THIRD DIVISION

[G.R. No. 203367, March 17, 2021]

ENERGY DEVELOPMENT CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*[1] assails the May 31, 2012 Decision[2] and August 29, 2012 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA *En Banc* Case No. 809 which denied petitioner Energy Development Corporation's (EDC) appeal for lack of merit and for lack of cause of action.

The assailed rulings of the CTA *En Banc* affirmed with modification the May 9, 2011 Resolution[4] of the CTA Second Division dismissing EDC's judicial claim[5] for tax credit or refund of its unutilized input value-added taxes (VAT) for 2007 in the amount of P89,103,931.29 lack of cause of action based on our ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[6] *(Aichi)*.

The Facts:

EDC is a domestic corporation registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer.[7] On various dates, EDC filed its quarterly VAT Returns and the amendments thereof, for the year 2007 through Electronic Filing & Payment System of the BIR.

On March 30, 2009, EDC filed with the BIR Large Taxpayers District Office, Makati City an administrative claim for tax credit or refund of its unutilized input VAT for its zero-rated sales amounting to P89,103,931.29 for the taxable year 2007.[8]

On April 24, 2009, EDC filed an appeal/Petition for Review with the CTA docketed as CTA Case No. 7926 which was initially raffled to its First Division and subsequently transferred to its Second Division.[9]

The dates of EDC's filings of its 2007 Quarterly VAT Returns and administrative and judicial claims for input VAT tax credit or refund are as follows:[10]

Taxable Year 2007	Date of Filing (Quarterly Amended Quarterly VAT Returns)	Date of Filing (Administrative/Judicial Claim)
1st Quarter	April 25, 2007/December 22, 2007	March 30, 2009/April 24, 2009

2nd Quarter	July 19, 2007/December 22, 2007	March 30, 2009/April 24, 2009
3rd Quarter	October 25, 2007/December 22, 2007	March 30, 2009/April 24, 2009
4th Quarter	January 25, 2008/none	March 30, 2009/April 24, 2009

On June 18, 2009, respondent Commissioner of Internal Revenue (CIR) opposed the claim of EDC, arguing that EDC failed to substantiate its claim for input VAT tax credit or refund by the submission of proper documents.[11]

Trial ensued with EDC presenting its evidence.

On October 6, 2010, the Supreme Court promulgated its Decision in *Aichi*[12] which delineated the prescriptive periods for filing separate administrative and judicial claims for input VAT refund or tax credit of the then Section 112 (A) and (C),[13] of the National Internal Revenue Code of 1997 (NIRC).

In parallel proceedings, the CTA effected a flurry of dismissals of judicial claims, all anchored on our ruling in *Aichi*.

On March 25, 2011, the CIR filed a Motion to Dismiss[14] EDC's Petition for Review citing EDC's failure to comply with the prescriptive periods under Section 112 (C), of the NIRC. The CIR alleged that EDC did not wait for: (a) the CIR's action on its administrative claim for input VAT tax credit or refund before appealing to the CTA within 30 days, and (b) in the alternative of the CIR's inaction, reckon the 30-day period to appeal from the expiration of 120 days from the date of the submission of complete documents to support the administrative claim under Section 112 (A).[15]

EDC opposed the CIR's motion to dismiss arguing that Aichi cannot be applied retroactively to cases where the claim for input VAT tax credit or refund arose before *Aichi's* promulgation and especially since the period relied upon for availment of remedies was based on prevailing jurisprudence. EDC further argued that our ruling in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* (*Atlas*)[16] is *apropos* where we ruled that the two-year prescriptive period under Section 229[17] of the NIRC applies to claims for refund or tax credit of unutilized input VAT.

Ruling of the CTA Second Division.

The CTA Second Division, in its May 9, 2011 Resolution,[18] dismissed EDC's petition for review for prematurity:

> **WHEREFORE**, premises considered, respondent's "**Motion to Dismiss**" filed on March 25, 2011 is hereby **GRANTED**. **Accordingly**, the instant Petition for Review is **DENIED** for having been prematurely filed.[19]

The CTA Second Division held that Section 112 (A), of the NIRC is clear that "a taxpayer may apply for an administrative claim for refund of its unutilized input VAT

payments 'within two years reckoned from the close of the taxable quarter when the relevant sales were made".[20]

Citing *Aichi*, the Second Division of the tax court explained that after the filing of the administrative claim, the taxpayer must wait for the decision of the CIR thereon or the lapse of the 120-day period from the submission of the complete documents in support thereof before filing a petition for review with the CTA. In both instances, the filing of the judicial claim must be made within 30 days of either reckoning event or period.[21]

Lastly, the CTA Second Division rejected EDC's argument that Section 229 of the NIRC is applicable to claims for input VAT tax credit or refund. Citing its own Revised Rules of the Court of Tax Appeals[22] and our ruling in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant)*,[23] the CTA Second Division reiterated that the two-year prescriptive period to file a petition for review with the CTA refers to cases of disputed assessment in Section 228 of the NIRC, the section preceding the invoked Section 229, and not claims for refund of input VAT under Section 112 thereof Specifically, the CTA Second Division noted that the requirement of filing a petition for review within the two-year period only applies to instances of *erroneous payment or illegal collection* of internal revenue taxes. In all, taxpayers cannot avail of the provisions of Section 229 in cases of refund of unutilized creditable input VAT as the latter is *not an erroneously, illegally or unlawfully collected tax*.[24]

EDC moved for reconsideration which was denied by the CTA Second Division in its July 15, 2011 Resolution.[25]

Posthaste, EDC appealed to the CTA *En Banc* raising the issue of:

> WHETHER OR NOT [EDC] HAD TIMELY AND DULY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR TAX CREDIT/REFUND OF ITS INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALE OF STEAM AND PURCHASES UNDER THE "CONSTRUCTION-IN-PROGRESS" AMOUNTING TO P89,103,931.29 FOR THE YEAR 2007.[26]

The Ruling of the CTA *En Banc*.

In its assailed May 31, 2012 Decision, the CTA *En Banc* affirmed the CTA Second Division's dismissal of EDC's petition for review based on *Aichi, viz.*:

> **WHEREFORE**, the assailed resolutions dated May 9, 2011 and July 15, 2011 in CTA Case No. 7926 of the Second Division of this Court are hereby **AFFIRMED WITH MODIFICATION**. The instant Petition for Review is hereby **DENIED** for lack of merit and for lack of cause of action.[27]

Applying the Court's pronouncement in *Aichi*, the CTA *En Banc* ruled that while EDC timely filed its administrative claim for input VAT tax credit or refund under Section 112 (A) of the NIRC, *i.e.*, within two years from the close of the taxable quarter when the sales were made, EDC however prematurely filed its judicial claim or the appeal to the CTA when it did not comply with the indispensable requirement for the

taxpayer to await the action or inaction of the CIR within the 120-day period as prescribed in Section 112 (C).[28]

According to the CTA *En Banc*, EDC's premature filing of its judicial claim is a violation of the doctrine of exhaustion of administrative remedies and thus not a jurisdictional defect. Consequently, EDC's cause of action against the CIR had not yet ripened when it filed its petition for review before the CTA. In short, the dismissal of EDC's petition for review was correct but ought to have been based on lack of cause of action.[29]

EDC forthwith filed a motion for reconsideration which was subsequently denied by the CTA *En Banc*.[30]

EDC thus comes to this Court decrying the dismissal of its petition for review based on our ruling in *Aichi* that the filing of the judicial claim must await either of the CIR's action or inaction within a 120-day period, on the administrative claim under Section 112 (A) and (C) of the NIRC. In the main, EDC argues that *Aichi* is not applicable, either retroactively or as a controlling doctrine, in claims for refund of unutilized input VAT.

Issues

EDC posited the following assignment of errors:

> I. WHETHER OR NOT THE *AICHI* CASE CAN RETROACTIVELY APPLY TO CASES ALREADY FILED OR PENDING IN COURTS PRIOR TO ITS PROMULGATION.
>
> II. WHETHER OR NOT THE *AICHI* CASE IS THE CONTROLLING DOCTRINE IN CASES INVOLVING CLAIMS FOR REFUND OF UNUTILIZED INPUT VAT.
>
> III. WHETHER OR NOT THE *AICHI* CASE BEING A RULING OF A DIVISION OF THIS HONORABLE COURT CAN OVERTURN PREVIOUS DOCTRINES RENDERED BY ITS OTHER DIVISIONS.
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> IV. WHETHER OR NOT THE 2-YEAR PRESCRIPTIVE PERIOD FOR FILING CLAIMS FOR REFUND UNDER SECTION 112(A) IN RELATION TO 112(C) OF THE NATIONAL INTERNAL REVENUE CODE REFERS ONLY TO ADMINISTRATIVE CLAIMS.
>
> V. WHETHER OR NOT THE DOCTRINE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES PROPERLY APPLIES TO [EDC'S] CASE.
>
> VI. WHETHER OR NOT THE DENIAL OF THE CLAIM FOR REFUND CONSTITUTES UNJUST ENRICHMENT AND SOLUTIO INDEBITI ON THE PART OF THE GOVERNMENT.[31]

We fuse the issues into the singular issue of whether EDC timely filed its judicial claim or its petition for review before the CTA, for unutilized input VAT tax credit or refund under Section 112, (A) and (D) of the NIRC.

Our Ruling

The bone of contention herein lies in the applicability, or inapplicability, of our ruling in *Aichi* which squarely ruled on the prescriptive periods for the filing of a judicial claim. However, it must be pointed out that the touchstone of EDC's *cassus belli* is found on Section 112 (C) of the NIRC.

Section 112 (A) and (C) of the NIRC.

The contentious provision, before its recent amendment by Republic Act No. 10963, [32] provides:

> 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 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.
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) 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.

Notably, the recent amendment to Section 112 (C)[33] finally removed the confusion on the reckoning period for judicial claims by legislating a singular action for the CIR to decide on the administrative claim for input VAT tax credit or refund within a period of ninety (90) days.