REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

HARTE-HANKS PHILIPPINES, INC.,
Petitioner,

C.T.A. EB NO. 813
(C.T.A. CASE NO. 8124)

Present:

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 16 2012 2:15pm

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

While the right to appeal a decision of the Commissioner to the CTA is merely a statutory remedy, nevertheless, the requirement that it must be brought within 30 days is jurisdictional. Under *Section 112 (C) of the NIRC of 1997, as amended*, the taxpayer has 30 days from receipt of the decision of the Commissioner, or from the lapse of the 120 day period within which to file an appeal to the CTA. Failure to file the judicial claim for refund/credit within the 30-day period warrants a dismissal of the claim inasmuch as no jurisdiction was acquired by the CTA.

THE CASE

This is a Petition for Review filed by Harte-Hanks Philippines, Inc. (hereafter "petitioner") under *Section 3 (b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended,* which seeks to reverse the Resolutions dated June 1, 2011 and July 27, 2011 rendered by the Second Division of this Court in C.T.A Case No. 8124, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, premises considered, the petition for review is hereby **DENIED** for being prematurely filed.
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, premises considered, petitioner's **"Motion for Reconsideration"** filed on June 21, 2011 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with

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principal office at 4/F, Market, Market, Building, Bonifacio Global City, Taguig City. Petitioner 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. It is registered with the BIR as a VAT taxpayer, in accordance with *Section 236 of the NIRC of 1997, as amended,* with Taxpayer Identification No. 241-927-728-000.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR") empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law.

THE FACTS

The antecedent facts, as culled from the records, are, as follows:

On March 23, 2010, petitioner filed a written application for refund or issuance of a TCC for its excess and unutilized input VAT for the second quarter of 2008 in the amount of P2,535,459.48, which to date remains unacted by respondent CIR.

On June 29, 2010, petitioner filed its Petition for Review with the CTA Second Division, docketed as C.T.A. Case No. 8124, praying for the refund or issuance of a TCC for P2,535,459.48, representing excess input VAT attributable to zero-rated sales for the second quarter of 2008.

On August 19, 2010, respondent CIR filed her answer, alleging that petitioner failed to demonstrate that the tax, which is the subject of this case was erroneously or illegally collected; taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable; it is incumbent upon petitioner to show that it has complied with the provisions of Sections 112(A) and 204(C), in relation to Section 229 of the 1997 Tax Code, as amended; further, petitioner has the burden of proving that it complied with the requirements of effectively zero-rated transactions under Revenue Regulations 16-2005, dated 1 September 2005; 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-G.R. SP No. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)*; claims for refund are construed strictly against the claimant, as the same partake of 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, 124 SCRA 121)*.

On October 4, 2012, respondent CIR filed a "Motion for Leave to Admit Supplemental Answer and to Defer Pre-Trial" to which petitioner filed its "Comment/Opposition to Respondent's Motion to Admit Supplemental Answer and to Defer Pre-Trial".

On November 17, 2010, the Court granted respondent CIR's "Motion for Leave to Admit Supplemental Answer and to Defer Pre-Trial" and the Supplemental Answer was admitted.

In her Supplemental Answer, respondent CIR prayed that the petition be dismissed for failure to exhaust administrative remedies, pursuant to *Section 112 (C) of the 1997 Tax Code* and for lack of jurisdiction as there is no decision or inaction that is tantamount to a denial by the respondent that is appealable to the CTA, under *Section 3, Rule 4 of the Revised Rules of the CTA*.

On December 3, 2010, petitioner filed a "Motion for Reconsideration (Re: Resolution dated November 17, 2010)", and for failure of respondent to file her comment thereto, on January 20, 2011, the motion was denied for lack of merit.

On January 24, 2011, petitioner presented Mr. Leonardo G. Tabalon as witness.

On March 28, 2011, respondent CIR filed a ""Motion to Dismiss for Lack of Jurisdiction" to which petitioner filed its "Comment/Opposition (to Respondent's Motion to Dismiss for Lack of Jurisdiction)" on April 29, 2011.

On June 1, 2011, the Second Division issued the assailed Resolution dated June 1, 2011 dismissing the Petition For Review for having been prematurely filed.

On June 21, 2011, petitioner filed a "Motion for Reconsideration", which was denied for lack of merit by the Second Division on July 27, 2011.

Hence, this Petition for Review raising the following issues:

ISSUES

I

THE CTA IN DIVISION ERRED IN DISMISSING THE PETITION DUE TO PREMATURE FILING. THE PREMATURE FILING OF THE JUDICIAL CLAIM FOR REFUND IS NOT JURISDICTIONAL BUT AMOUNTS MERELY TO A FAILURE TO STATE A CAUSE OF ACTION.

II

THE RESPONDENT HAS WAIVED HER RIGHT TO RAISE THE DEFENSE OF FAILURE TO STATE A CAUSE OF ACTION IN HER ANSWER.

III

SECTIONS 112 AND 229 OF THE TAX CODE COULD STAND TOGETHER, AS THEY ARE NOT IRRECONCILABLE.

IV

THE AICHI CASE DID NOT OVERTURN THE RULING OF THE SUPREME COURT IN ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION V. COMMISSIONER OF INTERNAL REVENUE WHICH ESTABLISHED THAT SECTION 229 OF THE TAX CODES APPLIES TO CLAIMS FOR REFUND OF VAT; AND

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ASSUMING ARGUENDO THAT AICHI IS APPLICABLE, THE SAME SHOULD BE APPLIED PROSPECTIVELY.

On September 5, 2011, without necessarily giving due course to the petition, respondent CIR was ordered to file her comment, within ten (10) days from notice.

For failure of respondent to file her comment despite notice, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice, afterwhich the case shall be deemed submitted for decision.

On November 26, 2011, petitioner manifested that it is adopting its Petition for Review dated August 15, 2011 as its Memorandum.

Respondent, on the other hand, failed to file her Memorandum despite notice.

Thus, on January 11, 2012, this case was deemed submitted for decision.

Petitioner's Arguments

Petitioner argues that failure to comply with the 120-day period under *Section 112 (C) of the Tax Code* is not jurisdictional but merely renders the petition dismissible for lack of cause of action for failure to exhaust administrative remedies; that the taxpayer's failure to comply with the 120-day period does not divest the CTA of its jurisdiction, but renders taxpayer's cause of action defective and such defect must be raised by the adverse party at the earliest opportunity, otherwise such defense shall be deemed waived; records show that respondent CIR failed to raise such defense in her answer; it was only when respondent filed her Supplemental Answer that she raised the defense of lack of cause of action, thus such defense is deemed waived; that *Sections 112, 204 and 229* are the three provisions of the *Tax Code* that govern the taxpayer's rights and obligations to file a claim for refund; with respect to taxpayer's judicial remedy, *Section 229* is the more specific provision and prevails over *Section 112*, which governs only the administrative remedy; that *Section 112* being the more specific provision on the administrative remedies for input VAT should prevail over *Section 204*; since said sections are not irreconcilable, these three provisions should be read harmoniously; that the correct approach to harmonize *Sections 112 and 229* should be that when the two- year period under *Section 229* is about to lapse, the taxpayer need not wait for respondent CIR to decide on its claim; that the mandatory character of *Section 229* and its applicability to VAT refund/claims have been consistently sustained by the Supreme Court; that the Aichi case should be applied prospectively; that the instant petition should remain unaffected by the Aichi doctrine since the same was filed in the light of prevailing jurisprudence as it then stood.

THE COURT *EN BANC'S* RULING

The petition has no merit.

