Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

HARTE-HANKS PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 7975
For: Refund or Issuance of a Tax Credit Certificate

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

HARTE-HANKS PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 7998
For: Refund or Issuance of a Tax Credit Certificate

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:

JUL 02 2012
2:50 p.m.

x---x

DECISION

MINDARO-GRULLA, J.:

These are consolidated cases of two (2) Petitions for Review separately filed by Harte-Hanks Philippines, Inc. as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Rule

4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA). Petitioner appeals the inaction of respondent Commissioner of Internal Revenue over petitioner's administrative claim for tax refund or issuance of a tax credit certificate for 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 covering the period from July to December 2007, in the aggregate amount of ₱6,718,522.11, broken down as follows:

CTA Case No.	Period Covered	Amount
7975	July to September 2007	₱ 3,235,804.19
7998	October to December 2007	3,482,717.92
TOTAL		₱6,718,522.11

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]. 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, c

[1] Par. 1, Admitted Facts, Consolidated Joint Stipulation of Facts and Issues, Docket, p. 114.

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".[2]

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. [3]

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 non-resident foreign corporation, HH

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[2] Exhibit "A".
[3] Exhibit "B".

Austin Merger, Inc. (HAMI), which is engaged in business conducted outside of the Philippines.[4] 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).[5]

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.[6]

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

[4] Exhibits "C", "D", "E", "F", and "U".
[5] Exhibits "Y", "Z", "NN" and "YY".
[6] Exhibit "M".

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. [7]

Respondent interposed the following Special and Affirmative Defenses in her Answers to the Petitions for Review docketed as CTA Case Nos. 7975[8] and 7998:[9]

CTA Case No. 7975

"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).

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[7] Docket of CTA Case No. 7975, p. 108.
[8] Docket, pp. 79-83.
[9] Docket of CTA Case No. 7998.

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 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 faillure 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[10] of petitioner, this Court appointed Ms. Ma. Milagros F. Padernal as Independent Certified Public Accountant (CPA).[11]

During trial, petitioner presented as witnesses Mr. Leonardo G. Tabalon, its Controller[12] and Ms. Ma. Milagros F. Padernal, the Court-commissioned Independent CPA.[13]

On March 25, 2011, petitioner filed its Formal Offer of Evidence (with Motion to Remark Exhibits),[14] with respondent's comment.[15] This Court in its Resolution[16] 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)

[10] Docket, pp. 138-141.
[11] Minutes, Docket, p. 154.
[12] Minutes, Docket, pp. 135, 154, 190, 211 and 229.
[13] Minutes, Docket, pp. 190 and 222.
[14] Docket, pp. 237-263.
[15] Docket, pp. 274-275.
[16] Docket, pp. 282-283.

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 Ian 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. 1009000030000697 (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. Ian 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. Ian 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
AA1 to AA2	Statements of Account for services for the 3rd and 4th 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 BB15a	Journal Entry
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
DD1b 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
FF1b 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 2, 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.[17]

[17] Minutes, Docket, p. 273.

In the Resolution[18] 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[19] 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 ₱3,235,804.19 and ₱3,482,717.92, or an aggregate amount of ₱6,718,522.11, 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 ₱3,235,804.19 and ₱3,482,717.92, respectively, or an aggregate amount of ₱6,718,522.11, is duly substantiated by VAT invoices and official receipts;
>
> 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; c

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[18] Docket, p. 321.

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

> 7.4. Whether or not petitioner's excess and unutilized input VAT for the third and fourth quarters of CY 2007 amounting to ₱3,235,804.19 and ₱3,482,717.92, respectively, or an aggregate amount of ₱6,718,522.11, 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 ₱6,718,522.11, 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."

Suffice it to say that Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, lays down the requisites for refunds or tax credits of input tax due or paid attributable to zero-rated or effectively zero-rated sales, which reads as follows:

> "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 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: *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, petitioner must comply with the following requisites to be entitled to a refund or a tax credit of input taxes attributable to zero-rated or effectively zero-rated sales:

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 sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

As to petitioner's compliance with the fifth requirement pertaining to prescription or anent the fifth requisite, Section 112(A) of the NIRC of 1997 requires that the taxpayer's application for refund or a tax credit of unutilized or excess input VAT attributable to its zero-rated or effectively zero-rated sales must be made within two (2) years after the close of the taxable quarter when such sales were made.

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[20], the Supreme Court aptly stated that:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
>> (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 (Emphasis ours.)
>
> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may,

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[20] G.R. No. 172129, September 12, 2008.

> and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed."

Following the above-quoted provision of law and jurisprudence, the counting of the two-year prescriptive period for the filing of a claim for refund or a tax credit of input VAT on zero-rated sales is reckoned not from the date of filing of the corresponding Quarterly VAT Return and payment of the tax but **from the close of the taxable quarter** when the pertinent sale or transaction was made.

The present claim pertains to input VAT on zero-rated sales incurred during the third and fourth quarters of 2007. Petitioner had until the following dates to file its administrative claims for refund or issuance of tax credit certificate:

CTA CASE NO.	PERIOD COVERED	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date Administrative Claim was Filed
7975	July to September 2007	September 30, 2007	September 30, 2009	June 24, 2009
7978	October to December 2007	December 31, 2007	December 31, 2009	

In the instant case, petitioner's administrative claim for the refund of its unutilized input VAT payments attributable to its zero-rated sales, covering the third and fourth quarters of taxable year 2007 in the aggregate amount of ₱6,718,522.11, was filed well within the two-year prescriptive periods outlined in the above table.[21]

However, as to whether petitioner's judicial claims for refund or tax credit for the third and fourth quarters of 2007 were timely filed pursuant to Section 112(C) of the NIRC of 1997, as amended, which provides that:

> "SEC. 112. *Refunds of Tax Credits of Input Tax.* –
>
> 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 Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the **taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**" (*Emphasis supplied*)

Consequently, the taxpayer has thirty (30) days from its receipt of the decision denying the claim for refund or issuance of a tax credit certificate or after the expiration of the one hundred twenty (120)-day period from the date of submission of complete documents to appeal the decision or the inaction of the Revenue Commissioner with this Court.

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[21] Exhibit "M".

Applying the provision of Section 112(C) of the NIRC of 1997, which was formerly Section 112(D) prior to its amendment by Republic Act (R.A.) No. 9337, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[22] *(Aichi case)* held in this wise:

> "Section 112(D) 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 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. 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

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

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.**

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 as no jurisdiction was acquired by the CTA.**" (*Emphasis supplied*)

Based on the *Aichi case*, the second paragraph of Section 112(C)[23] envisions two scenarios, namely: (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. Likewise, the *Aichi case* categorically stated that the 120-day period mentioned in Section 112(C) of the NIRC of 1997 is crucial in filing an appeal with this Court.

[23] Formerly Section 112(D) of the NIRC of 1997.

In the *Aichi case*,[24] the Supreme Court held 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." The phrase "within two (2) years xxx apply for the issuance of a tax credit certificate or refund" refers to applications for refund or tax credit filed with the BIR Commissioner and not to appeals made to the CTA. Section 229 does not apply to refunds/tax credits of input VAT, which is governed by the provision of Section 112 of the NIRC, following the *Aichi case*.

In the instant case, records reveal the following:

<table>
<tr><th>CTA CASE NO.</th><th>PERIOD COVERED</th><th>Close of the Taxable Quarter</th><th>Last Day to File Administrative Claim</th><th>Administrative Filing</th><th>End of 120-day period for BIR to decide the claim</th><th>End of 30-day period to file w/ the Court</th><th>Judicial Filing</th></tr>
<tr><td>7975</td><td>July to Sep. 2007</td><td>Sep. 30, 2007</td><td>Sep. 30, 2009</td><td rowspan="2">June 24, 2009</td><td rowspan="2">October 22, 2009</td><td rowspan="2">Nov. 21, 2009</td><td>Sep. 29, 2009</td></tr>
<tr><td>7978</td><td>Oct. to Dec. 2007</td><td>Dec. 31, 2007</td><td>Dec. 31, 2009</td><td>Nov. 20, 2009</td></tr>
</table>

It is not disputed that in CTA Case No. 7975, petitioner filed its judicial claim for refund/issuance of tax credit certificate on September 29, 2009, or merely ninety-seven (97) days after the filing of the administrative claim on June 24, 2009.

On the other hand, in CTA Case No. 7998, petitioner filed such judicial claim on November 20, 2009, which is well within the period prescribed by law, as shown in the table above. Following the ruling in the *Aichi case*, the premature filing of CTA

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

Case No. 7975 before this Court warrants a dismissal of the said case inasmuch as this Court has not acquired jurisdiction.

In CTA Case No. 7998, which involves the claim for refund/issuance of tax credit certificate of unutilized input taxes for the fourth quarter of 2007 in the amount of ₱3,482,717.92, the question arises as to whether petitioner duly complied with the substantiation requirements.

Petitioner asserts that it rendered services to its non-resident client, Harte-Hanks Response Management/Austin, Inc. (HHRM), which was subsequently merged with HH Austin Merger, Inc. (HAMI). The services were paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*; thus, qualify as VAT zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended.

As discussed above, Section 112(A) of the NIRC of 1997 requires, among others, that in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, there must be zero-rated or effectively zero-rated sales and that input taxes incurred are attributable to zero-rated or effectively zero-rated sales.

To comply with the foregoing requirements, petitioner must still substantiate its sales with proper documents to attest that there were really sales subject to 0% rate.

In the instant case, as reflected in its VAT Return for the fourth quarter of 2007,[25] petitioner's zero-rated sales amount to ₱59,999,700.00. To prove that it generated sales subject to 0%, petitioner offered in evidence its statement of accounts,[26] bank credit advices,[27] and bank statements.[28] Petitioner also presented various official receipts[29] issued to its client, with the aggregate amount of US$4,512,281.46 and with peso equivalent of ₱199,826,905.49.[30]

A careful evaluation/verification of the said documents shows that the amounts reflected thereon do not coincide with the amount reported as zero-rated sales in its VAT Return for the fourth quarter. Likewise, these documents cannot be given credence considering that the same were dated outside the period of claim. In other words, the documents presented may not actually correspond or pertain to the zero-rated sales reported in its Quarterly VAT Return. Accordingly, the Court cannot ascertain the existence of such zero-rated sales. In fine, without valid supporting documents, petitioner's alleged sales to its non-

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[25] Exhibit "K-1".
[26] Exhibits "AA1" to "AA2".
[27] Exhibits "AA1b" to "AA1b3" and "AA2b" to "AA2b2".
[28] Exhibits "AA1c" to "AA1c3" and "AA2c" to "AA2c2".
[29] Exhibits "AA1a" to "AA1a3" and "AA2a" to "AA2a2".
[30] Exhibit "AA".

resident clients cannot qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997.

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. 7978** covering the fourth quarter of the taxable year 2007 is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
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.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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's Division.

ERNESTO D. ACOSTA
Presiding Justice