

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

TECHNOPEAK CORPORATION,
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

C.T.A. CASE NO. 7751

Members:

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

Promulgated:

FEB 26 2010; 10:20 a.m.

X

X

DECISION

CASANOVA, J.:

This is a Petition for Review¹ filed on April 8, 2008 by petitioner praying that the assessment made by the respondent Commissioner of Internal Revenue (CIR) in the amount of PESOS: FIVE MILLION ONE HUNDRED TWENTY SEVEN THOUSAND NINE HUNDRED TWENTY EIGHT and 60/100 (P5,127,928.60)², representing alleged deficiency value added tax (VAT), with interest, for taxable year 2002, be declared null and void. Further, petitioner prays that Question No. 47 and Answer No. 47 of Revenue Memorandum Circular (RMC) No. 69-2007 and the BIR Ruling dated March 7, 2008 should be declared null and void for being in violation of Section 8 of Republic Act (R.A.) No. 9480, as well as to declare petitioner to be entitled to the immunities and privileges under the said law. 

¹ Docket, pp. 4-20

² Exhibits "F", "G"

The facts of the case, based on joint stipulations and evidence on record, are as follows:

Technopeak Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 262 Mayon Street, Lourdes, Quezon City. It may be served with processes through petitioner's counsels of record.³

Respondent Commissioner of Internal Revenue is tasked with the assessment and collection of internal revenue taxes. It may be served with summons and other court processes at the Bureau of Internal Revenue Building (BIR), Diliman, Quezon City⁴.

Petitioner filed its Quarterly Value Added Tax Returns for the calendar year (CY) 2002 as follows⁵:

Quarter	Date Filed
First Quarter	April 25, 2002
Second Quarter	July 23, 2002
Third Quarter	October 24, 2002
Fourth Quarter	January 24, 2003

On August 30, 2005, petitioner, allegedly, was made to sign a Waiver of Statute of Limitations under the National Internal Revenue Code (NIRC) allowing BIR to assess taxes upon taxpayer not later than December 31, 2005⁶.

On April 25, 2006, petitioner received a Formal Letter of Demand and Assessment Notice, both dated April 12, 2006, from the Bureau of Internal Revenue (BIR) assessing 

³ Paragraph 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 84

⁴ Ibid, par. 2, Docket, pp. 84 - 85

⁵ Id., par. 3, Docket, p. 85; Exhibits "B" to "E"

⁶ Petition for Review, par. 9, Docket, p. 7

petitioner of the alleged deficiency value-added tax for the calendar year 2002 in the amount of P 5,127,928.60.⁷

On November 26, 2007, petitioner availed of the Tax Amnesty Program under Republic Act No. 9480 for the unpaid assessment per Final Assessment Notice/Demand Letter No. 38678 dated April 12, 2006⁸.

The Notice of Availment of Tax Amnesty dated November 21, 2007 was denied by the respondent in its Letter dated March 7, 2008⁹ which was received by petitioner on March 12, 2008¹⁰.

In its Answer with Motion to Dismiss¹¹, respondent interposed the following special and affirmative defenses:

- "7. All presumptions are in favor of the correctness of the Assessment;
8. It was stated by the Petitioner in paragraph 3 of the Petition that what is in issue before this Court is the invalid portion of Revenue Memorandum Circular No. 69-2007. In essence, the instant case is a Petition for Declaratory Relief. Under Section 1, Rule 63 of the Rules of Civil Procedure, it is stated that "*Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or **regulation**, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the **appropriate Regional Trial Court** to determine any question of construction or **validity** arising, and for a declaration of his rights or duties, thereunder.* In which case it is humbly submitted that the instant case had been erroneously filed before this Honorable Court such that the Honorable Court has no jurisdiction over the subject matter consonant to the provisions of Section 1(b), Rule 16 of the Rules of Civil Procedure;
9. Further, Section 3 of Rule 63 of the Rules of Civil Procedure requires that in cases of this nature, the Office of the Solicitor General should be properly notified for purpose of giving the State the

⁷ Exhibits "F" and "G"

⁸ JSFI, par. 4, Docket, p. 85; Exhibit "H"

⁹ Ibid, par. 5, Docket, p. 85; Exhibit "A"

¹⁰ Exhibit "A" notation of receipt.

¹¹ Docket, pp. 62-64

opportunity to be heard upon such question. Thus the aforecited Section is hereunder quoted for ready reference, to wit:

Section 3. Notice on Solicitor General – In any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation, the Solicitor General shall be notified by the party assailing the same and shall be entitled to be heard upon such question.

10. Non-compliance with the aforecited provision is in essence a deprivation of the right to be heard and/or the right to due process;
11. These Revenue Regulations are presumed valid and correct until and unless the same are declared unconstitutional. Without having been declared to be unconstitutional, the same shall have the force of the law and shall be valid and binding for all legal intents and purposes;
12. Delay in the issuance of the assessment had been caused by the intentional failure of the Petitioner to cooperate with the investigation being conducted by the Respondent. Petitioner should not be benefited by its malicious disregard of the notices and demands for presentation of documents or accounting records;
13. The Petitioner filed a pro-forma protest on May 16, 2006 without mentioning any reason on which it anchors the legal arguments to question the basis for the Assessment issued against Petitioner. The "Protest" filed does not conform to the prescribed procedure of the Respondent under Revenue Regulations No. 12-99 and the same should be considered null and void. The taxpayer's protest should *"state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect."* As a consequence, the assessment issued against the herein Petitioner had already become final and demandable.
14. The assessment issued against the Petitioner, being final and demandable, is to be considered delinquent accounts within the context of Revenue Memorandum Circular 69-2007. Hence, there is legal reason for the Petitioner's denial of the availment of the Tax Amnesty Program of 2007." 

During trial, petitioner presented as witnesses Benjamin Pineda, President of the Technopeak Corporation and its Treasurer, Evelyn Pineda¹². Thereafter, petitioner formally offered EXHIBITS "A" to "N-21"¹³, inclusive of sub-markings, in support of its claims, which this court resolved in a Resolution dated May 6, 2009¹⁴. Due to the continued absences of respondent's counsel, Atty. Philip Mayo, during the hearings set for the presentation of respondent's evidence, the right of respondent to present evidence was considered waived.¹⁵

On October 13, 2009, this case was submitted for decision, considering petitioner's Memorandum¹⁶ filed on September 23, 2009, sans respondent's memorandum¹⁷.

The parties jointly stipulated on the following issues¹⁸ for the Court's resolution:

"ISSUES RAISED BY THE PETITIONER

1. Whether or not the full period of limitation within which the Bureau of Internal Revenue can assess internal revenue taxes has expired.
2. Whether or not Petitioner Corporation waived its defense of prescription.
3. Whether or not the alleged waiver claimed by the Bureau complied with the requirements of Revenue Memorandum Order No. 20-90 and Revenue Delegation Authority Order No. 5-2001.
4. Whether or not the Petitioner validly availed of the Tax Amnesty Program under Republic Act No. 9489 (sic) for the unpaid assessment per Final Assessment Notice/Demand Letter No. 38678 dated April 12, 2006.
5. Whether or not Question 47 and Answer 47 of Revenue Memorandum Circular No. 69-2007 which became the BIR's legal basis for denying Petitioner's Notice of Availment of the Tax Amnesty Program is violative of Republic Act 9489 (sic).

ISSUES RAISED BY THE RESPONDENT

1. Whether or not the right of the government to assess value-added tax liability had already prescribed.
2. Whether or not the assessment has become final on the ground that the Petitioner failed to submit all documents in support of its protest. 

¹² Hearing, Benjamin Pineda, TSN dated November 11, 2008; Evelyn Pineda, TSN dated December 4, 2008

¹³ Formal Offer of Evidence, Docket, p.197-199

¹⁴ Docket, pp. 281-282

¹⁵ Docket, p. 291

¹⁶ Docket, pp. 292-305

¹⁷ Docket, p. 306

¹⁸ Docket, pp. 85-87

3. Whether or not this Honorable Court has jurisdiction to hear the issue of validity of Revenue Regulations No. 69-2007.
4. Whether or not it was Petitioner who submitted the assailed waiver."

In sum, the issue is whether or not petitioner is entitled to the prayers in its petition, namely: to declare the subject assessment null and void; to declare Question No. 47 and Answer No. 47 of RMC 69-2007 and BIR Ruling dated March 7, 2008 null and void; and to declare that petitioner is entitled to the immunities and privileges under RA 9480.

The Petition lacks merit.

