REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PROCTER & GAMBLE ASIA, PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 973
(C.T.A. CASE NO. 8164)

Present:

DEL ROSARIO, PJ
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, JJ.

Promulgated:

DEC 09 2013 ApApolinario 8:40 a.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review dated December 28, 2012, petitioner Procter & Gamble Asia, PTE, Ltd. assails the Decision dated July 25, 2012 which denied its judicial claim for refund of excess and unutilized input VAT allegedly attributable to its zero-rated sales for the quarters ending September 30, 2008 and December 31, 2008 for having been filed beyond the 30-day reglementary period mandated under Section 112 of the National Internal Revenue Code (NIRC), as amended. The assailed Decision was effectively affirmed in the similarly assailed Resolution of December 13, 2012 which denied petitioner's Motion for Reconsideration.

The facts as established during the trial of the case are as follows:

Petitioner is a foreign corporation organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarters in the Philippines at 18th Floor, Petron Megaplaza, 358 Sen. Gil Puyat Avenue, Makati City. It is registered with the Securities and Exchange Commission with Certificate of Registration and License No. A199913443. It is likewise a VAT Registered Taxpayer and is covered by Bureau of Internal Revenue Certificate of Registration No. 9RC0000071787.

Petitioner provides management, marketing, technical and financial advisory and other qualified services to related companies.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), holding office at the BIR National Office Building, Diliman, Quezon City.

For the periods July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008, petitioner electronically filed its Monthly VAT Declarations and Quarterly VAT Returns as follows:

Month/Quarter Covered	**Return Filed**	**Date Filed**
July 2008	Monthly VAT Declaration	August 20, 2008
August 2008	Monthly VAT Declaration	September 19, 2008
3rd Quarter of 2008	Quarterly VAT Return	October 21, 2008
3rd Quarter of 2008	Amended Quarterly VAT Return	October 20, 2009
October 2008	Monthly VAT Declaration	November 17, 2008
November 2008	Monthly VAT Declaration	December 18, 2008
4th Quarter of 2008	Quarterly VAT Return	January 20, 2009
4th Quarter of 2008	Amended Quarterly VAT Return	April 27, 2009

Based on its VAT Returns, petitioner accumulated input VAT from its domestic purchases of goods other than capital goods, services and others during the periods covering July 1, 2008 to September 30, 2008 and October 1, 2008 to

December 31, 2008 in the aggregate amount of P120,847,220.09, detailed as follows:

	Input VAT			
Period Covered	**Goods**	**Services**	**Others**	**Total**
July 1, 2008 to September 30, 2008	P740,654.75	P62,786,978.40	P902,259.16	P64,429,892.31
October 1, 2008 to December 31, 2008	P1,041,575.46	P54,334,907.14	P1,040,845.18	P56,417,327.78

In the same periods, petitioner also reported sales subject to VAT in the aggregate amount of P1,595,173,624.65, broken down as follows:

Period Covered	**Amount of Sales**
September 2008	P884,332,846.58
December 2008	710,840,778.07
Total	**P1,595,173,624.65**

Out of the total sales of P1,595,173,624.65 for the periods from July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008, sales in the amount of P57,917,172.17 were subjected to twelve percent (12%) VAT and P1,537,256,452.48 were subjected to zero percent (0%) VAT. The sales subjected to 0% VAT allegedly pertain to services rendered by petitioner to its foreign affiliates, which were allegedly paid in foreign currency and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas (BSP).

On December 9, 2009, petitioner filed an application with Revenue District Office (RDO) No. 49 of the BIR for the refund or issuance of tax credit certificate of its alleged excess and unutilized input VAT of P115,242,046.55 paid or incurred during the periods covering July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008, which were attributable to its zero-rated sales of services, pursuant to Section 108(B)(2) in relation to Sections 110(B) and 112(A) of the NIRC of 1997, as amended, broken down as follows:

Period Covered	Amount To Be Refunded/Tax Credit
Third Quarter of 2008	P60,873,226.15
Fourth Quarter of 2008	54,368,820.40
Total	**P115,242,046.55**

Alleging inaction on the part of respondent, petitioner elevated its claim for refund before the Court in Division via a Petition for Review on September 29, 2010.

During trial, only petitioner presented evidence in support of its case. Respondent did not present any, despite the opportunity granted.

In the Decision dated July 25, 2012, the Court in Division denied petitioner's judicial claim for refund on jurisdictional ground. The dispositive portion of the Decision reads as follows:

> WHEREFORE, the instant Petition for Review is hereby DENIED on the ground that the judicial claim for refund of excess and unutilized input VAT in the amount of P115,242,046.55, covering the periods of July 1, 2008 to September 31, 2008 and October 1, 2008 to December 31, 2008, was filed out of time.
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> SO ORDERED.

The motion for reconsideration thereto filed by petitioner was denied by the Court in Division in the Resolution of December 13, 2012, in this wise:

> WHEREFORE, premises considered, petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration are hereby DENIED.
>
> SO ORDERED.

Hence, the instant Petition for Review before the Court *En Banc.* Petitioner questions the dismissal of its Petition by the Court in Division which according to it should have been decided on the merits of its claim.

Petitioner claims that its constitutional rights to due process and equal protection of the law were violated when the Court in Division dismissed its Petition for Review for lack of jurisdiction for failure to observe the 120-30 day periods provided under Section 112 of the NIRC. Petitioner cited several cases[1] where the Court allegedly entertained petitions notwithstanding violation of the 120-30 day periods requirement.

Petitioner disagrees with the ruling of the Court in Division that there was no violation of the equal protection clause since unlike in the instant case, the issue of the 120-30 day periods was not raised in the cited cases. According to petitioner, Section 112 does not state that the mandatory nature of the 120-30 day rule applies only when the said issue is raised squarely in a case. That being the case, the Court in Division should have entertained its appeal.

Petitioner further claims that the mandatory application of the 120-30 day periods, as held in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi),*[2] has been abandoned by the Supreme Court in the subsequent cases[3] where it did not apply the 120-30 day periods. With the promulgation of the subsequent cases, the Supreme Court revived the previous ruling that the 120-30 day periods are merely permissive and not mandatory, and non-compliance thereof will not deprive the Court of jurisdiction. The subsequent cases should prevail over the *Aichi* case.

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[1] a) Intel vs. CIR, G.R. No. 166732, April 27, 2007; b) San Roque vs. CIR, G.R. No. 180345, November 25, 2009; c) Panasonic vs. CIR, G.R. No. 178090, February 8, 2010; d) AT&T vs. CIR, G.R. No. 182364, August 3, 2010; e) Hitachi vs. CIR, G.R. No. 174212, October 20, 2010; f) Silicon vs. CIR, G.R. No. 172378, January 17, 2011; g) Kepco vs. CIR, G.R. No. 179961, January 31, 2011; h) Microsoft vs. CIR, G.R. No. 180173, April 6, 2011; i) Southern Philippines Power vs. CIR, G.R. No. 179632, October 19, 2011; j) Western Mindanao Power vs. CIR, G.R. No. 181136, June 13, 2012.

[2] G.R. No. 184823, October 06, 2010.

[3] a) Hitachi vs. CIR, G.R. No. 174212, October 20, 2010; b) Silicon vs. CIR, G.R. No. 172378, January 17, 2011; c) Kepco vs. CIR, G.R. No. 179961, January 31, 2011; d) Microsoft vs. CIR, G.R. No. 180173, April 6, 2011; e) Southern Philippines Power vs. CIR, G.R. No. 179632, October 19, 2011; f) Western Mindanao Power vs. CIR, G.R. No. 181136, June 13, 2012.

Petitioner also invokes Section 4(3) of Article VIII of the Philippine Constitution which states 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 court sitting en banc." In relation thereto, petitioner points out that prior to the *Aichi* case, there were four (4) cases[4] pertaining to claims for refund under Section 112 of the 1997 NIRC where the Supreme Court ignored the import of the 120-30 day periods. Pursuant to the constitutional provision, the doctrine laid down in these four (4) previous cases cannot be overturned by *Aichi* since the latter was promulgated by a division of the Supreme Court and not by the Court sitting *en banc.*

Petitioner also points out that although judicial decisions form part of the law of the land, they cannot have retroactive effect pursuant to Article 4 of the New Civil Code. Thus, this case is excluded from the interpretation of Section 112 in the *Aichi* case, deemed as a new law, which should be applied prospectively. This is more judicious since to apply it retroactively will violate petitioner's constitutional right to due process, given that it relied on the old doctrine in good faith.

While admitting that the issue of jurisdiction may be raised at any stage of the proceedings, petitioner submits that respondent is guilty of estoppel by laches for having actively participated in all the stages of the proceedings. Thus, she is deemed to have waived the defense of lack of jurisdiction in accordance with Article 6 of the Civil Code of the Philippines which states that rights may be waived. Besides, respondent already submitted to the jurisdiction of the Court and can no longer repudiate it at this point.

Further, the *Aichi* case cannot be applied in this case since the two cases differ in factual circumstances. In the *Aichi* case, the Petition for Review and the administrative claim for refund were filed on the same day depriving respondent of the opportunity to resolve the claim at her level. This evil sought to be remedied by jurisprudence is

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[4] a) Intel vs. CIR, G.R. No. 166732, April 27, 2007; b) San Roque vs. CIR, G.R. No. 180345, November 25, 2009; c) Panasonic vs. CIR, G.R. No. 178090, February 8, 2010; d) AT&T vs. CIR, G.R. No. 182364, August 3, 2010.

not present in the instant case as petitioner's judicial claim was filed almost 200 days after the administrative claim allowing respondent ample time to act on her level.

Also by dismissing the case, the Court in Division has effectively sanctioned unjust enrichment on the part of the State especially considering that the amount of the subject claim is substantially greater than that in *Aichi.*

Petitioner invokes as well substantial justice, equity and fair play which it claims should prevail over technical rules of procedure. Cases must be decided on the merits and not on mere technicalities in the interest of justice.

Finally, based on the ruling in the case of *Commissioner of Internal Revenue vs. San Roque,*[5] that "as long as the claim for refund is filed with the Court within the two-year period the taxpayer applicant is deemed to have filed its judicial claim on time," [6] the instant judicial claim is considered seasonably filed.

Respondent did not file any comment despite the Court's directive but manifested that she would adopt the factual findings and legal conclusions of the Court in Division in the assailed Decision of July 25, 2012 and Resolution of December 13, 2012 as her comment to the Petition. Subsequently, respondent filed a Memorandum,[7] in which she argued that the ruling in the case of *Commissioner of Internal Revenue vs. San Roque,*[8] saying that all taxpayers could rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by the Supreme Court in *Aichi* on 6 October 2010, was incorrect. Despite the Supreme Court ruling, she insisted that BIR Ruling No. DA-489-03 was not a valid administrative issuance pursuant to the rule making power of the Commissioner of the BIR as provided under Section 4 and 7 of the 1997 Tax Code since the same was issued not by the Commissioner herself but by a mere Deputy Commissioner.

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[5] G.R. Nos. 187485, 196113, & 197156, Feb. 12, 2013.
[6] Petitioner's Memorandum dated May 17, 2013.
[7] Respondent's Memorandum dated May 6, 2013.
[8] G.R. Nos. 187485, 196113, & 197156, Feb. 12, 2013.

Neither can BIR Ruling No. DA-489-03 be considered an issuance within the delegated authority of the Deputy Commissioner given that Section 7 of the Tax Code expressly prohibits the delegation of the power of the Commissioner to issue rulings of first impression.

Petitioner cannot also claim any benefit under BIR Ruling No. DA-489-03 since it never invoked it during the proceedings before the Court in Division, hence petitioner cannot be excluded from the mandatory requirement of the 120-30 day periods under Section 112 of the NIRC. That being the case, petitioner cannot as well raise it for the first time on appeal before the Court *En Banc.*

Finally, the judicial claim of petitioner was filed beyond the mandatory 30-day reglementary period for appeal provided under Section 112 of the NIRC, as amended, the Court in Division did not acquire jurisdiction over the instant case and correctly dismissed the same. Respondent also gave premium to the fact that she raised lack of jurisdiction on the part of the Court in her Answer.

Basically, the arguments raised by petitioner have been squarely addressed by the Court in Division in the assailed Decision of July 25, 2012. Nevertheless, the Court *En Banc* will revisit and discuss the issues as restated in the Petition for Review if only to put petitioner's mind to rest.

The instant case involves a claim for refund of alleged excess and unutilized input VAT for the periods covering July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008 in the total amount of P115,242,046.55.

Section 112 of the NIRC, as amended, pertinently provides, thus:

> Section 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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> (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.
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> 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. x x x

By express provision of Section 112, a VAT-registered person, such as petitioner, has a period of two (2) years after the close of the pertinent taxable quarter when the sales were made, within which to file with respondent an administrative claim for refund or issuance of a tax credit certificate of creditable input tax due or paid attributable to such sales.

The import of the two-year prescriptive period for filing administrative claim for refund or issuance of tax credit certificate under Section 112 of the NIRC has been elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi)*,[9] thus:

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[9] G.R. No. 184823, October 06, 2010.

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.

x x x x x x x x x

Section 112(D)[10] 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 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

x x x x x x x x x

Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.

[10] Now Section 112(C).

In the most recent case of of *Commissioner of Internal Revenue vs. San Roque Power Corporation (San Roque),*[11] the mandatory and jurisdictional nature of the 120-30 day periods have been emphasized as follows:

> It is indisputable that compliance with the 120-day waiting period is mandatory and jurisdictional. x x x Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. x x x Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review.
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> x x x x x x x x x
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> Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner x x x. This law is clear, plain, and unequivocal. Following the well-settled *verbal legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.
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[11] Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485; Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113; Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156, February 12, 2013.

> Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).

The instant claim for refund pertains to input VAT generated for the periods covering July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008. Thus, for the third quarter ending September 30, 2008 and for the fourth quarter ending December 31, 2008, petitioner had until September 30, 2010 and December 31, 2010, respectively, within which to apply with respondent for refund or tax credit of its excess and unutilized input VAT. Clear as a day that petitioner's administrative claim was timely filed on December 9, 2009.

Under the same provision, respondent has 120 days to act on the claim for refund/tax credit by either granting or denying the same. In case of adverse ruling, the aggrieved taxpayer may, within thirty (30) days from receipt of the decision or after the expiration of the one hundred twenty-day (120) period without any action thereon, seek judicial intervention via a petition for review to be filed with the Court of Tax Appeals.

Since the administrative claim was filed by petitioner on December 9, 2009, respondent had 120 days or until April 8, 2010 to render a decision. Considering that respondent failed to act on petitioner's claim within the 120-day period the last day of which was on April 8, 2010, petitioner had 30 days or until May 8, 2010 to assail such inaction on the part of respondent before the Court. It appears however that May 8, 2010 was a Saturday, hence, petitioner had until the next working day or until May 10, 2010 to appeal.

For reason only known to it, petitioner filed its Petition for Review only on September 29, 2010 or 144 days beyond the reglementary period of 30 days to appeal.

Section 112 of the NIRC, as amended is clear and categorical in its language, there is no need for further interpretation by the courts and non-compliance with the said provision cannot be justified.[12] In fine, the Court *En Banc* agrees with the Court in Division that the belated filing of the Petition for Review divested the Court of the authority to entertain the appeal.

With the foregoing, discussions on the rest of the issues raised by petitioner become irrelevant. But with the end in view of putting petitioner's mind to rest, the Court will continue to traverse the other issues raised by petitioner.

On the alleged violation of petitioner's right to due process, suffice it to say that as long as the party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[13] What the law prohibits is *absolute* absence of the opportunity to be heard, hence, petitioner cannot feign denial of due process as it had been afforded the opportunity to present its side.[14]

As regards petitioner's claim that its right to equal protection had been violated by the dismissal of its case citing cases which it claims to be in all fours with its case, evidently petitioner ignored the ruling of the Supreme Court

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[12] Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue, G.R. No. 196907, March 13, 2013.
[13] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. NO. 168498, June 16, 2006.
[14] Placido vs. National Labor Relations Commission, G.R. No. 180888, September 18, 2009.

on the matter in the case of *San Roque,*[15] the relevant portion of which is quoted below:

> The *Atlas* doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in *Atlas*. The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional.
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> Any issue, whether raised or not by the parties, *but not passed upon by the Court*, does not have any value as precedent. As this Court has explained as early as 1926:
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>> It is contended, however, that the question before us was answered and resolved against the contention of the appellant in the case of *Bautista vs. Fajardo* (38 Phil. 624). In that case no question was raised nor was it even suggested that said section 216 did not apply to a public officer. That question was not discussed nor referred to by any of the parties interested in that case. It has been frequently decided that the fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity, where that question is squarely and

[15] Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485, Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113, Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156, February 12, 2013.

> properly raised and presented. **Where a question passes the Court *sub silention*, the case in which the question was so passed is not binding on the Court (*McGirr vs. Hamilton and Abreu,* 30 Phil. 563), nor should it be considered as a precedent.** (*U.S. vs. Noriega and Tobias*, 31 Phil. 310; *Chicote vs. Acasio,* 31 Phil. 401; *U.S. vs. More*, 3 Cranch [U.S.] 159, 172; *U.S. vs. Sanges*, 144 U.S. 310, 319; *Cross vs. Burke*, 146 U.S. 82.) For the reasons given in the case of *McGirr vs. Hamilton and Abreu*, supra, the decision in the case of *Bautista vs. Fajardo*, supra, can have no binding force in the interpretation of the question presented here.
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> In *Cebu Toyo*, the nature of the 120-day period, whether it is mandatory or optional, was not even raised as an issue by any of the parties. **The Court never passed upon this issue.** Thus, *Cebu Toyo* does not constitute binding precedent on the nature of the 120-day period.

As stated in the *San Roque* case, the *Aichi* case is the first Supreme Court decision that squarely addressed the issue of the 120-30 day periods. The issues in the cases cited by petitioner do not deal directly with the application of the prescriptive periods under Section 112.

The Supreme Court, both in the *Aichi* case and *San Roque* case, has ruled that the 120-30 day periods as provided under Section 112 of the NIRC, as amended, are mandatory and jurisdictional. Such ruling which has become a judicial precedent should be followed in subsequent cases by all courts in the land,[16] this Court included. For it is

[16] Filinvest Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. NO. 146941, August 09, 2007.

established in this jurisdiction that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[17]

Contrary to petitioner's claim the *Aichi* case did not overturn existing doctrine whether rendered by a division or the *en banc* for as earlier stated it is the first ruling of the Supreme Court on the 120-30 day periods and should be applied immediately.

Anent the alleged estoppel on the part of respondent for not having raised the issue of jurisdiction, the record is plain that respondent raised petitioner's non-compliance with the requirements of Section 112 of the 1997 NIRC in her Answer.

Even assuming that respondent failed to question the Court's competence due to petitioner's non-compliance with the 120-30 day periods in her Answer or even in her Memorandum, lack of jurisdiction may be raised at any time even on appeal. Such infirmity cannot be waived even by the parties, as held by the Supreme Court in this wise:

> Because the 120+30 day period is jurisdictional, the issue of whether petitioner complied with the said time frame may be broached at any stage, even on appeal. Well-settled is the rule that the question of jurisdiction over the subject matter can be raised at any time during the proceedings. Jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them. Consequently, the fact that the CIR failed to immediately express its objection to the premature filing of the

[17] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003.

> petition for review before the CTA is of no moment.[18]

Note that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before the Supreme Court.[19] A decision rendered without jurisdiction is not a decision in contemplation of law and can never become executory.[20] In a case, the High Court held that a void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bonds anyone, and under which all acts performed and all claims flowing therefrom are void.[21]

On the contention that by applying the doctrine laid down in the *Aichi* case, specifically the interpretation of the 120-30 day periods, the Court effectively deprived petitioner of its right to seek judicial intervention in its claim for refund, the Supreme Court, in the *San Roque* case, has this to say:

> Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity. It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right

[18] Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue, G.R. No. 196907, March 13, 2013.
[19] Bungcayao, Sr. vs. Fort Ilocandia Property Holdings, G.R. No. 170483, April 19, 2010.
[20] Heirs of Honrales vs. Honrales, G.R. No. 182651, August 25, 2010.
[21] Tanenglian, vs. Silvestre, et al., G.R. No. 173415, March 28, 2008.

can arise from acts or omissions which are against the law or which infringe upon the rights of others. For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper. x x x

The mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. **Well settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer**. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

This Court cannot disregard mandatory and jurisdictional conditions mandated by law simply because the Commissioner chose not to contest the numerical correctness of the claim for tax refund or credit of the taxpayer. Non-compliance with mandatory periods, non-observance of prescriptive periods, and non-adherence to exhaustion of administrative remedies **bar** a taxpayer's claim for tax refund or credit, whether or not the Commissioner questions the numerical correctness of the claim of the taxpayer. This Court should not establish the precedent that non-compliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements, for then every tax refund case will have to

> be decided on the numerical correctness of the amounts claimed, regardless of non-compliance with mandatory and jurisdictional conditions.

The law may be harsh but that is the law.[22]

WHEREFORE, the Petition for Review dated December 28, 2012 filed by petitioner Procter & Gamble Asia, PTE. Ltd., is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[22] Olympio Revaldo vs. People of the Philippines, G.R. No. 170589, April 16, 2009.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice