REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HARTE-HANKS PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 748
(C.T.A. Case No. 8050)

Members:

ACOSTA, *PJ*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

SEP 07 2012 2:00 p.m.

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DECISION

Fabon-Victorino, J.:

This *Petition for Review*[1] seeks to annul and set aside the Resolution of November 30, 2010,[2] which granted respondent's *Motion to Dismiss* and another Resolution[3] dated March 14, 2011, which denied the motion for reconsideration, both issued by the

[1] *En Banc* case docket, pp. 6-47.
[2] *Id.*, pp. 52-57.
[3] *Id.*, pp. 65-69.

Court in Division in CTA Case No. 8050, entitled *Harte-Hanks Philippines, Inc., vs. Commissioner of Internal Revenue*.

The antecedent facts as culled from the record of the case are as follows:

Petitioner Harte-Hanks Philippines, Inc. is a duly organized and existing domestic corporation, with principal office at 4/F, Market! Market! Building, Bonifacio Global City, Taguig City. 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. As a registered VAT taxpayer with Bureau of Internal Revenue (BIR), it was issued a Taxpayer Identification No. 241-927-728-000.[4]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) with the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law.[5]

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[4] Paragraph 4, Petition for Review, *En Banc* case docket, pp.7-8.
[5] Paragraph 5, Petition for Review, *En Banc* case docket, p. 8.

In the first quarter of calendar year (CY) 2008, petitioner rendered services in the Philippines to persons engaged in business conducted outside of the Philippines, and was paid in acceptable foreign currency accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

On April 25, 2008, petitioner filed, through the BIR Electronic Filing and Payment System (EFPS), its original Quarterly VAT Return for the first quarter of CY 2008, which was amended on May 29, 2008.

For the first quarter of CY 2008, petitioner allegedly did not have any local sales subject to 12% VAT, thus had no output VAT liability during the said quarter. However, it incurred and paid input VAT of Php3,167,402.34 on its domestic purchases of goods and services attributable to its zero-rated sales of services in the same quarter which remained unutilized.

On March 23, 2010, it filed with the BIR a written application for refund or issuance of tax credit certificate (TCC) for the stated excess and unutilized input VAT for the first quarter of CY 2008 in the amount of P3,167,402.34.

On March 30, 2010, petitioner elevated its claim for refund or issuance of TCC to the Court in Division on account of inaction on the part of respondent and to prevent the running of the two-year prescriptive period provided by law.

On May 25, 2010, respondent filed a *Motion to Dismiss* instead of an *Answer*, on the ground of lack of cause of action due to petitioner's failure to exhaust administrative remedies. Respondent claimed that the *Petition for Review* was prematurely filed before the lapse of the 120-day period provided in Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, depriving her of the opportunity to act on the administrative claim for tax refund/credit.

On July 14, 2010, petitioner filed its *Comment (To Respondent's Motion to Dismiss dated May 24, 2010)* praying for the denial of the *Motion to Dismiss* on the following grounds: 1) that the motion was procedurally infirm; 2) it lacks basis to hold that petitioner failed to exhaust administrative remedies; 3) respondent's failure to establish the non-applicability of the 2-year prescriptive period under Section 229 of the 1997 Tax Code; 4) the duty imposed in Section 112(C) of the 1997 Tax Code was upon respondent and not upon petitioner; 5) that the motion was violative of petitioner's right to seek refund within the 2-year period; and 6) respondent failed to take action on its administrative claim.

On November 30, 2010, the Court in Division granted respondent's *Motion to Dismiss* as the petition was prematurely filed. The Court in Division, quoting the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. ("Aichi case")*[6], ruled that Section 112(C) of the NIRC of 1997, as amended, provides for the relevant periods for the refund/issuance of tax credit of unutilized input taxes. The Commissioner of Internal Revenue has 120 days from date of submission of the complete documents in support of the application for tax refund/credit to decide whether to grant or deny the same. The claimant, on the other hand, has 30 days from receipt of the denial of the claim or from the expiration of the 120-day period, in case of inaction, to file a judicial claim with the Court. Failure to await the expiration of the 120-day period is fatal as it will render the institution of judicial action premature.

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

The Court in Division effectively affirmed its ruling when it denied for lack of merit petitioner's *Motion for Reconsideration* filed on December 16, 2010 by its Resolution dated March 14, 2011.

Hence, this instant *Petition for Review*[7] filed on April 18, 2011.

In this *Petition for Review*, petitioner submits that the high value given by the Court in Division's in the case of *Aichi* is misplaced and that it is flawed to conclude that its judicial claim for refund was prematurely instituted because:

> 17.1 The two-year period under Section 229, Tax Code is imperative and should be taken into consideration in applying the periods stated under Section 112, Tax Code. Also, Section 229, Tax Code is clear and definite that the two-year period is applicable to any "*national internal revenue tax xxx alleged to have been erroneously or illegally assessed or collected, xxx or any sum alleged to have been excessively or in any manner wrongfully collected,*" which tax includes input value-added tax (VAT) attributable to zero-rated sales;
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> 17.2 The use of the word "may" in Section 112(C), Tax Code indicates that judicial recourse within thirty (30)

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[7] See Note 1, *Supra*.

days after the lapse of the one hundred twenty (120) – day period is directory and permissive, and not mandatory and jurisdictional;

17.3 The CTA-Division's reliance on the Supreme Court's pronouncement in Aichi is bereft of any basis;

17.4 The interpretation that the 120-day period under Section 112(C), Tax Code is a condition imposed upon petitioner's right to appeal rather than as a mandate on the respondent to fulfill her duties with dispatch, is against the standards of fairness, equity and due process;

17.5 By mandate of Article VIII, Section 4(3) of the 1987 Constitution, the ruling in Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue was not overturned by the Aichi case;

17.6 Even assuming for the sake of argument that the Aichi decision validly overturned the doctrine laid down in the Atlas case, the Aichi decision should only be applied prospectively; and

17.7 The CTA-Division erred in not treating respondent's Motion to Dismiss as a mere scrap of paper.

Petitioner contends that Sections 112(C) and 229 of the NIRC of 1997, as amended, must be read harmoniously and in conformity with the Supreme Court ruling in the *Atlas* case that the two-year prescriptive period required in Section 229 applies to VAT refund. Stretching further the argument, petitioner posits that the use of the word "may" in Section 112(C) indicates that judicial recourse within thirty days after the lapse of the 120-day period is merely directory as opposed to the mandatory character of the two-year prescriptive period prescribed in Section 229. Petitioner theorizes that if compliance with the 120-day period is made a condition for the right to appeal rather than a working timeline, the real intent of the law to afford petitioner and similarly situated taxpayers the protection against the respondent's delay in processing administrative claims for refund will be rendered inutile.

Further, the *Aichi* case decided by the First Division of the Supreme Court could not validly overturn the Atlas case without violating Article VIII, Section 4(3) of the Constitution, which states 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.*" Even assuming that the *Aichi* decision validly overturned the doctrine laid down in the *Atlas* case, the same should apply prospectively.

Finally, respondent's *Motion to Dismiss* should be treated as a mere scrap of paper as the notice of hearing failed to comply with the mandate of Section 5, Rule 15 of the Rules of Court.

On May 12, 2011, respondent was ordered to file her comment on the petition within ten (10) days from notice,[8] but respondent failed. Thus, on June 27, 2011, the Court, directed the parties to submit their respective memoranda within thirty (30) days from notice.[9]

On October 5, 2011, the instant petition was submitted for decision, taking into consideration petitioner's *Manifestation* adopting its *Petition for Review* dated April 18, 2011 as its *Memorandum.* Again, respondent failed to file the required *Memorandum,* giving no excuse for the lapse committed.

THE COURT EN BANC'S RULING

The *Petition for Review* must fail.

Perusal of the issues raised in the present Petition for Review readily shows that it is just a restatement of petitioner's

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[8] *En Banc* case docket, pp. 76-77.
[9] *Id.*, pp.80-81.

