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# SECOND DIVISION

# [ G.R. No. 204277, May 30, 2016 ]

## PROCTER AND GAMBLE ASIA PTE LTD., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

## D E C I S I O N

**BRION, J.:**

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking the reversal of the decision[2] dated June 18, 2012, and the resolution[3] dated November 8, 2012 of the Court of Tax Appeals (CTA) en banc in CTA EB Case No. 740 (CTA Case No. 7683). In the assailed decision and resolution, the CTA *en banc* affirmed the decision[4] dated November 9, 2010 and resolution[5] dated March 7, 2011, of the CTA Second Division (*CTA Division*). The latter dismissed the petition of Procter & Gamble Asia Pte. Ltd. (*PGAPL*) for premature filing.

### The Facts

Petitioner PGAPL is a foreign corporation duly organized and existing under the laws of Singapore, with a Regional Operating Headquarters (*ROHQ*) in the Philippines. The ROHQ provides management, marketing, technical and financial advisory, and other qualified services to its related parties. PGAPL is registered as a Value Added Tax (*VAT*) taxpayer with the Bureau of Internal Revenue (*BIR*). On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (*CIR*), empowered to perform the duties of said office including, among others, the duty to act upon and approve claims for refunds or tax credits as provided by law.

On October 24, 2005, and January 26, 2006, PGAPL filed with the BIR its Original Quarterly VAT returns for the Third and Fourth quarters of 2005, respectively.

On April 4, 2007, PGAPL amended its Quarterly VAT returns for the last two quarters of 2005, reporting both sales subject to 10% VAT and zero-rated sales. For the last two quarters of 2005, PGAPL claimed it incurred unutilized input VAT amounting to P53,624,427.14.

On August 21, 2007, PGAPL filed an administrative claim for tax refund with the BIR for input VAT attributable to its zero-rated sales covering the period July 2005 to September 2005 and October 2005 to December 2005.

Claiming that the CIR has not acted on its application, PGAPL elevated the case to the CTA by filing a petition for review[6] before the CTA division on September 27, 2007.

The CTA Division dismissed PGAPL's petition.[7] It ruled that the filing of the judicial claim for tax refund or credit before the CTA is premature, because the petitioner proceeded with its appeal even before the expiration of the 120-day period given to the CIR to decide on its claim for tax refund or credit of excess input VAT. Section 112 of the National Internal Revenue Code of 1997 (*NIRC*) provides that in case of denial of his claim for tax credit or refund or failure of the CIR to act on the application within 120 days, the taxpayer may, within 30 days from the receipt of the notice of denial or after the expiration of the 120-day period, appeal the decision or unacted claim with the CTA. The CTA Division emphasized that, as enunciated in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[8] **compliance with the aforesaid 120- and 30-day periods is crucial in filing an appeal before the CTA** (*Aichi Doctrine*).

PGAPL moved for reconsideration, but the CTA denied its motion in a resolution dated March 7, 2011.[9] The CTA Division struck down PGAPL's argument that respondent is already estopped from raising the issue of jurisdiction considering that it already actively participated in all stages of the proceedings and that the CTA has proceeded to try the case without bringing into petitioner's attention that it has no jurisdiction to do so. It ruled that parties are not barred from assailing the jurisdiction of the court, even when the case has already been tried and decided upon. Jurisdiction must exist as a matter of law and may not be conferred by the consent of the parties or by estoppel.[10]

Thereafter, petitioner filed a petition for review[11] before the CTA *en banc*.

In its decision[12] dated June 18, 2012, the CTA *en banc* affirmed the decision and resolution of the CTA Division. It found that PGAPL's administrative claim for excess input VAT credit or refund was timely filed with the BIR on August 21, 2007. However, its judicial claim before the CTA was filed on September 27, 2007, or only 37 days after it had filed its administrative claim.

Based on these timelines, the CTA *en banc* held that PGAPL's petition was prematurely filed. Thus, the CTA had no jurisdiction to hear and decide its appeal. The CTA *en banc* reiterated that, based on *Aichi*, the premature filing of a taxpayer's claim for tax credit or refund on input VAT before the CTA warrants dismissal as the CTA did not acquire jurisdiction over the claim.

The CTA *en banc* further held that, contrary to petitioner's claim, the Aichi Doctrine was

not effectively abandoned by the Supreme Court in its rulings in *Hitachi Global Storage Technologies Corp v. Commissioner of Internal Revenue,*[13] *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,[14] and *Kepco Philippines Corporation v. Commissioner of Internal Revenue*.[15] It observed that in PGAPL's cited cases, the issue of compliance with the 120- and 30-day periods under Section 112 of the NIRC was never squarely raised. Thus, *Aichi* remains the prevailing doctrine on the compliance with the 120- and 30-day periods.

The CTA *en banc* further ruled that *Hitachi, Silicon,* and *Kepco* could not have overturned *Aichi*. Such reversal would run counter to the constitutional mandate 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 Supreme Court sitting *en banc.*[16]

The CTA *en banc* also denied petitioner's motion for reconsideration.[17] Hence, on December 28, 2010, PGAPL filed the present petition.

PGAPL insists that this Court had abandoned the *Aichi* Doctrine not only in *Hitachi, Silicon,* and *Kepco*, but also in *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*,[18] *Southern Philippines Power Corporation v. Commissioner of Internal Revenue,*[19] and *Western Mindanao Power Corporation v. Commissioner of Internal Revenue.*[20]

PGAPL also posits that the premature filing of its judicial claim is not fatal to its case. It is not jurisdictional, but merely a failure to exhaust administrative remedies, which, when analyzed more closely, only amounts to a lack of cause of action. Thus, its petition before the CTA might have been infirm, but the CIR should be deemed to have waived this infirmity when it did not file a motion to dismiss and opted to participate at the trial.

PGAPL further argues that its constitutional rights to due process and equal protection of laws were violated when their judicial claim for tax credit or refund was dismissed due to noncompliance with the Aichi Doctrine. It noted that the claims filed by the taxpayers in *Intel*,[21] *San Roque*,[22] *Panasonic*,[23] *AT&T*,[24] *Hitachi, Silicon, Kepco, Microsoft, Southern Philippines Power*, and *Western Mindanao Power* were given due course despite the similar failure to observe the 120- and 30-day periods.

Finally, petitioner claims that even assuming that the *Aichi* Doctrine has not been overturned, it does not apply to its case, because the facts in *Aichi* are not identical with those in the present case. Further, the respondent should be considered estopped from questioning the jurisdiction of the CTA, considering that it has participated in all stages of the case.

On February 6, 2013,[25] we required the CIR to comment on the petition.

In the meantime, on February 12, 2013, we decided the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*, *Taganito Mining Corporation v. Commissioner of Internal Revenue,* and *Philex Mining Corporation v. Commissioner of Internal Revenue.*[26] In San Roque-Taganito, we recognized the effectivity of BIR Ruling No. DA-489-03, which expressly stated 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." We said:

> 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. **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 (*emphasis* ours).

In finding that the said BIR ruling is a **general interpretative rule**, which is an exception to the doctrine laid down in Aichi, this court held that taxpayers **acting in good faith** should not be made to suffer for adhering to general interpretative rules of the CIR interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the CIR or this court. Thus, We clarified that **strict compliance with the 120- and 30-day periods is necessary for a judicial claim of tax credit or refund to prosper, except for the period from December 10, 2003, the issuance of BIR DA-489-03, to October 6, 2010, when this court adopted the *Aichi* Doctrine.** Hence, a judicial claim for tax credit or refund filed within the period mentioned above will be deemed to have been filed on time.

On May 6, 2013, even before the CIR could comment, PGAPL filed a manifestation[27] invoking in its favor this court's ruling *San Roque-Taganito*. Petitioner claims that since its judicial claim was filed before the CTA on September 27, 2007, when BIR Ruling No. DA-489-03 was in effect, its judicial claim should be deemed as having been timely filed.

In her comment[28] dated June 11, 2013, the CIR argues that her office has the exclusive and original jurisdiction to interpret tax laws, subject to the review of the Secretary of Finance, as provided in Section 4 of the NIRC. Hence, BIR Ruling No. DA-489-03 was issued *ultra vires*, having been issued by BIR Deputy Commissioner Jose Mario C. Bunag, not by the CIR. The CIR further claims that even if we assume that the said ruling is valid, it still does not apply to the case of PGAPL, because it did not prove that it acted in good

faith. According to respondent, if PGAPL truly relied on the BIR ruling in good faith, it should have raised the rule set forth in the said BIR ruling as early as the time the present case was pending before the CTA.

## The Court's Ruling

We find the petition meritorious.

***BIR Ruling No. DA-489-03 is an exception to the Aichi Doctrine***

Under Section 112 of the NIRC,[29] if the administrative claim for tax credit or refund of input taxes is not acted upon by the CIR within 120 days from the date of submission of complete documents in support of the application, the taxpayer affected may appeal the unacted claim with the CTA within 30 days from the expiration of the 120-day period.

In *Aichi,* this Court ruled that observance of the 120- and 30-day periods is crucial in the filing of an appeal before the CTA. By "crucial," this Court meant that its observance is jurisdictional and mandatory, not merely permissive.

Contrary to the PGAPL's claim, this court has not abandoned the *Aichi* doctrine, more specifically in *Intel, San Roque (2009), Panasonic, AT&T, Hitachi, Silicon, Kepco, Microsoft, Southern Philippines Power Corporation,* and *Western Mindanao Power Corporation.*

While all such cases dealt with claims for tax credit or refund of excess input tax, the rulings of this Court were on the issue of compliance with applicable requirements supporting the taxpayer's claim. The issue of whether compliance with the 120- and 30-day periods under Section 112 of the NIRC is mandatory and jurisdictional was never squarely raised in any of the petitioner's cited cases.

The basic rule is that past decisions of this Court be followed in the adjudication of cases. However, for a ruling of this Court to come within this rule (known as *stare decisis*), the Court must categorically rule on an issue expressly raised by the parties; it must be a ruling on an issue directly raised.[30] When the court resolves an issue merely *sub silentio, stare decisis* does not apply on the issue touched upon.

In fact, the same argument was struck down by this court in *San Roque-Taganito*. There, we held that, "**[a]ny issue, whether raised or not by the parties, but not passed upon by the court, does not have any value as a precedent**."[32] (*emphasis in the original*)

From this perspective, the *Aichi* Doctrine could not have been overturned by subsequent cases before this Court that were decided based on another issue and the application of a different doctrine or rule of law. In the same vein, the cases cited by PGAPL are irrelevant

to the present case, because they did not rule on the jurisdictional and mandatory nature of the 120- and 30-day periods.

Indeed, *Aichi* is the prevailing doctrine on the matter of mandatory compliance with the 120- and 30-day periods in the filing of judicial claims of tax credit or refund before the CTA. However, in the manner of most rules, the *Aichi* Doctrine is also subject to exceptions.

In accordance with the equitable estoppel principle under Section 246 of the NIRC,[33] we ruled in *San Roque-Taganito* that there are exceptions to the strict rule that compliance with the *Aichi* Doctrine is mandatory and jurisdictional, one of which is BIR Ruling No. DA-489-03. If the CIR issues a ruling, either a specific one applicable to a particular taxpayer or a general interpretative rule applicable to all taxpayers, and, as a result, misleads the taxpayers affected by the rule, into filing prematurely judicial claims with the CTA, the CIR cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim.[34]

Since then, this Court has consistently adopted the ruling in *San Roque-Taganito* in holding that BIR Ruling No. DA-489-03 is an exception to the *Aichi* Doctrine.[35] We see no reason to disturb what is now a settled ruling.

Therefore, as a general interpretative rule, all taxpayers may rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003, until its effective reversal by the *Aichi* Doctrine adopted on October 6, 2010. Thus, judicial claims for tax credit or refund instituted before the CTA should be given due course, despite their failure to comply with the 120- and 30-day periods.

***BIR Ruling No. DA-489-03 is valid even if issued by the Deputy Commissioner.***

The respondent now impugns the validity of BIR Ruling No. DA-489-03. The CIR argues that the BIR ruling was issued only by the Deputy Commissioner and not by the CIR, who, under Section 4 of the NIRC,[36] has original and exclusive jurisdiction in interpreting provisions of the NIRC.

We are not persuaded by the CIR's contention.

This issue has been settled in the Court *en banc's* resolution dated October 8, 2013 in the consolidated cases of *San Roque-Taganito*[37] where we upheld the validity of the BIR ruling, because the power to interpret rules and regulations is not exclusive and may be delegated by the CIR[38] to the Deputy Commissioner.

***PGAPL is presumed to have relied***

***on BIR Ruling No. DA-489-03 in good faith.***

Finally, the CIR questions PGAPL's good faith in relying on BIR Ruling No. DA-489-03. To the CIR, if PGAPL truly relied on the BIR ruling in good faith, it should have cited the ruling as basis as early as the proceedings before the CTA. The CIR claims that since PGAPL failed to establish that it acted in good faith, it cannot raise the exception set forth in BIR Ruling No. DA-489-03.

We disagree with the CIR's reasoning.

*First*, good faith is always presumed and this presumption can only be overcome by clear and convincing evidence.[39] Good faith, or its absence, is a question of fact that is better determined by the lower courts. This Court cannot, without sufficient reason, throw out a presumption that arises as a matter of law and is well-entrenched in our legal system.[40]

The mere allegation that the petitioner failed to raise BIR Ruling No. DA-489-03 before the CTA is insufficient to negate this presumption.

*Second*, even if petitioner did not raise the BIR ruling before the CTA, we can take cognizance of an official act emanating from the BIR, an executive department of the government.[41] Judicial notice of BIR Ruling No. DA-489-03 is all the more mandatory especially when it has been applied consistently by this Court in its past rulings.[42]

Based on the foregoing, we rule that the judicial claim that PGAPL filed with the CTA on September 27, 2007 (during the effectivity of BIR Ruling No. DA-489-03) was timely filed.

**WHEREFORE**, premises considered, we **GRANT** the petition. The decision dated June 18, 2012, and the resolution dated November 8, 2012 of the CTA *en banc* in CTA EB Case No. 740 are hereby **REVERSED** and **SET ASIDE**. Accordingly, we **REMAND** the case to the CTA Second Division for the proper determination of the creditable or refundable amount due to the petitioner, if any.

**SO ORDERED.**

*Carpio, (Chairperson), Brion, Del Castillo, Mendoza,* and *Leonen, JJ.*, concur.

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[1] *Rollo,* pp. 49-92.

[2] Penned by CTA Associate Justice Cielito N. Mindaro-Grulla, and concurred in by Associate Justice Juanito C. Castaneda; *id.* at 8-33. CTA Presiding Justice Ernesto D.

Acosta and Associate Justice Lovell R. Bautista concurred with the majority, with a separate dissenting opinion; id. at 34-47.

[3] *Id.* at 155-161.

[4] *Id.* at 209-218.

[5] *Id.* at 220-223.

[6] Id at 225-252.

[7] In its decision dated November 8, 2012, supra note 4.

[8] G.R No. 184823, October 6, 2010, 632 SCRA 423, 444.

[9] *Supra* note 5.

[10] CTA Division citing *Cudiamat v. Batangas Savings and Loan Bank, Inc.* (G.R. No. 182403, March 9, 2010).

[11] *Rollo*, pp. 274-235.

[12] *Supra* note 2.

[13] G.R. No. 174212, October 20, 2010, 634 SCRA 205.

[14] G.R. No. 172378, January 17, 2011,639 SCRA 521.

[15] G.R. No. 179961, January 31, 2011, 641 SCRA 70.

[16] See Article VIII, Section 4(3), 1987 Constitution. *Hitachi, Silicon*, and *Kepco* were all decided by the Supreme Court sitting in division.

[17] *Supra* note 3.

[18] G.R. No. 180173, April 11, 2011, 647 SCRA 398.

[19] G.R. No. 179632, October 19, 2011, 659 SCRA 658.

[20] G.R. No 181136, June 13, 2012, 672 SCRA 350

[21] G.R. No. 182364, August 3, 2010, 626 SCRA 567.

[22] G.R. No. 180345, November 25, 2009, 605 SCRA 536.

[23] G.R. No. 178090, February 8, 2010, 612 SCRA 28.

[24] G.R. No. 182364, August 3, 2010, 626 SCRA 567.

[25] See undated Notice issued by the Supreme Court, *rollo*, p. 500.

[26] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

[27] Id. ai 510-517.

[28] *Rollo,* pp. 523-539.

[29] SEC. 112. R**efunds 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 such input tax has not been applied against output tax...xxx

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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.

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.

[30] *People v. Macadaeg*, 91 Phil. 410 (1952).

[31] *Hebron v. Reyes*, 104 Phil. 175 (1958).

[32] Supra note 26.

[33] SEC. 246. **Non-Retroactivity of Rulings**. -Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

[34] Supra note 26.

[35] See *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 08, 2015; *Commissioner of Internal Revenue v. Air Liquide Philippines, Inc*., G.R. No. 210646, July 29, 2015; *ROHM Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015; *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 205543, June 30, 2014; *Visayas Geothermal Power Company v. Commissioner of Internal Revenue,* G.R. No. 197525, June 04, 2014; *Commissioner of Internal Revenue v. Team Sual Corporation,* G.R. No. 194105, February 05, 2014; *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnerhsip*, G.R. No. 191498, January 15, 2014; *CBK Power Company Limited v. Commissioner of Internal Revenue,* G.R. Nos. 198729-30, January 15, 2014; *Team Energy Corporation v. Commissioner of Internal Revenue,* G.R. No. 197760, January 13, 2014; *Commissioner of Internal Revenue v. Visayas Geothermal Power Company,* G.R. No. 181276, November 11, 2013 and; *Republic of the Philippines v. GST Philippines, Inc.,* G.R. No. 190872, October 17, 2013.

[36] **SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases**. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[37] G.R. Nos. 187485, 196113 & 197156, October 8, 2013, 707 SCRA 66.

[38] *Id*. at 86.

[39] *Ford Philippines, Inc. v. Court of Appeals*, G.R. No. 99039, February 3, 1997, 267 SCRA 320 citing *Philippine Air Lines v. Miano*, 242 SCRA 235, 238 (1995).

[40] G.R. Nos. 209287, 209135-36, 209155, 209164, 209260, 209442, 209517 & 209569 February 3 2015.

[41] Section 1, Rule 129, Rules of Court.

[42] *Supra* note 35.

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