Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PROCTER & GAMBLE ASIA PTE LTD., Petitioner,	**G.R. No. 205652**
	Present:
- versus -	CARPIO, *Acting C.J.*, Chairperson, PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: 06 SEP 2017

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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 Procter & Gamble Asia Pte Ltd. (P&G) against the Commissioner of Internal Revenue (CIR) seeking the reversal of the Decision[2] dated September 21, 2012 and Resolution[3] dated January 30, 2013 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB Case No. 742. The CTA *En Banc* affirmed the CTA Special Second Division's dismissal of P&G's claim for refund of unutilized input value-added tax (VAT) attributable to its zero-rated sales covering the first and second quarters of calendar year 2005, for being prematurely filed.

Facts

P&G is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarter in the Philippines.[4] It provides management, marketing, technical and financial

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1 *Rollo*, pp. 43-79.

2 Id. at 81-96. Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez and Cielito N. Mindaro-Grulla, concurring and Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas, dissenting.

3 Id. at 123-127. Penned by Associate Justice Caesar A. Casanova with Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla, concurring and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas, dissenting.

4 Id. at 82.

advisory, and other qualified services to related companies as specified by its Certificate of Registration and License issued by the Securities and Exchange Commission.[5] It is a VAT-registered taxpayer and is covered by Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.[6]

P&G filed its Monthly VAT Declarations and Quarterly VAT Returns on the following dates:

VAT RETURN/ DECLARATION	DATE FILED (ORIGINAL)	DATE FILED (AMENDED)
January (Monthly)	February 21, 2005	
February (Monthly)	March 18, 2005	
Ending March (Quarterly)	April 25, 2005	March 19, 2007
April (Monthly)	May 20, 2005	
May (Monthly)	June 21, 2005	
Ending June (Quarterly)	July 26, 2005[7]	March 20, 2007[8]

On March 22, 2007 and May 2, 2007, P&G filed applications and letters addressed to the BIR Revenue District Office (RDO) No. 49, requesting the refund or issuance of tax credit certificates (TCCs) of its input VAT attributable to its zero-rated sales covering the taxable periods of January 2005 to March 2005, and April 2005 to June 2005.[9]

On March 28, 2007, P&G filed a petition for review with the CTA seeking the refund or issuance of TCC in the amount of ₱23,090,729.17 representing input VAT paid on goods or services attributable to its zero-rated sales for the first quarter of taxable year 2005. The case was docketed as CTA Case No. 7581.[10]

On June 8, 2007, P&G filed with the CTA another judicial claim for refund or issuance of TCC in the amount of ₱19,006,753.58 representing its unutilized input VAT paid on goods and services attributable to its zero-rated sales for the second quarter of taxable year 2005. The case was docketed as CTA Case No. 7639.[11]

On July 30, 2007, the CTA Division granted P&G's Motion to Consolidate CTA Case No. 7581 with 7639, inasmuch as the two cases involve the same parties and common questions of law and/or facts.[12]

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5 Id.
6 Id.
7 Stated as July 26, 2006 in page 2 of CTA Decision, id.; but see Quarterly Value-Added Tax Return, id. at 389.
8 *Rollo*, p. 82.
9 Id.
10 Id. at 83.
11 Id.
12 Id. at 84.

Proceedings ensued before the CTA Division. P&G presented testimonial and voluminous documentary evidence to prove its entitlement to the amount claimed for VAT refund. The CIR, on the other hand, submitted the case for decision based on the pleadings, as the claim for refund was still pending before the BIR RDO No. 40.[13]

Meanwhile, on October 6, 2010, while P&G's claim for refund or tax credit was pending before the CTA Division, this Court promulgated *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[14] (*Aichi*). In that case, the Court held that compliance with the 120-day period granted to the CIR, within which to act on an administrative claim for refund or credit of unutilized input VAT, as provided under Section 112(C) of the National Internal Revenue Code of 1997 (NIRC), as amended, is mandatory and jurisdictional in filing an appeal with the CTA.

In a Decision[15] dated November 17, 2010, the CTA Division dismissed P&G's judicial claim, for having been prematurely filed.[16]

Citing *Aichi,* the CTA Division held that the CIR is granted by law a period of 120 days to act on the administrative claim for refund.[17] Upon denial of the claim, or after the expiration of the 120-day period without action by the CIR, only then may the taxpayer-claimant seek judicial recourse to appeal the CIR's action or inaction on a refund/tax credit claim, within a period of 30 days.[18] According to the CTA Division, P&G failed to observe the 120-day period granted to the CIR.[19] Its judicial claims were prematurely filed with the CTA on March 28, 2007 (CTA Case No. 7581) and June 8, 2007 (CTA Case No. 7639), or only six (6) days and thirty-seven (37) days, respectively, from the filing of the applications at the administrative level.[20] Thus, the CTA Division ruled that inasmuch as P&G's petitions were prematurely filed, it did not acquire jurisdiction over the same.[21]

P&G moved for reconsideration but this was denied by the CTA Division in its Resolution[22] dated March 9, 2011.

Aggrieved, P&G elevated the matter to the CTA *En Banc* insisting, among others, that the Court's ruling in *Aichi* should not be given a retroactive effect.[23]

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13 Id.
14 646 Phil. 710 (2010).
15 *Rollo*, pp. 163-A to 179. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez concurring.
16 Id. at 179.
17 Id. at 175-177.
18 Id. at 177-178.
19 Id. at 178.
20 Id.
21 Id.
22 Id. at 218-222.
23 See id. at 85.

On September 21, 2012, the CTA *En Banc* rendered the assailed Decision affirming *in toto* the CTA Division's Decision and Resolution. It agreed with the CTA Division in applying the ruling in *Aichi* which warranted the dismissal of P&G's judicial claim for refund on the ground of prematurity.

P&G moved for reconsideration,[24] but the same was denied by the Court *En Banc* for lack of merit.[25]

In the meantime, on February 12, 2013, this Court 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] (*San Roque*), where the Court recognized BIR Ruling No. DA-489-03 as an exception to the mandatory and jurisdictional nature of the 120-day waiting period.

On March 27, 2013, P&G filed the present petition.[27]

Issue

Culled from the submissions of the parties, the singular issue for this Court's resolution is whether the CTA *En Banc* erred in dismissing P&G's judicial claims for refund on the ground of prematurity.

P&G avers that its judicial claims for tax refund/credit was filed with the CTA Division on March 28, 2007 and June 8, 2007, after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003, but before the adoption of the *Aichi* doctrine on October 6, 2010. Accordingly, pursuant to the Court's ruling in *San Roque,* its judicial claims with the CTA was deemed timely filed.[28]

P&G further contends that the CTA *En Banc* gravely erred in applying the *Aichi* doctrine retroactively. According to P&G, the retroactive application of *Aichi* amounts to a denial of its constitutional right to due process and unjust enrichment of the CIR.[29]

Lastly, P&G claims that assuming, without conceding, that its judicial claims were prematurely filed, its failure to observe the 120-day period was not jurisdictional but violates only the rule on exhaustion of administrative

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24 Id. at 105-121.
25 Id. at 123-127.
26 703 Phil. 310 (2013).
27 *Rollo*, pp. 43-79.
28 Id. at 509.
29 Id. at 516.

remedies, which was deemed waived when the CIR did not file a motion to dismiss and opted to actively participate at the trial.[30]

The CIR, on the other hand, insists that the plain language of Section 112(C) of the NIRC, as amended, demands mandatory compliance with the 120+30-day rule; and P&G cannot claim reliance in good faith with BIR Ruling No. DA-489-03 to shield the filing of its judicial claims from the vice of prematurity.[31]

The Court's Ruling

The Court finds the petition meritorious.

Exception to the mandatory and jurisdictional 120+30-day periods under Section 112(C) of the NIRC

Section 112 of the NIRC, as amended, provides for the rules on claiming refunds or tax credits of 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)

Based on the plain language of the foregoing provision, the CIR is given 120 days within which to grant or deny a claim for refund. Upon

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30 Id. at 518.

31 See id. at 459, 468.

receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has 30 days within which to file a petition for review with the CTA.

In *Aichi,* the Court ruled that compliance with the 120+30-day periods is mandatory and jurisdictional and is fatal to the filing of a judicial claim with the CTA.

Subsequently, however, in *San Roque,* while the Court reiterated the mandatory and jurisdictional nature of the 120+30-day periods, it recognized as an exception BIR Ruling No. DA-489-03, issued prior to the promulgation of *Aichi,* where the BIR expressly allowed the filing of judicial claims with the CTA even before the lapse of the 120-day period. The Court held that BIR Ruling No. DA-489-03 furnishes a valid basis to hold the CIR in estoppel because the CIR had misled taxpayers into filing judicial claims with the CTA even before the lapse of the 120-day period:

> 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.**
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> x x x x
>
> BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.
>
> **Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, <u>all</u> 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.**[32] (Emphasis supplied)

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32 Supra note 26, at 373-376.

In *Visayas Geothermal Power Company v. Commissioner of Internal Revenue,*[33] the Court came up with an outline summarizing the pronouncements in *San Roque,* to wit:

> For clarity and guidance, the Court deems it proper to outline the rules laid down in *San Roque* with regard to claims for refund or tax credit of unutilized creditable input VAT. They are as follows:
>
> 1. When to file an administrative claim with the CIR:
>
> a. General rule – Section 112(A) and *Mirant*
>
> Within 2 years from the close of the taxable quarter when the sales were made.
>
> b. Exception – *Atlas*
>
> Within 2 years from the date of payment of the output VAT, if the administrative claim was filed from June 8, 2007 (promulgation of *Atlas*) to September 12, 2008 (promulgation of *Mirant*).
>
> **2. When to file a judicial claim with the CTA:**
>
> **a. General rule – Section 112(D); *not* Section 229**
>
> **i. Within 30 days from the full or partial denial of the administrative claim by the CIR; or**
>
> **ii. Within 30 days from the expiration of the 120-day period provided to the CIR to decide on the claim. This is mandatory and jurisdictional beginning January 1, 1998 (effectivity of 1997 NIRC).**
>
> **b. <u>Exception – BIR Ruling No. DA-489-03</u>**
>
> **<u>The judicial claim need not await the expiration of the 120-day period, if such was filed from December 10, 2003 (issuance of BIR Ruling No. DA-489-03) to October 6, 2010 (promulgation of *Aichi*)</u>.** [34] (Emphasis and underscoring supplied)

In this case, records show that P&G filed its judicial claims for refund on March 28, 2007 and June 8, 2007, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though P&G filed its judicial claim without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque.* In other words, P&G's judicial claims were deemed timely filed and should not have been dismissed by the CTA.

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33 735 Phil. 321 (2014).

34 Id. at 338-339.

Application and validity of BIR Ruling No. DA-489-03

The CIR, however, argues that BIR Ruling No. DA-489-03 was already repealed and superseded on November 1, 2005 by Revenue Regulation No. 16-2005 (RR 16-2005), which echoed the mandatory and jurisdictional nature of the 120-day period under Section 112(C) of the NIRC. Thus, P&G cannot rely, in good faith, on BIR Ruling No. DA-489-03 because its judicial claims were filed in March and June 2007 or after RR 16-2005 took effect.[35] In other words, it is the CIR's position that reliance on BIR Ruling No. DA-489-03 should only be permissible from the date of its issuance, on December 10, 2003, until October 31, 2005, or prior to the effectivity of RR 16-2005.

The Court disagrees.

This issue was also raised by the CIR in *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*,[36] where the Court reiterated that **all** taxpayers may rely upon BIR Ruling No. DA-489-03, as a general interpretative rule, from the time of its issuance on December 10, 2003 until its effective reversal by the Court in *Aichi*.[37] The Court further held that while RR 16-2005 may have re-established the necessity of the 120-day period, taxpayers cannot be faulted for still relying on BIR Ruling No. DA-489-03 even after the issuance of RR 16-2005 because the issue on the mandatory compliance of the 120-day period was only brought before the Court and resolved with finality in *Aichi*.[38]

Accordingly, in consonance with the doctrine laid down in *San Roque,* the Court finds that P&G's judicial claims were timely filed and should be given due course and consideration by the CTA.

WHEREFORE, premises considered, the instant petition for review is hereby **GRANTED.** The Decision dated September 21, 2012 and the Resolution dated January 30, 2013 of the CTA *En Banc* in C.T.A. EB Case No. 742 are hereby **REVERSED AND SET ASIDE**. Accordingly, CTA Case Nos. 7581 and 7639 are **REINSTATED** and **REMANDED** to the CTA Special Second Division for the proper determination of the refundable amount due to petitioner Procter & Gamble Asia Pte Ltd., if any.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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35 *Rollo*, p. 472.
36 G.R. No. 211072, November 7, 2016.
37 Id. at 9.
38 Id.

WE CONCUR:

ANTONIO T. CARPIO
Acting Chief Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ANDRES B. REYES, JR.
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.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY:
TERESITA AQUINO TUAZON
DEPUTY DIVISION CLERK OF COURT
OCC - SECOND DIVISION