REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MARUBENI PHILIPPINES CORPORATION, Petitioner,	C.T.A. EB No. 799 (C.T.A. CASE NO. 7223)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	JUN 19 2013 8:05 a.m.

x- x

DECISION

***Fabon-Victorino, J.*:**

This is a Petition for Review filed by petitioner Marubeni Philippines Corporation assailing the Amended Decision dated March 14, 2011 dismissing its claim for refund of P11,139,650.19, representing its unutilized excess input taxes attributable to zero-rated sales for the four taxable quarters of 2003, as well as the Resolution dated June 15, 2011, denying its Motion for Reconsideration, for lack of merit.

The following facts are undisputed:

Petitioner is a duly organized and existing domestic corporation primarily engaged in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as the principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products whether natural or artificial. As a registered VAT taxpayer, it was issued a Taxpayer Identification No. 004-519-222-000 and BIR Certificate of Registration No. 8RC0000015925.

Respondent, on the other hand, is the Commissioner of Internal Revenue with authority to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.

For the first to the fourth quarter of 2003, petitioner filed with the BIR its original Quarterly VAT Returns (BIR Form No. 2550Q), and amended Quarterly VAT Returns as follows:

Period	Original Return	Exhibit	Amended Return	Exhibit
1st Quarter	April 23, 2003	B/B-1	October 17, 2003 (1st)	C
			April 14, 2005 (2nd)	D
			October 10, 2005 (3rd)	U
2nd Quarter	July 25, 2003	E/E-1	October 17, 2003 (1st)	F
			April 14, 2005 (2nd)	G/G-1
			October 10, 2005 (3rd)	V
3rd Quarter	October 27, 2003	H/H-1	April 14, 2005 (1st)	I/I-1
			October 10, 2005 (2nd)	W
4th Quarter	January 26, 2004	J/J-1	April 14, 2005 (1st)	K/K-1

			October 10, 2005 (2nd)	X

In its amended Quarterly VAT Returns for the four quarters of 2003, petitioner reflected VAT zero-rated sales of P166,957,052.16, taxable sales of P13,419,573.81 with the corresponding output VAT of P1,341,957.39 and excess input VAT of P11,167,802.09, broken down as follows:

Period	Zero-Rated Sales	Taxable Sales	Output VAT	Input VAT	Excess Input VAT
1st Quarter	P30,757,850.52	P11,251,123.63	P1,125,112.36	P2,749,892.90	P1,624,780.54
2nd Quarter	30,135,727.65	531,105.42	53,110.55	2,487,476.72	2,434,366.17
3rd Quarter	37,609,307.49	477,469.09	47,746.91	3,073,509.10	3,025,762.19
4th Quarter	68,454,166.50	1,159,875.67	115,987.57	4,198,880.76	4,082,893.19
Total	**P166,957,052.16**	**P13,419,573.81**	**P1,341,957.39**	**P12,509,759.48**	**P11,167,802.09**

On April 20, 2005, petitioner filed with respondent an application for refund/tax credit in the amount of P11,139,650.19 out of the total excess input VAT of P11,167,802.09 reported in its VAT return for the four quarters of 2003. The amount allegedly represents unutilized excess input VAT attributable to its zero-rated sales and capital goods purchased during the four quarters of 2003.

A day after or on April 21, 2005, petitioner filed a Petition for Review with the Court in Division alleging respondent's inaction on its claim.

In her Answer respondent argued that the subject claim for refund/tax credit is still subject to administrative investigation; that the questioned payment and collection of taxes are presumed to be valid; that the administrative claim for refund/tax credit were not fully substantiated; that the burden of proof to establish compliance with the requirements under Section 204 (c) in relation to Section 229 of the Tax Code and entitlement to the refund sought is on petitioner; that the alleged sales of goods and services to clients do not qualify as zero-rate VAT; and that the claims for refund are in the nature of exemption from taxation thus strictly construed against petitioner.

During the trial only petitioner presented evidence as respondent was declared to have waived her right to present any.

In the Decision dated December 15, 2009, the Court in Division partially granted the petition directing respondent to refund or issue tax credit certificate in favor of petitioner in the amount of ONE HUNDRED THIRTY FOUR THOUSAND SIX HUNDRED SIXTY TWO AND 95/100 PESOS (P134,662.95) representing its unutilized excess input taxes attributable to zero-rated sales for the four taxable quarters of 2003.

Not satisfied, petitioner sought a reconsideration of the foregoing decision.

In a Resolution dated April 30, 2010, the Court in Division held in abeyance the resolution of petitioner's motion for reconsideration and allowed it to submit supplemental evidence.

In the assailed Amended Decision dated March 14, 2011, the Court in Division denied petitioner's motion for reconsideration and turned 180 degrees by dismissing petitioner's claim for refund on ground of prematurity, thus:

> WHEREFORE, premises considered, petitioner's Motion for Reconsideration of the Court's Decision dated 15 December 2009 and Supplemental Motion For Reconsideration (With Motion for Leave of Court to Submit Supplemental Evidence, are hereby DENIED for lack of merit. Consequently, the Court's Decision dated December 15, 2009, granting the tax refund or the issuance of a tax credit certificate in the amount of P134,662.95, is REVERSED and SET ASIDE, and the Petition for Review filed on April 21, 2005 is

DISMISSED for having been prematurely filed.

SO ORDERED.

In the assailed Resolution of June 15, 2011, petitioner's Motion for Reconsideration was denied, for lack of merit.

Hence, the instant Petition for Review before the Court *En Banc*.

Petitioner argues that its judicial claim was seasonably filed following the prevailing practice and jurisprudence on VAT refunds at the time it instituted this action in 2005. At that time, the 120-30 day rule under Section 112 of the Tax Code was not mandatory and the administrative and judicial claims for refund were deemed timely if filed within two years from the payment of the tax in accordance with Section 229 of the Tax Code and applied in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (Atlas)*.[1]

In contrast, the 120-day period in Section 112 merely provides a timeframe for administrative evaluation of the application for refund and the 30-day period for purposes of appeal, both of which were directory as could be inferred from the use of the word "may" in the provision.

Petitioner further argues that the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[2] case cannot overturn the doctrine laid down in the *Atlas* case, similarly rendered by a Division of the Supreme Court. This is explicit in Article VIII, Section 4(3) of the 1987 Philippine Constitution which states that "no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc."

This is not to discount the fact that the ruling in the

[1] G.R. Nos. 141104 & 148763, June 8, 2007.
[2] G.R. No. 184823, October 06, 2010.

Aichi case is deemed part of the law of the land, hence, it should be applied prospectively and not retroactively as to adversely affect the instant petition lodged in 2005. This is in accord with Article 4 of the Civil Code which provides that laws shall have no retroactive effect. When a doctrine of the Supreme Court is overruled or reversed, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine in good faith.

Petitioner also contends that prematurity of the judicial claim is merely a violation of the rule on exhaustion of administrative remedies rendering the claim dismissible for lack of cause of action. This ground however may be waived as provided in Section 1, Rule 9 of the Rules of Court. Since the issue of prematurity was never raised in the proceedings before the Court in Division, respondent is deemed to have waived such defense, and is therefore estopped from raising it at this stage of the proceedings.

Respondent should not also be allowed to contradict her own issuances such as Revenue Regulations (RR) No. 7-95 particularly Section 4.104-2 thereof, Revenue Memorandum Circular (RMC) No. 42-99, RMC No. 42-2003, as amended by RMC No. 49-2003, and RMC No. 29-2009, which categorically declared that a taxpayer need not wait for the lapse of the 120-day period mandated under Section 112 of the NIRC provided both the administrative and judicial claims are filed within the two-year prescriptive period mandated in Section 229 of the same Tax Code. The said issuances made petitioner believe that there was no need to observe the 120-day rule under Section 112.

Finally, petitioner claims that it was able to prove by sufficient evidence its entitlement to refund/tax credit.

By way of comment, respondent claims that the *Aichi* case did not overturn the *Atlas* case for it was only in the former case that the Supreme Court made a direct and categorical pronouncement interpreting the 120/30-day periods provided in Section 112 of the Tax Code. That being the case, the doctrine laid down in the *Aichi* case should be applied to all similar cases after its promulgation on October 6, 2010. It has been held that judicial interpretation of a statute constitute a part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.

Petitioner's reliance in the *Atlas* case is also erroneous since it was decided using the 1977 Tax Code, while the instant case is already covered by the 1997 Tax Code.

Moreover, the cases cited by petitioner are not binding jurisprudence as they did not directly deal with the proper interpretation of the 120-30 day periods under Section 112 of the NIRC.

As to the alleged permissive or directory nature of the 120-day period in Section 112, respondent reiterates that the same has been put to rest in the *Aichi* case which declared that the 120-day period is mandatory and jurisdictional. In the instant case however, petitioner filed its Petition for Review one (1) day after it filed its administrative claim for refund/tax credit rendering the same premature thereby depriving the Court of competence to hear and determine it. And this defense can be raised at any time, even on appeal.

Lastly, the claim for tax refund should be construed strictly against petitioner who has the burden to prove its entitlement to refund/tax credit.

The Ruling of the Court *En Banc*

There is no dispute that the pertinent law is Section 112 of the NIRC, as amended, which reads as follows:

> 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. 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. x x x

In interpreting the foregoing provision, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[3] *(Aichi case)*, declared, thus:

> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states

[3] G.R. No. 184823, October 06, 2010.

> that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim. In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

The language of the law is clear and explicit, there is no room for interpretation, only application.[4] Further, it is plain from the cited case that a VAT-registered person, such as petitioner, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for issuance of tax credit certificate or refund of creditable input tax attributable to such sales.

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[4] Joselito R. Mendoza vs. Commission on Elections and Roberto M. Pagdanganan, G.R. No. 191084, March 25, 2010.

From the evidence presented, it is clear that the administrative claim for refund of unutilized input VAT for the four quarters of 2003 was filed within two (2) years after the close of the pertinent taxable quarter on April 20, 2005.

Section 112 of the NIRC, as amended also provides that within thirty (30) days from receipt of the decision denying the administrative claim for refund/tax credit, or after the expiration of the 120-day period, the aggrieved petitioner may appeal with the Court of Tax Appeals.

Thus, from the filing of the administrative claim on April 20, 2005, respondent had 120 days to grant or deny the claim. Thereafter, petitioner had 30 days to seek judicial review. But petitioner in this case did not wait for the lapse of the 120-day period. It immediately sought judicial intervention via a Petition for Review filed with the Court in Division a day after the filing of its administrative claim for refund/tax credit, or on April 21, 2005. In other words, petitioner failed to exhaust available administrative remedies on ground of prematurity resulting in lack of jurisdiction on the part of the reviewing Court.

Recently however, the Final Arbiter, in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation (San Roque)* [5] provided a window for the mandatory application of the 120-day rule under Section 112 of the NIRC, in this wise:

> 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

[5] Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485; Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113; Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156, February 12, 2013

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.

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BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

x x x x x x x x x

> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional. x x x BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim.

Clear as a day that the instant claim for refund falls squarely within the exception elucidated in the above-cited case. As earlier stated, petitioner filed its administrative claim for refund on April 20, 2005 and sprinted to the reviewing Court the following day. In fine, petitioner did not allow the 120-day period in Section 112 of the NIRC, as amended, to lapse before resorting to court.

Petitioner however is covered by the protective mantle of BIR Ruling No. DA-489-03 issued on December 10, 2003, which categorically states that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA. BIR Ruling No. DA-489-03 is effective from the time of its issuance on December 10, 2003 up to its reversal on October 6, 2010 by virtue of the *Aichi* case. Hence, respondent is estopped from invoking the defense of the prematurity in the filing of petitioner's judicial claim for refund/tax credit since it is deemed seasonably filed.

Consequently, the Court in Division acquired jurisdiction over the case and can as it did, rule on the merits of the claim.

Be that as it may, there is a need to remand the case to the Court in Division considering that it did not rule on the merits of petitioner's Motion For Reconsideration (Re: Decision dated 15 December 2009) filed on January 19, 2010 and Supplemental Motion For Reconsideration (With Motion for Leave of Court to Submit Supplemental Evidence filed on February 22, 2010. The said Motions involved petitioner's submission of additional documentary evidence, which were admitted by the Court in Division in the Resolution dated November 5, 2010. However, the Court in Division neither took into account the admitted additional documentary evidence nor the arguments raised in petitioner's Motion For Reconsideration and its Supplement. In the assailed Amended Decision dated March 14, 2011, the Court in Division dismissed the claim for refund\tax credit on ground of prematurity. Hence, this case should be remanded to the Court in Division for further proceedings.

WHEREFORE, the Petition for Review dated July 20, 2011 filed by petitioner Marubeni Philippines Corporation, is hereby **GRANTED**. The Amended Decision dated March 14, 2011 and the Resolution dated June 15, 2011 both rendered by the Special First Division of the Court are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court in Division for further proceedings to determine petitioner's entitlement to the relief sought.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(I Inhibit)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

MARUBENI PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 799
(CTA Case No. 7223)

Members:
DEL ROSARIO, ***PJ*****,**
CASTAÑEDA, JR.,
BAUTISTA
UY
CASANOVA,
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, ***JJ.***

Promulgated:
JUN 19 2013 8:05 a.m.

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DISSENTING OPINION

CASANOVA, ***J.*****:**

With due respect to my esteemed colleagues, I dissent with the majority opinion granting petitioner's Petition for Review filed on July 20, 2011.

I am aware of the recent pronouncement of the Supreme Court in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue*[1] which clarifies the issue on the application of the 120-30 day prescriptive period for refund under Section 112 of the 1997 NIRC. In the said consolidated cases, particularly in the San Roque case, the Supreme Court ruled that from the issuance of BIR

[1] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court in the Aichi case on October 6, 2010, the taxpayer-claimant need not wait for the lapse of the 120-day period before it could file its judicial claim before the CTA.

In the present case, petitioner filed its judicial claim on April 21, 2005, one (1) day after it filed its administrative claim on April 20, 2005, thus violating the 120-30 rule. However, as it filed its judicial claim within the period after the issuance of BIR Ruling No. DA-489-03 and before the promulgation of the Aichi case, petitioner is said to have filed its judicial claim on time, hence the decision of the majority to grant petitioner's Petition for Review.

Notwithstanding the foregoing, it is possible that a Motion for Reconsideration of the said decision may have been filed, thus, until the said Supreme Court case has attained finality and the corresponding entry of judgment has been made[2], prudence dictates that this Court's position on the matter be maintained and application of the new doctrine be, in the meantime, deferred.

In view of the foregoing, the undersigned votes that the instant Petition for Review should be denied considering that the premature filing of judicial claim warrants a dismissal inasmuch as no jurisdiction was acquired by this Court.

CAESAR A. CASANOVA
Associate Justice

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[2] RULE 36
JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF
Sec. 2. *Entry of judgments and final orders.*
If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.