This Court finds it appropriate to determine first the timeliness of the filing of the instant petition. Section 228 of the NIRC of 1997 explicitly provides, to wit:

"Sec. 228. Protesting of Assessment –

X X X X X

"Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180) - day period; otherwise, the decision shall become final, executory and demandable".
(emphasis supplied)

On the other hand, *Rule 8, Section 3 (a) of The Revised Rules of the Court of Tax Appeals* provides, thus:

"Sec. 3. Who may Appeal; period to file petition-

- (a) **A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry,

the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes." (emphasis supplied)

In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* (G.R. No. 168498, June 16, 2006), the Supreme Court held, thus:

"In *Ker & Company, Ltd. vs. Court of Tax Appeals*, the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless, the requirement that it must be brought within 30 days is jurisdictional. **If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.**

In fine, the failure to comply with the 30-day statutory period would bar the appeal and deprived the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment." (emphasis supplied)

Since the period to appeal is jurisdictional and non-extendible, the taxpayer's failure to seasonably file its Petition for Review before this Court is fatal (*Surigao Electric Co., Inc. vs. Commissioner*, CTA Case No. 1438, Oct. 1, 1965, citing *Pantranco vs. Chan Kian*, 105 Phil. 904; *Pangasinan Transportation Co., Inc. vs. Blaquera, etc.* 107 Phil. 975).

In the instant case, it is undisputed that petitioner did not file a written protest to respondent's Formal Letter of Demand and Assessment Notice dated April 12, 2006, which was received on April 25, 2006, but instead availed of the Tax Amnesty Program under R.A.

9480¹⁹. Based on petitioner's Judicial Affidavits²⁰, petitioner received on **April 25, 2006** a

¹⁹ Answer No. 6, Exhibit K-1, Judicial Affidavit of Benjamin Pineda, Docket, p. 213; Answer No. 9, Exhibit N-20, Judicial Affidavit of Evelyn Pineda, Docket, p. 244

Formal Letter of Demand and Assessment Notice, both dated April 12, 2006, collecting the amount of P 5,127,928.60, representing Value-Added Tax deficiency for the calendar year 2002, inclusive of interest.

Section 228 of the National Internal Revenue Code of 1997 explicitly provides that the said assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations; otherwise, the assessment shall become final. Applying the foregoing law, failure of the petitioner to file the said protest within thirty (30) days from April 25, 2006, (the date when it received the Formal Letter of Demand and Assessment Notice), rendered the above assessment final and unappealable.

The rule provides that in order for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a Petition for Review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.²¹ A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 can no longer be contested.²²

Petitioner, however, filed the instant Petition for Review only on April 8, 2008, without any pending administrative protest of the subject assessment dated April 12, 2006 which was admittedly received by petitioner on April 25, 2006. Consequently, the

²⁰ Answer No. 5, Exhibit K-I, Judicial Affidavit of Benjamin Pineda, Docket, p. 213; Answer No. 8, Exhibit N-20, Judicial Affidavit of Evelyn Pineda, Docket, p. 244

²¹ Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al., G.R. No. 148380, December 9, 2005

²² Ibid

determination of the validity or invalidity of the assessment falls out of the jurisdiction of this Court.

Be that as it may, while petitioner may have availed of tax amnesty under RA 9480, and correspondingly paid the alleged amnesty tax, the same is clearly not a substitute for the formal protest provided for under the NIRC in order to vest this Court jurisdiction to declare the assessment null and void.

As to the prayer of petitioner to determine the propriety of tax amnesty, the same is covered within the meaning of "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue" mentioned under Section 7 of Republic Act No. 9282, amending Republic Act No. 1125, which provides:

"SEC. 7. Jurisdiction. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" (emphasis supplied)

The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases arising under the NIRC or related laws administered by the Bureau of Internal Revenue.²³

The governing law of the subject tax amnesty is **Republic Act No. 9480** entitled "*An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed By the National Government for Taxable Year 2005*" 

²³ Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, Dec. 16, 2004

and Prior Years”. It is a law administered by the Bureau of Internal Revenue. Thus, this Court has jurisdiction to act upon the propriety/validity of petitioner’s availment of the Tax Amnesty Program under Republic Act No. 9480, which is herein quoted in pertinent part, as follows:

“SECTION 1. Coverage. — There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: Provided, however, That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.

“**SEC. 2.** *Availment of the Amnesty.* — Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR.”

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The requirements for the availment of the Tax Amnesty Program are provided under DOF Department Order No. 29-07 (DO 29-07). Section 6 of DO 29-07 provides:

“SEC. 6. Method of Availment of Tax Amnesty. —

1. Forms/Documents to be filed. - To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

a. Notice of Availment in such form as may be prescribed by the BIR;

b. Statements of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such form, as may be prescribed by the BIR;

c. Tax Amnesty Return in such form as may be prescribed by the BIR. 

x x x

3. Payment of Amnesty Tax and Full Compliance. – Upon filing of the Tax Amnesty Return in accordance with Sec. 6(2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.

The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of – or to be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance of the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.

The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.”

Records reveal that petitioner filed on November 26, 2007 a Notice of Availment of Tax Amnesty dated November 21, 2007²⁴ and paid the corresponding Amnesty tax in the amount of P-173,044.47²⁵. However, the instant case is bereft of evidence to show that petitioner has fully complied with the afore-quoted requirements of the Tax Amnesty Program under RA 9480, as implemented by DOF Department Order No. 29-07. Petitioner failed to present evidence in support of its availment of the Tax Amnesty Program, with the filing of its Statements of Assets, Liabilities and Networth (SALN) as of December 31, 2005 and the filing of the Tax Amnesty Return with the respondent BIR. Considering the foregoing, petitioner’s prayer that it be declared entitled to the immunities and privileges under Republic Act No. 9480 is bereft of merit and the same cannot be granted.

A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to

²⁴ Exhibit “H”

²⁵ Exhibit “I”

give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.²⁶

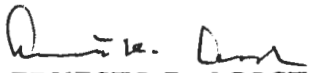
In view of the foregoing, this Court deems it no longer necessary to resolve the other issues in this case.

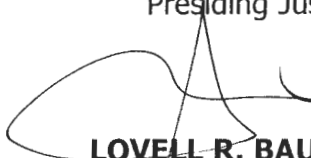
WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**.

SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

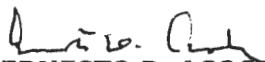

ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice

²⁶ Commissioner of Internal Revenue vs. Marubeni Corp., G.R. No. 137377, December 18, 2001

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's Division.


ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**PANAY POWER CORPORATION
(Formerly Avon River Power
Holding Corporation),**

Petitioner,

CTA CASE NO. 7402

Members:

~ versus ~

**ACOSTA, Chairperson,
BAUTISTA, and,
CASANOVA, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

FEB 18 2010 11:00 a.m.

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CONCURRING AND DISSENTING OPINION

I am in conformity with the *Ponente* in denying the Petition for Review, however, on a different ground.

In the majority's opinion, the Court, in applying the decision of the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*¹ with regard Section 112(A) of the 1997 NIRC or the period from which the counting of the two year period for refund of input tax will begin, considered the filing of petitioner's judicial claim for unutilized input VAT refund to be barred by prescription.

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¹ GR No. 172123, September 12, 2008.

CONCURRING AND DISSENTING OPINION
CTA Case No. 7402
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With all due respect to my esteemed colleagues, I do not subscribe to the majority opinion insofar as the ruling held the judicial claim as prescribed. Instead, it is my opinion that the Petition for Review was prematurely filed, because it violated the doctrine of exhaustion of administrative remedies.

Sections 112(A) and (D) of the 1997 NIRC provide the basis and procedure for refunds or tax credits of input tax attributable to zero-rated sales, to wit:

Section 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).

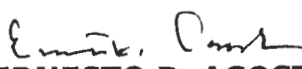
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CONCURRING AND DISSENTING OPINION
CTA Case No. 7402
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Applying the foregoing to the case at bar, petitioner, without any receipt of a decision on its administrative claim for refund which it filed on December 29, 2005, has 30 days from the lapse of one hundred twenty (120) days therefrom or from April 28, 2006, to file its judicial claim for VAT refund. The petitioner, however, filed its judicial claim on January 20, 2006, merely 22 days from the filing of its administrative claim, thus failing to comply with the requirements set forth by Section 112(A) in relation to Section 112(D) of the 1997 NIRC. Such is a violation of the doctrine of exhaustion of administrative remedies.

It is already 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.² The premature 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.³ After finding that respondent did not waive such defense, the judicial claim of petitioner must be dismissed for lack of cause of action.

I join the majority in denying the petitioner's claim for refund, however, not on the basis of prescription but on petitioner's violation of the doctrine of exhaustion of administrative remedies by failing to properly apply Section 112(A) in relation to Section 112(D) of the 1997 NIRC.


ERNESTO D. ACOSTA
Presiding Justice

² *Carale vs. Abarintos*, GR No. 120704, March 3, 2009.

³ *Paat vs. Court of Appeals*, G.R. No. 111107, January 10, 1997; 266 SCRA 167, pp. 175-177.