REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 765
(CTA Case No. 7820)

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ*.

Promulgated:

MAR 2 7 2013

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AMENDED DECISION

CASTAÑEDA, JR., *J*.:

Before the Court is petitioner's "Motion for Reconsideration" dated November 21, 2012 praying that the Decision promulgated on October 11, 2012 be reconsidered and set aside and that their petition be given due course and eventually be decided on the merits. The dispositive portion of questioned Decision reads:

> **WHEREFORE**, premises considered, the Petition for Review in the above-captioned case is hereby **DISMISSED** for lack of merit. Accordingly, the assailed Decision and Resolution of the CTA-Second Division in CTA Case No. 7820 are hereby **AFFIRMED**.
>
> **SO ORDERED**.[1]

The motion is anchored on the following grounds:[2]

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[1] *Rollo,* pp. 352-353.
[2] Id., at 367-368.

1. The Aichi decision which was the basis for dismissal cannot be used as precedent because it cannot reverse or modify the doctrine or principle of law which states that "failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court" for want of constitutional compliance;

2. The Aichi decision cannot also reverse or modify the prior application of Section 112 of the NIRC of 1997 in the cases of Intel, San Roque Power, Panasonic, and AT&T wherein the Court of Tax Appeals and Supreme Court acquired jurisdiction and granted tax refunds despite the 120-30 day period in respect of Article VIII, Sec. 4(3) of the Constitution.

3. The interpretation that 120-30 day period is mandatory and jurisdictional enunciated in Aichi case may not be applied retroactively from the moment Section 112 of the NIRC became effective because it will disturb previous Supreme Court decisions which already applied the 120-30 day period as non-jurisdictional;

4. In the interest of substantial justice, strict application of Section 112C (now D) may be relaxed by the Honorable Court following the decision of the Supreme Court in the case of *TFS, Incorporated vs. CIR [GR No. 166829]*;

5. Application of pure technicality to the instant case will deprive petitioner of no other recourse to get the tax refund it rightfully deserves.

In response to the Motion, the respondent, instead of filing a Comment, opted to file a "Manifestation & Motion" by adopting the findings and conclusions of this Court given that the Motion filed by petitioner is a *pro-forma* motion, that is, the arguments laid therein are entirely a reiteration of reasons and arguments previously set forth in petitioner-movant's memorandum.[3]

We grant the motion.

In view of the recent pronouncement of the Supreme Court in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[4] (San Roque) where the High Court granted the petition for review in G.R. No. 196113 when petitioner Taganito filed its administrative claim for refund of input VAT for the period of January 1, 2005 to December 31, 2005 on November 14, 2006 and barely ninety-two (92) days after it filed its administrative claim for refund or on February 14, 2007, Taganito sought judicial recourse before the Court of Tax Appeals.

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[3] *Rollo*, pp. 386-387.
[4] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

Ruling in favor of Taganito, the Supreme Court gave due course to the judicial claim despite the non-observance of the 120-day period for two reasons: First, the judicial claim was filed after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 which allows the claimant-taxpayer to file its judicial claim without waiting for the lapse of the 120-day period; and second, the said BIR Ruling is a general interpretative rule. Quoting the Supreme Court in this wise:

> x x x BIR Ruling No. DA-489-03 *expressly* states 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**." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
>
> 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 <u>first exception</u> 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 <u>second exception</u> 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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> xxx xxx xxx
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> 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. *ja*

> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. **Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of 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**. (emphasis and underlining supplied)

Thus, from December 10, 2003 until its abandonment in the case of *Aichi* on October 6, 2010, a taxpayer seeking judicial relief with the Court of Tax Appeals on its claim for tax refund or the issuance of a tax credit need not wait for the lapse 120-day period for filing its judicial claim on the basis of BIR Ruling No. DA-489-03.

In the case at bar, petitioner filed its administrative claim for refund within the two (2)-year period on April 15, 2008 reckoned from September 30, 2006, December 31, 2006, March 31, 2007 and June 30, 2007. Thereafter, for failure to observe the 120-day period to decide the refund claim on the administrative level, petitioner sought judicial recourse before the Court of Tax Appeals on August 8, 2008, or on the 115th day reckoned from April 15, 2008. Thus, applying the *San Roque* ruling to this present controversy, petitioner's judicial claim must, perforce, be given due course on the basis of BIR Ruling No. DA-489-03, which according to the High Court, is a general interpretative rule and is regarded as applicable to all taxpayers.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **GRANTED**. The Court *en banc*'s Decision promulgated on October 11, 2012 is hereby **REVERSED** and **SET ASIDE**. Accordingly, CTA Case No. 7820 is **REMANDED** to the Court of origin for a complete determination of the specific amount of refund or tax credit to which petitioner is entitled to, if any. Thereafter, the said Court shall render judgment, declaring such specific amount of refund or tax credit, if any.

SO ORDERED.

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

WE CONCUR:

(NO PART)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(No part in the Decision)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice