FIRST DIVISION

[G.R. No. 205185, September 26, 2018]

KEPCO ILIJAN CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL PROMULGATED: REVENUE, RESPONDENT.

DECISION

BERSAMIN, J.:

The petitioner hereby appeals the adverse decision promulgated on September 6, 2012,[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc)* denied its claim for refund of the input value-added tax (VAT) for taxable year 2002. This appeal concerns the proper reckoning of the periods under Section 112(A) and Section 112(C) of the *National Internal Revenue Code of 1997* (NIRC) for bringing the administrative and judicial claims to seek the refund or issuance of the tax credit certificate of the VAT.

Antecedents

The petitioner, a duly registered domestic corporation engaged in the production of electricity as an independent power producer (IPP) and in the sale of electricity solely to the National Power Corporation (NPC), claimed the refund or issuance of the tax credit certificate for 74,658,461.68 for the VAT incurred in taxable year 2002.

It appears that the petitioner filed its quarterly VAT returns for the four quarters of taxable year 2002, thereby showing the incurred expenses representing the importation and domestic purchases of goods and services, including the input VAT thereon. On April 13, 2004, it brought its administrative claim for refund with Revenue District Office (RDO) No. 43 of the Bureau of Internal Revenue (BIR), claiming excess input VAT amounting to P74,658,481.68 for taxable year 2002.

On April 22, 2004, nine days after filing the administrative claim, the petitioner filed its petition for review (CTA Case No. 6966), which was assigned to the Second Division of the CTA (CTA in Division).

Judgment of the CTA in Division

On April 14, 2009, the CTA in Division rendered judgment in CTA Case No. 6966 partly granting the petition for review ,[2] and ordering the respondent to refund or to issue a tax credit certificate in the reduced amount of P23,389,050.05 representing the petitioner's unutilized excess input VAT attributable to its zero-rated sales to NPC for the second, third and fourth quarters of taxable year 2002, but denying the petitioner's input VAT claim for the first quarter of taxable year 2002 on the ground of prescription, and the other input VAT claims for lack of the required documentary evidence.[3]

On April 30, 2009, the petitioner moved for partial reconsideration with prayer to admit attached additional supporting documents. It argued that its claim for the first quarter of taxable year 2002 should not be denied because the rules and jurisprudence then prevailing stated that the reckoning point of the two-year period for filing the claim for refund of unutilized input taxes was the date of filing of the return and payment of the tax due pursuant to the two-year rule under *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (Atlas).*[4]

Acting on the petitioner's motion for partial reconsideration, the CTA in Division promulgated the amended decision dated February 18, 2011 denying the entire claim on the ground of prematurity.[5] It opined that it did not acquire jurisdiction over the petition for review because of the petitioner's non-observance of the periods provided under the NIRC,[6] citing the rulings in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant)*[7] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi).* [8] It decreed thusly:

> **WHEREFORE**, premises considered, the **Motion for Partial Reconsideration** is hereby **DENIED** for lack of merit. On the other hand, the assailed Decision promulgated on April 14, 2009 is hereby **SET ASIDE** and the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
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> SO ORDERED.[9]

Decision of CTA *En Banc*

The petitioner elevated the case to the CTA *En Banc,* contending that it had seasonably filed its administrative and judicial claims; and that the CTA had properly acquired jurisdiction over the judicial claim.

Through the now assailed decision promulgated on September 6, 2012,[10] the CTA *En Banc* denied the petition for review, disposing:

> **WHEREFORE** premises considered, the Petition for Review docketed as CTA EB NO. 733 is **DISMISSED**. The Amended Decision dated February 18, 2011 of the Former Second Division of this Court in CTA Case No. 6966, is hereby **affirmed**. No pronouncement as to cost.
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> **SO ORDERED**.[11]

On December 13, 2012, the CTA *En Banc* denied the petitioner's motion for reconsideration.[12]

Hence, this appeal.

Issue

The petitioner submits that the CTA acquired jurisdiction over the case; that the rulings in *Mirant* and *Aichi* should be applied prospectively, and, accordingly, did not

apply hereto; that the two-year period for filing the claim for refund of unutilized input taxes was to be reckoned from the filing of the return and the payment of the tax due; and that the claim for the refund of P72,618,752.22 should be granted.

Ruling of the Court

The appeal is partly meritorious.

The relevant provisions of the NIRC are Section 112(A) and Section 112(C), to wit:

> 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: x x x.
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> x x x x
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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 Subsection (A) hereof.
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> 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.

Under the foregoing, a VAT-registered taxpayer claiming a refund or tax credit of excess and unutilized input VAT must file the administrative claim within two years from the close of the taxable quarter when the sales were made.

The CTA *En Banc* ruled that the statutory period for claiming the refund or tax credit was clearly provided under Section 112 of the NIRC; that the ruling in *Mirant* - which did not create a new doctrine but only pronounced the correct application of Section 112 (A) of the NIRC - was the applicable jurisprudence; and that, therefore, no. new doctrine had been retroactively applied to the petitioner.

The petitioner avers herein that when it filed its administrative claim on April 13, 2004 it relied in good faith on the prevailing rule that the two-year prescriptive period should be reckoned from the filing of the return and payment of the tax due; and that its reliance on the controlling laws as affirmed in *Atlas* ripened into a property right that neither *Mirant* nor *Aichi* could simply take away.

The resolution of when to reckon the two-year prescriptive period for the filing an