REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HARTE-HANKS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1573
(CTA Case Nos. 7894 & 7941)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:
AUG 0 1 2018 3:33 pm

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DECISION

CASTAÑEDA, JR., *J.* :

Before the CTA *En Banc* is the petition for review filed by petitioner Harte-Hanks Philippines, Inc. ("petitioner") on January 16, 2017 assailing the September 2, 2016 Amended Decision[1] and the December 13, 2016 Resolution[2] promulgated by the CTA Special First Division ("CTA Division") in the case entitled *"Harte-Hanks Philippines, Inc. v. Commissioner of Internal Revenue,"* docketed as CTA Case Nos. 7894 and

[1] *Rollo*, pp. 53- 65; Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Esperanza R. Fabon-Victorino.
[2] *Rollo*, pp. 67- 76; Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Esperanza R. Fabon-Victorino.

7941. The CTA Division denied petitioner's claim for the refund of or issuance of tax credit certificate (TCC) for its alleged excess and unutilized input value-added tax (VAT) for the 1st and 2nd quarters of calendar year (CY) 2007 in the amount of ₱4,159,034.86.

The dispositive portion of the September 2, 2016 Amended Decision reads:

> **WHEREFORE,** in light of the foregoing considerations, the consolidated Petitions for Review are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

The dispositive portion of the December 13, 2016 Resolution reads:

> **WHEREFORE,** in light of the foregoing considerations, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE FACTS

The following are the facts of the case as found by the CTA Division, as stated in the March 29, 2012 Decision:[3]

> 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, and is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, with Taxpayer's Identification Number No. (TIN) 241-927-728-000-VAT. It was incorporated on November 3, 2005 with the primary purpose of providing outsourcing customer relationship management solutions by rendering inbound or outbound call services to its customers.

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[3] CTA Division Docket, Vol. II, pp. 708-713.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, 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. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its original and amended Quarterly VAT Returns for the period covering January to June 2007 on the following dates:

QUARTERLY VAT RETURN	DATE OF FILING
For the First Quarter of 2007 (original)	April 25, 2007
For the First Quarter of 2007 (amended)	February 25, 2009
For the Second Quarter of 2007 (original)	July 16, 2007
For the Second Quarter of 2007 (amended)	February 25, 2009

As already stated, on March 30, 2009 and June 24, 2009, petitioner filed its administrative claims with Revenue District Office No. 44 of the BIR a written application for the refund or issuance of TCC for its excess and unutilized input VAT covering the first and second quarters of calendar year 2007 in the amounts of ₱2,230,470.78 and ₱1,928,564.08, respectively.

Alleging inaction on the part of respondent on the said administrative claims, petitioner separately filed two (2) Petitions for Review on March 31, 2009 and June 30, 2009 docketed as CTA Case Nos. 7894 and 7941, respectively. At the instance of petitioner, these two cases were consolidated per this Court's Resolution dated August 27, 2009.

In her separate Answers respectively filed in **CTA Case Nos. 7894** and **7941**, respondent interposes similar Special and Affirmative Defenses, to wit:

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

- Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected in violation of the tax laws relied upon by petitioner; *gr*

- Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable or creditable;

- It is incumbent upon the petitioner to prove by substantial and credible evidence that it has complied with the provisions of Sections 108, 112 and 204(C) in relation to Section 229 of the 1997 Tax Code, as amended upon which its claimed for refund is premised;

- In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)*;

- 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)."*

Additionally, in CTA Case No. 7941, respondent further avers that:

- 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).

- 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, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

Subsequently in her CONSOLIDATED ANSWER filed on October 14, 2009, respondent raises these additional defenses:

"1. In addition to the special and affirmative defences raised by the respondent in his answer filed on June 8, 2009 and July 24, 2009, respondent respectfully submits that the filing of the instant petitions is pre-mature.

xxx xxx xxx

Parenthetically, the said Consolidated Answer was simultaneously filed with a Motion for Leave of Court to File Consolidated Answer.

On October 26, 2009, petitioner filed its Reply (To Respondent's Consolidated Answer dated October 12, 2009) assailing respondent's Motion for Leave of Court to File Consolidated Answer on procedural grounds pursuant to Section 3, Rule 10 of the Revised Rules of Court and asserting that the doctrine of exhaustion of administrative remedies is not applicable to petitioner's case.

Respondent's Motion for Leave of Court to File Consolidated Answer was granted and the Consolidated Answer was admitted by the Court during the hearing held on February 16, 2010. On the same date, petitioner presented its first witness, Leonardo G. Tabalon. On June 25, 2010, upon motion of petitioner, this Court commissioned Ma. Milagros F. Padernal as Independent Certified Public Accountant (ICPA). She testified in court on August 5, 2010 and on November 11, 2010.

Thereafter, on April 14, 2011, petitioner filed its Formal Offer of Evidence (with Motion to Substitute Exhibits), submitting Exhibits "A" to "VV," and "AAA," inclusive of sub-markings; which this Court admitted, except Exhibits "E" and "F", in the Resolution dated June 14, 2011.

Respondent's presentation of evidence was set on July 14, 2011, but due to late arrival of respondent's counsel (after the hearing had already been cancelled by the Court), the hearing was reset to August 9, 2011. On this latter date, respondent's counsel again failed to appear, and upon motion of petitioner's counsel, this Court declared respondent to have waived her right to present evidence and required both parties to file their respective Memorandum. Petitioner was given a period of thirty (30) days from August 9, 2011 within which to file its Memorandum, while respondent was granted a period of thirty (30) days from notice to file her Memorandum. Only petitioner complied.

In the Resolution dated October 13, 2011, the case was submitted for decision, taking into consideration petitioner's Memorandum filed on October 10, 2011, *sans* respondent's Memorandum.

Subsequent to these facts, this Court quotes the narration of events as stated in the assailed September 2, 2016 Amended Decision:[4]

On March 29, 2012, this Court rendered its Decision in the instant case, the dispositive portion of which reads as follows:

"**WHEREFORE,** premises considered, the instant Petitions for Review are hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED."

Petitioner then filed a motion for reconsideration but the same was denied for lack of merit in the Resolution dated August 13, 2012.

Subsequently, petitioner elevated the said Decision and Resolution before the Court of Tax Appeals (CTA) *En Banc*, and the case was docketed as CTA EB No. 932. In its Decision dated November 5, 2013, the CTA *En Banc* decreed as follows, *viz:*

"**WHEREFORE,** premises considered, the instant *Petition for Review* is hereby **GRANTED**. The March 29, 2012 *Decision* and August 13, 2012

[4] CTA Division Docket, Vol. II, pp. 980-982.

> *Resolution* promulgated by the former First Division of this Court, which dismissed the consolidated Petitions for Review docketed as CTA Case Nos. 7894 & 7941, are **REVERSED AND SET ASIDE**.
>
> Accordingly, CTA Case Nos. 7894 & 7941 are hereby **REMANDED** to the court of origin for further proceedings.
>
> **SO ORDERED.**"

Respondent filed a motion for reconsideration of the CTA *En Banc's* Decision, but the same was denied for lack of merit in the Resolution dated March 20, 2014.

Thereafter, respondent filed a Petition for *Certiorari* before the Supreme Court and the same was docketed as G.R. No. 212432. However, the said Petition was dismissed for being a wrong remedy via the Resolution dated July 2, 2014 issued by the Third Division of the High Court. Respondent filed a motion for reconsideration of the said Resolution but it was denied with finality, pursuant to the Supreme Court's Resolution dated December 1, 2014.

The said Supreme Court's Resolution dated July 2, 2014 became final and executory on January 30, 2015. Correspondingly, the CTA *En Banc* in CTA EB No. 932 issued the Resolution dated August 20, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, considering the foregoing, and in accordance with the CTA *En Banc's* November 5, 2013 Decision, let CTA Case Nos. 7894 and 7941 be **REMANDED** to the court of origin for further proceedings.
>
> **SO ORDERED.**"

In the Resolution dated September 8, 2015, this Court submitted for decision the instant case xxx xxx xxx.

In the assailed Amended Decision dated September 2, 2016, the CTA Division denied for lack of merit the consolidated Petitions for Review. *gr*

In a Resolution dated December 13, 2016, the CTA Division denied petitioner's *Motion for Reconsideration*, for lack of merit.

Petitioner timely filed its Petition for Review on January 16, 2017.[5]

On February 23, 2017, respondent was ordered to file its Comment. However, per Records Verification dated April 24, 2017, counsel for respondent failed to file Comment on the Petition for Review.

On May 9, 2017, the parties were granted a period of thirty (30) days from notice, within which to file their respective memoranda. On June 30, 2017, this Court granted petitioner's "Motion for Extension of Time to File Memorandum." Within the period of extension given, petitioner filed its Memorandum on July 12, 2017. On the other hand, per Records Verification dated July 13, 2017, counsel for respondent has failed to file Memorandum in the above-entitled case. This case was submitted for decision on August 1, 2017.

ISSUE

Petitioner submits that the CTA Division's Amended Decision and Resolution should be set aside on the following meritorious grounds:

1. The CTA Division erred in finding that Petitioner failed to prove, by preponderance of evidence, that it performed services in the Philippines in favor of a nonresident foreign corporation;

2. The CTA Division erred in finding that Petitioner was unable to present ample evidence that its excess input taxes in the 1st and 2nd quarters of CY 2007 are attributable to its zero-rated sale of service;

3. The CTA Division erred in finding that Petitioner's excess input taxes in the 1st and 2nd quarters of CY 2007 have not been applied against output taxes during these quarters and the succeeding taxable period; and

4. The CTA Division erred in denying Petitioner's Motion to Re-Open Trial.

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[5] January 15, 2017 (due date of the extension) fell on a Sunday, thus, the next working day is January 16, 2017 (Monday).

Based on the foregoing, **the issue in this case is whether the CTA Special First Division erred in denying petitioner's claim for the refund of or issuance of tax credit certificate (TCC) for the alleged excess and unutilized input value-added tax (VAT) for the 1st and 2nd quarters of calendar year (CY) 2007 in the amount of ₱4,159,034.86.**

Petitioner alleges that its evidence sufficiently established that it rendered services in the Philippines in favor of a nonresident foreign client.

Petitioner argues that the CTA Division should have taken judicial notice of the findings in CTA Case No. 8234 that petitioner rendered services in the Philippines.

Petitioner also alleges that its input taxes are attributable to its zero-rated sales.

Petitioner submits that the CTA Division erred in ruling that petitioner failed to prove that the input VAT being claimed has not been applied against output taxes during the 1st and 2nd quarters of CY 2007 and the succeeding quarters.

Petitioner believes that the higher interest of justice would have been served with the reopening of trial.

THIS COURT'S RULING

The petition is denied.

After a careful review of petitioner's arguments in this petition, this Court finds that almost all of these arguments have already been considered by the Court in Division in the assailed Resolution. The new argument raised in this appeal pertains to the reopening of the trial, *i.e.* the higher interest of justice would have been served with reopening of the trial.

This case involves petitioner's claim for refund of alleged excess unutilized input taxes attributable to its zero-rated sales for the first and second quarters of 2007, detailed as follows:

CTA Case No.	Period Covered	Input Tax Claim
7894	January to March 2007	₱ 2,230,470.78
7941	April to June 2007	1,928,564.08
	Total	**₱ 4,159,034.86**

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Anent the input tax claim, the CTA Division adopted the findings of the Court-commissioned ICPA[6] and concluded that "the aggregate amount of input VAT for first and second quarters of CY 2007 that may be claimed for refund or tax credit certificate by petitioner, subject to the other requisites, is only ₱3,900,414.33."[7]

Pertinent to this case is Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337,[8] which states:

> "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: 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. ge

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[6] Exhibit "W", Division Docket, pp. 434-435.
[7] Amended Decision, p. 10.
[8] "*AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES,*" which took effect on November 1, 2005.

"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."

In applying the above provision, the CTA Division enumerated certain requisites to be complied with by a taxpayer-claimant to successfully obtain a credit/refund of excess input VAT.[9] However, the CTA Division found out that petitioner failed to show compliance with the following requisites in order that it may successfully obtain credit/refund of input VAT:[10]

1. that petitioner the taxpayer is engaged in zero-rated or effectively zero-rated sales (since there is no showing that the services rendered by petitioner were performed in the Philippines);

2. that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; and

3. that the input taxes have not been applied against output taxes during and in the succeeding quarters.

Also pertinent in this case is Section 108 (B) (2) of the 1997 NIRC, as amended, which states:

"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —

xxx xxx xxx

"(B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

"(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

[9] Assailed Amended Decision, pp. 4-5.
[10] Assailed Amended Decision, pp. 11-12.

> "(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> xxx xxx xxx

The CTA Division in the assailed Amended Decision enumerated the elements for a transaction to be treated as subject to the zero percent (0%) VAT under Section 108(B) (2) of the 1997 NIRC, as amended, as follows:

1. the subject services must be performed in the Philippines;
2. the recipient of such services is doing business outside the Philippines;
3. the services must be other than processing, manufacturing or repacking goods;[11]
4. the consideration for the services is paid for in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

The CTA Division found that the second to fourth elements were complied with by petitioner as discussed in the assailed Amended Decision.[12] The 1st element, however, was not complied with by petitioner as found by the CTA Division.

Petitioner failed to prove that services were performed in the Philippines

Petitioner reiterates its argument that the following documents sufficiently establish that it performed customer contact services in the Philippines in favor of Harte-Hanks Response Management/Austin, Inc. (HHRM): (a) Articles of Incorporation;[13] (b) Statement of Account and

[11] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
[12] Amended Decision, pp. 7-8.
[13] Exhibit "A", Division Docket-Vol.I, pp. 317-328.

Official Receipts;[14] (c) Transfer Pricing Agreement[15] between petitioner and HHRM ("TP Agreement");[16] (d) Independent Certified Public Accountant's (ICPA) Report;[17] (e) Audited Financial Statements for the Year Ended December 31, 2007;[18] (f) Reissued Audited Financial Statements for the Year Ended December 31, 2007;[19] (g) Supplemental ICPA Report dated November 2, 2010;[20] and (h) Supplemental ICPA Report dated November 2, 2010.[21]

In particular, petitioner alleges that the TP Agreement contains stipulations which, viewed collectively, indicate that Petitioner rendered customer support services in the Philippines. Petitioner explains that although the TP Agreement was primarily executed to spell out the guidelines for determining the arm's length price of the transaction between petitioner and HHRM, provisions of the said agreement show that the consideration for the arm's length price being paid by HHRM was petitioner's customer support operations in Manila. Petitioner also alleges that other pieces of evidence taken collectively and in conjunction with TP Agreement, prove that petitioner rendered services within the Philippines in favor of its nonresident foreign client.

The allegations are bereft of merit.

It is worthy to emphasize that the documents or exhibits offered by a party and admitted by the Court are still subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case. "Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight."[22]

In this case, based on petitioner's Formal Offer of Evidence (FOE), the Transfer Pricing Policy (Exhibit "II") was offered "to prove the agreed rate for the inbound and outbound services billed by the Petitioner to HAMI." Clearly, this is not the proof showing that the subject services are performed in the Philippines.

The CTA Division found out the documents presented were not sufficient, whether individually or collectively, to conclude that the subject

[14] Exhibits "AA1" to AA3a", Division Docket- Vol. I, pp. 505, 507-511.
[15] Should be Transfer Pricing Policy.
[16] Exhibit "II", Division Docket – Vol. I, pp. 583-587.
[17] Exhibit "W", Division Docket- Vol. I, pp. 428-441.
[18] Exhibit "JJ", Division Docket- Vol. I, pp. 588-611.
[19] Exhibit "KK", Division Docket- Vol. I, pp.612-625.
[20] Exhibit "SS", Division Docket-Vol. I, pp. 477-479.
[21] Exhibit "TT", Division Docket- Vol. I, pp. 480-482.
[22] *Westmont Investment Corporation v. Francia, Jr. et al,* G.R. No. 194128, December 7, 2011.

services were indeed performed in the Philippines. We reiterate pertinent portions of the assailed Resolution which state:

> xxx xxx xxx the Court finds no sufficient basis, whether taken collectively or individually, to conclude that the subject services were indeed performed in the Philippines.
>
> What has been clearly established is that petitioner is engaged in the following business activities: 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 held desk support, reservations, account management, pre-sales consulting, web assistance, customer marketing and acquisition, product sales and such other similar services through a remote customer contact center which shall utilize multiple channels of communications such as voice, e-mail, fax, web-based support and such other telecommunications infrastructure ; engaging in other information technology-enabled services including but not limited to data encoding, transcribing and processing; and engaging in operations to support the services set forth above.[23]
>
> However, the Court notes that these services, by the very nature thereof, can be performed, not only in the Philippines, but also in other countries. Thus, petitioner should have presented further evidence to establish that these services were indeed performed in the Philippines by petitioner, as required under Section 108 (B) of the National Internal Revenue Code as amended by Republic Act (RA No. 9337.)

No sufficient proof to show that petitioner's input VAT are attributable to the alleged zero-rated sales

Petitioner reiterates that its input taxes are attributable to its zero-rated sales.

We do not agree.

Considering that petitioner has not sufficiently established its claim that the subject services are performed in the Philippines, the Court in

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[23] Exhibits "A" and "II", Division Docket – Vol. 1, pp. 319 and 583.

Division is correct in ruling that "there is no showing that petitioner's input VAT are attributable to its zero-rated sales."[24] We quote the discussion of the CTA Division in the assailed Resolution[25]:

> As We have already ruled, petitioner's sales of services did not qualify for VAT zero-rating. Thus, even when the input VAT of petitioner is indeed attributable to said sales of services, the same is still not refundable, for the simple reason that only input VAT attributable to zero-rated sales may be refunded, pursuant to Section 112 of the NIRC of 1997, as amended by RA No. 9337.
>
> Conversely, even assuming that the sales of services of petitioner qualify for VAT zero-rating, its input VAT cannot still be said to be attributable to said sales. This is because petitioner failed to prove or to show any evidence to that effect.
>
> It must be emphasized that petitioner, being a party-litigant, is required to prove every minute aspect of its case.

It is a "well-established rule that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government...the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim."[26] In the case *Commissioner of Internal Revenue v. Far East Bank & Trust Company,*[27] the Supreme Court emphasized that the failure of the CIR to present any evidence or to refute the evidence presented by the taxpayer does not *ipso facto* entitle the taxpayer to a tax refund. The taxpayer must still present substantial evidence to prove his claim for refund. The burden is on the taxpayer to prove its entitlement to the refund. Pertinent portions of the said Decision reads:

> **The burden is on the taxpayer to prove its entitlement to the refund.**
>
> Moreover, **the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of**

[24] Assailed Resolution, p. 7.
[25] *Id.*
[26] *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012, citing *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, 500 Phil 149, 163 (2005).
[27] G.R. No. 173854, March 15, 2010; Citations Omitted.

> **establishing the factual basis of a claim for a refund rests on the taxpayer.**
>
> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. **The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.**
>
> Hence, for failing to prove its entitlement to a tax refund, respondent's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, **evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.** *(Emphases Supplied.)*

No judicial notice to the findings in CTA Case No. 8234[28] that petitioner rendered services in the Philippines

Petitioner invokes the power of the CTA Division to take judicial notice of actions by judicial organs under Section 1, Rule 129[29] of the Rules of Court. Petitioner alleges that the court's power to take judicial notice of matters adjudicated in another case involving the same parties was affirmed by the Supreme Court in *Clarion Printing House, Inc. v. NLRC.*[30]

We do not agree.

In a more recent case, the Supreme Court held that, "Courts may take judicial notice of a judgment in another case as long as the parties give their consent or do not object."[31] It means that judicial notice thereof is not

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[28] *Harte-Hanks Philippines, Inc. v. Commissioner of Internal Revenue*, November 4, 2013.
[29] RULE 129

What Need Not Be Proved

Section 1.*Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (1a)
[30] G.R. No. 148372, June 27, 2005.
[31] *Jumamil v. Cafe,* G.R. No. 144570, September 21, 2005, citing *Landbank of the Philippines v. Spouses Banal,* G.R. No. 143276, July 20, 2004.

mandatory and that consent of both parties are required. Thus, there is no duty on the part of the CTA Division to take judicial notice of the said case.

Further proof is required to ascertain the claimed input VAT for the 1st and 2nd quarters of 2007

Petitioner submits that the CTA Division erred in ruling that petitioner failed to prove that the input VAT being claimed has not been applied against output taxes during the 1st and 2nd quarters of CY 2007 and the succeeding quarters.

This Court reiterates the findings of the CTA Division in the assailed Amended Decision:[32]

> xxx xxx xxx While it may [be] true that the amount of ₱2,230,470.78 is stated in the Quarterly VAT Return for the first quarter of CY 2009 as "VAT Refund/TCC claimed", and thus, was not carried over to the succeeding periods, it does not necessarily follow that the composition of the said amount is the same input VAT being claimed for the said first quarter of CY 2007.
>
> In the same vein, this Court cannot determine whether the amount of ₱1,928,564.08, which supposedly represents the amount of input VAT being claimed for the second quarter of CY 2007, has been carried over in the succeeding periods. This is bolstered by the fact that in the Quarterly VAT Return for the second quarter of CY 2009 the amount of ₱8,784,130.31 of excess input VAT remains outstanding. In other words, it is possible that the said amounts of ₱2,230,470.78 and ₱1,928,564.08 remain to be included in the latter amount of ₱8,784,130.31. xxx xxx xxx

In the assailed Resolution,[33] the CTA Division also stated that:

> To the mind of the Court, the said testimonies should have been corroborated by a showing of the composition of the said amount of ₱8,784,130.31, so as to clear all doubts that it indeed did not include the amounts of refund being claimed

[32] Amended Decision, p. 11.
[33] Assailed Resolution, p. 8.

> (₱2,230,470.78 for the 1st quarter of 2007 and ₱1,928,564.08 for the 2nd quarter of 2007).
>
> To reiterate, to successfully obtain credit/refund of excess input VAT for a specific quarter, it must be proven that the same have not been applied against output VAT during and in the succeeding quarters. The reason for this requisite is obvious—it is to prevent the scenario wherein the taxpayer-claimant will be able to claim a refund and at the same time, be able to credit the same against the output VAT. Hence, the said requisite, like the other requisites, must be strictly complied with.

Re-opening of trial is not proper.

Petitioner believes that the higher interest of substantial justice would have been served with the reopening of trial. Petitioner alleges that the re-opening of trial would have allowed it to comply with the strict documentary requirements required by the CTA Division for proving that it rendered its services in the Philippines and that it did not apply the input tax claimed in the prior and succeeding quarters. Petitioner also alleges, among others, that the prejudice that was caused to petitioner by the non-presentation of these documents far outweigh the prejudice, if any that may have caused to the respondent by the reopening of the trial.

Petitioner's argument is bereft of merit.

Section 5, Rule 15 of the Revised Rules of the CTA, as amended, state the grounds of motion for new trial, as follows:

> SEC. 5. *Grounds of motion for new trial.* — A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and,

> which, if presented, would probably alter the result.

We agree with the findings of the CTA Division, as follows:

> In the instant case, petitioner has failed to show that its case fall under any of the foregoing grounds, and has not complied with the submission of affidavits of merits and/or duly authenticated documents which are supposed to be introduced in evidence.

Moreover, there is no allegation that it will present newly discovered evidence. To be considered a newly discovered evidence under the Rules of Court, the following requisites must be present: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment. [34]

We emphasize that, "[T]he bare invocation of 'the interest of substantial justice' is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed."[35]

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[36] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

Based on the foregoing discussions, this Court finds no reversible error to disturb the assailed Amended Decision and Resolution of the CTA Special First Division.

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[34] *Ombudsman-Mindanao v. Ibrahim*, G.R. No. 211290, June 1, 2016, citing *Amarillo v. Sandiganbayan*, 444 Phil. 487 (2003).
[35] *Bergonia v. Court of Appeals, (4th Division)*,G .R. No. 189151, January 25, 2012, 664 SCRA 322.
[36] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.

WHEREFORE, premises considered, the Petition for Review filed by Harte-Hanks Philippines, Inc. is **DENIED** for lack of merit. Accordingly, the September 2, 2016 Amended Decision and the December 13, 2016 Resolution of the Special First Division in CTA Case Nos. 7894 and 7941 are **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice