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SECOND DIVISION

[G.R. No. 205652, September 06, 2017]

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

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 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 P23,090,729.17 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 P19,006,753.58 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]

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]

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 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 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: