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EN BANC

[G.R. No. 226592; July 27, 2021]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v.* **CARRIER AIR CONDITIONING PHILIPPINES, INC.,** *Respondent*.

D E C I S I O N

LEONEN, *J.*:

Section 229 of the National Internal Revenue Code of 1997 prescribes two conditions for an action to recover erroneously paid or illegally collected taxes, namely: (1) that an administrative claim must first be filed with the Bureau of Internal Revenue; and (2) that the judicial claim must be filed within two years from payment of the tax. Respondent's judicial claim, filed within the two-year prescriptive period, is proper.

This Court resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Tax Appeals *En Banc*, which affirmed the Second Division's Decision[4] and Resolution[5]

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[1] *Rollo*, pp. 12-35. Filed under Rule 45 of the Rules of Court.

[2] Id. at 46-60. The June 2, 2016 Decision in CTA EB Case No. 1341 was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban of the Court of Tax Appeals, Quezon City.

[3] Id. at 61-63. The August 12, 2016 Resolution in CTA EB Case No. 1341 was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban of the Court of Tax Appeals, Quezon City.

[4] Id. at 208-226. The March 17, 2015 Decision in CTA Case No. 8393 was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justice Juanito C. Castañeda, Jr. of the Second Division, Court of Tax Appeals, Quezon City.

[5] Id. at 234-240. The July 13, 2015 Resolution in CTA Case No. 8393 was penned by Associate Justice Caesar A. Casanova and concurred in by Associate

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granting the claim for refund or tax credit of ₱11,395,574.20. This amount represents the final withholding tax on the excess cash dividends paid by Carrier Air Conditioning Philippines, Inc. (Carrier Air Conditioning) to its non-resident foreign parent company in 2009.

During a special meeting on November 23, 2009, Carrier Air Conditioning's Board of Directors declared cash dividends in favor of its foreign parent company, Carrier HVACR Investments B.V. (Carrier B.V.), out of its unrestricted retained earnings as of October 31, 2009.[6] The cash dividends in the total amount of ₱871,084,418.00 were payable as follows:

Payable on or before	Amount
November 30, 2009	₱654,000,000.00
December 31, 2009	₱217,084,418.00[7]

Carrier Air Conditioning paid Carrier B.V. the cash dividends on November 24, 2009 and December 22, 2009,[8] net of the 10% final withholding taxes that were remitted to the Bureau of Internal Revenue on December 10, 2009 and January 12, 2010.[9]

However, an independent audit for the year 2009 revealed that the unrestricted retained earnings were insufficient to support the dividends of ₱113,955,742.00 that were overdeclared on November 23, 2009.[10] Since the cash dividends were already paid to Carrier B.V., Carrier Air Conditioning recorded the overpaid dividends as receivables from Carrier B.V. in its 2009 Audited Financial Statements.[11] These receivables were carried over and reflected in the 2010 Audited Financial Statements.[12]

Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas of the Second Division, Court of Tax Appeals, Quezon City.

[6] Id. at 48.

[7] Id.

[8] Id. at 220.

[9] Id. at 219.

[10] Id. at 220-221.

[11] Id. at 222.

[12] Id. at 223.

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On November 2, 2011, the Board of Directors approved a cash dividend declaration of ₱150,333,970.00 "out of the unrestricted retained earnings of the Corporation as of December 31, 2010[.]"[13] Of that amount, the Board also authorized the deduction of the overpaid cash dividends from 2009, resulting in a net dividend payable of ₱21,344,381.00.[14]

This net dividend payable was remitted to Carrier B.V. on November 23, 2011. Thus, the receivables from Carrier B.V. worth ₱113,955,742.00 were removed from Carrier Air Conditioning's 2011 Audited Financial Statements.[15] The 10% final withholding taxes of ₱15,033,397.00 for the 2011 dividend declaration were remitted to the Bureau of Internal Revenue on December 6, 2011.[16]

Meanwhile, on November 29, 2011, Carrier Air Conditioning had filed an administrative claim for the refund or issuance of tax credit certificate in the amount of ₱11,395,574.20, representing the final withholding taxes on the 2009 overpaid dividends.[17]

Ten days later, on December 9, 2011, Carrier Air Conditioning filed a Petition for Review before the Court of Tax Appeals.[18]

In its Answer (with Motion to Dismiss),[19] the Commissioner of Internal Revenue argued that the claim was without legal and factual bases;[20] the Court of Tax Appeals had no jurisdiction over the case because the Verification and Certification of Non-Forum Shopping attached to the Petition was defective;[21] and the

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[13] Id. at 49.

[14] Id. at 48-49.

[15] Id. at 223.

[16] Id. at 224.

[17] Id. at 49.

[18] Id.

[19] Id. at 125-134.

[20] Id. at 128.

[21] Id. at 128-129.

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administrative claim was still subject to their investigation.[22] To this, Carrier Air Conditioning filed its Reply.[23]

In an April 24, 2012 Resolution, the Court of Tax Appeals denied the Commissioner of Internal Revenue's prayer to have the Petition dismissed.[24]

On August 17, 2012, the parties filed their Joint Stipulation of Facts and Issues,[25] setting forth the following issues:

a. Whether there is an actual and proper reversal of cash dividends made by [Carrier Air Conditioning];

b. Whether [Carrier Air Conditioning] has remitted the final withholding tax on the dividends to the BIR, which is currently the subject of the case for refund or issuance of a TCC;

c. Whether [Carrier Air Conditioning's] claim for refund or issuance of a TCC is duly substantiated by documentary evidence;

d. Whether [Carrier Air Conditioning] is entitled to refund or issuance of a TCC in the amount of ₱11,395,574.20, representing final tax withheld and remitted on the excess cash dividends paid by [Carrier Air Conditioning] to Carrier [B.V.] on November 24, 2009 and December 22, 2009.[26]

During trial, Carrier Air Conditioning submitted its evidence and Memorandum. The Commissioner of Internal Revenue submitted no memorandum and manifested that no witnesses would be presented.[27]

In a March 17, 2015 Decision,[28] the Court of Tax Appeals Second Division granted the Petition.[29] It held that "both administrative

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[22] Id. at 130.

[23] Id. at 50.

[24] Id.

[25] Id.

[26] Id. at 51.

[27] Id. at 50.

[28] Id. at 208-226.

[29] Id. at 51.

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and judicial claims were filed within the two-year prescriptive period" under Sections 204 and 229 of the 1997 National Internal Revenue Code.[30] Moreover, it found an over-remittance of final withholding tax,[31] thus ordering the Commissioner of Internal Revenue to refund or issue a tax credit certificate worth ₱11,395,574.20, representing the erroneously withheld final withholding tax on the excess cash dividends paid in 2009.[32]

The Commissioner of Internal Revenue moved for reconsideration,[33] which was denied in a July 13, 2015 Resolution[34] for having been filed two days late[35] and for lack of merit.[36]

The Commissioner of Internal Revenue then filed a Petition for Review before the Court of Tax Appeals *En Banc*.[37]

In its June 2, 2016 Decision,[38] the Court of Tax Appeals *En Banc* still ruled for Carrier Air Conditioning. It first held that the Commissioner of Internal Revenue's Motion for Reconsideration was filed on time, as shown in the April 6, 2015 registry receipt that was belatedly submitted by the Commissioner. [39] Nonetheless, it denied the Petition for lack of merit.[40] It also denied the subsequent Motion for Reconsideration in an August 12, 2016 Resolution.[41]

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[30] Id. at 219.

[31] Id. at 224.

[32] Id. at 225.

[33] Id. at 52.

[34] Id. at 234-240.

[35] Id. at 236.

[36] Id. at 240.

[37] Id. at 46-47.

[38] Id. at 46-60.

[39] Id. at 54.

[40] Id. at 59.

[41] Id. at 61-63.

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Hence, the Commissioner of Internal Revenue filed this Petition for Review on *Certiorari*.[42] Carrier Air Conditioning filed its Comment,[43] to which petitioner filed a Reply.[44]

Petitioner submits that the Court of Tax Appeals *En Banc* erred in affirming the Second Division's ruling.[45] Petitioner argues that under Republic Act No. 1125, even after being amended by Republic Act No. 9282, the Court of Tax Appeals only has appellate jurisdiction over refund claims. Thus, without a ruling by petitioner, respondent may not invoke the Court of Tax Appeals' appellate jurisdiction. Petitioner contends that respondent's judicial claim, filed barely 10 days from the filing of the administrative claim for refund, was premature and violative of the doctrine of exhaustion of administrative remedies.[46] Petitioner adds:

> The taxpayer claiming the tax credit or refund has the burden of proving that [they are] entitled to the refund by showing that [they] strictly complied with the conditions for the grant of the tax refund or credit. . . . 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.[47] (Citation omitted)

In its Comment, respondent counters that petitioner is barred from arguing that it violated the doctrine of exhaustion of administrative remedies for belatedly raising it.[48] It notes that petitioner had actively participated in the proceedings before the Court of Tax Appeals without once raising the issue, and for petitioner to introduce this argument only after more than five years was "clearly a mere afterthought[.]"[49]

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[42] Id. at 12-35.

[43] Id. at 260-279.

[44] Id. at 515-521.

[45] Id. at 24.

[46] Id. at 30.

[47] Id. at 31.

[48] Id. at 270.

[49] Id. at 270-271.

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At any rate, respondent posits that the doctrine of exhaustion of administrative remedies admits of exceptions as when its application would nullify the claim being asserted.[50] Respondent avers that it had to file its judicial claim on December 9, 2011 given petitioner's inaction on its administrative claim, and to preserve its right to seek a refund or tax credit of erroneously paid taxes, which was supposed to expire on December 10, 2011.[51] It points out that the Court of Tax Appeals Second Division expressly recognized that its administrative and judicial claims for refund were filed within the prescriptive period under the 1997 National Internal Revenue Code.[52]

Finally, respondent asserts that it had cause of action to file its claim for refund or tax credit. It submits that it duly proved its error or mistake in withholding and remitting the final withholding tax on overpaid dividends to the Bureau of Internal Revenue, as confirmed by both the Court of Tax Appeals Second Division and *En Banc*.[53]

The sole issue for this Court's resolution is whether or not the Court of Tax Appeals erred in granting respondent Carrier Air Conditioning Philippines, Inc.'s judicial claim, instead of dismissing the petition on the grounds of violation of the doctrine of exhaustion of administrative remedies and lack of cause of action.

The Petition is denied.

I

Sections 204(C) and 229 of the 1997 National Internal Revenue Code govern the filing of claims to recover any erroneously paid or illegally collected tax. The provisions state:

SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. —*

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[50] Id. at 272.

[51] Id. at 274.

[52] Id. at 275.

[53] Id. at 276-277.

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The Commissioner may —

. . . .

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

. . . .

SECTION 229. Recovery of Tax Erroneously or Illegally Collected. — *No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected,* or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, *until a claim for refund or credit has been duly filed with the Commissioner*; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, *no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that way arise after payment: Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

Section 204 refers to the Commissioner of Internal Revenue's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two years from payment of the tax.

Section 229, on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed

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first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.

Reading the two provisions together, both administrative and judicial claims must be filed within the two-year period. Furthermore, the administrative claim must be filed before the judicial claim. This Court has previously declared that "[t]imeliness of the filing of the claim is mandatory and jurisdictional. The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund filed either prematurely or out of time."[54]

Consequently, respondent had two years from the date of payment or remittance of the overpaid final withholding tax to the Bureau of Internal Revenue to file a claim for refund, both administrative and judicial.

Here, as the Court of Tax Appeals Second Division found, respondent filed its monthly remittance return of final income taxes withheld for November and December 2009, and paid the corresponding final withholding tax of ₱87,108,441.80 on the dividend payments, as follows:

Return Period	Date Filed	Payment Date	Amount Paid
November 2009	December 10, 2009	December 10, 2009	₱65,400,000.00
December 2009	January 8, 2010	January 12, 2010	₱21,708,441.80
			₱87,108,441.80[55] (Emphasis in the original, citations omitted)

Based on the payment dates, the two-year period for filing a claim for refund (both administrative and judicial) would end on December 10, 2011 and January 12, 2012.[56]

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[54] *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, 802 Phil. 636, 645 (2016) [Per J. Brion, Second Division].

[55] *Rollo*, p. 219.

[56] Id.

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Respondent filed its administrative claim on November 29, 2011; its judicial claim, on December 9, 2011.[57] Clearly, both were within the two-year prescriptive period.

II

Petitioner, however, argues that respondent's Petition for Review before the Court of Tax Appeals, having been filed barely 10 days from the filing of the administrative claim for refund, is premature and in clear violation of the doctrine of exhaustion of administrative remedies.[58]

The principle of exhaustion of administrative remedies requires a party to first avail all the means provided by administrative processes before seeking the courts' intervention.[59] It is a "form of courtesy, where the court defers to the administrative agency's expertise and waits for its resolution before hearing the case."[60] Non-observance of the rule, however, does not affect the court's jurisdiction, but only the party's cause of action.[61] Hence, it may be waived if not invoked at the proper time.[62]

Closely related in concept and function is the doctrine of primary administrative jurisdiction, which refers to a court's competence to take cognizance of a case at the first instance.[63] Under this doctrine, where the law confines in an administrative body the power to determine a particular issue, the administrative body's jurisdiction will prevail over the court's.[64] This means that

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[57] Id. at 49.

[58] Id. at 30.

[59] *Republic v. Gallo*, 823 Phil. 1090 (2018) [Per J. Leonen, Third Division].

[60] *National Federation of Hog Farmers, Inc. v. Board of Investments*, G.R. No. 205835, June 23, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343> [Per J. Leonen, En Banc].

[61] *Republic v. Gallo*, 823 Phil. 1090 (2018) [Per J. Leonen, Third Division].

[62] *Sunville Elmber Products, Inc. v. Abad*, 283 Phil. 400 (1992) [Per J. Cruz, First Division].

[63] *Republic v. Gallo*, 823 Phil. 1090 (2018) [Per J. Leonen, Third Division].

[64] *Republic v. Lacap*, 546 Phil. 87 (2007) [Per J. Austria-Martinez, Third Division]; *Radio Communications of the Philippines, Inc. v. National Telecommunications Commission*, 263 Phil. 449 (1990) [Per J. Bidin, En Banc].

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courts "cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal[.]"[65] Noncompliance with this doctrine is jurisdictional; it cannot be waived.[66]

Section 4 of the 1997 National Internal Revenue Code states that "the power to decide disputed assessments, refunds of internal revenue taxes, . . . is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals." The Commissioner of Internal Revenue's power to refund or credit taxes is further expounded in Section 204.

Meanwhile, Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282,[67] provides for the Court of Tax Appeals' *exclusive appellate* jurisdiction. It states:

SECTION 7. *Jurisdiction.* — The CTA shall exercise:

(a) *Exclusive appellate jurisdiction to review by appeal*, as herein provided:

(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 relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal

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[65] J. Leonen, Dissenting Opinion in *Department of Finance v. Dela Cruz, Jr.*, 767 Phil. 611, 652 (2015) [Per J. Carpio, Second Division].

[66] *Republic v. Gallo*, 823 Phil. 1090 (2018) [Per J. Leonen, Third Division].

[67] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes. March 30, 2004.

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> Revenue, *where the National Internal Revenue Code provides a specific period of action*, in which case the inaction shall be deemed a denial[.] (Emphasis supplied)

Thus, applications for refunds of internal revenue taxes lie within the primary jurisdiction of the Commissioner of Internal Revenue, and the Court of Tax Appeals may take cognizance of these claims only on an appellate basis. Specifically, under Section 7, the Court of Tax Appeals can review by appeal *decisions*, or "*inactions deemed denial*," of the Commissioner of Internal Revenue in applications for refund of internal revenue taxes. There is an "inaction deemed denial" when the Commissioner fails to act on a claim within the specific period provided by the 1997 National Internal Revenue Code.

In this case, petitioner assails respondent's filing of the judicial claim before the Court of Tax Appeals sans any ruling by them on the administrative claim.

This same issue has been squarely passed upon in *CBK Power Company Limited v. Commissioner of Internal Revenue*.[68] The Commissioner argued that since the judicial claim was filed merely five days after the administrative claim had been filed, they were not given a reasonable time to act on the claim. The Commissioner contended that the taxpayer's filing of the judicial claim violates the doctrines of exhaustion of administrative remedies and primary jurisdiction.[69]

This Court rejected the Commissioner's argument. It ruled that Sections 204 and 229 of the 1997 National Internal Revenue Code require only that the administrative claim be filed before the judicial claim and that both claims be filed within two years from the payment of the tax. Hence, the taxpayer properly filed its judicial claim without awaiting the Commissioner's action on its administrative claim, as long as the judicial claim was filed within the two-year prescriptive period.[70] Thus:

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[68] 750 Phil. 748 (2015) [Per J. Perlas-Bernabe, First Division].

[69] Id.

[70] Id. at 763-764.

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> Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the [1997] NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner. . . .
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> . . . .
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> With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.
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> Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.[71] (Citation omitted)

Still in *CBK Power Company*, this Court further held that Section 229 does not require that the Commissioner first act on the taxpayer's claim, and that the taxpayer cannot go to court without the Commissioner's action.[72] Citing *P.J. Kiener Company, Ltd. v. David*,[73] this Court held that the administrative claim filed before

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[71] Id. at 763-765. Reiterated in *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*, 792 Phil. 484 (2016) [Per J. Perlas-Bernabe, First Division], where this Court upheld the judicial claim that was filed only 13 days from the administrative claim.

[72] Id. at 765.

[73] 92 Phil. 945 (1953) [Per J. Tuason, En Banc].

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the Commissioner was intended "primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow[.]"[74]

Hence, applying the ruling in *CBK Power Company*, this Court finds proper respondent's filing of judicial claim 10 days after it had filed its administrative claim, even without petitioner's ruling. The judicial claim was timely filed within the two-year prescriptive period based on the plain language of Section 229 of the 1997 National Internal Revenue Code.

III

A closer reading of Sections 204 and 229 of the 1997 National Internal Revenue Code, in conjunction with Section 7 of Republic Act No. 9282, reveals a problem of what is considered a "reasonable period" for the Commissioner of Internal Revenue to act on a claim for refund of taxes.

Section 229, which requires a prior administrative claim before a judicial claim is filed, recognizes the Commissioner of Internal Revenue's primary jurisdiction to decide refunds of internal revenue taxes. It gives the Commissioner "an opportunity to consider [their] mistake, if mistake has been committed,"[75] or to investigate and ascertain the veracity of the claim,[76] before they are sued. This Court in *CBK Power Company*, citing *P.J. Kiener*, held that the primary purpose of filing an administrative claim is to serve as a *notice or warning* to the Commissioner that *court action would follow*

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[74] *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, 750 Phil. 748, 765 (2015) [Per J. Perlas-Bernabe, First Division].

[75] *P.J. Kiener Co., Ltd. v. David*, 92 Phil. 945, (1953) [Per J. Tuason, En Banc].

[76] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, 514 Phil. 147 (2005) [Per J. Panganiban, Third Division]; *Citibank, N.A. v. Court of Appeals*, 345 Phil. 695 (1997) [Per J. Panganiban, Third Division]; *San Carlos Milling, Co., Inc. v. Commissioner of Internal Revenue*, 298-A Phil. 76 (1993) [Per J. Padilla, Second Division].

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unless the tax or penalty is refunded.[77] This necessarily implies that the Commissioner has sufficient time to examine, evaluate, and act on the matter within their jurisdiction.

On the other hand, Section 7 of Republic Act No. 9282 grants the Court of Tax Appeals exclusive appellate jurisdiction over a decision or "inaction deemed denial" of the Commissioner in a claim for refund. Under its clear wording, the Court of Tax Appeals can take cognizance of appeals in cases of the Commissioner's "inaction" only where the 1997 National Internal Revenue Code specifically provides a period for the Commissioner to act on a claim for refund. However, unlike in claims for refund of input value-added tax,[78] the 1997 National Internal Revenue Code does not prescribe a specific period within which the Commissioner must resolve the claim for refund or credit of erroneously paid taxes.

Sections 204 and 229 fixed the same period of two years for filing an administrative claim for refund before the Bureau of Internal Revenue and to sue before the Court of Tax Appeals. *CBK Power Company* explained that as long as these two acts fall within the two-year period, there is no legal impediment to the judicial claim for refund.[79]

Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.

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[77] *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, 750 Phil. 748, 765 (2015) [Per J. Perlas-Bernabe, First Division].

[78] Under Section 112 (C) of the National Internal Revenue Code of 1997, as amended by Republic Act No. 10963 or the TRAIN Law, the Commissioner of Internal Revenue has 90 days from the date of submission of complete documents in support of the application within which to grant a refund or issue the tax credit certificate.

[79] *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, 750 Phil. 748 (2015) [Per J. Perlas-Bernabe, First Division].

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Thus, in *CBK Power Company*, as with subsequent cases, this Court upheld the propriety of the taxpayer's judicial claim instituted as early as five[80] and 13[81] days after the administrative claim had been filed, on the ground that both claims were filed within the two-year prescriptive period.

The Court of Tax Appeals likewise allowed judicial claims[82] filed simultaneously, or one to 28 days from the administrative claim's filing, on the same ground that both claims were filed within the two-year prescriptive period.

In much earlier cases, however, it was the Commissioner who was considered long delayed in resolving the administrative claims. Hence, this Court has held that the taxpayer need not wait

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[80] *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, 802 Phil. 636 (2016) [Per J. Brion, Second Division].

[81] *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*, 792 Phil. 484 (2016) [Per J. Perlas-Bernabe, First Division].

[82] *Aeon Credit Service (Philippines), Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 9770, July 15, 2020; *Commissioner of Internal Revenue v. Keppel Philippines Properties, Inc.*, C.T.A. EB Case No. 1540 (C.T.A. Case No. 8908) (Resolution), September 19, 2018; *Commissioner of Internal Revenue v. Philippine National Bank*, C.T.A. EB Case No. 1533 (C.T.A. Case No. 8268), August 23, 2018; *Commissioner of Internal Revenue v. ABB, Inc.*, C.T.A. EB Case No. 1501 (C.T.A. Case Nos. 8563, 8594, and 8674), March 13, 2018; *Commissioner of Internal Revenue v. Estate of Cabrera*, C.T.A. EB Case No. 1503 (C.T.A. Case No. 8785), July 25, 2017; *Commissioner of Internal Revenue v. PMFTC, Inc.*, C.T.A. EB Case No. 1385 (C.T.A. Case No. 8691), July 11, 2016; *Philip Morris Phils. Manufacturing, Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 8692, June 30, 2015; *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, C.T.A. Case No. 8232, December 16, 2014; *Commissioner of Internal Revenue v. Goodyear Phils., Inc.*, C.T.A. EB Case No. 1041 (C.T.A. Case No. 8188), August 14, 2014; *Unisys Public Sector Services Corp. v. Commissioner of Internal Revenue*, C.T.A. Case No. 8216, April 16, 2014; *South Global Services Phils., Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 8354, February 27, 2014; *Sutherland Global Services Phils., Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 8180, January 13, 2014; *Philippine Bank of Communications v. Commissioner of Internal Revenue*, C.T.A. EB Case Nos. 555 & 556 (C.T.A. Case No. 7486), May 13, 2010; *Gillette (Philippines), Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 4248, February 8, 1995; *Far East Bank and*

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for the Commissioner's decision, and may file its judicial claim when the two-year prescriptive period is about to lapse.

For instance, in *P.J. Kiener*,[83] the taxpayer filed its administrative claim for refund four months after the last payment of the tax sought to be refunded. Yet, the then Collector of Internal Revenue took their time — *more than two years* — to decide on the claim, so much so that when the taxpayer filed its appeal, its action had already prescribed. This Court held: "*Having filed his claim* ***and the Collector of Internal Revenue having had ample time to study it****, the claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision*."[84]

In *Collector of Internal Revenue v. Court of Tax Appeals and Hume Pipe & Asbestos Co., Inc.*,[85] this Court deemed *two months* as ample time for the Collector to have decided the claim for refund of overpaid income tax. Hence, in that case, it upheld the taxpayer's filing of a petition for review before the Court of Tax Appeals without waiting for the Collector's decision, since the two-year prescriptive period was already about to expire.

In *Commissioner of Customs and Commissioner of Internal Revenue v. The Honorable Court of Tax Appeals and Planters Products, Inc.*,[86] *eight months and 10 days* had lapsed from the taxpayer's filing of an administrative claim, but the Commissioner had not acted on it. Ruling in the taxpayer's favor, this Court, quoting a ruling of the tax court, said:

Trust Company/Foreign Currency Deposit Unit v. Commissioner of Internal Revenue, C.T.A. Case Nos. 4356 and 4441, May 5, 1994; and *Bank of the Philippine Islands, as Liquidator of Paramount Acceptance Corporation v. Commissioner of Internal Revenue*, C.T.A. Case No. 4257, December 20, 1993.

[83] *P.J. Kiener* involved the refund of overpaid percentage taxes for the year 1948, which were paid on April 20, 1948, July 20, 1948, and January 20, 1949. The administrative claim was filed on May 25, 1949, and was denied by the Collector of Internal Revenue only on June 11, 1951.

[84] *P.J. Kiener Co., Ltd. v. David*, 92 Phil. 945, 947 (1953) [Per J. Tuason, En Banc].

[85] 110 Phil. 680 (1961) [Per J. Dizon, En Banc].

[86] 253 Phil. 339 (1989) [Per J. Griño-Aquino, First Division].

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The taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect.

. . . .

It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector [(now Commissioner)] of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the [Commissioner], would have, at his personal convenience, given his go signal.[87]

In these cases, the written claim for refund was duly filed at the administrative level, but the claim had not been acted upon by the Commissioner (then Collector) of Internal Revenue. Since the two-year period was about to lapse, the taxpayer was held justified in filing its judicial claim, without waiting for the Commissioner's decision, to protect its interest. Otherwise, should the Commissioner render an adverse decision after the two-year period, the taxpayer would be barred, to its prejudice, from pursuing its appeal to the Court of Tax Appeals.

These cases show that the lack of a specific period fixed by the law within which the Commissioner must decide the claim has led to delays, to the taxpayer's prejudice. On the other hand, there were instances when the Commissioner was deprived of the opportunity to act on the matter within their jurisdiction because of the short interval between the filing of the administrative claim and the filing of the judicial claim. This is so because the law merely provides two years for a taxpayer to file the administrative claim and judicial claim, with the former required to be filed first.

Nonetheless, the silence or insufficiency in the law on the reasonable period for the Commissioner's action is one that can be addressed not by judicial pronouncement, but by appropriate legislation.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed June 2, 2016 Decision and August 12, 2016

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[87] Id. at 343.

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Resolution of the Court of Tax Appeals *En Banc* are **AFFIRMED**. Respondent Carrier Air Conditioning Philippines, Inc.'s claim for refund or tax credit of ₱11,395,574.20 is **GRANTED**.

Let a copy of this Decision be furnished to the Senate of the Philippines and the House of Representatives for their information and appropriate action.

SO ORDERED.

Gesmundo, C.J., Hernando, Carandang, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, and *J. Lopez, JJ.*, concur.

Perlas-Bernabe, Caguioa and *Lazaro-Javier, JJ.*, see concurring opinions.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Castillo Laman Tan Pantaleon & San Jose for respondent.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. In *CBK Power Company Limited v. Commissioner of Internal Revenue (CBK Power Company)*,[1] the Court has already held that Section 229[2] of the Tax Reform Act of 1997 (Tax

[1] 750 Phil. 748, 765 (2015).

[2] Section 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit

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Code)[3] does not contemplate that the Commissioner of Internal Revenue (CIR) must first act upon the taxpayer's administrative claim before a judicial action is instituted. Citing *P.J. Kiener Company, Ltd. v. David (P.J. Kiener Co.)*,[4] the Court, in said case, held that "the claim with the Collector of Internal Revenue was intended primarily as a notice or warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow."[5]

Notably, it has been pointed out during the deliberations on this case that the *CBK Power Company* doctrine effectively permits anomalous situations wherein the period between lodging an administrative claim and filing a judicial claim would only be a matter of a few days, which thus curtails the CIR's authority to resolve the administrative claim on the merits. Therefore, it was ruminated whether or not the CIR should be first given a fixed reasonable period to rule on the administrative claim before the taxpayer may pursue his or her judicial claim.

It bears to stress that the *CBK Power Company* doctrine stems from none other than the consistent phraseology of Section 229 of the Tax Code, which has long existed since the National Internal Revenue Code of 1939.[6] Its precursor provision, *i.e.*, Section 306 of the 1939 Tax Code, states that:

> Section 306. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been

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any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[3] Republic Act No. 8424, entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES" (January 1, 1998).

[4] 92 Phil. 945, 947 (1953).

[5] See *CBK Power Company*, *supra* at 765.

[6] Commonwealth Act No. 466, entitled "AN ACT TO REVISE, AMEND AND CODIFY THE INTERNAL REVENUE LAWS OF THE PHILIPPINES," then also known as the "NATIONAL INTERNAL REVENUE CODE," approved on June 15, 1939.

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erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty.

In 1972, Section 306 was amended to include a *proviso* empowering the CIR to refund taxes on its own when erroneous payment is apparent on the face of the return:[7]

Section 306. *Recovery of tax erroneously or illegally collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

When the Tax Code was re-codified in 1977,[8] Section 306 was renumbered to Section 292 but the substance thereof was retained:

Section 292. *Recovery of tax erroneously or illegally collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously

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[7] Presidential Decree No. (PD) 69, entitled "AMENDING CERTAIN SECTIONS OF NATIONAL INTERNAL REVENUE CODE," approved on November 24, 1972.

[8] PD 1158, entitled "A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES," also known as the "NATIONAL INTERNAL REVENUE CODE OF 1977" (June 3, 1977).

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or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

By the second re-codification in 1997,[9] Section 292 was again renumbered to the present Section 229, but nevertheless remained unchanged:

Section 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Notably, in the most recent amendment of the Tax Code, through Republic Act No. (RA) 10963, or the "Tax Reform for

[9] See note 3.

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Acceleration and Inclusion (TRAIN)" Law,[10] Section 229 was not altered in any way.

From the foregoing, it is apparent that despite the numerous amendments undergone by the Tax Code, legislators did not see fit to include in Section 229 a "reasonable period" for the CIR to act on the administrative claim for refund prior to the institution of a judicial action.

It should be borne in mind that when Section 306 was first amended in 1972, *P.J. Kiener Co.* already espoused the doctrine that "the filing of the claim with the Collector of Internal Revenue [is] **intended primarily as a notice or warning** that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow. Previous and timely notice is, in other cases and for diverse salutary reasons, made a prerequisite to the prosecution of contemplated proceedings **without imposing on the party to whom the notice was sent any obligation to make any move**."[11] Nevertheless, the law was not amended to provide for a mandatory period for the CIR to act on the claim. In fact, the provision remained unchanged despite the succeeding amendments to the Tax Code.

When the TRAIN Law was passed in 2017, *CBK Power Company* was already promulgated wherein the Court applied Section 229 exactly as worded even if the end result entailed the almost simultaneous filing of the administrative claim for refund with the judicial claim. Despite this prevailing doctrine, the legislators did not see fit to amend Section 229 by introducing a

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[10] Entitled "AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES" (January 1, 2018).

[11] *P.J. Kiener Co*, *supra* note 4, at 947; emphases supplied.

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mandatory period that must be observed prior to the institution of a judicial claim.

In the enactment of statutes, it is presumed that the Legislature "understood the language it used and to have acted with full idea of what it wanted to accomplish,"[12] and that the law is passed "with deliberation with full knowledge of all existing ones on the subject."[13] Based on this dictum, it is thus reasonable to conclude that Congress deliberately chose to forego a mandatory period for administrative review of claims for refund for erroneously or illegally collected taxes.

It deserves highlighting that, in contrast to Section 229, the corresponding provision for refund of creditable input value-added tax (VAT) provides for a period. To recount, the concept of VAT was introduced to the Philippine taxation system in 1987 through Executive Order No. 273.[14] The refund thereof was governed by Section 106:

> Section 106. *Refunds or Tax Credits of Input Tax.* — (a) *Export Sales*. — An exporter who is a VAT-registered person may, within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.
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> (b) *Zero-Rated or Effectively Zero-Rated Sales.* — Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
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> (c) *Capital Goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital

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[12] *Id.*

[13] See *Mecano v. Commission on Audit*, 290-A Phil. 272, 283 (1992).

[14] Entitled "ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES" (January 1, 1988).

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goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application for refund may be made only after the expiration of two (2) succeeding quarters following the quarter in which the importation or local purchase was made: Provided, That a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later: Provided, however, That the application is filed not later than two (2) years from the dates herein prescribed.

(d) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 100(c) of this Code may, within 2 years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes.

(e) *Period within Which Refund of Input Taxes May be Made by the Commissioner.* — The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.

x x x x

In 1994, when the VAT system was expanded by RA 7716,[15] Section 106(d) was amended to recognize resort to the Court of Tax Appeals in cases of full or partial denial or inaction by the CIR of administrative claims for refund for input VAT:

Section 106. *Refunds or tax credits of creditable input tax.* — x x x

x x x x

[15] Entitled "AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES," approved on May 5, 1994.

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(d) *Period within which refund or tax credit of input taxes shall be made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the enacted claim with the Court of Tax Appeals.

Upon the 1997 re-codification of the Tax Code, the VAT system was therein integrated, and Section 106 became Section 112. Paragraph (d), however, remained unchanged except for the increase in the period given to the CIR to act on such claims from sixty (60) days to one hundred twenty (120) days:

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

xxx xxx xxx

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

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

Section 112(D) was then re-numbered to Section 112(C) through RA 9337 or the VAT Reform Act,[16] but it remained the same in substance:

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[16] Entitled "AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF

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

x x x x

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

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

Most recently, the TRAIN Law[17] amended Section 112(C) by reducing the period to act on the administrative claim for refund from one hundred twenty (120) days to ninety (90) days, mandating that the CIR must have legal and factual bases to deny any claim, and providing for sanctions if the CIR or his or her agents fail to act on any application within the ninety (90)-day period:

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

x x x x

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision

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THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES" (July 1, 2005).

[17] See note 10.

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denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

The evolution of the VAT provision on refund shows that the legislature has always intended for administrative claims for VAT refund to be subject to a mandatory period of review. Had Congress intended for a similar period to apply to the refund of erroneously or illegally collected taxes, it could have simply adopted the wording of the VAT refund provision. This therefore shows that the treatment of Section 229 and Section 112 (C) of the Tax Code, with respect to the period to rule on an administrative claim, was deliberately differentiated.

In sum, there is nothing in the Tax Code which requires a definite period for the filing of an administrative claim for refund of erroneously or illegally collected taxes prior to seeking a judicial claim within the two (2)-year prescriptive period. This is in stark contrast to claims for refund of input VAT wherein the judicial action can only prosper after an administrative claim is lodged and the mandatory ninety (90)-day period to act on the same has lapsed.

Whether or not the CIR should be given a mandatory period of review of administrative claims as a condition precedent to the filing of a judicial claim goes into the wisdom of the law. It is well-settled that the Court cannot supplant its own wisdom with that of Congress as this goes beyond the purview of its power of judicial review. As the Court has held, "[t]he courts may or may not agree with the legislature upon the wisdom or necessity of the law. Their disagreement, however, furnishes no basis for pronouncing a statute illegal. If the particular statute is within the constitutional power of the legislature to enact, whether the courts agree or not in the wisdom of its enactment, is a matter of no concern."[18]

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[18] *United States v. Ten Yu*, 24 Phil. 1, 10-11 (1912).

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In this regard, the proper recourse against the curtailment of the CIR's power to first rule on administrative claim, as herein stated, is to seek the amendment of Section 229. "'[I]f the law is too narrow in scope, it is for the Legislature rather than the courts to expand it.' It is only when all other means of determining the legislative intention fail that a court may look into the effect of the law; otherwise, the interpretation becomes judicial legislation."[19]

Therefore, as now ruled by the *ponencia*, the Court is constrained to deny the present petition, but let a copy of this Decision be furnished to the Senate and the House of Representatives for their information, and for the possible enactment of remedial legislation.

CONCURRING OPINION

CAGUIOA, *J.*:

On November 29, 2011, respondent Carrier Air Conditioning Philippines, Inc. (Carrier) filed an administrative claim for refund or issuance of tax credit certificate (TCC) for overpaid final withholding taxes (FWT). After 10 days or on December 9, 2011, without waiting for petitioner Commissioner of Internal Revenue's (CIR) action on its administrative claim, Carrier filed its judicial claim for refund before the Court of Tax Appeals (CTA).

The CTA Division granted Carrier's claim and ordered the CIR to refund or issue a TCC in favor of Carrier. The CTA Division found that Carrier's administrative and judicial claims were filed within the two-year prescriptive period provided under Sections 204 and 229 of the National Internal Revenue Code of 1997[1] (NIRC), as amended, and there was an over-remittance of FWT. In the assailed Decision, the CTA En Banc affirmed the CTA Division.[2]

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[19] *Lacson v. Roque*, 92 Phil. 456, 464 (1953), citing *Cornejo v. Naval,* 54 Phil. 809, 814 (1930).

[1] Republic Act No. 8424, December 11, 1997.

[2] *Ponencia*, pp. 3-5.

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In the Petition before this Court, the CIR contends that Carrier's judicial claim was prematurely filed because it was filed only 10 days after its administrative claim. Thus, the CIR contends that this violates the principle of exhaustion of administrative remedies. The CIR further contends that Carrier may not invoke the CTA's appellate jurisdiction over refund claims without a decision or ruling by the CIR on its administrative claim.

On the other hand, Carrier argues that it had to file its judicial claim on December 9, 2011 to preserve its right to seek a refund or tax credit of erroneously paid taxes, which was to expire the following day or on December 10, 2011.[3]

The *ponencia* denies the CIR's Petition and affirms the assailed Decision of the CTA En Banc. The *ponencia* finds proper Carrier's filing of its judicial claim 10 days after its administrative claim even without any decision from the CIR.[4] The *ponencia* explains that Section 229 of the NIRC, as amended, does not require the CIR to resolve a claim for refund or credit of erroneously paid taxes within a specific period.[5] Thus, it does not matter how far apart the administrative and judicial claims were filed, or whether the CIR was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.[6] The ponencia concludes that the law's silence on a reasonable period for the CIR to resolve an administrative claim is one that can be remedied through appropriate legislation.[7]

I concur.

Section 229 of the NIRC, as amended, does not provide the CIR a specific period within which to decide an administrative claim. As such, the filing of the judicial claim for refund a few days after the filing of the administrative claim for refund, or even

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[3] Id. at 6.

[4] Id. at 11.

[5] Id. at 11-12.

[6] Id. at 12.

[7] Id. at 14.

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in the absence of a decision from the CIR on the administrative claim, as in the instant case, is still proper. Such action also does not violate the principle of exhaustion of administrative remedies or the doctrine of primary administrative jurisdiction.

Section 229 of the NIRC, as amended, allows the successive or simultaneous filing of the administrative and judicial claims, even without awaiting the CIR's decision on the administrative claim

Section 229 of the NIRC, as amended, provides for the requisites for filing a judicial claim for refund of erroneously or illegally collected taxes. Said provision reads:

> Sec. 229. *Recovery of Tax Erroneously or Illegally Collected*. — **No suit or proceeding shall be maintained in any court** for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim ***for refund or credit has been duly filed with the Commissioner;*** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause** that may arise after payment: *Provided*, *however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis and underscoring supplied)

A plain reading of Section 229 indubitably shows that there are only two requisites before a claim for refund may be filed before the court: (1) that an administrative claim is first filed with the CIR; and (2) that the judicial claim is filed within two years from the actual payment of tax or penalty sought to be refunded, regardless of the existence of any supervening cause after payment.

It must likewise be noted that Section 229 does not provide the CIR with a period within which to decide an administrative claim.

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Unlike in claims for refund for excessive or unutilized input Value-Added Tax (VAT) under Section 112(D)[8] of the NIRC, as amended, where the CIR is given a 120-day period[9] to act on the claim for refund of input VAT, and under Section 228[10] of the NIRC, as amended, where the CIR is allowed a period of 180 days within which to decide a disputed assessment, the legislature intentionally did not provide a period for the CIR to act on the administrative claim for erroneously or illegally paid taxes under Section 229. Section 229 simply states that the claim for refund or credit should be duly filed with the CIR. This clearly suggests that the filing of a claim with the CIR is a mere condition precedent for the filing of a judicial claim with the court.[11] The primary purpose of filing an administrative claim is to serve as a notice or warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded.[12]

Consequently, a taxpayer who files a claim for refund with the CIR a few days before the expiration of the two-year prescriptive

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[8] Sec. 112. *Refunds or Tax Credits of Input Tax.* —

x x x x

(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents x x x.

[9] Republic Act No. 10963 or the "Tax Reform for Acceleration and Inclusion" Law reduced the period to 90 days.

[10] Sec. 228. *Protesting of Assessment.* — x x x

x x x x

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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[11] *Vda. de Aguinaldo v. Commissioner of Internal Revenue*, No. L-19927, February 26, 1965, 13 SCRA 269.

[12] *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016, 799 SCRA 489, 499.

period, or without waiting for the CIR's decision, still complies with the clear mandate of the law as long as the taxpayer's judicial claim is filed in court within the two-year prescriptive period. In other words, a taxpayer does not have to wait for the CIR's action on the administrative claim before the taxpayer may have a cause of action to file the judicial claim before the courts. This was aptly explained by the Court in *CBK Power Company Limited v. CIR*[13] (*CBK Power Company Limited*) in this wise:

> Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. **There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.**
>
> x x x x
>
> x x x Nowhere and in no wise does the law imply that the [Commissioner] of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the [CIR's] action.[14]

Clearly, the ruling in *CBK Power Company Limited* simply interprets and applies the plain meaning of Section 229 of the NIRC, as amended. Giving the CIR a period to decide an administrative claim goes beyond the clear and unequivocal language of Section 229. As aptly pointed out in the *ponencia*, the absence of a period in Section 229 for the CIR to resolve or decide an administrative claim can only be addressed through appropriate legislation.[15]

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[13] G.R. Nos. 193383-84 & 193407-08, January 14, 2015, 746 SCRA 93.

[14] *Id.* at 110-112; emphasis supplied.

[15] *Ponencia*, p. 14.

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A "decision" or "inaction deemed denial" over taxes erroneously or illegally collected is not required to seek judicial recourse

It is also error for the CIR to insist that the CTA has no jurisdiction over Carrier's judicial claim because there was no "decision" or "inaction deemed denial" to speak of over which the CTA may exercise its jurisdiction.

In Republic Act (RA) No. 1125,[16] the CTA had jurisdiction only over the "decisions" of the CIR. When RA No. 1125 was amended through RA No. 9282[17] and further by A.M. No. 05-11-07-CTA[18] (Revised CTA Rules), the CTA's jurisdiction is expanded to include **inaction** by the CIR. However, the "inaction deemed denial" is relevant only in cases where the law fixes a period within which the CIR has to rule on a claim such as the refund of input VAT under Section 112 and disputed assessments under Section 228, and such inaction is appealed to the CTA. This "inaction deemed denial" is recognized under the Revised CTA Rules, *viz.*:

> 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

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[16] AN ACT CREATING THE COURT OF TAX APPEALS, June 16, 1954.

[17] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS, ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, March 30, 2004.

[18] REVISED RULES OF THE COURT OF TAX APPEALS, November 22, 2005.

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> 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 abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that **in 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[.]**[19]

However, with respect to refund filed under Section 229, a "decision" or "inaction deemed denial" by the CIR is irrelevant. To reiterate, Section 229 of the NIRC, as amended, does not fix a period for the CIR to act on the refund claim. Without a doubt, therefore, the taxpayer does not have to wait for the "decision" of the CIR before filing an appeal to the CTA in cases of refund of erroneously or illegally collected tax. As can be gleaned from the last sentence of Section 3(a)(2) of the Revised CTA Rules, what is required is that a taxpayer-claimant must file a petition for review with the CTA before the expiration of the two-year period. There is no "decision" or "inaction deemed denial" provided for in the last sentence of Section 3(a)(2) of the Revised CTA Rules before

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[19] REVISED RULES OF THE COURT OF TAX APPEALS, Rule 4, Sec. 3; emphasis supplied.

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a taxpayer may seek judicial relief. Simply put, the governing rule for appeals to the CTA in cases of refund of erroneously or illegally collected tax is not Section 3(a)(1) which applies to "decisions" nor the first part of Section 3(a)(2) on "inaction deemed denial," but the last sentence thereof. The wording of the provision is clear and simple.

No violation of the principle of exhaustion of administrative remedies and doctrine of primary administrative jurisdiction

Lastly, I agree with the *ponencia* in ruling that there was no violation of the principle of exhaustion of administrative remedies in this case. As aptly explained in the *ponencia*, the requirement of filing of the administrative claim before a judicial claim is filed in court already recognizes the primary jurisdiction of the CIR to decide refunds of internal revenue taxes as it gives the CIR "an opportunity to consider his/her mistake, if mistake has been committed," or to investigate and ascertain the veracity of the claim, before he/she is sued.[20]

The principle of exhaustion of administrative remedies requires that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he/she avails himself/herself of all administrative processes afforded him/her. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within such officer's jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.[21]

Corollary to the principle of exhaustion of administrative remedies is the time-honored doctrine of primary administrative jurisdiction. Under this doctrine, courts cannot or will not determine a controversy involving a question which is within

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[20] *Ponencia*, pp. 11-12; citation omitted.

[21] *Samar II Electric Cooperative, Inc. v. Seludo, Jr.*, G.R. No. 173840, April 25, 2012, 671 SCRA 78, 88; citation omitted.

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the jurisdiction of the administrative tribunal prior to resolving the same, where the question demands the exercise of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact. In cases where the doctrine of primary jurisdiction is clearly applicable, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence.[22]

The principle of exhaustion of administrative remedies is not violated in this case. Contrary to the CIR's claim, Carrier complied with the text of Section 229, which requires the filing of an administrative claim with the CIR before seeking judicial relief, and both must be done within the two-year prescriptive period. In fact, this same issue was raised in *CBK Power Company Limited*, where the Court correctly held that:

> With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.[23]

Neither is there a violation of the doctrine of primary jurisdiction in this case. As discussed, Section 229 does not provide for a period within which the CIR must decide an administrative claim. Neither does it suggest that the taxpayer-claimant should wait for the CIR's action before the taxpayer can file a claim for refund with the court. If there was an option to wait in Section 229, a violation of the doctrine of primary administrative jurisdiction is possible where a taxpayer-claimant seeks judicial relief without giving the administrative agency an opportunity to act on the case.

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[22] *Guy v. Ignacio*, G.R. Nos. 167824 & 168622, July 2, 2010, 622 SCRA 678, 691; citations omitted.

[23] *CBK Power Company Limited v. CIR*, *supra* note 13, at 110; citation omitted.

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Nonetheless, the doctrine is not violated when a taxpayer has filed a prior administrative claim before the CIR and more importantly, when judicial relief is needed to comply with what Section 229 mandates — that the administrative claim and the subsequent appeal to the CTA filed within the two-year prescriptive period.

In light of the foregoing, I vote to **DENY** the Petition filed by the Commissioner of Internal Revenue.

CONCURRING OPINION

LAZARO-JAVIER, ***J.:***

I join the concurring opinion of my esteemed colleague, Senior Associate Justice Estela M. Perlas-Bernabe.

To recall, the core issue here is *whether the administrative and judicial claims for refund of overpaid income taxes should be simultaneously or successively filed.*[1]

We reckon with Sections 204 and 229 of the National Internal Revenue Code (NIRC), *viz.*:

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

x x x x

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

x x x x

Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.* — **No**

[1] Decision, p. 6.

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suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegal assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; Provided, however, That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

The NIRC explicitly provides that within two (2) years from tax payment, the claimant must first file an administrative claim with the Bureau of Internal Revenue (BIR) before initiating its judicial claim. Significantly, both claims must be filed within the crucial two (2)-year prescriptive period.

Here, as found by the Court of Tax Appeals, respondent filed its administrative claim on November 29, 2011, and subsequently, its judicial claim ten (10) days later or on December 9, 2011. Indubitably, both administrative and judicial claims were commenced within the two (2)-year prescriptive period.[2]

As eloquently discussed by my esteemed colleague, Senior Associate Justice Perlas-Bernabe,[3] and cited by the *ponencia* itself,[4] ***CBK Power Company Limited v. Commissioner of Internal Revenue is the case law in point***.[5] There, the Court rejected the CIR's claim that since the judicial claim was filed a

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[2] Decision, pp. 7-8.

[3] Reflections, p. 1.

[4] Decision, pp. 10-12.

[5] 750 Phil. 748, 762 (2015).

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mere five (5) days after the administrative claim was itself initiated, he was deprived of the opportunity to act on said claim; that CBK Power's failure to give him reasonable time to act thereon was violative of the doctrines of exhaustion of administrative remedies and primary jurisdiction; and the Court cannot, and should not, allegedly deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC.[6]

Citing ***P.J. Kiener Co., Ltd. v. David***,[7] the Court decreed that nothing in the law implies that the CIR must first act upon the taxpayer's claim, and that the taxpayer ought not to file a judicial claim unless he or she is first notified of the CIR's action. On the contrary, the claim filed with the CIR was intended primarily as a notice or warning that, unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will inevitably follow.

The Court cannot abandon the doctrine in ***CBK Power Company*** as regards the interpretation of Section 229 of the NIRC on the period for filing administrative and judicial claims for refund for erroneously or illegally collected taxes.

It is a basic principle in statutory construction that when the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. A cardinal rule in statutory construction is that when the **words and phrases of the statute** are **clear and unequivocal**, their **meaning** must be determined from the **very language employed**. In other words, **the statute must be taken to mean exactly what it says, and there is no room for construction or interpretation, there is only room for application.** ***Verba legis non est recendendum***.[8]

The wording of Section 229 of the NIRC is plain, clear, and unequivocal. Following the ***verba legis*** **doctrine**, the law must

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[6] *Id.*

[7] 92 Phil. 945, 947 (1953).

[8] *Amores v. House Electoral Tribunal,* 636 Phil. 600, 610 (2010).

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be applied exactly as worded, specifically that Section 229 only requires that an administrative claim be filed prior to a judicial claim for refund. Thus, so long as the administrative claim is filed prior to the judicial claim both within the two (2)-year prescriptive period, the required exhaustion of administrative remedies is therefore deemed complied with. Notably, **Section 229 does not bear any requirement that the CIR must be given *reasonable period* after the filing of the administrative claim for refund within which to resolve it, before the taxpayer can resort to judicial action. The two-year period stands alone for this purpose. The law however does not dictate upon the taxpayer when exactly, within the two-year window, he or she should file the twin cases, nor does it demand that there ought to be a reasonable time gap in between.**

As lucidly discussed by Senior Associate Justice Perlas-Bernabe, **the Legislature is presumed to have understood the language it used, the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute**.[9] In ***Guy v. Guy***,[10] petitioner filed a complaint to nullify the special stockholders' meeting on the ground that he did not receive the notice calling for the same. The Court, however, declined petitioner's view that the notice must actually be received, and not just sent, prior to the date of the meeting. Clearly, Section 50 of the Corporation Code only requires the sending/mailing of the notice of a stockholders' meeting to the stockholders. Had the lawmakers intended to include the stockholder's receipt of the notice, it would have clearly said so in the law itself. **As applied here, the Legislature did not contemplate any mandatory reasonable period from the filing of the administrative claim for refund of erroneously or illegally collected taxes before a judicial action can prosper. Had it been otherwise, it would have so provided in Section 229**

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[9] *Review Center Association of the Philippines v. Executive Secretary*, 602 Phil. 342, 362-363 (2009).

[10] *Guy v. Guy*, 785 Phil. 99, 111 (2016).

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of the NIRC. Indeed, the solemn power and duty of the Court to interpret and apply the law does not include the power to correct by reading into the law what is not written there.[11]

Verily, the law is clear and unambiguous and the Court is not in a position to modify the same without violating the proscription against judicial legislation. The primordial duty of the Court is merely to apply the law in such a way that it shall not usurp legislative powers by judicial legislation and that in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms. Hence, until such time that the law on the matter is amended, the Court must faithfully apply the same, exactly as worded.[12]

ACCORDINGLY, I vote to **DENY** the petition. I join Senior Associate Justice Perlas-Bernabe's suggestion that a copy of this Decision be furnished to the Senate and the House of Representatives for their information and for possible enactment of remedial legislation.

For the Banc's consideration.

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[11] *Intestate Estate of Manolita Gonzales v. People*, 626 Phil. 177, 194 (2010).

[12] *Corpuz v. People*, 734 Phil. 352, 416 (2014).