Atlas doctrine only pertains to the reckoning point of the 2-year prescriptive period from the date of payment of the output VAT under Section 229, and has no relevance to the 120+30 day period under Section 112, to wit:

"The Atlas doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be ***effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in Mirant.*** *The Atlas doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the Atlas doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the verba legis rule. The Mirant ruling, which abandoned the Atlas doctrine, adopted the verba legis rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.*

"The Atlas doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in Atlas. The application of the 120+30 day periods was first raised in Aichi, which adopted the verba legis rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies. Such doctrine is basic and elementary.

3. Aichi not applied prospectively. –

"Petitioner VGPC also argues that Aichi should be

applied prospectively and, therefore, should not be applied to the present case. This position cannot be given consideration.

"Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.

"Considering that the nature of the 120+30 day period was first settled in Aichi, the interpretation by the Court of its being mandatory and jurisdictional in nature retroacts to the date the NIRC was enacted. It cannot be applied prospectively as no old doctrine was overturned.

"The petitioner cannot rely either on the alleged jurisprudence prevailing at the time it filed its judicial claim. The Court notes that the jurisprudence relied upon by the petitioner consists of CTA cases. It is elementary that CTA decisions do not constitute precedent and do not bind this Court or the public. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system."

4. CIR not stopped. –

"It is a well-settled rule that the government cannot be estopped by the mistakes, errors or omissions of its agents. It has been specifically held that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. Thus, the government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents. Upon taxation depends the ability of the government to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people."

The decision of the CTA Former Second Division of April 17, 2009 is reinstated. Hence, the CIR is hereby:

*"**ORDERED TO REFUND** or, in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE**, in favor of the petitioner the amount of SEVEN MILLION SIX HUNDRED NINETY NINE THOUSAND THREE HUNDRED SIXTY SIX PESOS AND 37/100 (P7,699,366.37) representing unutilized input VAT paid on domestic purchases of non-capital goods and services, services rendered by non-residents, and importations of non-capital goods for the first to fourth quarters of taxable year 2005."*

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20. Commissioner of Internal Revenue (CIR), Petitioner vs. The Insular Life Assurance Co. Ltd., Respondent (G.R. No. 197192, June 4, 2014)

Facts:

Respondent was assessed for deficiency documentary stamp taxes (DST) on its premiums on direct business/sums assured for calendar year 2002, in the amount ₱92,934,359.21.

The CIR maintains that since Insular is not registered with the Cooperative Development Authority (CDA), it should not be considered as a cooperative company that is exempt under Section 199(a) of the Tax Code, as amended.

Issue:

"*Whether or not the Cta En Banc erred in ruling that Respondent is a cooperative and [is] thus[,] exempt from Documentary Stamp Tax.*"

Held:

The SC gave the following explanation:

"First, the NIRC of 1997 does not require registration with the CDA. No tax provision requires a mutual life insurance company to register with that agency in order to enjoy exemption from both percentage and DST. Although a provision of Section 8 of the Revenue Memorandum Circular (RMC) No. 48-91 requires the submission of the Certificate of Registration with the CDA before the issuance of a tax exemption certificate, that provision cannot prevail over the clear absence of an equivalent requirement under the Tax Code.

"The respondent correctly pointed out that in other provisions of the NIRC, registration with the CDA is expressly required in order to avail of certain tax exemptions or preferential tax treatment - a requirement which is noticeably absent in Section 199 of the NIRC. Quoted

below are examples of cooperatives which are expressly mandated by law to be registered with the CDA before their transactions could be considered as exempted from value added tax:

"Sec. 109. Exempt Transactions. – The following shall be exempt from the value -added tax:

"Xxxx

"(r) Sales by ***agricultural cooperatives duly registered with the Cooperative Development Authority*** *to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;*

"(s) Sales by ***electric cooperatives duly registered with the Cooperative Development Authority*** *or National Electrification Administration, relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity;*

"(t) Gross receipts from lending activities by ***credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority*** *whose lending operation is limited to their members;*

"(u) Sales by ***non-agricultural, non-electric and non-credit cooperatives duly registered with the Cooperative Development Authority****: Provided, That the share capital contribution of each member does not exceed Fifteen thousand pesos ([P] 15,000) and regardless of the aggregate capital and net surplus ratably distributed among the members; (Emphasis ours)*

"x x x x

"This absence of the registration requirement under Section 199 clearly manifests the intention of the Legislative branch of the government to do away with registration before the CDA for a cooperative to benefit from the DST exemption under this particular section.

"Second, the provisions of the Cooperative Code of the Philippines do not apply. The history of the Cooperative Code was amply discussed in Sunlife where it was noted that cooperatives under the old law, Presidential Decree (P.D.) No. 175 "referred only to an

organization composed primarily of small producers and consumers who voluntarily joined to form a business enterprise that they themselves owned, controlled, and patronized. The Bureau of Cooperatives Development — under the Department of Local Government and Community Development (later Ministry of Agriculture) — had the authority to register, regulate and supervise only the following cooperatives: (1) barrio associations involved in the issuance of certificates of land transfer; (2) local or primary cooperatives composed of natural persons and/or barrio associations; (3) federations composed of cooperatives that may or may not perform business activities; and (4) unions of cooperatives that did not perform any business activities. Respondent does not fall under any of the abovementioned types of cooperatives required to be registered under [P.D. No.] 175.cralawred

"Thus, when the subsequent law, R.A. No. 6939, concerning cooperatives was enacted, the respondent was not covered by said law and was not required to be registered, viz:

***"When the Cooperative Code was enacted years later, all cooperatives that were registered under PD 175 and previous laws were also deemed registered with the CDA. Since respondent was not required to be registered under the old law on cooperatives, it followed that it was not required to be registered even under the new law**.*

*"x x x **Only cooperatives to be formed or organized under the Cooperative Code needed registration with the CDA**. x x x.*

"The distinguishing feature of a cooperative enterprise is the mutuality of cooperation among its member-policyholders united for that purpose. So long as respondent meets this essential feature, it does not even have to use and carry the name of a cooperative to operate its mutual life insurance business. Gratia argumenti that registration is mandatory, it cannot deprive respondent of its tax exemption privilege merely because it failed to register. The nature of its operations is clear; its purpose well-defined. Exemption when granted cannot prevail over administrative convenience.

"Third, the Insurance Code does not require registration with the CDA. "The provisions of this Code primarily govern insurance contracts; only if a particular matter in question is not specifically provided for shall the provisions of the Civil Code on contracts and special

laws govern."

The CTA En Banc decision was affirmed.

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21. Commissioner of Internal Revenue (CIR), Petitioner vs. Mindanao II Geothermal Partnership, Respondent (G.R. No. 189440, June 18, 2014)

Facts:

Respondent filed with the BIR its Quarterly VAT Returns of taxable year 2002. Mindanao declared zero-rated sales and input VAT on domestic purchases. Subsequently, respondent filed a claim for refund or issuance of a tax credit certificate (TCC) of its unutilized input VAT. Said amount was later on corrected (increased).

Pending the resolution of the CTA case 6909, BIR issued to Mindanao a TCC. On June 4, 2008 the CTA 1st Division rendered the assailed decision partially granting Mindanao's claim. The CTA En Banc denied the Motion for Reconsideration (MR) on the ground that issues raised for the first time at the appellate level cannot be entertained by the reviewing courts.

Issue:

"*[Whether] the court of tax appeals en banc decided a question of substance which is not in accord with the law and prevailing jurisprudence."*

Held:

Petition of the CIR is granted. The SC said:

"*Notwithstanding the timely filing of the respondent's administrative claim, we are constrained to order the dismissal of the respondent's judicial claim for tax refund or tax credit for having been filed beyond the mandatory and jurisdictional periods provided in Section 112(C) of the NIRC."*

"X x x.

"This law is clear, plain, and unequivocal. Following the well-settled verba legis doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the CIR to the CTA within 30 days from receipt of the CIR's decision, or if the CIR does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

"In Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., this Court clarified the mandatory and jurisdictional nature of the 120+30 day

period provided under Section 112(C) of the NIRC. We clarified that the two-year prescriptive period under Section 112(A) of the NIRC refers only to the filing of an administrative claim with the BIR. Meanwhile, the judicial claim under Section 112(C) of the NIRC must be filed within a mandatory and jurisdictional period of 30 days from the date of receipt of the decision denying the claim, or within 30 days from the expiration of the 120-day period for deciding the claim."

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22. Taganito Mining Corporation, Petitioner vs. Commissioner of Internal Revenue (CIR) Respondent (G.R. No. 197591, June 18, 2014)

Facts:

"On December 28, 2005, Taganito filed before the Bureau of Internal Revenue (BIR) an administrative claim for the refund of input VAT paid on its domestic purchases of taxable goods and services and importation of goods in the amount of ₱1,885,140.22 covering the period January 1, 2004 to December 31, 2004, in accordance with Section 112, subsections (A) and (B) of the National Internal Revenue Code (NIRC). Thereafter, or on March 31, 2006, fearing that the period for filing a judicial claim for refund was about to expire, Taganito proceeded to file a petition for review before the CTA Division, docketed as C.T.A. Case No. 7428."

The CTA Division found that Taganito's claim was filed within the periods provided in the Tax Code. It partially granted petitioner's prayer for refund.

The CTA En Banc reversed and set aside the Decision of the CTA Division. The entire amount of refund of Taganito was denied. *"Explaining that the observance of the 120-day period provided under Section 112(D) of the NIRC is mandatory and jurisdictional to the filing of a judicial claim for refund pursuant to the case of CIR v. Aichi Forging Company of Asia, Inc. (Aichi), it held that Taganito's filing of a judicial claim was premature, and, thus, the CTA Division had yet to acquire jurisdiction over the same."*

Issue:

"The issues for the Court's resolution are as follows: (a) whether or not the CTA En Banc correctly dismissed Taganito's judicial claim for refund of excess input VAT; and (b) whether or not Taganito should be entitled to its claim for refund in the total amount of P1,885,140.22."

Held:

The SC said the action is partly meritorious.

The Court pointed out:

"*The first provision that allowed the refund or credit of unutilized excess input VAT is found in Executive Order No. 273, series of 1987, the original VAT Law. Since then, this provision was amended numerous times, by Republic Act No. (RA) 7716, RA 8424, and, lastly, by RA 9337 which took effect on July 1, 2005. Since Taganito's claim for refund covered periods before the effectivity of RA 9337, Section 112 of the NIRC, as amended by RA 8424, should apply*."

"X x x.

"As correctly pointed out by the CTA En Banc, the Court, in the 2010 Aichi case, ruled that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. Consequently, non-observance thereof would lead to the dismissal of the judicial claim due to the CTA's lack of jurisdiction. The Court, in the same case, also clarified that the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims."

"X x x.

"In the recent case of CIR v. San Roque Power Corporation (San Roque), the Court, however, recognized an exception to the mandatory and jurisdictional treatment of the 120-day period as pronounced in Aichi. In San Roque, the Court ruled that BIR Ruling No. DA-489-03 dated December 10, 2003 – wherein the BIR stated that the "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" – provided taxpayers-claimants the opportunity to raise a valid claim for equitable estoppel under Section 246 of the NIRC, viz.:

"There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. ***The second exception is where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all***

<u>taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.</u>"

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