Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **April 28, 2021** *which reads as follows:*

"G.R. No. 207587 (Procter & Gamble Asia, Pte. Ltd., *Petitioner*, **v. Commissioner of Internal Revenue,** *Respondent.*) – This Petition for review on *certiorari*[1] (petition) seeks to reverse and set aside the *En Banc* Decision[2] dated 20 December 2012 and Resolution[3] dated 27 May 2013 of the Court of Tax Appeals (CTA) in CTA EB No. 830 (CTA Case No. 7982), affirming the twin Resolutions dated 23 May 2011[4] and 06 September 2011[5] of the Third Division[6] of the CTA (Third Division).

Antecedents

Procter & Gamble Asia, Pte. Ltd. (petitioner) is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarters in the Philippines. It provides management, marketing, technical and financial advisory, and other qualified services to related companies. It is a duly-registered Value Added Tax (VAT) entity and is covered by Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000071787.[7]

- over – eleven (11) pages ...

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1 *Rollo*, pp. 44-76.
2 *Id.* at 09-31; penned by Associate Justice Erlinda P. Uy, concurred in by Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, dissented by Associate Justice Lovell R. Bautista, and Presiding Justice Ernesto D. Acosta, on leave, of the Court of Tax Appeals *En Banc*, Quezon City.
3 *Id.* at pp. 33-42.
4 *Id.* at 177-189.
5 *Id.* at 198-202.
6 Chaired by Court of Tax Appeals Associate Justice Lovell R. Bautista with Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas as Members.
7 *Rollo*, p. 10.

On 30 April and 31 October 2008, petitioner filed applications and letters with BIR Revenue District Office No. 49 requesting the refund or tax credit of its alleged unutilized input VAT attributable to its zero-rated sales covering the quarters ending on 30 September 2007, 31 December 2007, 31 March 2008, and 30 June 2008.[8]

There being no action on the part of the Commissioner of Internal Revenue (respondent/CIR), petitioner filed, on 30 September 2009, a petition for review with the CTA seeking the refund or issuance of a tax credit certificate in the aggregate amount of P182,653,791.33, representing its unutilized input VAT paid on goods and services attributable to its zero-rated sales for the quarters ending on 30 September 2007, 31 December 2007, 31 March 2008, and 30 June 2008, pursuant to Section 110 (B) on excess output or input tax, in relation to Section 112 (A) on refunds or tax credits of input tax, of the National Internal Revenue Code of 1997 (1997 NIRC), as amended.[9]

Respondent subsequently filed her Answer to the said petition for review, alleging that petitioner failed to comply with the conditions/requirements under the provisions of Section 112 (A), (B) and (D) of the 1997 NIRC, as amended.[10]

Ruling of the CTA Division

In a Resolution[11] dated 23 May 2011, the Third Division granted respondent's motion to dismiss; and, accordingly, dismissed the petition for review for having been filed late. The majority of the Third Division ruled that petitioner filed its petition for review beyond the thirty (30)-day prescribed period to appeal, in violation of the provision of Section 112 (C) and of the pronouncements made in *Commissioner of Internal Revenue v. Aichi Forging Co. of Asia, Inc. (Aichi)*.[12]

Justice Lovell R. Bautista, Chairperson of the Third Division, stated in his Dissenting Opinion[13] that the judicial recourse to the CTA by a taxpayer-claimant within thirty (30) days, either from the lapse of the one hundred twenty (120)-day period within which the CIR should decide on the claim, or after the receipt of the decision denying the

8 *Id.* at 11.
9 *Id.*
10 *Id.* at 11-12.
11 *Id.* at 177-189.
12 *Id.* at 13; 646 Phil. 710 (2010); G.R. No. 184823, 06 October 2010 [Per J. Del Castillo].
13 *Rollo*, pp. 190-197.

same, pursuant to Section 112 (C) of the 1997 NIRC, as amended, was merely directory and permissive, and not mandatory nor jurisdictional. This, provided that it was made within the two (2)-year prescriptive period prescribed under Sections 112 and 229 of the same Code. He concluded that there was no need for the taxpayer to wait for the denial of the claim by the CIR or even the inaction after the expiration of the 120-day period before the taxpayer could exercise its right to appeal with the CTA, for claims for refund or tax credit, both in the administrative and judicial claims must be filed within the 2-year period.[14]

Dissatisfied with the ruling of the Third Division, petitioner filed a motion for reconsideration, which the Third Division denied in its Resolution[15] dated 06 September 2011. Petitioner, thereafter, sought recourse to the CTA *En Banc* by filing a petition for review.

Ruling of the CTA *En Banc*

In its Decision[16] dated 20 December 2012, the CTA *En Banc* affirmed the resolutions of the Third Division. It explained that it was incumbent upon the taxpayer-claimant to comply, not only with the 2-year period within which to file a refund/tax credit claim with the BIR, but must also give the CIR a period of 120 days to either partially, or fully deny the claim. Subsequently, upon denial of the claim, or after the expiration of the 120-day period without any action by the CIR thereon, 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 therefrom.[17]

Petitioner subsequently moved for reconsideration, but the CTA *En Banc* denied the motion in its Resolution[18] dated 27 May 2013. Hence, the filing of the instant petition before this Court.

Issues

The issues raised by petitioner in this case are whether or not:

a) The CTA gravely erred when it ruled that it acquired no jurisdiction to act on petitioner's judicial claim for refund;

14 *Id.* at 191, 194-195.
15 *Id.* at 198-202.
16 *Id.* at 9-31.
17 *Id.* at 22-23.
18 *Id.* at 33-42.

b) The CTA gravely erred in strictly applying the provisions of Section 112 of the NIRC because based on jurisprudence prevailing at the time of the filing of the judicial claims for refund, the thirty (30)-day period under the aforesaid section can be considered to be permissive and not mandatory;

c) The CTA gravely erred in retroactively applying the ruling in *Aichi* to petitioner's claim for refund, because the said ruling must be applied prospectively, or at the earliest, only upon the finality of *Aichi*, since prospective application of this Court's decision is not only grounded on equity and fair play but also based on the constitutional tenet that rules of procedures shall not impair substantive rights; and

d) The CTA committed reversible error in disregarding the doctrine sanctioned by the Supreme Court that substantial justice, equity and fair play prevail over technicalities and legalism.

Ruling of the Court

The Court finds the petition without merit.

It bears stressing that the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[19] Section 7 of Republic Act No. (RA) 1125,[20] as amended by RA 9282,[21] specifically provides:

> Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges,

19 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019 [Per J. Peralta].

20 An Act Creating the Court of Tax Appeals.

21 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

> penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> xxx.

Section 11 of the same law enunciates how the said appeal should be taken, thus:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. X x x [Emphases supplied.]

Further, Section 112 of the 1997 NIRC, as amended,[22] provides the prescriptive periods for the filing of administrative and judicial claims for refund or tax credit of creditable input taxes,[23] to wit:

> 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

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22 As Amended by RA 9337 (An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, As Amended, and For Other Purposes) otherwise known as the Value Added Tax (VAT) Reform Act, approved on 24 May 2005, and became effective on 01 July 2005.

23 *San Roque Power Corp. v. Commissioner of Internal Revenue*, 737 Phil. 387 (2014); G.R. No. 205543, 30 June 2014 [Per J. Leonardo-de Castro].

x x x x

(C)[24] *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. [Emphases ours.]

Corollarily, in *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*,[25] the Court summarized the rules on prescriptive periods for claiming credit/refund of input VAT, thus:

SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

x x x

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)[26]

3. The only other rule is the *Atlas*[27] ruling, which applied only from 8 June 2007 to 12 September 2008.[28] *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. (*San Roque*)

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24 In RA 8424 (Tax Reform Act of 1997), the section is numbered 112 (D). RA 9337 renumbered the section to 112 (C). (*Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310 (2013); G.R. Nos. 187485, 196113, and 197156, 12 February 2013 [Per J. Carpio]).

25 G.R. No. 191498, 15 January 2014, 724 Phil. 534-563 (2014) [Per J. Sereno] cited in *Silicon Phils., Inc. v. Commissioner of Internal Revenue*, G.R. No. 173241, 25 March 2015 [Per J. Leonardo-de Castro] and *Commissioner of Internal Revenue v. Mindanao I Geothermal Partnership*, G.R. No. 192006, 14 November 2018 [Per J. A.B. Reyes, Jr.].

26 *Commissioner of Internal Revenue v. San Roque Power Corp.*, *supra* at note 24.

27 *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, 551 Phil. 519 (2007); G.R. Nos. 141104 & 148763, 08 June 2007 [Per J. Chico-Nazario].

28 The ruling in *Atlas* was effective only from its promulgation on 08 June 2007 until its abandonment on 12 September 2008 in *Mirant*. (*Commissioner of Internal Revenue v. San Roque Power Corp.*, *supra* at note 24).

B. 120+30 Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi and San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03[29] was still in force. (*San Roque*)

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque*)

At this juncture, it is worth stressing that any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.[30] The 30-day appeal period to the CTA "was adopted precisely to do away with the old rule," so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the CIR acts only on the 120th day, or does not act at all during the 120-day period."[31]

It is undisputed that petitioner had complied with the required 2-year period within which to file a refund/tax credit claim with the BIR when it filed its administrative claims on 30 April 2008 and 31 October 2008 (within the period from the close of the subject quarters of taxable years when the relevant sales or purchases were made).[32] But, as indubitably shown in the table prepared by the CTA *En Banc*, the judicial claim of petitioner was filed beyond the 30-day period.

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29 BIR Ruling No. DA-489-03, issued on 10 December 2003, 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 a petition for review. (*Commissioner of Internal Revenue v. Air Liquide Phils., Inc.*, G.R. No. 210646, 29 July 2015 [Per J. Mendoza]).

30 *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, 782 Phil. 44 (2016); G.R. No. 182737, 02 March 2016 [Per J. Sereno].

31 *Harte-Hanks Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205721, 14 September 2016 [Per J. Reyes].

32 *Rollo*, p. 26.

Taxable quarters ending	Filing date of the administrative claim	Last day of the 120-day period under Section 112 (C) from the date of filing of the administrative claim in case of inaction	Last day of the 30-day period to judicially appeal said inaction	Filing date of the Petition for Review
30 September 2007 and 31 December 2007	30 April 2008	28 August 2008	27 September 2008	30 September 2009
31 March 2008 and 30 June 2008	31 October 2008	28 February 2009	30 March 2009	

As correctly ruled by the CTA *En Banc*, petitioner failed to observe the 30-day period under Section 112 (C) of the 1997 NIRC, as amended, to judicially appeal the instant administrative claim. Correspondingly, the belated filing of the judicial claim for refund of or issuance of a tax credit certificate in its favor before the Third Division warranted a dismissal of the petition for review with prejudice, inasmuch as no jurisdiction was acquired thereon by the latter to entertain the said case.[33]

Petitioner staunchly argues that the 30-day period under Section 112 (C) is permissive and not mandatory. The matter of whether said period is permissive and not mandatory has already been clarified in *Commissioner of Internal Revenue v. San Roque Power Corp.* (*San Roque*),[34] where it was stated that "the law does not make the 120+30 day periods optional just because the law uses the word 'may.' The word 'may' simply means that the taxpayer may or may not appeal the decision of the Commissioner within thirty (30) days from receipt of the decision, or within 30 days from the expiration of the one hundred twenty (120)-day period. Certainly, by no stretch of the imagination can the word 'may' be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner."

[33] *Id.* at 27.
[34] *Supra* at note 24.

As succinctly explained in *Commissioner of Internal Revenue v. Mindanao I Geothermal Partnership*, [35] the word "may" in Section 112 (C) refers to the choice of remedy and not to the period for seeking such remedy, *i.e.*, the taxpayer may or may not appeal the claim, but if it elects to do so, the appeal must be filed within the 30-day period.[36] Moreover, it was ruled in *Aichi* that the 120-day and 30-day periods are not merely directory but mandatory.[37]

Petitioner, however, contends that *Aichi* should not be applied retroactively and that *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*[38] (*Intel*) was the prevailing jurisprudence on Section 112 of the NIRC when it filed its judicial claim. Thus, it relied on the disposition of this Court that the 120+30 day periods were not mandatory and jurisdictional.

Notably, when petitioner filed its claims for refund or tax credit in 2008, the 1997 NIRC, as amended, was already in effect, which clearly provided for: (a) 120 days for the CIR to act on a taxpayer's claim; and (b) 30 days for the taxpayer to appeal either from the CIR's decision or from the expiration of the 120-day period, in case of the CIR's inaction.[39] Thus, even without the *Aichi* ruling, the law is explicit on the mandatory and jurisdictional nature of the 120+30 day periods.[40] Besides, late filing, as in this case, is **absolutely** prohibited, even during the period when the *Aichi* doctrine was yet controlling.[41]

It is apt to point out that in *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*,[42] Mindanao II Geothermal Partnership filed its administrative and judicial claims on 06 October 2005 and 21 July 2006, respectively, prior to the promulgation of *Aichi* and *San Roque*. While its administrative claim was found to have been timely filed, this Court nevertheless denied its refund claim because the judicial claim was filed late or only 138 days after the lapse of the 120+30-day periods. This Court held that the 30-day period to appeal was mandatory and jurisdictional, applying the ruling

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35 G.R. No. 192006, 14 November 2018 [Per J. A.B. Reyes, Jr.].

36 *Id.*

37 *Republic v. GST Philippines, Inc.*, 719 Phil. 728 (2013); G.R. No. 190872, 17 October 2013 [Per J. Perlas-Bernabe].

38 550 Phil. 751 (2007); G.R. No. 166732, 27 April 2007 [Per J. Callejo, Sr.].

39 *Team Energy Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 197663 and 197770, 14 March 2018 [Per J. Leonen].

40 *CBK Power Co. Ltd. v. Commissioner of Internal Revenue*, 724 Phil. 686 (2014); G.R. Nos. 198729-30, 15 January 2014 [Per J. Sereno].

41 *Supra* at note 24.

42 724 Phil. 534(2014); G.R. No. 191498, 15 January 2014 [Per J. Sereno] cited in *Team Energy Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 197663 and 197770, 14 March 2018 [Per J. Leonen].

in *San Roque*. It further emphasized that late filing was absolutely prohibited. Since then, the 120+30-day periods have been applied to pending cases, resulting in denial of taxpayers' claims due to late filing.

To stress, when this Court decides a case, it does not pass a new law but merely interprets a preexisting one; thus, this interpretation becomes part of the law from the moment it became effective.[43] This is especially applicable in the case at hand since the NIRC, which clearly provided the period of filing, was already in effect when petitioner filed its claim for refund.

While *Intel* also dealt with claims for refund or issuance of a tax credit certificate of excess input tax, the issues raised therein are: (1) whether the absence of the BIR authority to print or the absence of the TIN-V in petitioner's export sales invoices operates to forfeit its entitlement to a tax refund/credit of its unutilized input VAT attributable to its zero-rated sales; and (2) whether petitioner's failure to indicate 'TIN-V' in its sales invoices automatically invalidates its claim for a tax credit certification. The Court did not discuss in the said case that the 120+30 day periods are mandatory or jurisdictional.

It is well-settled that past decisions of this Court should be followed in the adjudication of cases. However, for a ruling of this Court to be considered *stare decisis*, there must be a categorical pronouncement on an issue expressly raised by the parties; it must be a ruling on an issue directly raised. When the court resolves an issue merely *sub silentio, stare decisis* does not apply on the issue touched upon.[44] Thus, any issue, whether raised or not by the parties, but not passed upon by the Court, does not have any value as precedent.[45]

Lastly, the right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[46]

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43 *Accenture, Inc. v. Commissioner of Internal Revenue,* G.R. No. 190102, 11 July 2012 [Per J. Sereno].

44 *Procter and Gamble Asia Pte Ltd. v. Commissioner of Internal Revenue*, 785 Phil. 817 (2016); G.R. No. 204277, 30 May 2016 [Per J. Brion].

45 *Supra* at note 24.

46 *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, 642 Phil. 251 (2010); G.R. No. 167606, 11 August 2010 [Per J. Mendoza].

In fine, while petitioner's administrative claims for the refund or tax credit of its alleged unutilized input VAT were timely filed, the corresponding judicial claim was belatedly filed. Due to the belated filing, the Third Division correctly dismissed petitioner's claim for refund or tax credit, as it did not acquire jurisdiction over the same. Consequently, the CTA *En Banc* did not err in affirming the resolutions of the Third Division.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is hereby **DENIED**. Accordingly, the Decision dated 20 December 2012 and Resolution dated 27 May 2013 of the Court of Tax Appeals *En Banc* in CTA EB No. 830 (CTA Case No. 7982) are hereby **AFFIRMED**.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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