FIRST DIVISION

[G.R. No. 198485, June 05, 2017]

MARUBENI PHILIPPINES CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Marubeni Philippines Corporation (Marubeni), assailing the Decision[2] dated March 23, 2011 and Resolution[3] dated August 31, 2011 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 557. The CTA *En Banc* affirmed with modification the CTA Second Division's Decision[4] dated June 2, 2009 in C.T.A. Case No. 6469. The CTA Second Division dismissed Marubeni's claim for refund and/or issuance of a tax credit certificate (TCC) for having been filed beyond the two-year prescriptive period. The CTA *En Banc,* on the other hand, dismissed Marubeni's claim for refund and/or issuance of a TCC because it was premature.

Facts

Marubeni is a domestic corporation duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer.[5]

On April 25, 2000, Marubeni filed its Quarterly VAT Return for the 1st quarter of Calendar Year (CY) 2000 with the BIR.[6]

On March 27, 2002, Marubeni filed with the BIR a written claim for a refund and/or the issuance of a TCC, which it later amended on April 25, 2002, reducing its claim to P3,887,419.31.[7] On the same date, Marubeni filed a petition for review before the CTA claiming a refund and/or issuance of a TCC in the amount of P3,887,419.31.[8]

During the proceedings in the CTA, Marubeni presented its witnesses and offered its evidence while respondent Commissioner of Internal Revenue (CIR) submitted the case for decision based on the pleadings.[9] After submitting its Memorandum, Marubeni moved to be allowed to present additional evidence, which the CTA Second Division granted.[10]

On December 8, 2008, Marubeni filed its Memorandum and on January 15, 2009, the case was deemed submitted for decision.[11]

In a Decision dated June 2, 2009, the CTA Second Division dismissed Marubeni's

judicial claim, the dispositive portion of which states:

> **WHEREFORE,** premises considered, the petition is hereby **DENIED DUE COURSE,** and accordingly, **DISMISSED**.
>
> **SO ORDERED.**[12]

The CTA Second Division ruled that following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,*[13] Marubeni timely filed its administrative claim for refund and/or the issuance of a TCC on March 27, 2002, which was within the two-year period from the close of the 1st quarter of CY 2000,[14] but that Marubeni's judicial claim for refund and/or issuance of TCC that was filed on April 25, 2002 (or the same day Marubeni amended its administrative claim for a refund and/or the issuance of a TCC to P3,887,419.31) was late because this should have been filed also within the two-year period from the close of the 1st quarter of CY 2000.[15]

Marubeni moved for reconsideration, but this was denied by the CTA Second Division in its Resolution[16] dated October 20, 2009.

Marubeni then elevated the matter to the CTA *En Banc,* raising the following arguments: (1) the two-year prescriptive period for the filing of the administrative and judicial claims for refund and/or issuance of TCC is reckoned from the date of the filing of the Quarterly VAT Return and payment of the output tax as held by the Court in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue;*[17] (2) *Mirant* could not validly overturn the ruling in *Atlas;* and (3) assuming that *Mirani* validly overturned the ruling in *Atlas,* the ruling should be applied prospectively and should not be made to apply to pending judicial claims for refund of excess input VAT.[18]

On March 23, 2011, the CTA *En Banc* rendered a Decision affirming with modification the Decision and Resolution of the CTA Second Division, the dispositive portion of which states:

> **WHEREFORE,** premises considered, the petition is **DENIED.** Accordingly, the Decision of the former Second Division of this Court in CTA Case No. 6469 dated June 2, 2009 and its Resolution dated October 20, 2009 are hereby **AFFIRMED,** with the modification that the dismissal of the Petition for Review is on the ground for having been prematurely filed. No pronouncement as to costs.
>
> **SO ORDERED.**[19]

The CTA *En Banc* agreed with the CTA Second Division that Marubeni timely filed its administrative claim for refund.[20] But as to Marubeni's judicial claim for refund, the CTA *En Banc* ruled that following Section 112 (D) of the National Internal

Revenue Code (1997 Tax Code) and the Court's ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*[21] the filing of the petition for review with the CTA was premature. According to the CTA *En Banc,* Marubeni should have filed its petition for review with the CTA 30 days from receipt of the decision of the CIR denying the claim or after the expiration of the 120-day period from the filing of the administrative claim with the CIR.[22]

Marubeni moved for reconsideration but the CTA *En Banc* denied this in a Resolution dated August 31, 2011.

Hence, this petition.

Issues

Marubeni raised the following issues:

a. Whether *Aichi* is applicable to its claim for refund;

b. Whether *Aichi* should only be applied prospectively; and,

c. Whether the CIR waived the defense of non-exhaustion of administrative remedies.[23]

The Court's Ruling

The petition lacks merit.

Prescriptive period for filing of judicial claim for refund.

The first and second issues are discussed together.

Marubeni claims that the Court's ruling in *Atlas* should be the one applicable to it instead of *Aichi.*[24] In *Atlas,* the Court held that the two-year period for the filing of claims for refund and/or issuance of TCC for input VAT must be counted from the date of filing of the quarterly VAT return. On the other hand, in *Aichi,* the Court ruled that the compliance with the 120+30 day periods in Section 112 (C) of the 1997 Tax Code were mandatory and jurisdictional.

Marubeni thus argues that the prospective application of *Aichi* means that *Aichi* will only be applied to claims for refund that were filed with the CTA after the promulgation of *Aichi* (which was promulgated by the Court on October 6, 2010).[25] And since Marubeni filed its petition with the CTA on April 25, 2002, the Court's ruling in *Atlas,* and not *Aichi,* should be applied to it.

This claim is wrong.

The issue of the retroactive application of *Aichi* and the applicability of *Atlas* was also raised in *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue.*[26] The facts and issue here and in *Mindanao II* are identical, except only for the covered taxable period — Marubeni's claim involved the 1st quarter of CY 2000, while the claim in *Mindanao II* involved different quarters of CY 2003. Thus, the ruling of the Court in *Mindanao II* squarely applies here.

The Court ruled in *Mindanao II* that a taxpayer cannot claim that *Atlas,* which was promulgated on June 8, 2007, is controlling on the timeliness of a judicial claim that was filed prior to June 8, 2007. According to the Court, it is the 1997 Tax Code, which took effect on January 1, 1998, that applies to the taxpayer, thus:

> When Mindanao II and Mindanao I filed their respective administrative and judicial claims in 2005, neither *Atlas* nor *Mirant* has been promulgated. ***Atlas* was promulgated on 8 June 2007, while *Mirant* was promulgated on 12 September 2008. It is therefore misleading to state that *Atlas* was the controlling doctrine at the time of filing of the claims.** The 1997 Tax Code, which took effect on 1 January 1998, was the applicable law at the time of filing of the claims in issue. x x x[27] (Emphasis in the original)

In this regard, the Court had already clarified in *Commissioner of Internal Revenue v. San Roque Power Corp.,*[28] that *Atlas* did not interpret, expressly or impliedly, the 120+30 day periods, thus:

> San Roque cannot also claim [to] being misled, misguided or confused by the *Atlas* doctrine because **San Roque filed its petition for review with the CTA more than four years before *Atlas* was promulgated.** The *Atlas* doctrine did not exist at the time San Roque failed to comply with the 120-day period. Thus, San Roque cannot invoke the *Atlas* doctrine as an excuse for its failure to wait for the 120-day period to lapse. In any event, the *Atlas* doctrine merely stated that the two-year prescriptive period should be counted from the date of payment of the output VAT, not from the close of the taxable quarter when the sales involving the input VAT were made. **The *Atlas* doctrine does not interpret, expressly or impliedly, the 120+30 day periods.**[29] (Emphasis in original.)

Similarly, it was misleading for Marubeni to invoke *Atlas* given that *Atlas* could not have been applicable as it was promulgated years after Marubeni had filed its administrative and judicial claims in 2002; accordingly, it cannot escape the applicability of the 1997 Tax Code.

Section 112 of the 1997 Tax Code[29-a] provides for the rules on claiming refunds of and/or the issuance of a TCC for unutilized input VAT, the pertinent portions of which

read as follows:

> 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
>
> x x x x
>
> (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.**
>
> 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 supplied)

According to the Court in *Mindanao II,* it is the above-quoted Section 112 (C) of the 1997 Tax Code that applies to the judicial claim for refund, and, citing *San Roque,* [30] compliance with the 120+30 day periods is mandatory and jurisdictional. Thus:

> In determining whether the claims for the second, third and fourth quarters of 2003 have been properly appealed, we still see no need to refer to either *Atlas* or *Mirant,* or even to Section 229 of the 1997 Tax Code. The second paragraph of Section 112 (C) of the 1997 Tax Code is clear: "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."
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> The mandatory and jurisdictional nature of the 120+30 day periods was explained in *San Roque:*