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FIRST DIVISION

[G.R. No. 197980, December 01, 2016]

DEUTSCHE KNOWLEDGE SERVICES PTE LTD., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision[1] dated July 22, 2011 of the Court of Tax Appeals (CTA) *En Banc* in CTA E.B. Case No. 596, entitled *"Deutsche Knowledge Services Pte Ltd. v. Commissioner of Internal Revenue."* The aforementioned judgment affirmed with modification the Resolution dated October 28, 2009 as well as the Resolution dated February 8, 2010 of the CTA (Former Second Division) in CTA Case No. 7921. Both resolutions disposed of the petition for review and the subsequent motion for reconsideration filed by petitioner Deutsche Knowledge Services Pte. Ltd. before the CTA's former Second Division with regard to the alleged inaction of respondent Commissioner of Internal Revenue on the former's application for tax credit/refund of alleged excess and unutilized input Value-Added Tax (VAT).

The factual and procedural antecedents of this case were narrated in the July 22, 2011 Decision of the CTA *En Banc* in this wise:

> Petitioner avers that on March 31, 2009, it filed an application for Tax Credit/Refund of its allegedly excess and unutilized input VAT for the 1st quarter of the calendar year 2007 in the amount of P12,549,446.30 with respondent Commissioner of Internal Revenue (empowered to act upon and approve claims for refund or tax credit as provided by law) through its BIR Revenue District No. 47.
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> Citing inaction on the part of respondent, petitioner on April 17, 2009 filed a Petition for Review or [s]eventeen (17) days after petitioner filed an application for tax credit/refund with respondent based on Section 112 and 229 of the National Internal Revenue Code of 1997, as amended.
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> However, on June 8, 2009, instead of an Answer respondent filed a Motion to Dismiss on ground of prescription. Citing the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* (Mirant Case), respondent alleged that the Petition for Review was filed out of time on the ground of having been filed beyond the two-year prescriptive period.
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> A day after or on June 9, 2009, respondent filed an Answer again citing the same grounds in the Motion to Dismiss in her Special and Affirmative

defenses.

After hearing and the filing of Comment/Opposition on the Motion to Dismiss, the former Second Division of this Court resolved to grant said motion on October 28, 2009. Petitioner filed a motion for reconsideration thereon on November 16, 2009.

However, in an Order dated January 11, 2010, the case was ordered to be transferred to the Third Division of this Court pursuant to CTA Administrative Circular No. 01-2010, "Implementing the Fully Expanded Membership in the Court of Tax Appeals".

Notwithstanding, on February 8, 2010, the former Second Division of this Court promulgated a Resolution which denied petitioner's Motion for Reconsideration.[2]

Petitioner then filed a petition for review with the CTA *En Banc.* However, the said tribunal merely affirmed with modification the assailed resolutions and dismissed petitioner's suit for having been prematurely filed prior to the expiration of the 120-day period granted to respondent to resolve the tax claim. The dispositive portion of the assailed July 22, 2011 Decision of the CTA *En Banc* reads:

WHEREFORE, premises considered, the Resolution of the former Second Division of this Court in CTA Case No. 7921, dated October 28, 2009 and its Resolution, dated February 8, 2010, are hereby **AFFIRMED with MODIFICATION.** Accordingly, CTA Case No. 7921 is hereby **DISMISSED** for having been prematurely filed pursuant to the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* No pronouncement as to costs.[3]

Hence, petitioner resorted to the present appeal, by way of a petition for review under Rule 45, wherein it cited the following errors allegedly committed by the CTA *En Banc:*

ASSIGNMENT OF ERRORS

THE CTA *EN BANC* DECISION IS NOT IN ACCORD WITH LAW AND WITH THE RELEVANT DECISIONS OF THE SUPREME COURT, AND CONSTITUTE A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF THIS HONORABLE COURT'S SUPERVISION, AS FOLLOWS:

A.

THE CTA *EN BANC* COMMITTED REVERSIBLE ERROR IN AFFIRMING THAT THE CTA'S FORMER SECOND DIVISION COULD STILL RESOLVE PETITIONER'S MOTION FOR RECONSIDERATION AFTER IT HAD LOST JURISDICTION OVER THE CASE UPON ITS TRANSFER TO THE THIRD DIVISION.

B.

THE CTA *EN BANC* COMMITTED REVERSIBLE ERROR IN NOT FINDING THAT THE CTA'S FORMER SECOND DIVISION SHOULD HAVE ORDERED THE PRE-TRIAL CONFERENCE TO PROCEED:

B.1 THE CTA'S FORMER SECOND DIVISION FAILED TO ADDRESS VITAL SUFFICIENT TO RENDER RESPONDENT'S MOTION TO DISMISS MOOT AND ACADEMIC.

B.2 RESPONDENT DEFIED THE CTA'S FORMER SECOND DIVISION'S ORDER. THE SECOND DIVISION INTENDED TO HEAR THE CASE IN ITS ENTIRETY WHEN IT ORDERED RESPONDENT TO FILE AN ANSWER INSTEAD OF A MOTION TO DISMISS, IN LINE WITH THE INTEGRATED BAR OF THE PHILIPPINES-OFFICE OF THE COURT ADMINISTRATOR MEMORANDUM ON POLICY GUIDELINES DATED MARCH 12, 2002 ("IBP-COA MEMORANDUM").

B.3 RESPONDENT LOST HER RIGHT TO ASSAIL THE FORMER SECOND DIVISION'S JURISDICTION WHEN SHE SOUGHT RELIEF FROM THE COURT BY FILING A MOTION FOR EXTENSION OF TIME TO FILE ANSWER.

B.4 THE ISSUES OF THE CASE HAVE BEEN JOINED UPON RESPONDENT'S FILING OF THE ANSWER, AND THUS, PRE-TRIAL AND TRIAL SHOULD HAVE PROCEEDED AS A MATTER OF PROCEDURE; AND

C.

THE CTA *EN BANC* ERRED IN NOT FINDING THAT PETITIONER'S JUDICIAL CLAIM FOR REFUND WAS TIMELY FILED IN ACCORDANCE WITH SECTION 112(C), TAX CODE IN RELATION TO THE TWO-YEAR PRESCRIPTIVE PERIOD PROVIDED UNDER SECTION 229, TAX CODE. THE LETTER AND THE INTENT [OF THE]

LAW AS WELL AS EXISTING JURISPRUDENCE ALL POINT TO THE PRIMORDIAL SIGNIFICANCE OF THE TWO-YEAR PRESCRIPTIVE PERIOD:

C.1 THE TWO-YEAR PRESCRIPTIVE PERIOD FOR THE FILING OF CLAIMS FOR REFUND SHOULD BE RECKONED FROM THE DATE OF FILING OF THE QUARTERLY VAT RETURN AS SETTLED IN ATLAS.

C.2 THE CTA *EN BANC* ERRED IN FINDING THAT AICHI PREVAILS OVER AND/OR OVERTURNED THE DOCTRINE IN ATLAS, WHICH UPHELD THE PRIMACY OF THE TWO-YEAR PERIOD UNDER SECTION 229, 1997 TAX CODE. THE LAW AND JURISPRUDENCE HAVE LONG ESTABLISHED THE DOCTRINE THAT THE TAXPAYER IS DUTY-BOUND TO OBSERVE THE TWO-YEAR PERIOD UNDER SECTION 229, 1997 TAX CODE WHEN FILING ITS CLAIM FOR REFUND OF EXCESS AND UNUTILIZED VAT.

C.3 THE CTA *EN BANC* ERRED IN NOT HOLDING THAT RESPONDENT IS PRECLUDED FROM QUESTIONING THE JURISDICTION OF THE CTA-DIVISION BASED ON HER PRONOUNCEMENTS RECOGNIZING THAT THE 120-DAY PERIOD IS NOT JURISDICTIONAL VIS-A-VIS HER FAILURE TO RAISE THE ISSUE OF PREMATURITY IN HER ANSWER AND IN HER MOTION TO DISMISS.

C.4 THE CTA *EN BANC* ERRED IN FINDING THAT AICHI CAN BE APPLIED INVARIABLY TO TAXPAYERS WHO, IN GOOD FAITH, FILED AND LITIGATED THEIR CLAIMS FOR REFUND OF INPUT VAT RELYING UPON ESTABLISHED DECLARATIONS AND PRONOUNCEMENTS OF THIS HONORABLE COURT AND THE CTA. ASSUMING AICHI IS MADE TO APPLY, THE PROSPECTIVE APPLICATION THEREOF IS LEGALLY AND EQUITABLY IMPERATIVE.[4]

In deciding the substantive aspect of petitioner's suit before it, the CTA *En Banc* ratiocinated that:

> [T]he substance of petitioner's argument is the alleged applicability of the Decision of the Supreme Court in the case of *Atlas Consolidated Mining*

and Development Corporation v. Commissioner of Internal Revenue (Atlas Case) promulgated on June 8, 2007 and the non-applicability of the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* (Mirant Case), promulgated on September 12, 2008.

In applying the *Mirant* Case in relation to Section 112, the former Second Division held that the administrative claim was filed on time while the Petition for Review before this Court's Division was filed out of time or beyond the two-year prescriptive period, the close of the taxable first quarter of the calendar year 2007 or March 31, 2007 as the reckoning period, it appearing that the application for tax credit/refund was filed with the respondent on March 31, 2009 and the petition for review was filed on April 17, 2009.

However, in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,* reiterating the *"Mirant* Case", the Supreme Court categorically ruled that unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made and that the 120-day period is crucial in filing an appeal with this Court. The pertinent portion of which reads as follows:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenu v. Mirant Pagbilao Corporation,* where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes." x x x.
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> x x x x
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> In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unuti1ized input VAT. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.
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> x x x x
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> Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the