Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 816
(CTA Case No. 8123)

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:

DEC 13 2012 3:15 pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review filed by petitioner Deutsche Knowledge Services, Pte Ltd., for the Court *En Banc* against respondent Commissioner of Internal Revenue (or CIR), under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Resolution[2] dated

[1] Sec. 2. *Cases within the jurisdiction of the Court en banc*.- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

March 30, 2011, rendered by the Third Division of this Court in CTA Case No. 8123, and its Resolution[3] dated August 8, 2011.

Petitioner assailed both the aforesaid Resolutions, the dispositive portions of which, respectively, read as follows:

Resolution dated March 30, 2011:

> *"WHEREFORE, premises considered, respondent CIR's affirmative defense of premature filing raised in her Answer is hereby **GRANTED**. Accordingly, the Petition for Review is hereby **DISMISSED**, for having been prematurely filed.*
>
> *SO ORDERED."*

Resolution dated August 8, 2011:

> *"**WHEREFORE**, premises considered, petitioner's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit.*
>
> *SO ORDERED."* £

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.-*

(a) xxx.

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

(c) xxx.

[2] En banc docket, pp. 78-95.

[3] En banc docket, pp. 96-101.

The antecedent facts are as follows:

On June 24, 2010, petitioner filed with the BIR-Revenue District Office No. 44 an Application for Tax Credits/Refunds of its excess and unutilized input VAT for the 2nd quarter of CY 2008 in the amount of ₱29,792,984.25. On June 29, 2010 or five days thereafter, petitioner filed a Petition for Review and which was raffled to the Third Division of this Court.

In her Answer, the CIR assailed the jurisdiction of this Court's Division to entertain the petition for non-compliance with Section 112(C) of the 1997 Tax Code which provides that a taxpayer may appeal within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty(120) day-period. The CIR argues that the petition was prematurely filed, thus, it should be dismissed for lack of jurisdiction and/or lack of cause of action.[4]

Both parties filed their respective Pre-Trial Brief. Thereafter, the CIR moved that the affirmative defense of premature filing be resolved. Hence, petitioner filed its comment and the issue of premature filing of the petition was submitted for resolution.

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[4] Division Docket, pp. 49-55.

On March 30, 2011, the Third Division of this Court promulgated the assailed Resolution[5].

Petitioner filed a Motion for Reconsideration but to no avail. The Third Division of this Court denied the motion in its August 8, 2011 Resolution. Hence, petitioner filed the instant petition.

Petitioner asserts that this Court acquired jurisdiction of petitioner's judicial claim for refund and that the Aichi Case should not be applied indiscriminately to all claims for VAT refund.

Without necessarily giving due course to the instant petition for Review, this Court directed the CIR to file a comment. The CIR failed to comply. Thereafter, this Court directed both parties to file their respective memorandum. Both parties complied.

In her memorandum, the CIR raised the lone issue of whether or not the Petition for Review before this Court's Division was prematurely filed. Pursuant to the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.[6] (the Aichi Case), the CIR argues that the petition was filed five days after it filed the administrative claim for refund, hence, it was prematurely filed and in effect divested this Court of its jurisdiction.

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[5] Associate Justice Lovell R. Bautista, dissented and voted that the Petition be given due course while Associate Justice Amelia R. Cotangco-Manalastas concurred with the dismissal of the petition but voted that it be on the ground of lack of cause of action.
[6] G.R. No. 184823, October 6, 2010.

On the other hand, petitioner in its memorandum maintains that:

A. THE TWO-YEAR PRESCRIPTIVE PERIOD PREVAILS OVER THE 120/30 DAY PERIODS STATED IN SECTION 112 (C), TAX CODE , and

B. CTA-DIVISION VALIDLY ACQUIRED JURISDICTION OF PETITIONER'S JUDICIAL CLAIM FOR REFUND;

Petitioner claims that legislative history and judicial interpretations are clear, that the two-year prescriptive period is mandatory and that they do not attribute jurisdictional significance to the 120/30 day period. Citing the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue[7] (the Atlas Case), petitioner maintains that the petition for review was filed within the period prescribed by law and that the CIR is precluded from questioning the jurisdiction of this Court. Petitioner insists that the 120/30 day period to appeal may be dispensed with as long as both the administrative and judicial claims for refund are filed within two (2) years pursuant to Section 229 of the Tax Code. Likewise, petitioner maintains that the Aichi Case cannot be applied invariably to taxpayers who, in good faith filed and litigated their claims for refund of input VAT relying upon the pronouncement of the Supreme Court and the Court of Tax Appeals (CTA). Assuming, Aichi Case is made to apply, petitioner states that the prospective application thereof is legally and equitably imperative.

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[7] G.R. Nos. 141104 & 1487636, June 8, 2007

We resolve to deny the motion.

In the Aichi Case, the Supreme Court categorically ruled that:

1. 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;
2. 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;
3. Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT;
4. Applying the two-year period to judicial claims (pertaining to Section 229 of the NIRC) 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;
5. Section 229 does not apply to refunds/credits of input VAT;
6. The 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;
7. The 120-day period is crucial in filing an appeal with the CTA; and
8. The premature filing of claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA. c

Apparently, petitioner's arguments are contrary to the pronouncement declared by the Supreme Court in the Aichi Case. Petitioner must bear that all rulings of the Supreme Court on questions of law are conclusive and binding on all courts including this Court[8] and, under the doctrine of *stare decisis et non quieta movere*, a point of law already established will, generally, be followed by all courts of lower rank in subsequent cases where the same legal issue is raised[9]. Consequently, this Court adheres to the precedents laid down by the Supreme Court in the Aichi Case. Thus, we rule that this Court's Division correctly held that:

> *"As to the argument that the Aichi case should not be applied to this case following the principle of prospectivity of statutes, it must be emphasized that in the Aichi Case, the Supreme Court merely interpreted the provisions of Section 112 of the NIRC of 1997, as amended. Considering that Section 112 of the NIRC of 1997, as amended, is the law in force and applicable to petitioner's claim for the period covering the second quarter of 2008, it cannot claim that it is legally impossible to comply with the same, and that the Aichi case was still non-existent at the time petitioner filed its Petition for Review. Hence, we cannot disregard the letter of the law on the pretext of pursuing its spirit.(Tanada and Macapagal vs. Cuenco, 103 Phil. 1051, 1086).*
>
> *Basic is the rule that judicial interpretation of the law retroacts to the date when the said law becomes effective. Thus, the ruling in the Aichi case, being a mere interpretation of Section 112 of the NIRC of 1997, as amended, retroacts to the date when Section 112 took effect."*[10]

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[8] Systra Philippines Inc. vs. CIR, G.R. No. 176290, September 21, 2007
[9] Ayala Corporation vs. Rosa-Diana Realty and Development Corp., 346 SCRA 663
[10] Supra, Note 3.

Moreover, the variance of interpretation and application of the tax law in the Atlas Case[11] and the Aichi Case, to ours was not brought about by the reversal of doctrines but rather due to the amendatory provisions introduced to the Tax Code. Atlas Case which harmonized Sections 112 and 229 of the 1977 NIRC is no longer controlling and applicable due to the amendments made by the legislature intentionally providing the manner and the period in claiming refunds/ tax credits of input tax which is entirely distinct and different from the recovery of tax erroneously or illegally collected. Instructively, the Supreme Court in the Aichi Case held that "*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.*". Concomitantly, the Supreme Court cases cited[12] by petitioner claiming that the two-

[11] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue G.R. Nos. 141104 & 1487636, June 8, 2007

[12] Kepco Philippines vs, CIR, G.R. No. 181858, November 24, 2010; Hitachi Global Storage Technologies Philippines, Corp. vs. CIR, G.R. No. 174212, October 20, 2010; AT&T Communications Services Philippines, Inc. vs. CIR, G.R. No. 182364, August 3, 2010; Toshiba Information Equipment (Phils.), Inc. vs CIR, G.R. No. 157594, March 9, 2010; Panasonic Communications Imaging Corp. of the Phil. vs CIR, G.R. No. 178090, February 8, 2010; Kepco Philippines vs, CIR, G.R. No. 179356, December 14, 2009; San Roque Power Corporation. vs CIR, G.R. No. 180345, November 25, 2009; Atlas Consolidated Mining and Development Corporation vs, CIR, G.R. No. 159490, February 18, 2008; CIR vs. Placer Dome Technical Services (Phils.) Inc., G.R. No. 164365, June 8, 2007; Atlas Consolidated Mining and Development Corporation vs. CIR, G.R. No. 1411010 & 148763, June 8, 2007; Intel Technology Philippines, Inc. vs. CIR, G.R. No. 166732, April 27, 2007; Atlas Consolidated Mining and Development Corporation vs, CIR, G.R. No. 145526, March 16, 2007; CIR vs. Acesite Hotel Corp., G.R. No. 147295, February 16, 2007; CIR vs. Burmeister and Wain Scandinavian Contractor Minadanao, Inc., G.R. No. 153205, January 22, 2007; CIR vs. Mirant Pagbilao Corp., G.R. No. 159593, October 12, 2006; CIR vs. Bicolandia Drug Corp., G.R. No. 148083, July 21, 2006; CIR vs. Sekisui Jushi Philippines, Inc., G.R. No. 149671, July 21, 2006; CIR vs. Manila Mining Corp., G.R. No. 153204, August 31, 2005; CIR vs. American Express International, Inc. , G.R. No. 152609, June 29, 2005; CIR vs. Cebu

year period under Section 229 was being applied and the 120/30 day period was not applied cannot be given full weight. The very *lis mota* or crux of the controversy of PREMATURE APPEAL vis-à-vis the 120/30 period in Section 112(D) of the 1997 NIRC as amended (now subsection (C) of Section 112, as amended), was not squarely raised as an issue. Thus, the Supreme Court cases cited by petitioner should nct be considered as legal precedents regarding premature appeal to this Court and interpretation of the 120-30 day period in Section 112(D) of the 1997 NIRC (now subsection (C) of Section 112, as amended).

Moreover, it would not be amiss that as early as 1968, the Supreme Court en banc in the case of CIR vs. Villa[13] (Villa Case) held that a premature appeal before the Court of Tax Appeals would result to the dismissal of the appeal or petition for review due to lack of jurisdiction. Though the Villa Case pertains to premature appeal to this Court of an assessment without previously contesting the same, it equally applies to a premature appeal to this Court of a decision or inaction on the part of the Commissioner of Internal Revenue on cases of refund of internal revenue taxes, specifically as in the instant case- a refund of input VAT, without the decision or inaction of the CIR.

Toyo Corp., G.R. No. 149703, February 16, 2005; CIR vs. Seagate Technology , G.R. No. 153866, February 11, 2005; Contex Corp. vs. CIR, G.R. No. 151135, July 2, 2004; Atlas Consolidated Mining and Development Corporation vs, CIR, G.R. No. 134467, November 17, 1999.

[13] CIR vs. Villa , G.R. No. L-23988 , January 2, 1968.

The Supreme Court en banc confronted the primary issue of whether a premature appeal is jurisdictional and declared as follows:

> *"To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings. In this case, the parties submitted voluntarily to the jurisdiction of the Court of Tax Appeals, adduced their evidence thereat. Thereafter, they submitted their cause for decision. At no stage of the proceedings have they raised the issue of jurisdiction. However, as aforesaid, the consent of the parties does not confer jurisdiction over the subject matter.*
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> *xxx xxx xxx.*
>
> *The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of Republic Act 1125, the pertinent part of which states:*
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>> *Sec. 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided —*
>>
>> *(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;*
>
> *The word "decisions" in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments. xxx.*
>
> *xxx xxx xxx.*
>
> *xxx [T]he taxpayer appealed the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction.*
>
> *WHEREFORE, the judgment appealed from is set aside for lack of jurisdiction and the petition for review filed in the Court of Tax Appeals is hereby ordered dismissed."*[14] *(Emphasis supplied.)*

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[14] Ibid.

Furthermore, the Supreme Court in the Aichi Case held that Section 112(D) (now subsection (C) of Section 112) of the NIRC already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The term "appeal" thereon refers to the action a taxpayer must take when adversely affected by a decision or inaction of the CIR before this Court. The statutory period for filing an appeal is jurisdictional and must be adhered to strictly.[15] Non-compliance with the 120-30 day period to appeal mentioned in Section 112(D) of the NIRC (now subsection (C) of Section 112, as amended), due to absence of decision or inaction on the part of the Commissioner of Internal Revenue in cases of refund of input VAT is a question of jurisdiction over the subject matter.

Suffice it to say that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue.[16] Thus, the decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain an appeal, provided it is filed within 30 days after

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[15] *Yao vs. Court of Appeals (GR No. 132428, October 24, 2000)*
[16] Republic Act No. 9282 "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES"

receipt of such decision or ruling, or within 30 days after the expiration[17] of the specific period the CIR is required to act. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[18] Thus, this Court's Division was correct when it held that:

> *"We find merit in respondent CIR's affirmative defense of premature filing raised in her answer.*
>
> *Section 112 (C) of the NIRC of 1997, as amended, provides:*
>
> > *"(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) 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.*
>
> *Pursuant to the above provision, the Commissioner of Internal Revenue has 120 days from the submission of supporting documents to decide on the claim for refund. In case of full or partial denial, or the inaction of the Commissioner of Internal Revenue, the taxpayer may file an appeal with the CTA, within 30 days from receipt of the decision, or from the lapse of the 120 day period. xxx.*
>
> *xxx xxx xxx.*
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> *Pursuant to the above ruling, petitioner's administrative claim for refund for the second quarter of 2008 filed on June 24, 2010, was filed within the two-year prescriptive period.*

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[17] RCBC vs. CIR, G.R. No. 168498, April 24, 2007.
[18] Ibid.

Pursuant further to Section 112 (C) of the same Code, the CIR has 120 days from June 24, 2010 or until October 22, 2010 to decide petitioner's administrative claim for refund. In this case, petitioner's claim was not acted upon by respondent CIR; thus, petitioner has 30 days from October 23, 2010 or until November 22, 2010 to appeal to the CTA the CIR's inaction on its claim for refund.

Records, show, however, that petitioner filed the present Petition For Review before this Court on June 29, 2010. It is clear that the Petition for Review was prematurely filed, since the 120-day period for the CIR to decide the claim for refund had yet to lapse on October 22, 2010.

Pursuant to the aforequoted ruling of the Supreme Court in the Aichi Case, the present Petition For Review, having been prematurely filed, this Court has not acquired jurisdiction over the case.

The Court, therefore, is left with no recourse, but to dismiss the petition."

In fine, the Petition for Review before this Court's Division was properly dismissed and we find no valid justification to compel a modification or reversal of the Resolution dated March 30, 2011 and Resolution dated August 8, 2011 in CTA Case No. 8123.

WHEREFORE premises considered, the Petition for Review docketed as CTA EB No. 816 is **DISMISSED.** The Resolutions dated March 30, 2011 and August 8, 2011 of the Third Division of this Court in CTA Case No. 8123, are hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

(with Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

"I maintain my Dissenting Opinion."
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

"I join PJ Acosta's Concurring and Dissenting Opinion."
ESPERANZA R. FABON-VICTORINO
Associate Justice

"I join PJ Acosta's Concurring and Dissenting Opinion."
AMELIA R. COTANGCO-MANALASTAS
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD.,
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- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 816
(CTA CASE NO. 8123)

Members:

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

Promulgated:

DEC 13 2012 3:15pm

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CONCURRING AND DISSENTING OPINION

The present claim pertains to input VAT on zero-rated sales incurred for the 2nd quarter of 2008, in the aggregate amount of Php29,792,984.25. The pertinent dates are as follows:

Period Covered	Date of Filing of Original return	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim	End of the 120-day period under Section 112 (D), NIRC	End of the 30-day period under Section 112 (D), NIRC
2ND Quarter, 2008	July 25, 2008	June 24, 2010	June 29, 2010	October 22, 2010	November 22, 2010

As correctly applied by the majority, an application for refund or tax credit over input taxes arising from zero-rated sales or effectively zero-rated sales is governed by Section 112(A) and (D) [now section (C)] of the 1997 NIRC which provides:

> **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 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.
>
> xxx xxx xxx
>
> **(D)** ***Period within which Refund or Tax Credit of Input Taxes shall be Made.*** - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis Ours)

The foregoing provisions require that a claim for refund over excess input VAT arising from zero-rated or effectively zero-rated sales must be administratively filed within two (2) years from the close of the taxable quarter when the sales were made. There is also an indispensable requirement for the taxpayer to await the action or inaction of the Commissioner within a period of

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one hundred twenty (120) days before it can appeal to this Court its claim for refund on excess or unutilized input VAT arising from zero-rated or effectively zero-rated sales. The application of Sections 112(A) and (D) [now section 112 (C)] of the 1997 NIRC has already been established in the cases of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[1] and *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[2]

Following the provisions of Sections 112(A) and (D) [now section 112 (C)] of the 1997 NIRC, it appears that the claim for refund or issuance of a tax credit certificate of input VAT was administratively filed within the two (2) year period, hence, compliant with Section 112(A) of the 1997 NIRC. The petitioner, however, failed to comply with the one hundred twenty (120) day period required to await the decision of the respondent as prescribed in Section 112(D) [now section 112 (C)] of the 1997 NIRC. Thus, petitioner prematurely filed the judicial claim of excess input VAT for second quarter of taxable year 2008.

However, I beg to differ from the view of the majority that the premature filing of a refund claim involving unutilized input VAT is jurisdictional. With all due respect, the premature filing of said claim is a violation of the doctrine of exhaustion of administrative remedies. It is well settled that non-exhaustion of administrative remedies is not jurisdictional. It only renders the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[3] The premature

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[1] G.R. No. 172129, September 12, 2008.
[2] G.R. No. 184823, October 6, 2010.
[3] *Carale vs. Abarintos,* G.R. No. 120704, March 3, 1997.

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invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel,* the case is susceptible of dismissal for lack of cause of action.[4] Based on the records, it appears that respondent alleged in his answer the premature filing of the case in Court. Thus, respondent is considered not to have waived the said defense. Therefore, the Court must dismiss petitioner's judicial claim for lack of cause of action.

In view of the foregoing, I respectfully dissent on the Honorable Ponente's dismissal of petitioner's claim on the basis of lack of jurisdiction to try the instant case on account of the premature filing of petitioner's judicial claim. It is my stand that this Honorable Court has acquired jurisdiction to determine petitioner's claim. However, due to the premature filing of the judicial claim, the instant petition should be **DENIED** for lack of cause of action. Conversely, I concur with the Honorable Ponente in **AFFIRMING** the Resolutions dated March 30, 2011 and August 8, 2011 of the Third Division of this Court in CTA Case No. 8123.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[4] *Paat vs. Court of Appeals,* G.R. No. 111107, January 10, 1997.