The issues raised by petitioner are not novel, as the same had already been settled by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., 632 SCRA 422* ("Aichi Case"), as follows:

"The filing of the judicial claim was premature

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However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:

SEC. 112. Refunds or Tax Credits of Input Tax. –

x x x x

(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. 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 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. [130 Phil. 12 (1968)]* 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."

Under the above-quoted ruling, the Supreme Court clarified that *Section 112 (A) of the NIRC of 1997, as amended*, provides a 2-year prescriptive period to file an administrative claim for refund/credit with the CIR, while *Section 112 (D) [now Section 112 (C)] of the same Code* provides a period within which to file a judicial claim for refund/credit with the CTA, which is, within thirty (30) days from receipt of the decision of the CIR, or from the expiration of the 120-day period when no decision was made by the CIR within the 120-day period. The premature filing of the claim for refund or credit with the CTA warrants a dismissal of the claim, inasmuch as no jurisdiction was acquired by the CTA.

Applying the law and jurisprudence in this case, records show that on March 23, 2010 petitioner filed its administrative claim for refund for its excess unutilized input VAT for the second quarter of calendar year 2008 in the amount of P2,535,459.48, which is well within the prescribed two (2) year period after the close of the taxable quarter when the sales were made. Pursuant to *Section 112 (C) of the NIRC, as amended,* respondent CIR had 120 days or until July 21, 2010, within which to decide petitioner's administrative claim for refund. Within thirty (30) days from the lapse of the 120-day period, or until August 20, 2010, petitioner may appeal its claim for refund to the CTA. However, records show that petitioner filed the Petition for Review in C.T.A. Case No. 8124 on June 29, 2010, barely ninety-seven (97) days after it filed its administrative claim. It is clear, therefore, that the Petition for Review in C.T.A. Case No. 8124 was prematurely filed.

Section 112 of the NIRC of 1997, as amended, vis-à-vis Section 229 of the same Code

Petitioner's reliance on the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 524 SCRA 94* ("Atlas case") in relation to *Section 229 of the NIRC of 1997, as amended*, that claims for refund or credit of input VAT, both in the administrative and judicial levels, must be filed within two years reckoned from the date of filing of the corresponding VAT returns, is misplaced.

The Atlas case relied on by petitioner involved a claim for refund of unutilized input VAT on purchases of capital goods and zero-rated sales covering taxable years 1990 and 1992. What was interpreted, by the Supreme Court in Atlas case is the Tax Code of 1977, as amended by EO 273, and not the NIRC of 1997.

The Tax Code of 1977 does not provide for a period within which to file the judicial claim for refund, unlike the present NIRC of 1997, as amended, which explicitly provides for a thirty (30)-day period within which to appeal to the CTA the decision of the CIR or unacted claim after the expiration of the 120-day period to decide *[Section 112 (C) thereof]*. With the incorporation of *Section 112 (C) in the NIRC of 1997, as amended,* the two- year period prescribed in *Section 229 of the same Code*, can no longer be applied to claims for refund of input taxes.

Furthermore, in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, 565 SCRA 172-173*, the Supreme Court categorically ruled that taxpayers cannot avail of the provisions of either *Section 204 (C) or Section 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.

Application of the Aichi Case

Petitioner's contention that the Aichi Case should be applied prospectively is likewise devoid of merit.

Even before the promulgation of the Aichi ruling, the requirement for the observance of the 120-day and 30-day periods has already been in existence as early as January 1, 1998, upon the effectivity of the NIRC of 1997, as amended.

The Aichi ruling merely clarified the provisions of *Section 112 of the NIRC of 1997, as amended*, that the phrase in Section 112 (A) *"within two (2) years xxx 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. On the other hand, *Section 112 (C),of the NIRC of 1997, as amended*, provides for the period within which to file the judicial claim with the CTA, which is, within 30 days from receipt of the decision of the CIR denying the claim, or within 30 days from the expiration of the 120-day period.

Settled is the rule that once the Supreme Court has interpreted a law, such interpretation becomes part of the law itself. Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one, which is the situation in this case *(Eagle Realty Corporation vs. Republic of the Philippines, 594 SCRA 558)*. Considering that *subsection 112 (A)* prescribing the period to apply the claim for refund/credit within two years after the close of the taxable quarter when the sales were made, and *subsection 112 (C)* prescribing the period to appeal to the CTA the decision or the unacted claim, are provisions in *the NIRC of 1997, as amended*, which were interpreted by the Supreme Court in the Aichi Case, then such judicial interpretation constitutes part of the NIRC of 1997 as of the date it took effect on January 1, 1998.

The issue of jurisdiction may be raised at any stage of the proceedings

As regards petitioner's contention that respondent has waived her right to raise the defense of failure to state a cause of action in her answer, it is basic that the Court may dismiss a case *motu propio* on ground of lack of jurisdiction at any stage of the proceedings. Courts are

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bound to take notice of the limits of their authority and they may, by their own motion, even though the questions are not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings *(Ace Publications, Inc., vs. Commissioner of Customs and Collector of Customs, 11 SCRA 153).*

Finding no reversible error, the Court *En Banc* affirms the assailed Resolutions dated June 1, 2011 and July 27, 2011 rendered by the Second Division of this Court in C.T.A. Case No. 8124.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(I join PJ Acosta in his Concurring and Dissenting Opinion.)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(I join PJ Acosta's Concurring and Dissenting Opinion.)
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HARTE-HANKS PHILIPPINES INC., Petitioner,	CTA EB NO. 813 (CTA Case No. 8124)
	Present:
-versus-	**ACOSTA, *PJ.*** **CASTAÑEDA, Jr.,** **BAUTISTA,** **UY,** **CASANOVA,** **PALANCA-ENRIQUEZ,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 16 2012 3:15pm

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CONCURRING AND DISSENTING OPINION

Acosta, PJ:

I join the majority in ruling that the Petition for Review should be dismissed. However, as to the ground relied upon in dismissing the petition, I respectfully dissent to the majority Decision.

With all due respect to my esteemed colleagues, I cannot subscribe to their position that the Court has no jurisdiction over a prematurely filed judicial claim for a refund covering unutilized input Value Added Tax (VAT) attributable to zero-rated or effectively zero-rated sales under Section 112 of the National Internal Revenue Code (NIRC). It is my humble opinion that this Court has jurisdiction to entertain such a refund case for excess/unutilized input VAT albeit prematurely elevated from the administrative level.

In the instant case, petitioner timely filed its administrative claim for the refund of its unutilized input value added tax (VAT) for the second quarter of calendar year 2008 on 23 March 2010. However, it failed to await the respondent CIR's grant or denial of the claim, or the lapse of the 120-day period provided by the NIRC, before elevating its claim to the Court. Records show that petitioner filed its Petition for Review on 29 June 2010 or merely ninety seven (97) days after it filed its administrative claim. Here, the fact that petitioner prematurely filed its judicial claim before the Court was timely raised by respondent in her Supplemental Answer. Plainly, respondent did not waive this defense. Therefore, although petitioner's failure to comply with Section 112(C) of the NIRC is clear, such defect is merely a violation of the doctrine of exhaustion of administrative remedies which does not preclude petitioner from seeking judicial relief.

The doctrine of exhaustion of administrative remedies mandates that whenever there is an available remedy provided by law, no judicial recourse can be made until all such remedies have been availed of and exhausted.[1] In fact, the premature invocation of the intervention of the court is fatal to one's cause of action.

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[1] *Oporto v. Members of the Board of Inquiry and Discipline of National Power Corporation*, G.R. No. 147423, 15 October 2008.

This rule would not only give the administrative agency an opportunity to decide on the matter by itself correctly, but would also prevent the unnecessary and premature resort to courts.[2]

In *Union Bank of the Philippines v. Court of Appeals,*[3] the honourable Supreme Court held that "before a party is allowed to seek the intervention of the court, it is a pre-condition that it should have availed of all the means of administrative processes afforded by him. Hence, if a remedy within the administrative machinery can still be resorted by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action."

