Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

HARTE-HANKS PHILIPPINES, INC., Petitioner,	EB Case No. 949 (CTA Case Nos. 7975 & 7998)
- versus -	Members: DEL ROSARIO, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *J.J.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 28 2014 apolinario 9:05 a.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review,[1] filed by petitioner Harte-Hanks Philippines, Inc., with the Court En Banc, seeking the reversal of the Decision dated July 2, 2012 (Assailed Decision)[2] and Resolution dated October 5, 2012 (Assailed Resolution)[3] of the CTA Second Division in CTA Case Nos. 7975 & 7998 dismissing petitioner's claim for refund of its excess and unutilized input VAT for the 3rd quarter of 2007 (CTA Case No. 7975) for lack of jurisdiction and denying petitioner's claim for refund for the 4th quarter of 2007 (CTA Case No. 7998) for insufficiency of evidence.

[1] En Banc Rollo, pp. 6-61
[2] Division Docket, pp. 324-349
[3] Ibid, pp. 438-445

The facts of the case as narrated from the "Assailed Decision"[4] are as follows:

> "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. It was registered with the Securities and Exchange Commission (SEC) on November 3, 2005, the primary purpose of which is 'to engage in the business of outsourcing customer relationship management solutions by rendering inbound or outbound call services to entities from different countries on its own behalf or on behalf of any affiliate, including but not limited to technical help desk support, reservations, account management, pre-sales consulting, web assistance, customer marketing and acquisition, product sales and such other similar services through a remote customer contact center which shall utilize multiple channels of communication such as voice, email, fax, web-based support and such other telecommunications infrastructure; to engage in other information technology-enabled services including but not limited to data encoding transcribing and processing; and to engage in operations to support the services set forth above.'
>
> It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer as evidenced by its Certificate of Registration No. OCN9RC0000253275 dated November 17, 2005, with Taxpayer's Identification Number (TIN) 241-927-728-000.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, with the authority to act as such, including the power to decide, approve and grant claims for issuance of a tax credit certificate or refund of overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> In the third and fourth quarters of the taxable year 2007, petitioner rendered services in the Philippines to

[4] Decision, Id., pp 324-338

non-resident foreign corporation, HH Austin Merger, Inc. (HAMI), which is engaged in business conducted outside of the Philippines. The services were paid in US dollars, an acceptable foreign currency, and accounted for in accordance with the rules and regulations of *the Bangko Sentral ng Pilipinas* (BSP).

Petitioner filed its original and amended Quarterly VAT Returns for July to December 2007 on the following dates:

Exhibit	Period Covered	Date of Filing
'J'	July to September 2007	October 19, 2007
'K'	October to December 2007	January 25, 2008
'J-1'	July to September 2007 (Amended Return)	February 25, 2009
'K-1'	October to December 2007 (Amended Return)	March 23, 2009

On June 24, 2009, petitioner filed an administrative claim with the BIR Revenue District Office No. 44 for the refund of or issuance of a tax credit certificate (TCC) for its excess and unutilized input VAT covering the second, third, and fourth quarters of the taxable year 2007.

Due to respondent's inaction on petitioner's administrative claim for refund of its excess and unutilized input VAT for the third and fourth quarters of the taxable year 2007, petitioner filed two (2) separate Petitions for Review docketed as CTA Case Nos. 7975 and 7998 on September 29, 2009 and November 20, 2009, respectively.

At the instance of petitioner, the two (2) cases were consolidated on February 18, 2010.

Respondent interposed the following Special and Affirmative Defenses in her Answers to the Petitions for Review docketed as CTA Case Nos. 7975 and 7998:

<u>CTA Case No. 7975</u>

> '4. Granting arguendo that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been or erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.

6. It is incumbent upon the petitioner to prove by substantial and credible evidence that it is entitled for a refund or for issuance of a Tax Credit Certificate.

7. 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).

8. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.

9. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.

10. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the 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).

11. Claims for refund arel (sic) 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).

<u>CTA Case No. 7998</u>

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

> 6) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 7) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable;
>
> 8) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended upon which its claimed for refund is premised;
>
> 9) 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)* ;
>
> 10) 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).'*

On June 2, 2010, upon Motion of petitioner, this Court appointed Ms. Ma. Milagros F. Padernal as Independent Certified Public Accountant (CPA).

During trial, petitioner presented as witnesses Mr. Leonardo G. Tabalon, its Controller and Ms. Ma. Milagros F. Padernal, the Court-commissioned Independent CPA.

On March 25, 2011, petitioner filed its Formal Offer of Evidence (with Motion to Remark Exhibits), with respondent's comment. This Court in its Resolution dated August 15, 2011, admitted Exhibits 'AA' to 'ZZ' inclusive of their sub-markings.

The documentary evidence formally offered and admitted are as follows:

Exhibits:	Description:
A	Petitioner's Articles of Incorporation duly registered with the Securities and Exchange Commission (SEC)
B	Petitioner's Certificate of Registration with the Bureau of Internal Revenue (BIR)
C	Certificate of Incorporation of HH Austin Merger, Inc. (HAMI)
D	Certification issued by the Secretary of State of the State of Delaware dated July 24, 2009
E	Certification of Non-Registration of Company issued by the Philippine SEC on August 20, 2009
F	Certification of Non-Registration of Company issued by the Philippine SEC on December 7, 2009
J	Petitioner's Original Quarterly VAT Return for the 3rd quarter of CY 2007 filed on October 19, 2007
J-1	Petitioner's Amended Quarterly VAT Return for the 3rd quarter of CY 2007 filed on February 25, 2009
K	Petitioner's Original Quarterly VAT Return for the 4th quarter of CY 2007, filed on January 25, 2008 via the BIR's electronic filing and payment system (EFPS) with reference no. 100800002024195 (certified true copy)
K-1	Petitioner's Amended Quarterly VAT Return for the 4th quarter of CY 2007, filed on March 23, 2009 via the BIR's EFPS with reference no. 100900002855612 (certified true copy)
M	Petitioner's administrative claim for refund of its excess and unutilized input VAT for the 2nd to 4th quarters of CY 2007, filed with the RDO No. 44 of the BIR on June 24, 2009
M-1	Signatures of Petitioner's tax counsel, Salvador & Associates, particularly, Maria Rosario L. Bernardo, Martin Ignacio D. Mijares, and lan Dominic M. Pua
N	Petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2008, filed on May 29, 2009 via the BIR's EFPS with reference no. 100900002995956 (certified true copy)

O	Petitioner's Amended Quarterly VAT Return for the 2nd Quarter of CY 2008, filed on May 29, 2009 via the BIR's EFPS with reference no. 100900002996435 (certified true copy)
P	Petitioner's Amended Quarterly VAT Return for the 3rd Quarter of CY 2008 filed on June 2, 2009 via the BIR's EFPS with reference no. 100900003000412 (certified true copy)
Q	Petitioner's Amended Quarterly VAT Return for the 4th Quarter of CY 2008, filed on June 2, 2009 via the BIR's EFPS with reference no. 1 009000030000697 (certified true copy)
R	Petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2009, filed on July 7, 2009 via the BIR's EFPS with reference no. 100900003067334 (certified true copy)
S	Petitioner's Original Quarterly VAT Return for the 2nd Quarter of CY 2009, filed on July 27, 2009 via the BIR's EFPS with reference no. 100900003116534 (certified true copy)
T	Sworn Statement of Mr. Leonardo G. Tabalon to Questions Propounded by Atty. lan Dominic M. Pua dated April 13, 2010
T-1	Signature of Mr. Leonardo G. Tabalon
U	Supplemental Sworn Statement of Mr. Leonardo G. Tabalon to Questions Propounded by Atty. lan Dominic M. Pua dated June 1, 2010
U-1	Signature of Mr. Leonardo G. Tabalon
V	ICPA Report dated July 9, 2010, filed with the Court of Tax Appeals on July 9, 2010
V-1	Signature of Ms. Ma. Milagros F. Padernal
W	Supplemental Sworn Statement of Mr. Leonardo G. Tabalon to Questions Propounded by Atty. Anthony Raphael V. Jacoba dated August 3, 2010
W-1	Signature of Mr. Leonardo G. Tabalon

X	Sworn Statement of Ms. Ma. Milagros F. Padernal to Questions Propounded by Atty. Anthony Raphael V. Jacoba dated August 3, 2010
X-1	Signature of Ma. Milagros F. Padernal
Y	Certificate from J.P. Morgan Chase Bank, N.A. dated August 31 , 2010
Z	Supplemental Sworn Statement of Mr. Leonardo G. Tabalon to Questions Propounded by Atty. Mignonette E.G.D. Balein dated October 8, 2010
Z-1	Signature of Mr. Leonardo G. Tabalon
AA	Schedule of zero-rated sales and collections from HH Austin Merger, Inc. (formerly Harte- Hanks Response Management Austin, L.P.): Supported by original statements of account, official receipts, credit advices and bank statements for the 3rd and 4th quarters of CY 2007
AA 1 to AA2	Statements of Account for services for the 3rd and 4^{th} quarters of 2007
AA1a to AA1a3 and AA2a to AA2a2	Official Receipts
AA1b to AA1b3 and AA2b to AA2b2	Credit advices
AA1c to AA1c3 and AA2c to AA2c2	Bank Statements
AA-1	Summary of Zero-Rated Sales and Collections
BB	Schedule of Input Taxes on Capital Goods not exceeding Php1 Million: Supported by original VAT invoices in the Petitioner's name for the 3rd and 4th quarters of CY 2007
BB1 to BB15	VAT invoices issued by various suppliers
BB1a to	Journal Entry

BB15a	
BB1b to BB15b	General Ledger
BB1c to BB15c	Fixed Assets Register
CC	Schedule of Input Taxes on Capital Goods Not Exceeding Php1 Million: supported by Journal Entry, General Ledger and Fixed Assets Register for the 3rd and 4th quarters of CY 2007
CC1	Journal Entry
CC1a	General Ledger
CC1b	Fixed Assets Register
DD	Schedule of Input Taxes on Capital Goods Exceeding Php1 Million: Supported by original VAT invoices in the Petitioner's name for the 3rd and 4th quarters of CY 2007
DD1 to DD41	VAT Invoices issued by various suppliers
DD1a to DD41a	Journal Entry
DD1 b to DD41b	General Ledger
DD1c to DD41c	Fixed Assets Register
EE	Schedule of Input Taxes on Capital Goods Exceeding Php1 Million: Supported by original VAT invoices in the Petitioner's name marked as VAT exempt sale for the 3rd and 4th quarters of CY 2007
EE1	VAT Invoice issued by various suppliers
EE1a	Journal Entry
EE1b	General Ledger
EE1c	Fixed Assets Register
FF	Schedule on Input Taxes on Capital Goods Exceeding Php1 Million: Supported by Journal Entry,

	General Ledger and Fixed Assets Register for the 3rd and 4th quarters of CY 2007
FF1 to FF2	Journal Entry
FF1a to FF2a	General Ledger
FF1 b to FF2b	Fixed Assets Register
GG	Schedule of Input Taxes on Purchases of Services: Supported by original VAT Official Receipts in the Petitioner's Name for the 3rd and 4th quarters of CY 2007
GG1 to GG99	VAT Official Receipts issued by various suppliers
HH	Schedule of Input Taxes on Purchases of Services: Supported by original VAT Official Receipts in the Petitioner's name marked as VAT Exempt Sale for the 3rd and 4th quarters of CY 2007
II	Schedule of Input Taxes on Purchases of Services: not supported by original VAT Official Receipts in the Petitioner's name for the 3rd and 4th quarters of CY 2007
JJ	Schedule of Input Taxes on Purchases of Goods other than Capital Goods: Supported by original VAT invoices in the Petitioner's name
JJ1 to JJ80	VAT invoices issued by various suppliers
KK	Schedule of Input Taxes on Purchases of Goods other than Capital Goods: Supported by original VAT invoices in the Petitioner's name with no BIR permit to print
KK1 to KK6	VAT invoices issued by various suppliers
LL	Schedule of Input Taxes on Purchases of Goods other than Capital Goods: Not supported by original VAT invoices in the Petitioner's name with no BIR permit to print

MM	Summary of quarterly VAT returns from the 3rd quarter of taxable year of 2007 to the 1st quarter of the taxable year 2010
NN	Transfer Pricing Agreement between Harte- Hanks Response Management/Austin L.P. and Harte-Hanks Philippines, Inc.
OO	Audited Financial Statements for the Year Ended December 31 , 2007
PP	Reissued Audited Financial Statements for the Year Ended December 31 , 2007
QQ	Quarterly VAT Return for the 3rd quarter of the taxable year 2009
RR	Quarterly VAT Return for the 4th quarter of the taxable year 2009
SS	Quarterly VAT Return for the 1st quarter of the taxable year 2010
TT	2007 Annual Income Tax Return
UU	2007 Amended Annual Income Tax Return
VV	Philippine Veterans Bank BTR-BIR Deposit Slip
WW	Supplemental ICPA Report dated November 2, 2010 for CTA Case Nos. 7894 & 7941, filed with the Court of Tax Appeals on November 3, 2010
WW-1	Signature of Ms. Ma. Milagros F. Padernal
XX	Supplemental Sworn Statement of Ms. Ma. Milagros F. Padernal dated November 3, 2010
XX-1	Signature of Ms. Ma. Milagros F. Padernal
YY	Supplemental Sworn Statement of Mr. Leonardo G. Tabalon to Questions Propounded by Atty. Jerome B. Arnaldo dated November 30, 2010
YY-1	Signature of Mr. Leonardo G. Tabalon
VV (to be remarked as ZZ)	Supplemental ICPA Report dated November 2010 for CTA Case Nos. 7975 & 7998, filed with the Court of Tax Appeals on November 3, 2010

VV-1 (to be Remarked as ZZ-1)	Signature of Ms. Ma. Milagros F. Padernal

On the other hand, during the April 27, 2011 hearing, respondent manifested to this Court that petitioner's administrative claim for refund has no final report and that she is submitting the case for decision based on the pleadings.

Thus, this Court granted the parties a period of thirty (30) days from receipt of this Court's Resolution on petitioner's Formal Offer of Evidence within which to file their respective Memorandum.

In the Resolution dated October 24, 2011, the case was submitted for decision, taking into consideration petitioner's Memorandum filed on October 17, 2011 and the Report dated October 20, 2011 of the Records Division that no Memorandum has been filed by respondent.

The parties' jointly stipulated issues[5] state those submitted for this Court's resolution, as follows:

> '6. The parties agreed that the main issue for decision of this Court is: 'Whether or not petitioner is entitled to the refund of or issuance of a tax credit certificate (TCC) in the amounts of P3,235,804.19 and P3,482,717.92, or an aggregate amount of P6,718,522.11, representing petitioner's excess and unutilized input VAT paid and incurred on its purchases of goods and services attributable to its zero-rated sales of services for the third and fourth quarters of calendar year (CY) 2007.'
>
> 7. This issue may be broken down into the following sub-issues:
>
> 7.1. Whether or not the input VAT paid and incurred by petitioner for the third and fourth quarters of CY 2007 amounting to P3,235,804.19 and P3,482,717.92, respectively, or an aggregate amount of P6,718,522.11, is duly substantiated by VAT invoices and official receipts;

[5] Stipulated Issues for Trial, Consolidated Joint Stipulation of Facts and Issues, Docket, pp. 115-117

> 7.2. Whether or not petitioner had zero-rated sales during the third and fourth quarters of CY 2007;
>
> 7.3. Whether or not the input VAT on petitioner's purchases of goods and services for the third and fourth quarters of CY 2007 is attributable to its zero-rated sales of services for the same period;
>
> 7.4. Whether or not petitioner's excess and unutilized input VAT for the third and fourth quarters of CY 2007 amounting to P3,235,804.19 and P3,482,717.92, respectively, or an aggregate amount of P6,718,522.11 , was applied or credited against any output VAT of the petitioner during same quarters and subsequent quarter or quarters; and
>
> 7.5. 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 third and fourth quarters of CY 2007 were filed within the two-year period prescribed under the Tax Code.'

> The foregoing issues are summed up under one issue: 'Whether or not petitioner is entitled to a refund or issuance of a tax credit certificate in the aggregate amount of P6,718,522.11, 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 third and fourth quarters of the taxable year 2007.

After trial on the merits, the CTA Former Second Division promulgated a Decision on July 2, 2012, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, CTA Case No. 7975, which refers to the instant Petition for Review with respect to the judicial claim covering the third quarter of the taxable year 2007, is hereby **DISMISSED** for lack of jurisdiction; while CTA Case No. 7998 covering the fourth quarter of the taxable year 2007 is hereby **DENIED** for insufficiency of evidence.

SO ORDERED."

On July 20, 2012, petitioner filed its Motion for Reconsideration[6] via registered mail.

In the Resolution[7] dated October 5, 2012, the CTA Former Second Division denied petitioner's Motion for Reconsideration for lack of merit.

On October 23, 2012, petitioner filed a Motion for Additional Time to File Petition for Review[8] with CTA En Banc which was granted by the Court on October 25, 2012[9].

On November 8, 2012, petitioner filed the instant Petition for Review[10], praying that the Honorable Court reverse the Decision and Resolution of the CTA-Second Division and render a judgment ordering the respondent to refund or issue a tax credit certificate in favor of the petitioner in the amounts of Php3,235,804.19 and Php3,482,717.92, representing petitioner's excess and unutilized input VAT attributable to zero-rated sales for the 3rd and 4th quarters of CY 2007, respectively, or an aggregate amount of Php6,718,522.11.

On November 26, 2012, the CTA En Banc promulgated a Resolution[11] ordering respondent to file her comment to petitioner's Petition for Review. Respondent failed to file her comment per the reports from the Judicial Records Division.[12]

On February 21, 2013, the CTA En Banc promulgated a Resolution[13] giving due course to petitioner's Petition for Review sans respondent's comment despite due notice. Both parties were required to submit their simultaneous memoranda within a non-extendible period of thirty (30) days.

[6] Division Docket, pp. 394-431
[7] Id., pp. 438-445
[8] En Banc Rollo, pp. 1-4
[9] Minute Resolution, Ibid, p. 5
[10] En Banc Rollo, pp. 6-61
[11] Id., pp. 99-100
[12] Records Verification Reports, pp. 101-103
[13] Id., pp. 105-106

On April 10, 2013, petitioner filed its Memorandum[14] while respondent failed to file her Memorandum as per Records Verification[15] dated May 22, 2013.

On May 27, 2013, the instant Petition for Review was deemed submitted for decision per Resolution[16] promulgated on the same date.

Petitioner, in the instant Petition for Review, raised the following grounds/assignment of errors, to wit:

> "13. With all due respect, Petitioner submits that the CTA-Second Division erred in dismissing the Petitions for Review in CTA Case Nos. 7975 and 7998 due to the following reasons:
>
> > 13.1. Petitioner was able to substantiate its zero-rated sales with the proper documents contrary to the ruling of the CTA-Second Division;
> >
> > 13.2. As held by the divisions of the Court of Tax Appeals (CTA) in Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue (the "DKS" case) and CE Casecnan Water and Energy Company, Inc. v. Commissioner of Internal Revenue (the "CE" case) as well as by this Honorable Court in the case of UCPB Properties, Inc. v. Commissioner of Internal Revenue (the "UCPB" Resolution), the premature filing of the judicial claim for refund is not jurisdictional but merely constitutes a failure to state a cause of action;
> >
> > 13.3. Since the provisions of the 1977 and the 1997 Tax Codes are substantially the same, the Courts must adhere to the doctrine in the Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (the 'Atlas' case), where it was held that that (sic) Section 229, Tax Code applies to claims for refunds of VAT. The doctrine in the Aichi case cannot be applied without violating Section 4(3), Article VIII, 1987 Constitution;
> >
> > 13.4. Sections 112 and 229, Tax Code should be reconciled;
> >
> > 13.5. Assuming *arguendo* that Aichi is applicable, the same should be applied prospectively."[17]

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[14] Id., pp. 107-149
[15] Id., p. 150
[16] Id., pp. 152-153
[17] En Banc Rollo, pp. 13-14

After a thorough evaluation of the records of the case as well as the arguments of both parties in their memoranda, We find no merit in the Petition for Review.

The Assailed Decision dismissed petitioner's claim for refund/issuance of tax credit of its excess and unutilized input VAT for the 3rd quarter of 2007, docketed as CTA Case No. 7975, for lack of jurisdiction considering that its judicial claim was prematurely filed. Petitioner filed its judicial claim on September 29, 2009, or merely 97 days from the filing of its administrative claim on June 24, 2009, in violation of Sec. 112(C) of the National Internal Revenue Code of 1997 and the ruling in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (the "Aichi Case")[18]. Thus, the following pertinent ruling of the CTA Second Division in the Assailed Decision, to wit:

> "x x x x x x. Following the ruling in the Aichi case, the premature filing of CTA Case No. 7975 before this Court warrants a dismissal of the said case inasmuch as this Court has not acquired jurisdiction."

However, in the recent consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[19], *Taganito Mining Corporation vs. Commissioner of Internal Revenue*[20], *and Philex Mining Corporation vs. Commissioner of Internal Revenue*[21], the Supreme Court discussed and ruled on the effect of BIR Ruling No. DA-489-03 on the period for filing a judicial claim for tax refund/issuance of tax credit certificates of unutilized input VAT, as follows:

> "**<u>VI. BIR Ruling No. DA-489-03 dated 10 December 2003</u>**
>
> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 expressly states that the '**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**'. Prior to this ruling, the BIR held, as shown by

[18] G.R. No. 184823, October 6, 2010
[19] G.R. No. 187485. February 12, 2013
[20] G.R. No. 196113, February 12, 2013
[21] G.R No. 197156, February 12, 2013

its position in the Court of Appeals[22], that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

x x x x x x x x x

Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, **the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional. (Underscoring ours)

x x x x x x x x x

Taganito, however, filed its judicial claim with the CTA on 14 February 2007, **after** the issuance of BIR Ruling No. DA-489-03 on 10

[22] Commissioner of Internal Revenue v. Hitachi Computer Products (Asia) Corporation, CA-G.R. SP No. 63340, 7 February 2002

> December 2003. Truly, Taganito can claim prematurely that in filing its judicial claim prematurely without waiting for the 120-day period to expire, it was misled by BIR Ruling No. DA-489-03. Thus, Taganito can claim the benefit of BIR Ruling No. DA-489-03 which shields the filing of its judicial claim from the vice of prematurity." (Underscoring ours)

The same ruling was reiterated in the consolidated cases of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[23], *Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*[24].

Following the above recent jurisprudence, this Court now has jurisdiction to act and rule on petitioner's claim for refund (CTA Case No. 7975) for the 3rd quarter of 2007, petitioner having been shielded from the vice of prematurity even if its judicial claim was filed only ninety-seven (97) days from the filing of its administrative claim.

We shall now proceed to determine whether petitioner was able to substantiate its claims for refund/issuance of tax credit certificate for the 3rd (CTA Case No. 7975) and 4th (CTA Case No. 7998) quarters of 2007.

It is long settled that the applicable provision in claims for refund or tax credit of unutilized input VAT attributable to zero-rated sales or effectively zero-rated sales is Section 112(A) of the NIRC of 1997, which reads:

> "**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 that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale

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[23] G.R. No. 193301, March 11, 2013
[24] G.R. No. 194637, March 11, 2013

of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Based on the foregoing, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. there must be zero-rated or effectively zero-rated sales;

2. that input taxes were incurred or paid;

3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and,

5. that the claim for refund was filed within the two-year prescriptive period.

An examination of petitioner's VAT return for the 3rd quarter of 2007 reveals that it had no record of zero-rated sales. Likewise, no other supporting documents were presented to substantiate the claim. Consequently, petitioner's claimed input VAT for the said quarter in the amount of P3,235,804.19 cannot be granted.

Likewise, petitioner's claimed input VAT of P3,482,717.92 for the 4th quarter of 2007 which is allegedly attributable to zero-rated sales cannot be sustained for petitioner's failure to substantiate its zero-rated sales of P59,999,700.00 as reflected in its amended VAT Returns.

Petitioner insists that its zero-rated sales upon which the input VAT claim may be attributed is the amount of P199,826,905.49 pertains to call services rendered during the 3rd and 4th quarters of 2007 and which were declared in the amended VAT returns[25] upon its collection[26] in 2009 and 2010.

[25] Exhibit "QQ"- Quarterly VAT Return for 3rd quarter of taxable year 2009; Exhibit "RR" – Quarterly VAT Return for 4th quarter of taxable year 2009; Exhibit "SS" – Quarterly VAT Return for the 1st quarter of taxable year 2010

[26] Exhibits "AA1a1" to "AA1a3"; AA2a"; "AA2a1" to "AA2a2"

On the other hand, the VAT Return for the 4th quarter of 2007 reflected zero-rated sales of P59,999,700.00, presumably for services rendered prior to the 4th quarter of 2007 but were collected in the 4th quarter of 2007.

It bears stressing that the value added tax accrues upon actual or constructive receipt of payments or the consideration by the seller of service as evidenced by the official receipts, regardless of whether or not the services have been rendered. In the case of *Philippine Fast Ferry Corporation vs. Commissioner of Internal Revenue*[27], this Court held that the VAT should not be based on the income that must have been received but on the income that was actually received; that, "although the taxable transaction is the past, present or future performance of service, the tax accrued only upon actual or constructive receipt of consideration (The Value-Added Tax in the Philippines, by Victor A. Deoferio, Jr. and Victorino Mamalateo, First Ed., page 103)". Thus, when the seller received no payment, no value-added tax (output tax) liability arises.

It can thus be concluded that the supporting official receipts submitted by petitioner, which bear the dates 2009 and 2010, pertains to sales for the period other than the 3rd and 4th quarters of 2007 which are the subject of the instant claim. The amount of P59,999,700.00, on the other hand, may be considered as petitioner's zero-rated sales as this is the amount reflected in its Quarterly VAT return for the 4th quarter of 2007 upon which the claimed input VAT for the 3rd and 4th quarters of 2007 in the aggregate amount of P6,718,522.11 may be attributed. Regrettably, petitioner did not submit any VAT official receipt proving the actual receipt of payments in the amount of P59,999,700.00 for the services it rendered to its clients. Consequently, there are no zero-rated sales to speak of and petitioner is, therefore, not entitled to a refund or issuance of tax credit certificate of its input tax allegedly attributable thereto since it is a basic requirement under Section 112(A) of the NIRC that there should exist a zero-rated sales in order to be entitled to a refund or unutilized input tax.

Well entrenched in our jurisprudence is that tax refund are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the

[27] CTA Case No. 6302, August 15, 2002

person or entity claiming the exemption.[28] Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[29]

WHEREFORE, finding no reversible error in the Assailed Decision dated July 2, 2012 and the Assailed Resolution dated October 5, 2012, with regard to petitioner's claim for refund for the 4th quarter of taxable year 2007 (docketed as CTA Case No. 7998), the same are both hereby **AFFIRMED**.

As regards petitioner's claim for the 3rd quarter of taxable year 2007 (docketed as CTA Case No. 7975), the same is hereby **DENIED** for petitioner's failure to present any record of zero-rated sales for this period.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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[28] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., G.R. No. 127105, June 25, 1999

[29] Citibank, N.A. vs. Court of Appeals & Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice