



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**MARUBENI PHILIPPINES CORPORATION,**

Petitioner,

**G.R. No. 198485**

Present:

- versus -

SERENO, C.J., Chairperson,  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO,  
 PERLAS-BERNABE, and  
 CAGUIOA, JJ.

**COMMISSIONER OF INTERNAL REVENUE,**  
 Respondent.

Promulgated:

**JUN 05 2017**

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**DECISION**

**CAGUIOA, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioner Marubeni Philippines Corporation (Marubeni), assailing the Decision<sup>2</sup> dated March 23, 2011 and Resolution<sup>3</sup> 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<sup>4</sup> 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.

<sup>1</sup> *Rollo*, pp. 10-51.

<sup>2</sup> *Id.* at 57-92. Penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, and Esperanza R. Fabon-Victorino, concurring; Presiding Justice Ernesto D. Acosta, concurring and dissenting; and Associate Justices Lovell R. Bautista and Amelia R. Cotangco-Manalastas, dissenting.

<sup>3</sup> *Id.* at 114-127. Penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring; Presiding Justice Ernesto D. Acosta, Associate Justices Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas, concurring and dissenting; and Associate Justice Lovell R. Bautista, dissenting.

<sup>4</sup> *Id.* at 135-151. Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy concurring.

### Facts

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

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

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 ₱3,887,419.31.<sup>7</sup> 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 ₱3,887,419.31.<sup>8</sup>

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.<sup>9</sup> After submitting its Memorandum, Marubeni moved to be allowed to present additional evidence, which the CTA Second Division granted.<sup>10</sup>

On December 8, 2008, Marubeni filed its Memorandum and on January 15, 2009, the case was deemed submitted for decision.<sup>11</sup>

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.**<sup>12</sup>

The CTA Second Division ruled that following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,<sup>13</sup> 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 1<sup>st</sup> quarter of CY 2000,<sup>14</sup> 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

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<sup>5</sup> Id. at 137.

<sup>6</sup> Id.

<sup>7</sup> Id. at 138-139.

<sup>8</sup> Id. at 150.

<sup>9</sup> Id. at 141.

<sup>10</sup> Id.

<sup>11</sup> Id. at 142.

<sup>12</sup> Id. at 151.

<sup>13</sup> 586 Phil. 712 (2008).

<sup>14</sup> *Rollò*, pp. 148-150.

to ₱3,887,419.31) was late because this should have been filed also within the two-year period from the close of the 1<sup>st</sup> quarter of CY 2000.<sup>15</sup>

Marubeni moved for reconsideration, but this was denied by the CTA Second Division in its Resolution<sup>16</sup> 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*;<sup>17</sup> (2) *Miranti* could not validly overturn the ruling in *Atlas*; and (3) assuming that *Miranti* 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.<sup>18</sup>

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.**<sup>19</sup>

The CTA *En Banc* agreed with the CTA Second Division that Marubeni timely filed its administrative claim for refund.<sup>20</sup> 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.*,<sup>21</sup> 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.<sup>22</sup>

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<sup>15</sup> Id. at 150.

<sup>16</sup> Id. at 153-161.

<sup>17</sup> 551 Phil. 519 (2007).

<sup>18</sup> *Rollo*, p. 64.

<sup>19</sup> Id. at 91.

<sup>20</sup> Id. at 85.

<sup>21</sup> 646 Phil. 710 (2010).

<sup>22</sup> *Rollo*, pp. 85-87.

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.<sup>23</sup>

### 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*.<sup>24</sup> 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).<sup>25</sup> 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.

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<sup>23</sup> Id. at 22.

<sup>24</sup> Id. at 28-30.

<sup>25</sup> See id. at 49.

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*.<sup>26</sup> The facts and issue here and in *Mindanao II* are identical, except only for the covered taxable period — Marubeni's claim involved the 1<sup>st</sup> 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<sup>27</sup> (Emphasis in the original)

In this regard, the Court had already clarified in *Commissioner of Internal Revenue v. San Roque Power Corp.*,<sup>28</sup> 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.**<sup>29</sup> (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.

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<sup>26</sup> 706 Phil. 48 (2013).

<sup>27</sup> Id. at 74.

<sup>28</sup> 703 Phil. 310 (2013).

<sup>29</sup> Id. at 357-358.

Section 112 of the 1997 Tax Code<sup>29-a</sup> 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*,<sup>30</sup> 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.”

The mandatory and jurisdictional nature of the 120+30 day periods was explained in *San Roque*:

At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were

<sup>29-a</sup> As amended by R.A. No. 9337.

<sup>30</sup> Supra note 28.



already in the law. Section 112(C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: "x x x 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." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.

Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

x x x 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)

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

x x x x

Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only



logical interpretation of Section 112(A) and (C). (Emphases in the original; citations omitted)<sup>31</sup>

Marubeni therefore failed to comply with the mandatory and jurisdictional requirement of Section 112 (C) when it filed its petition for review with the CTA on April 25, 2002, or just 29 days after filing its administrative claim before the BIR on March 27, 2002.

Since Marubeni filed its judicial claim for refund on April 25, 2002, it could not benefit from BIR Ruling No. DA-489-03 that was subsequently issued on December 10, 2003. As the Court ruled in *San Roque*:

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. **Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.**<sup>32</sup> (Emphasis and underscoring supplied.)

In fine, Marubeni's judicial claim for refund was, as correctly found by the CTA *En Banc*, premature and the CTA was devoid of any jurisdiction over the petition for review because of Marubeni's failure to strictly comply with the 120+30 day periods required by Section 112 (C) of the 1997 Tax Code. To recall, Marubeni filed its administrative claim on March 27, 2002. The CIR had 120 days from that date within which to rule on that administrative claim. But within 29 days from March 27, 2002, or on April 25, 2002, Marubeni already filed its petition for review with the CTA.

Marubeni could also not benefit from BIR Ruling No. DA-489-03 because that ruling was issued on December 10, 2003, or after Marubeni had already filed its petition for review with the CTA on April 25, 2002.

***Waiver of objection to non-exhaustion of administrative remedies.***

Marubeni also argues that even assuming that the 120+30 day periods are applicable, failure to comply with said periods violates only the rule on non-exhaustion of administrative remedies which can be waived when not objected to.<sup>33</sup> Stated otherwise, Marubeni posits that the CIR's failure to raise

<sup>31</sup> Supra note 26, at 78-81.

<sup>32</sup> Supra note 28, at 371.

<sup>33</sup> See *rollo*, pp. 30-32, 225-227.



the issue of prematurity in its Answer to Marubeni's petition before the CTA should be deemed a waiver of that objection.<sup>34</sup> Again, this has no basis.

In *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*,<sup>35</sup> the Court, citing *San Roque*, ruled that the failure to observe the 120 days prior to filing of a judicial claim for refund is not a mere non-exhaustion of administrative remedies but is jurisdictional in nature, thus:

Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, both periods are hereby rendered jurisdictional. Failure to observe 120 days prior to the filing of a judicial claim is not a mere non-exhaustion of administrative remedies, but is likewise considered jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether the CIR renders a decision (which must be made within 120 days) or there was inaction, the period of 120 days is material.<sup>36</sup>

Accordingly, the CIR's failure to raise the issue of compliance with the 120+30 day periods in its Answer to Marubeni's petition for review cannot be deemed a waiver of such objection. As the Court ruled in *Applied Food*, the periods are jurisdictional, and "x x x the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or considered by the Court *motu proprio*."<sup>37</sup> Marubeni cannot therefore escape compliance with the 120+30 day periods. Its failure to observe the periods is fatal to its judicial claim for refund.<sup>38</sup>

**WHEREFORE**, premises considered, the instant petition for review is hereby **DENIED**. The Decision dated March 23, 2011 and the Resolution dated August 31, 2011 of the CTA *En Banc* in CTA EB Case No. 557 are hereby **AFFIRMED**.

**SO ORDERED.**

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>34</sup> Id. at 31.

<sup>35</sup> 720 Phil. 782 (2013).

<sup>36</sup> Id. at 794.

<sup>37</sup> Id. at 790.

<sup>38</sup> See id. at 795.

WE CONCUR:



**MARIA LOURDES P. A. SERENO**

Chief Justice

Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**

Associate Justice

  
**MARIANO C. DEL CASTILLO**

Associate Justice



**ESTELA M. PERLAS-BERNABE**

Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**

Chief Justice