From the foregoing, it is clear that the failure to exhaust administrative remedies will not rob the courts of its jurisdiction over a case as the same is tantamount only to a judicial petition lacking a cause of action. In our jurisdiction, the defense of lack of cause of action is not jurisdictional in nature and may be deemed waived if not timely raised in a Motion to Dismiss or in the Answer.[4]

The Supreme Court in *Iloilo City Zoning Board of Adjustment and Appeals vs. Gegato Abecia Funeral Homes, Inc.*[5] established that the premature invocation of the

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[2] *Republic of the Philippines v. Express Telecommunications Co., Inc. & Bayan Telecommunications Co. Inc.,* G.R. No. 147096, 15 January 2002.
[3] G.R. No. 131729, 19 May 1998.
[4] Sec. 1, Rule 9 of the Rules of Court.
[5] G.R. No. 157118, 08 December 2003.

court's intervention is only fatal to *one's cause of action*. However, the case is susceptible to dismissal absent any finding of waiver or estoppel, *viz*:

> The settled rule is that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. <u>The premature invocation of the court's intervention is fatal to one's cause of action.</u>
>
> Accordingly, absent <u>any finding of waiver or estoppel the case is susceptible of dismissal for failure to state a cause of action.</u> This doctrine of exhaustion of administrative remedies is not without practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[6]

In the absence of any waiver or estoppel, a premature recourse to the courts is dismissible. Otherwise, the Court acquires jurisdiction and may properly act on the petition.

Notably, in the instant case, respondent did not waive the defense of non-exhaustion of administrative remedies or the lack of a cause of action, as she submitted the said issue in her Special and Affirmative Defenses in her Supplemental Answer dated 17 November 2010, *viz*:

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2) The Petition should be dismissed based on the following grounds:

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[6] Citing *Paat v. Court of Appeals*, 334 Phil. 146, 152–153 (1997)

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a) Lack of cause of action of the Petition for failure to exhaust administrative remedies.

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2.a.5) ....the non-exhaustion of administrative remedies 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....

Everything considered, the premature filing of the Petition for Review exposes it to an attack that it lacks or fails to state a cause of action, which defense is waivable at the election of the opposing party. Here, respondent did not waive said defense, hence, the petition is susceptible of dismissal. Thus, it is my stand that the claim of petitioner should be dismissed on the ground that it states no cause of action.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA COTANGCO- MANALASTAS
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

HARTE-HANKS PHILIPPINES, INC., Petitioner,	**CTA EB CASE NO. 813** (CTA Case No. 8124)
-*versus*-	Present: *Acosta, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Palanca-Enriquez,* *Fabon-Victorino,* *Mindaro-Grulla, and* *Cotangco-Manalastas, JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 16 2012 2:15pm

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DISSENTING OPINION

BAUTISTA, J.:

A perusal of the factual milieu present in the case at bench shows that petitioner filed its administrative claim for refund or issuance of a tax credit certificate of excess and unutilized input taxes for the second quarter of the taxable year 2008 on March 23, 2010, and its Petition for Review before this Court on June 29, 2010; all during which, the then prevailing ruling in this Court – the reckoning of the two (2)-year prescriptive period – is from the close of the quarter;[1] and not within

[1] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.

thirty (30) days from receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.[2]

As early as the case of *Ramon Torres v. Tan Chim*,[3] the Supreme Court has ruled in this wise:

> While we profess no "idolatrous reverence for precedents," *(Philippine Trust Co. vs. Mitchell, 59 Phil., 30)*, we should not overlook the fact that the rule laid down in the *Roa case* had been adhered to and accepted for more than 20 years before the adoption of our Constitution; not only this Court but also inferior courts had consistently and invariably followed it; the executive and administrative agencies of the Government had theretofore abided by it; and the general public had acquiesced in it. **Withal, our decisions should not be, as to a given period of time, upon the same or similar facts and under the same or similar circumstances, as fluctuating as to engender the phenomenon described by Mr. Justice Thompson of the Supreme Court of Virginia as *ignis fatuus. (Perkins v. Clemente et als. 1 Pat and (Va.) 153.)*** *(Boldfacing supplied.)*

Indeed, when a doctrine is overruled and a different view is adopted, the new doctrine should not apply to parties who had relied on the old doctrine and acted on the faith thereof.[4] In the case of *Filoteo, Jr. v. Sandiganbayan*,[5] the High Tribunal made the following pronouncement:

> The prospective application of "judge-made" laws was underscored in *Co vs. Court of Appeals* where the Court ruled thru Chief Justice Andres R. Narvasa that in accordance with Article 8 of the Civil Code which provides that "(j)udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines," and Article 4 of the same Code which states that "(l)aws shall have no retroactive effect unless the contrary is provided," the **principle of prospectivity of statutes, original or amendatory, shall apply to judicial decisions, which, although in themselves are not laws,**

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[2] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.
[3] G.R. No. L-46593, February 3, 1940, 69 Phil. 518.
[4] Co. *v.* Court of Appeals, G.R. No. 100776, October 28, 1993, 277 SCRA 444.
[5] G.R. No. 79543, October 16, 1996, 263 SCRA 222.

> **are nevertheless evidence of what the law means.** (*Boldfacing supplied and citations omitted.*)

Also, a compelling rationalization of the prospectivity principle of judicial decisions is well set forth in the oft-cited case of *Chicot County Drainage District v. Baxter States Bank*,[6] which advocates the imperative necessity to take account of the actual existence of a statute prior to its nullification, as an operative fact negating the acceptance of "a principle of absolute retroactive invalidity."[7]

While, the latter ruling wherein the jurisdiction of this Court is reckoned from thirty (30) days from receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon for filing the judicial claim,[8] is more in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code, as amended, it would be the height of injustice to impose a new ruling, on the basis of the so-called "adherence to precedence," for the same is clearly promulgated *after* the taxpayer-claimant had faithfully relied and complied with the Court's ruling at the time it filed its claim.

Further, taking into considerations the pronouncements made by this Court in the cases of *Commissioner of Internal Revenue v. Toledo Power, Inc.*,[9] and *Commissioner of Internal Revenue v. San Roque Power Corporation*,[10] it must be borne in mind that no claim can be had, whether in the administrative or judicial *fora*, beyond the two (2)-year period; therefore, if the two (2)-year prescriptive period is about to expire, there

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[6] 308 US 371, 374 [1940].
[7] *Supra* note 4. See also Felicisimo Rieta *v.* People, G.R. No. 147817, August 12, 2004, 436 SCRA 273.
[8] *Supra*, note 2.
[9] CTA EB Case No. 321 (CTA Case Nos. 6805 & 6851), May 7, 2008.
[10] CTA EB Case No. 408 (CTA Case No. 6647), March 25, 2009.

is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the one hundred twenty (120)-day period before the taxpayer can lodge its appeal with this Court.[11]

It was merely unfortunate that during the pendency of the case at bench that the Supreme Court issued a ruling wherein the two (2)-year period pertains only to administrative claim, and that the taxpayer is merely given a thirty (30)-day period to elevate its claim before this Court either from the receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.

In sum, I find the Petition for Review, docketed as CTA Case No. 8124, *made within the prescribed period in force at the time the action was made.*

Accordingly, I vote that the Petition for Review be **GRANTED.** The Petition for Review docketed as CTA Case No. 8124 should be **REINSTATED**.

LOVELL R. BAUTISTA
Associate Justice

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[11] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB Case No. 426, May 29, 2009.