Motion for Reconsideration dated December 16, 2010, filed before the Court in Division. It does present new arguments or new matters that will merit a change or even a modification of the ruling of the Court in Division. To be sure, these arguments have been considered and sufficiently discussed by the Court in Division in the assailed Resolutions of November 30, 2010 and March 14, 2011. But if only to disabuse petitioner's mind, the Court *En Banc* will discuss them in *seriatim*.

Section 112 of the NIRC of 1997, as amended, explicitly prescribes the periods for the refund/issuance of tax credit certificate of unutilized input taxes.

Contrary to petitioner insistence, the pronouncement in the *Atlas* case (*i.e.* the two-year prescriptive period mandated by Section 229 of the NIRC of 1997 applies to VAT) is no longer controlling. Sections 112(C) cannot simply be harmonized with Section 229 of the NIRC of 1997 as the former specifically pertains to refunds or tax credit of excess and unutilized input tax while the latter is for the recovery of erroneously or illegally collected internal revenue taxes.

Prior to the effectivity of Republic act (RA) No. 7716[10] and RA No. 8424[11], there was no specific provision on judicial claim for unutilized input VAT refund/credit under Section 106 of the NIRC of 1977, hence, the need to harmonize Section 106 with Section 230 of the NIRC of 1977. For easy reference, Section 106 of the NIRC of 1977 is hereby quoted, to wit:

> SECTION 106. Refunds or tax credits of input tax. —
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> (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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[10] 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.

[11] The Tax Reform Act of 1997 which took effect on January 1, 1998.

(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 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 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 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 of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraph (a), (b) and (c) as the case may be.

(f) Manner of giving refund. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being counter-signed by the Chairman, Commission on Audit, the provisions of the Revised Administrative Code to the contrary notwithstanding: Provided, That refunds under this paragraph

> shall be subject to post audit by the Commission on Audit.

Thus, in the *Atlas* case which involved a claim for refund/credit of unutilized input VAT for the taxable years 1990 and 1992, the Supreme Court harmonized the provisions on Refunds or Tax Credits of input tax under Section 106 (now Section 112 of the NIRC of 1997) with the two-year prescriptive period for instituting a suit or proceeding for the recovery of tax erroneously or illegally collected under Section 230 of the NIRC of 1977 (now Section 229 of the NIRC of 1997).

Subsequently however, RA No. 7716 and RA No. 8424, were enacted and became effective on January 1, 1996 and January 1, 1998, respectively, obliterating the need to harmonize the provisions of Sections 106 and 230 of the NIRC of 1977. The provisions of RA No. 7716 and RA No. 8424 specify the prescriptive periods in filing administrative and judicial claims for refund/credit of unutilized input VAT attributable to zero-rated sales. The pertinent provisions of the amendatory laws are hereunder quoted for ready reference:

<u>*RA No. 7716*</u>

Sec. 106. Refunds or tax credits of creditable input tax. —

(a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, <u>**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**</u> 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 100(a)(2)(A)(i), (ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the 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 of goods or 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.

(b) Capital goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. <u>**The application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made**</u>.

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

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

(e) Manner of giving refund. — Refund shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Revised Administrative Code, to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit. (*Emphases supplied*)

<u>*RA No. 8424*</u>

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, **<u>within two (2) years after the close of the taxable quarter when the sales were made, apply for the</u>**

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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 of goods or 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.

(B) Capital Goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. **The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made**.

(C) 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 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

(D)[12] Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, **the Commissioner shall**

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[12] Now Subsection (C) of Section 112 of the NIRC of 1997, as amended.

> **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.
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> "**In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**.
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> (E) Manner of Giving Refund. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit. (*Emphases supplied*)

Thus under RA No. 7716 and RA No. 8424, the period within which to appeal to the Court of Tax Appeals is thirty (30) days from the receipt of respondent's adverse decision or after the expiration of period given her to decide - 60 days under RA No. 7716 and now 120 days, as amended by RA No. 8424. These periods are crucial for non-observance thereof will deprive the Court of competence to entertain the appeal. To repeat, an aggrieved VAT-registered person, whose claim for tax refund or tax credit has been denied or has not been acted upon in the administrative level within the period provided by law, may within 30 days from receipt of the adverse decision or after the expiration of the 120-day period without any action on the part of respondent, seek judicial relief via a petition for review with this Court seating in Division.

In the relatively recent *Aichi* case, which involved a claim for refund/credit of input VAT for the period July 1, 2002 to September 30, 2002, the Supreme Court squarely addressed the issue of prescription insofar as the filing of an administrative claim for unutilized input VAT refund/credit before respondent and its subsequent judicial appeal before the CTA. The pertinent portion of the said decision reads:

> The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [G.R. No. 172129, September 12, 2008, 565 SCRA 154], where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.

xxx To be clear, <u>Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made</u>.

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<u>Respondent's 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</u>.

There is nothing in Section 112 of the NIRC to support respondent's view. <u>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 . . . 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. 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</u>.

<u>In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) 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</u>

> an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA. (*Underscoring supplied*)

In the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[13] the Supreme Court categorically ruled that taxpayers cannot avail of the provisions of either Sections 204 (C) or 229 of the NIRC of 1997, as amended, as regards the refund of any unutilized creditable input VAT. Both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes. A refund of unutilized input VAT is not an erroneously, illegally, or wrongfully collected tax.

In fine, petitioner's filing of the *Petition for Review* was premature as it was done before the lapse of the 120-day period granted to respondent to act on the administrative claim.

The use of the word "may" in Section 112(C) of the NIRC of 1997, as amended, simply means that the taxpayer has the option to appeal the decision or inaction of the Commissioner of Internal Revenue to the Court of Tax Appeals.

[13] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

Petitioner's stance that the "120-30" day period in Section 112 (C) of the NIRC of 1997, as amended, is merely permissive on account of the use of the word "may", is bereft of merit.

As ruled by the Court in Division, the word "may" in Section 112 (C) refers to the taxpayer's discretion on whether or not to appeal respondent's decision or inaction with the Court of Tax Appeals. It does connote that the said periods can be dispensed with provided that the judicial claim is lodged within the two year prescriptive. To apply petitioner's argument would render nugatory Section 112 (C) of the NIRC of 1997, as amended.

A law should be interpreted with a view of upholding rather than destroying it. One portion of a statute should not be construed to destroy the other. A construction that would render a provision inoperative or ineffective should be avoided.[14]

Here We quote with approval the disquisition of the Court in Division's on this point:

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[14] Agpalo, Statutory Construction, Fifth Ed. (2003), p. 256.

It bears stressing that the use of the word "may" in Section 112(C) of the NIRC of 1997, as amended, simply means that the taxpayer has the option to appeal the CIR decision or the CIR inaction to the CTA. It merely gives the taxpayer the option to appeal or not to appeal the adverse ruling or inaction of respondent within the 30-day reglementary period. Again, the phrase "may appeal" does not mean that the judicial recourse within thirty days from the receipt of the decision/ruling or from the lapse of the 120-day period is directory and permissive.

Furthermore, the Supreme Court clarified this issue in the case of CIR vs. Aichi Forging Company (GR No. 184823, October 6, 2010), thus:

> xxx 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 . . . 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. 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) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) 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.

> Sections 112(A) and 112(C), of the NIRC of 1997, as amended, prescribe the periods within which certain acts must be done, particularly, when the administrative claim and judicial appeal may be filed. Therefore, compliance with the periods provided therein is imperative and mandatory."

The Aichi case did not overturn the doctrine laid down in the Atlas case.

Petitioner's assertion that the *Aichi* ruling could not have validly overturned the *Atlas* doctrine without violating Article VIII, Section 4(3) of the Constitution, is devoid of merit.

Note that for Article VIII, Section 4 (3) of the 1987 Constitution to apply, there must be an existing doctrine or principle of law laid down by the Supreme Court in a decision rendered *en banc* or in division which the Supreme Court sitting *en banc*, modifies or reverses. Prior to the promulgation of the *Aichi* case, there was no Supreme Court decision construing or interpreting Section 112 of the NIRC of 1997, as amended. The invoked ruling in the *Atlas* case that the aggrieved taxpayer may seek refuge with CTA via a petition for review before the lapse of the two (2) year prescriptive period pursuant to Section 229 of the NIRC of 1997, as amended, is an interpretation of the 1977 NIRC, and not of the NIRC of 1997, as amended.

Further, Section 112 (C) of the NIRC of 1997, as amended, regarding the 30-day period to appeal with the CTA the denial of the administrative claim for refund or credit or respondent's inaction during the 120-day period given her to act on her level "has been effective and existing as early as January 1, 1998 when R.A. 8424 took effect. The *Aichi* case, therefore, did not overturn any existing doctrine or principle previously laid down by the Supreme Court.

Clearly, the different interpretation and application of the NIRC in the *Atlas* case and the *Aichi* case, was not brought about by the reversal of doctrines but due to the amendatory provisions introduced in the old NIRC (1977).

As the alleged prospective application of the *Aichi* case, suffice it to say that the Supreme Court merely interpreted the provisions of Section 112 of the NIRC of 1997, as amended, which is the law in force and applicable to petitioner's claim for refund for the period covering the first quarter of 2008. Judicial interpretation becomes part of the law of the land **as of the date that the law was originally passed** since such construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. Such judicial doctrine does not amount to a passage of a new law, but consists merely of a construction or interpretation of a pre-existing one and that is precisely the situation in this case.[15]

Section 5 of Rule 15 of the Rules of Court mandates that a copy of the Notice of Hearing stating the time and the place of hearing be served upon the parties.

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[15] Senarillos v. Hermosisima , 100 Phil 501

Petitioner finds respondent's *Motion to Dismiss* infirm for it was addressed solely to the Clerk of Court in violation of Section 5, Rule 15 of the Rules of Court which provides, thus:

> Section 5. Notice of Hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

A notice of hearing is conceptualized as an integral component of procedural due process intended to afford the adverse parties a chance to be heard before a motion is resolved by the court.[16] Through such notice, the adverse party is permitted time to study and answer the arguments in the motion.

Record reveals that petitioner was not denied procedural due process and was accorded day in court. As observed by the Court in Division, petitioner was able file a very extensive *Comment* on respondent's *Motion to Dismiss, a* proof that the very purpose of a notice of hearing had been duly served. The

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[16] Vlason Enterprises Corp. vs. Court of Appeals, et al., G.R. Nos. 121662-64, July 6, 1999.

Court in Division in its Resolution dated November 30, 2010, ruled:

> Undeniably, the notice was addressed to the Clerk of Court and not to the opposing party as required in Section 5 of the Rules; however, requiring the notice to be addressed to the opposing party is merely directory. What is mandatory is the service of the motion indicating the time and place of hearing. In other words, what is decisive is for petitioner to have sufficient notice of the time and place of the hearing of the motion to dismiss. The reason for this requirement is to give the opposing party an opportunity to be heard.
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> A perusal of the record of the case shows that petitioner was not deprived of such right. As admitted by petitioner, it received a copy of the Motion on May 28, 2010, which is six (6) days before June 4, 2010, the date of hearing set in the notice. It had sufficient notice of the place, time and date when the motion to dismiss is to be heard. Indeed, petitioner was able to study and prepare for respondent's motion, as shown by the filing of an extensive comment thereto.
>
> In Case and Nantz vs. Jugo, the Supreme Court made it clear that lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and have not deprived the court of its authority.

There being no substantial arguments raised by petitioner to merit a modification much more reversal of the assailed Resolutions dated November 30, 2010 and March 14, 2011, the

Court *En Banc* is left with no option but to sustain the assailed Resolutions.

WHEREFORE, the instant *Petition for Review* is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my *Dissenting Opinion* as promulgated by the Third Division of the Court in the Resolutions dated Nov. 30, 2012 and March 14, 2011)
LOVELL R. BAUTISTA
Associate Justice

(On Official Business)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice