REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

HARTE-HANKS PHILIPPINES, INC., Petitioner,	**CTA Case Nos. 7894 and 7941**
	Members:
- versus -	**ACOSTA,** *Chairperson* **UY,** *and* **FABON-VICTORINO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 29 2012 ; 2:00 p.m.

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DECISION

UY, *J.*:

Petitioner, Harte-Hanks Philippines, Inc., filed two separate Petitions for Review, docketed as CTA Case Nos. 7894 and 7941, arising from the inaction of respondent, Commissioner of Internal Revenue, over its administrative claims filed on March 30, 2009 and June 24, 2009, respectively, for the refund or the issuance of tax credit certificate (TCC) of its alleged excess and unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to its zero-rated sales of services for the first and second quarters of calendar year 2007 in the aggregate amount of ₱ 4,159,034.86, broken down as follows:

CTA CASE NO.	PERIOD COVERED	AMOUNT
7894	January to March 2007	₱ 2,230,470.78
7941	April to June 2007	1,928,564.08
TOTAL		**₱ 4,159,034.86**

THE FACTS

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 4/F, Market! Market! Building, Bonifacio Global City, Taguig City,[1] and is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, with Taxpayer's Identification Number No. (TIN) 241-927-728-000-VAT.[2] It was incorporated on November 3, 2005 with the primary purpose of providing outsourcing customer relationship management solutions by rendering inbound or outbound call services to its customers.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of said office, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

Petitioner filed its original and amended Quarterly VAT Returns for the period covering January to June 2007 on the following dates:

[1] Par. 1, Admitted Facts, Consolidated Joint Stipulation of Facts and Issues (CJSFI), Docket (CTA Case No. 7894), p. 184.
[2] Par. 4, Admitted Facts, CJSFI, Docket (CTA Case No. 7894), p. 185. Exhibit "B", Docket, p. 328.
[3] Par. 3, Admitted Facts, CJSFI, Docket (CTA Case No. 7894), p. 185.
[4] Par. 2, Admitted Facts, CJSFI, Docket (CTA Case No. 7894), p. 185.

QUARTERLY VAT RETURN	DATE OF FILING
For the First Quarter of 2007(original)[5]	April 25, 2007
For the First Quarter of 2007 (amended)[6]	February 25, 2009
For the Second Quarter of 2007 (original)[7]	July 16, 2007
For the Second Quarter of 2007(amended)[8]	February 25, 2009

As already stated, on March 30, 2009 and June 24, 2009, petitioner filed its administrative claims with Revenue District Office No. 44 of the BIR a written application for the refund or issuance of TCC for its excess and unutilized input VAT covering the first and second quarters of calendar year 2007 in the amounts of ₱ 2,230,470.78 and ₱ 1,928,564.08, respectively.[9]

Alleging inaction on the part of respondent on the said administrative claims,[10] petitioner separately filed two (2) Petitions for Review on March 31, 2009 and June 30, 2009 docketed as CTA Case Nos. 7894 and 7941, respectively. At the instance of petitioner, these two cases were consolidated per this Court's Resolution dated August 27, 2009.[11]

In her separate Answers[12] respectively filed in **CTA Case Nos. 7894** and **7941**, respondent interposes similar Special and Affirmative Defenses, to wit:

- Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

[5] Exhibit "C", Docket, pp. 329 to 330.
[6] Exhibit "C-1", Docket, pp. 331 to 333.
[7] Exhibit "D", Docket, pp. 336 to 337.
[8] Exhibit "D-1", Docket, pp. 338 to 340.
[9] Par. 5, Admitted Facts, CJSFI, Docket (CTA Case No. 7894), p. 185. Exhibits "G" and "H", inclusive of sub-markings, Docket, pp. 355 to 365. NOTE: The administrative claim filed on June 24, 2009 covers also alleged unutilized input VAT attributable to zero-rated sales for the third and fourth quarters of calendar year 2007.
[10] Par. 14, Petition for Review, Docket (CTA Case No. 7894), p. 5; Par. 14, Petition for Review, Docket (CTA Case No. 7941), p. 5.
[11] Docket (CTA Case No. 7894), pp. 83 to 84; Docket (CTA Case No. 7941), pp. 82 to 83.
[12] Docket (CTA Case No. 7894), pp. 38 to 40; Docket (CTA Case No. 7941), pp. 50 to 53.

- Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected in violation of the tax laws relied upon by petitioner;

- Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable or creditable;

- It is incumbent upon the petitioner to prove by substantial and credible evidence that it has complied with the provisions of Sections 108, 112 and 204(C) in relation to Section 229 of the 1997 Tax Code, as amended upon which its claimed for refund is premised;

- In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*);

- Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, these are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

Additionally, in CTA Case No.7941, respondent further avers that:

- Well–settled is the rule that the interpretation placed upon a statute by executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, the courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R No: 112024, 302 SCRA 241, January 28, 1999).

- Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and, as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

Subsequently in her **CONSOLIDATED ANSWER** filed on October 14, 2009,[13] respondent raises these additional defenses:

"1. In addition to the special and affirmative defences raised by the respondent in his answer filed on June 8, 2009 and July 24, 2009, respondent respectfully submits that the filing of the instant petitions is pre-mature.

2. In as much as the respondent Bureau of Internal Revenue was not given sufficient time to finish the processing of the petitioner's refund as provided in paragraph (C) of Section 112 of the NIRC the petition must be dismissed for failure to exhaust administrative remedies. Paragraph C Section 112 of 1997 NIRC provides that:

> *(c)* ***Period within which Refund or Tax Credit of Input Taxes shall be Made.*** *– In proper cases, the Commissioner shall grant a tax credit/refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraphs (a) and (b) above.*
>
> *In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of the denial;*
> *otherwise, the decision will become final. However, if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty-day (120) period from the date of submission of the application but before the lapse of the two (2 year period from the date of filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals.' (Emphasis Ours)*

From the provision above the respondent is given 120 days from the filing of the claim for refund within which to process and decide the same and after the last day of the 120 days the taxpayer is given thirty days within which to elevate the case to the CTA. The petitioner filed its administrative claim for the refund of its unutilized input vat for the 1st quarter of 2007 on March 30, 2009 so the respondent has until July 18, 2009 to decide on the claim for refund and from that date the petitioner has until August 18, 2009 to file the same on the CTA. For the

[13] Docket (CTA Case No. 7894), pp. 94 to 95.

> 2nd quarter of 2007 the petitioner filed its administrative claim for refund of its unutilized input vat on June 24, 2009 so the respondent has until October 24, 2009 to decide on the claim for refund and from that date the petitioner has until November 24, 2009 to file a claim at the CTA. Obviously the two petitions for review filed by the petitioner on March 31, 2009 and June 30, 2009 respectively in this Honorable Court were filed before the lapse of the 120 day period. **In view of the fact that petitioner elevated its claim before the 120 day period has ended, there was therefore violation of the doctrine of exhaustion of administrative remedy (*STEAG STATE POWER, INC. vs CIR., CTA Case Nos. 7458 and 7554 August 27, 2009*)**".

Parenthetically, the said Consolidated Answer was simultaneously filed with a Motion for Leave of Court to File Consolidated Answer.[14]

On October 26, 2009, petitioner filed its Reply (To Respondent's Consolidated Answer dated October 12, 2009)[15] assailing respondent's Motion for Leave of Court to File Consolidated Answer on procedural grounds pursuant to Section 3, Rule 10 of the Revised Rules of Court and asserting that the doctrine of exhaustion of administrative remedies is not applicable to petitioner's case.

Respondent's Motion for Leave of Court to File Consolidated Answer was granted and the Consolidated Answer was admitted by the Court during the hearing held on February 16, 2010.[16] On the same date, petitioner presented its first witness, Leonardo G. Tabalon. On June 25, 2010, upon motion of petitioner,[17] this Court commissioned Ma. Milagros F. Padernal as Independent Certified Public Accountant (ICPA).[18] She testified in court on August 5, 2010[19] and on November 11, 2010[20].

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[14] Docket (CTA Case No. 7894), pp. 92 to 93.
[15] Docket (CTA Case No. 7894), pp. 98 to 129.
[16] Minutes of the Hearing held on February 16, 2010, Docket (CTA Case No. 7894), p. 154.
[17] Docket (CTA Case No. 7894), pp. 196 to 199.
[18] Minutes of the Hearing, Docket (CTA Case No. 7894), p. 219.
[19] Minutes of the Hearing, Docket (CTA Case No. 7894), p. 238.
[20] Minutes of the Hearing, Docket (CTA Case No. 7894), p. 261.

Thereafter, on April 14, 2011, petitioner filed its Formal Offer of Evidence (with Motion to Substitute Exhibits), submitting Exhibits "A" to "VV," and "AAA," inclusive of sub-markings; which this Court admitted, except Exhibits "E" and "F", in the Resolution dated June 14, 2011.[21]

Respondent's presentation of evidence was set on July 14, 2011, but due to late arrival of respondent's counsel (after the hearing had already been cancelled by the Court), the hearing was reset to August 9, 2011.[22] On this latter date, respondent's counsel again failed to appear, and upon motion of petitioner's counsel, this Court declared respondent to have waived her right to present evidence and required both parties to file their respective Memorandum. Petitioner was given a period of thirty (30) days from August 9, 2011 within which to file its Memorandum, while respondent was granted a period of thirty (30) days from notice to file her Memorandum.[23] Only petitioner complied.[24]

In the Resolution dated October 13, 2011,[25] the case was submitted for decision, taking into consideration petitioner's Memorandum filed on October 10, 2011, *sans* respondent's Memorandum.

Hence, this Decision.

THE ISSUES

The parties jointly stipulated the following main issue and sub-issues[26] for this Court's resolution, to wit:

> "8. The parties agreed that the main issue to be submitted for this Honorable Court's resolution is:

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[21] Docket, pp. 655 to 657.
[22] Minutes of the Hearing held on July 14, 2011, Docket (CTA Case No. 7894), p. 658.
[23] Minutes of the Hearing, Docket (CTA Case No. 7894), p. 659.
[24] Docket (CTA Case No. 7894), pp. 666 to 702.
[25] Docket (CTA Case No. 7894), p. 704.
[26] Stipulated Issues for Trial, CJSFI, Docket, pp. 186 to 187.

> 'Whether or not petitioner is entitled to a refund of and/or issuance of a TCC in the amounts of Php2,230,470.78 and Php1,928,564.08, or an aggregate amount of Php4,159,034.86, representing petitioner's excess and unutilized input VAT paid and incurred on its domestic purchases of goods and services attributable to its zero-rated sales of services for the first and second quarters of CY 2007.'

9. This issue may be broken down into the following sub-issues:

   9.1. Whether or not the input VAT paid and incurred by petitioner for the first and second quarters of CY 2007 amounting to Php2,230,470.78 and Php1,928,564.08, respectively, or an aggregate amount of Php4,159,034.86, is duly substantiated by VAT invoices and official receipts;

   9.2. Whether or not petitioner had zero-rated sales during the first and second quarters of CY 2007;

   9.3. Whether or not the input VAT on petitioner's purchases of goods and services for the first and second quarters of CY 2007 is attributable to its zero-rated sales of services for the same period;

   9.4. Whether or not petitioner's excess and unutilized input VAT for the first and second quarters of CY 2007 amounting to Php2,230,470.78 and Php1,928,564.08, respectively, or an aggregate amount of Php4,159,034.86, was applied or credited against any output VAT of the petitioner in the same quarter and subsequent quarter or quarters; and

   9.5. Whether or not petitioner's administrative and judicial claims for refund of or issuance of a TCC for its excess and unutilized input VAT paid and incurred by petitioner on its purchases of goods and services attributable to its zero-rated sales of services for the first and second quarters of CY 2007 were filed within the two-year period prescribed under the Tax Code."

Petitioner's Arguments:

Petitioner claims that its services rendered during the first and second quarters of taxable year 2007 to Harte-Hanks Response Management/Austin, Inc., a non-resident foreign corporation engaged in business conducted outside of the Philippines, of which services were paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP, qualify as VAT zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended. It contends that its excess and unutilized input VAT of ₱ 4,159,034.86, covering the first and second quarters of taxable year 2007, was not applied or credited against any output VAT during the same or subsequent quarters.

According to petitioner, its administrative and judicial claims were filed within the two-year period prescribed under the NIRC of 1997; and that the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[27] *(Aichi* case*)*, stating that failure to observe the 120-day period under Section 112(C) of the NIRC of 1997 bars the taxpayer from seeking judicial recourse before this Court cannot be the controlling jurisprudence with respect to the issue of timeliness of filing its judicial claim for refund. It submits that Section 229 of the NIRC of 1997 remains to be the legal foundation for the rule that a taxpayer is given two (2) full years within which to file both its administrative and judicial claims for refund of any illegally, erroneously or excessively paid or collected national internal revenue tax.

Moreover, petitioner avers that the High Tribunal, sitting *en banc,* is the only one that can reverse or modify a doctrine or principle of law laid down by the Supreme Court in a decision rendered *en banc* or in division. Petitioner also contends that all cases prior or subsequent to the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[28], holding that the two-year rule applies to claims for refund of excess input VAT, could not have been validly overturned by the doctrine made in the *Aichi case* unless such a ruling

[27] G.R. No. 184823, October 6, 2010.
[28] G.R. Nos. 141104 and 148763, June 8, 2007.

is reached by the Supreme Court *en banc*. Allegedly, just as laws should only be applied prospectively, judicial decisions such as the *Aichi case* should be applied prospectively, citing Articles 4 and 8 of the Civil Code.

Finally, petitioner claims that the ground of prematurity is premised on the principle of exhaustion of administrative remedies which is not jurisdictional and may be disregarded when there is *estoppel* or waiver on the part of the administrative agency concerned. However, as alleged by petitioner, the issue of prematurity was never raised in respondent's Answers in CTA Case Nos. 7894 and 7941, but only in her Consolidated Answer, which should be considered as "legally non-existent" for failure to comply with the requirements of notice of hearing under Sections 4 and 5, Rule 15 of the Rules of Court; hence, the defense of non-exhaustion of administrative remedies is deemed waived.

Respondent's Counter-Arguments:

Respondent argues, among others, that inasmuch as the BIR was not given sufficient time to finish the processing of petitioner's refund claim as provided in Section 112(C) of the NIRC, the two petitions must be dismissed for failure to exhaust administrative remedies.

Respondent points out that petitioner filed its administrative claim for the refund of its unutilized input VAT for the first quarter of 2007 on March 30, 2009, so respondent had until July 28, 2009 to decide on the claim for refund, and from that date, petitioner had until August 28, 2009 to file a judicial claim with this Court. For the second quarter of 2007, petitioner filed its administrative claim for refund of its unutilized input VAT on June 24, 2009; thus, respondent had until October 22, 2009 to decide on the claim for refund, and from that date, petitioner had until November

21, 2009 to file its judicial claim with this Court. However, the two Petitions for Review filed on March 31, 2009 and June 30, 2009 were allegedly filed before the lapse of the 120-day period.

THIS COURT'S RULING

For an orderly disposition of this case, We shall first resolve the last sub-issue raised by the parties which relates to the timeliness of the filing of the administrative and judicial claims.

The administrative claims were timely filed.

Section 112 of the NIRC of 1997, as amended by Republic Act No. (RA) 9337,[29] provides as follows:

> "SEC. 112. *Refund or Tax Credits of Input Tax.—*
>
> (A) *Zero-rated or Effectively Zero-rated Sales.—* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made**, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.—* In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application** filed in accordance with 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

[29] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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**.
xxx xxx xxx." *(Emphases supplied)*

It is clear from the above-quoted Section 112(A) that the application for the issuance of a TCC or refund of creditable input tax due or paid attributable to zero-rated sales or effectively zero-rated sales must be made *"within two (2) years after the close of the quarter when the sales were made"*.

In this case, since both administrative claims were filed with the BIR within two (2) years after the close of the respective taxable quarters when the sales were made, *i.e.*, after March 31, 2007 and June 30, 2007, the same were filed on time on March 30, 2009 and June 24, 2009, respectively.

The instant Petitions for Review were prematurely filed.

Notwithstanding the timely filing of the administrative claims, the instant Petitions for Review were **prematurely** filed on March 31, 2009 and June 30, 2009, respectively, since they were filed before the expiration of the 120-day period prescribed under the above-quoted Section 112(C).

A summary of the pertinent dates involved in this case is presented as follows:

Periods	***Filing dates of administrative claims***	***Last day of the 120-day period under Section 112(C) from the filing of the administrative claims***	***Last day of the 30-day period within which to file a petition for review under Section 112(C), NIRC of 1997, amended by RA 9337, and Section 11, RA 1125, as amended by RA 9282***	***Filing dates of the instant petitions for review***
1st Quarter 2007	***March 30, 2009***	***July 28, 2009***	***August 27, 2009***	***March 31, 2009 (for CTA Case No. 7894)***
2nd Quarter 2007	***June 24, 2009***	***October 22, 2009***	***November 21, 2009***	***June 30, 2009 (for CTA Case No. 7941)***

Although it would seem, from the wordings employed by the above-quoted Section 112, that the date of filing of the administrative claim is separate and distinct, albeit subsequent, from the date of submission of the complete documents in support thereof, it is apparent that petitioner, upon filing the said administrative claims, simultaneously and respectively submitted the complete documents in support thereof. This is manifested in petitioner's administrative claims, wherein the following statements were respectively indicated, *viz*:

Administrative claim filed on March 30, 2009[30]

"In support of its claim for refund, the Company submits the following documents:

1. Certificate of Incorporation issued by the Securities and Exchange Commission (attached hereto as Annex 'A');
2. BIR Certificate of Registration (attached hereto as Annex 'B');
3. Summary of purchases of goods and services for the first quarter of CY 2007 (attached hereto as Annex 'C'); and
4. Application for Tax Credits/Refunds [BIR Form No. 1914] (attached hereto as 'Annex 'D')."

Administrative claim filed on June 24, 2009[31]

"In support of its claim for refund, the Company submits the following documents:

1. Certificate of Incorporation issued by the Securities and Exchange Commission (attached hereto as Annex A);
2. BIR Certificate of Registration (attached hereto as Annex B);
3. Summary of purchases of goods and services for the second quarter to the fourth quarter of CY 2007 (attached hereto as Annexes C-1, C-2 and C-3, respectively);[32] and
4. Application for Tax Credits/Refunds [BIR Form No. 1914] (attached hereto as Annex D)."

[30] Exhibit "G", Docket (CTA Case No. 7894), p. 358.
[31] Exhibit "H", Docket (CTA Case No. 7894), p. 364.
[32] Refer to NOTE on footnote no. 5.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[33] the Supreme Court held:

> "A taxpayer is entitled to a refund either by authority of a statute expressly granting such right, privilege, or incentive in his favor, or under the principle of *solutio indebiti* requiring the return of taxes erroneously or illegally collected. In both cases, **a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim**.
> xxx xxx xxx
>
> Section 112(D)[34] of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. **However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days**.
>
> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
>
> **Respondent's** (petitioner in these cases) **assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.**
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.' The phrase 'within two (2) years x x x apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.

[33] G.R. No. 184823, October 6, 2010.
[34] Now Section 112(C), as renumbered by RA 9337.

> This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.
>
> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D)[35] of the NIRC, which already provides a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D)[36] of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**
>
> With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.
>
> **In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch no jurisdiction was acquired by the CTA.**
> xxx xxx xxx." *(Emphases supplied)*

The foregoing jurisprudence is clear on the importance of the lapse of the 120-day period set forth in the above-quoted Section 112, in case of the inaction of the respondent on the refund claim under the said provision, before filing an appeal before this Court. Furthermore, the High Court used the phrase *"no jurisdiction was acquired by the CTA"*, thereby indicating that the premature filing with this Court is jurisdictional. In other words, the said Court could not have used such phrase so loosely, if the premature filing with this Court is not jurisdictional.

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[35] Id.
[36] Id.

But even assuming *arguendo* that We ought to turn a blind eye on the instructive ruling in the *Aichi* case, a closer examination of the pertinent law on the jurisdiction of this Court would reveal that the premature filing of the refund claim under Section 112 indeed affects its jurisdiction. Apropos, the rule is that in order to ascertain whether a court has jurisdiction or not, the provisions of the law should be inquired into.[37]

Section 7 of RA 1125[38], as amended by RA 9282[39], enumerates over which cases this Court has exclusive appellate jurisdiction. In part, it provides:

> "SEC. 7. *Jurisdiction.*— The CTA shall exercise:
>
> (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
> xxx xxx xxx
>
> (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 provides a specific period for action, <u>in which case the inaction shall be deemed a denial</u>**; *(Emphases and underscoring supplied)*
>
> xxx xxx xxx."

Furthermore, Section 11 of the same law prescribes how the said appeal should be taken, *viz*:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the

[37] *Soller, et al. vs. Sandiganbayan, et al.*, G.R. Nos. 144261-62, May 9, 2001.
[38] AN ACT CREATING THE COURT OF TAX APPEALS.
[39] 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.

> Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**.
>
> **Appeal should be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. xxx *(Emphases supplied)*
> xxx xxx xxx."

One of the *"inaction*(s) *by the Commissioner of Internal Revenue"* being contemplated in these provisions is that found in Section 112 of the NIRC of 1997,[40] as amended by RA 9337,—the provision to which petitioner anchors the instant claim for refund or issuance of a TCC—wherein it *"provides a specific period of action", i.e.*, a period of 120 days from the date of submission of complete documents for the Commissioner of Internal Revenue, to grant, in proper cases, a refund or to issue a tax credit certificate for creditable input taxes due or paid attributable to zero-rated or effectively zero-rated sales. The lapse of such 120-day period is so crucial since it is only at such time that *"the inaction shall be deemed a denial"*.

Applying Sections 7(a)(2) and 11 of RA 1125, as amended by RA 9282, in relation to Section 112(C) of the NIRC of 1997, as renumbered by RA 9337, when respondent respectively filed its appeal via the instant Petitions for Review on March 31, 2008 and June 30, 2009, the specified period of 120 days' inaction on the part of the Commissioner of Internal Revenue over the administrative claims of petitioner

[40] The other *"inaction"* is found in Section 228 of the NIRC of 1997.

have not fully lapsed, as to clothe this Court with jurisdiction to entertain herein petitions for review within the bounds of law.

As held in *Yao vs. Court of Appeals, et al.*[41]

> "The right to appeal is **not** a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. Since the right to appeal is not a natural right nor a part of due process, **it may be exercised only in the manner and in accordance with the provisions of law**. Corollarily, **its requirements must be strictly complied with**.
>
> "**That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional.**" *(Emphases supplied)*

Moreover, it should be recalled that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[42] Relative thereto, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[43]

The* Aichi *case is applicable.

In arguing that the *Aichi* case is not applicable, petitioner strongly contends that: *first*, the said case practically ignored the established legal significance of Section 229 of the NIRC of 1997 to claims for refund of unutilized input VAT; *second*, just as laws should be applied prospectively, judicial decisions, such as the *Aichi* case, should also be applied prospectively; and *third*, the ground of prematurity is premised on the principle of exhaustion of administrative remedies, which is not jurisdictional.

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[41] G.R. No. 132428, October 24, 2000.
[42] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[43] Section 1, Rule 9, Rules of Court.

Petitioner is gravely mistaken.

It must be noted that Section 229 of the NIRC of 1997 is a general provision in our revenue code that pertains to "Recovery of Tax Erroneously or Illegally Collected" in general. Said Section reads as follows:

> "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 supplied)*

We must however not lose sight of the provisions of Section 112 of the same Code which refers to "Refund or Tax Credits of Input Tax", as this section provides a specified period and manner in pursuing a refund claim or issuance of tax credit on input tax arising from zero-rated or effectively zero-rated sales. For clarity, We quote the pertinent provisions of said Section, to wit:

> "SEC. 112. *Refund or Tax Credits of Input Tax.*—
>
> (A) *Zero-rated or Effectively Zero-rated Sales.*— Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made**, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx
>
> xxx xxx xxx

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

In effect therefore, Section 229 of the NIRC of 1997, being a general provision, is inapplicable insofar as claims for the issuance of a TCC or refund of creditable input tax due or paid attributable to zero-rated or effectively zero-rated sales as provided under Section 112 of the same NIRC are concerned.

Moreover, as earlier mentioned, Section 7(a)(2) of RA 1125, as amended by RA 9282, now declares that *"where the National Internal Revenue Code provides a specific period for action"*, as in the case of said Section 112(C) of the NIRC of 1997, as renumbered by RA 9337, and that where there was an *"inaction"* on the part of the Commissioner of Internal Revenue within such period, *"the inaction shall* (already) *be deemed a denial"*. In such case, pursuant to Section 11 of the same RA 1125, as amended by RA 9282, "(a)*ppeal should be made by filing a petition for review...within thirty (30) days...from the expiration of the period fixed by law to act thereon"*.

In view of these provisions, it becomes apparent that the application of Section 229 of the NIRC of 1997 over said claims cannot be made. One of the rules of statutory construction is that all parts of a statute are to be harmonized and reconciled so that effect may be given to each and every part thereof, and that conflicting intentions in the same statute are never to be supposed or so regarded, unless forced upon the court by an unambiguous language.[44]

In this connection, the following irreconcilable differences between Section 229 and Section 112 are hereby noted, to wit:

1. The above-quoted Section 229, for the purpose of refund or credit, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor.[45] Under said provision, the two-year prescriptive limit starts *"from the date of payment of the tax"*; while under Section 112, it starts from *"the close of the taxable quarter when the sales where made"*.
2. The two-year prescriptive period under Section 229 refers to the filing of both the administrative and judicial claims, while the two-year prescriptive period under Section 112(A) refers only to administrative claims.
3. A cursory reading of Section 229 would reveal that, unlike the said Section 112, it does not provide for a procedure of appeal in case of denial, whether full or partial, or in case of an implied denial or inaction by the Commissioner of Internal Revenue of the administrative claim. Section 229 merely prohibits the filing of a suit or proceeding in any court for the recovery of taxes, penalties and certain sums, beyond the two-year period *"from the date of payment of the tax"*.

The pronouncement made by the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal*

[44] *People of the Philippines vs. Garcia*, G.R. No. L-2873, February 28, 1950.
[45] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.*, G.R. No.172129, September 12, 2008.

Revenue[46] (hereinafter referred to as the "*Atlas* case"), to the effect that the filing of the administrative and judicial claims for refund of input VAT on zero-rated sales should be made within the two-year prescriptive period, cannot be made as the controlling doctrine in disposing the instant cases. It must be emphasized that the *Atlas* case involved the refund/credit of the input VAT on purchases of capital goods and on its zero-rated sales in the taxable quarters of the years 1990 and 1992. Thus, the said case was decided interpreting the pertinent provisions of the NIRC of 1977 [Presidential Decree No. (PD) 1158], as amended by Executive Order No. (EO) 273[47] (the law then in force), which took effect on January 1, 1988.[48] Upon the other hand, the *Aichi* case entailed the refund/credit of input VAT for the period July 1, 2002 to September 30, 2002. Hence, it was decided applying and interpreting Section 112 of the NIRC of 1997, which took effect on January 1, 1998.[49]

To bolster this point, a comparison of the provisions in question is in order, to wit:

NIRC of 1977, as amended by EO 273	*NIRC of 1997 (renumbered by RA 9337)*
SEC. 106. *Refunds or tax credits of input tax.* – x x x. (b) *Zero-rated or effectively zero-rated sales.* – Any person, except those covered by paragraph (a) above, whose sales are 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.	SEC. 112. *Refunds or Tax Credits of Input Tax.* – (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent

[46] G.R. Nos. 141104 and 148763, June 8, 2007.
[47] ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES.
[48] Section 30, Executive Order No. 273, series of 1987.
[49] Section 8, Republic Act No. 8424.

x x x x (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.	that such input tax has not been applied against output tax: 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 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.** *(Emphasis supplied)*

It can be easily discerned from the foregoing comparison that in the refund of input VAT attributable to zero-rated sales, unlike Section 106 of the NIRC of 1977, as amended by EO 273, Section 112 of the NIRC of 1997 spelled out the judicial remedy, by specifying the court where appeal should be taken, and the period within which the same appeal should be made, in case of full or partial denial of the claim, or in case of inaction on the part of the Commissioner of Internal Revenue. Thus, considering that the two cases were decided under different sets of law, it cannot be said that the *Aichi* case overturned or abandoned the doctrinal pronouncement in the *Atlas* case.

The deliberate selection in a statute of language differing from that of earlier acts on the subject indicates that a change of law was intended.[50] In other words, the change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had.[51] Logically, a different meaning of the law entails a different interpretation. An amended act is ordinarily to be construed as if the original statute had been repealed, and a new and independent act in the amended form had been adopted in its stead.[52]

Finding that the *Aichi* case did not overturn or abandon the *Atlas* case, the call for the application of Section 4(3), Article VIII of the 1987 Constitution that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*", is gravely misplaced. Such being the case, petitioner's audacious claim that the Division of the Supreme Court (*i.e.*, its First Division), which rendered the *Aichi* case, was *"in excess of jurisdiction"* deserves no credence.

Furthermore, it is presumed that said Division of the Supreme Court was acting in the lawful exercise of jurisdiction.[53] Apart from its bare assertion, petitioner never presented any evidence to contradict or overcome such presumption.

In the same vein, petitioner's contention that the *Aichi* case should be applied prospectively is without merit. The Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it merely

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[50] *Portillo vs. Salvani*, G.R. No. L-32181, March 10, 1930, citing *Brewster vs. Gage* [1930], U.S. Sup. Ct. Advance Opinions, p. 183.
[51] *Commissioner of Customs vs. Court of Tax Appeals, et al.*, G.R. Nos. L-48886-88, July 21, 1993.
[52] *Estrada vs. Caseda*, No. L-1560, October 25, 1949, 84 Phil. 791.
[53] Section 3(n), Rule 131, Rules of Court.

establishes the contemporaneous legislative intent that the interpreted law carried into effect.[54]

In light of the foregoing considerations, it becomes unnecessary to resolve the other issues raised in these consolidated cases.

WHEREFORE, premises considered, the instant Petitions for Review are hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ON LEAVE
ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

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[54] *Victorias Milling Co., Inc. vs. Intermediate Appellate Court, et al.*, G.R. No. 66880, August 2, 1991.