REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

PROCTER AND GAMBLE ASIA PTE. LTD.,
Respondent.

CTA EB No. 839
(CTA Case No. 7747)

Present:

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

Promulgated:

MAY 17 2013 4:00 p.m.

x- -x

D E C I S I O N

COTANGCO-MANALASTAS, J.:

This is a petition for review from the Decision dated July 11, 2013, and Resolution dated October 3, 2011, of the CTA First Division which partially granted respondent's claim for refund/tax credit representing the unutilized input VAT attributable to its zero-rated sales for the period covering January 1, 2006 to March 31, 2006 and April 1, 2006 to June 30, 2006.

Facts[1]

Petitioner is the official of the Republic of the Philippines charged with the duty of assessing and collecting internal revenue taxes. She holds office at the Bureau of Internal Revenue, National Office Building, BIR Road, Diliman, Quezon City.

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[1] *Rollo*, C.T.A. EB Case No. 839, pp. 6-7.

Respondent is a foreign corporation duly organized in Singapore with Regional Operating Headquarters (ROHQ) in the Philippines located at the 18/F Petron Megaplaza, 358 Sen. Gil Puyat Ave., Makati City.

On April 25, 2006 and July 25, 2006, respondent filed its Quarterly VAT Returns for the quarters ended March 31, 2006 and June 30, 2006, respectively.

On December 21, 2007, respondent filed with the BIR RDO 49-North Makati an administrative claim for refund of alleged unutilized input VAT attributable to its zero-rated sales, for the period covering January 1 to March 31, 2006 and April 1 to June 30, 2006.

On March 31, 2008, respondent judicially filed a Petition for Review with the First Division of the CTA, docketed as CTA Case No. 7747, hinged on herein petitioner's alleged inaction on its administrative claim for refund.

Petitioner (respondent in CTA Case No. 7747) filed its Answer on April 25, 2008. The parties filed their Joint Stipulation of Facts and Issues, which was approved by the CTA First Division on June 24, 2008. Trial ensued, after which the parties were ordered to file their memorandum.

The CTA First Division promulgated its Decision on July 13, 2011, the dispositive portion states:

> "WHEREFORE, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby DIRECTED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favour of petitioner in the reduced amount of THIRTY FIVE MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND SIX HUNDRED SIXTY EIGHT AND 89/100 PESOS (PHP35,578,668.89), representing unutilized input VAT incurred by petitioner in relation to its zero-rated sales for the periods covering January 1, 2006 to March 31, 2006 and April 1, 2006 to June 30, 2006."[2]

On July 28, 2011, petitioner (therein respondent) filed a motion for reconsideration arguing that the judicial claim was

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[2] *Rollo*, pp. 49-50.

prematurely filed and therefore the Court did not acquire jurisdiction. The motion was denied in the First Division's Resolution dated October 3, 2011.

Hence, this petition for review filed by petitioner where it argues that under the *Aichi* ruling[3], the premature filing of the judicial claim is not a mere violation of the doctrine of exhaustion of administrative remedies.

Respondent filed its Comment on December 29, 2012. On April 4, 2013, respondent filed a manifestation bringing to this Court's attention the promulgation of the Supreme Court *en Banc* Decision[4] (*San Roque* case), dated February 12, 2013, clarifying the applicability of the 120+30 day periods in applying and filing for refund/tax credit, and manifesting that the filing of its judicial claim was before the promulgation of the *Aichi* ruling, and therefore filed on time.

Issues[5]

I. Whether or not the First Division of this Honorable Court has jurisdiction to entertain the subject matter of the Petition for Review in CTA Case No. 7747.

II. Whether or not the First Division of this Honorable Court erred in holding that the premature filing of respondent's judicial claim is a mere violation of the Doctrine of Exhaustion of Administrative Remedies.

Ruling of the Court

The main issue in the instant case is whether respondent's judicial claim, filed prematurely or before the lapse of the 120-day period, should be dismissed since the Court does not acquire jurisdiction.

There is no dispute that respondent did not wait for the lapse of the 120-day period when it filed its judicial claim.

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[3] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

[4] Consolidated cases of *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; and, *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 197456.

[5] *Rollo*, p. 8.

When respondent filed its petition with the CTA Division on March 31, 2008, only 101 days have elapsed from the time it filed its administrative claim on December 21, 2007.

Section 112(D) [now 112(C)] of the 1997 NIRC grants the Commissioner 120 days from receipt of the complete documents, within which to act on the application for refund. Only after the lapse of the said 120 days or from the receipt of the adverse decision, may an aggrieved taxpayer, within 30 days therefrom, seek judicial intervention on its claim for refund via a petition for review.

This was further cemented by the *Aichi* ruling on October 6, 2010 where the Supreme Court categorically stated that the 120+30 day period is mandatory and jurisdictional, and again in the Supreme Court *En Banc* decision in the *San Roque* case.

Under the foregoing precepts, respondent's petition is premature and therefore, dismissible. As explained in *San Roque*:

> "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."[6]

However, through its ruling in the *San Roque* case, the Supreme Court *En Banc* also recognized the existence of BIR Ruling No. DA-489-03[7] which 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." It was further explained that "all 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."[8]

With this, an exception to the strict application of the mandatory and jurisdictional 120+30 day periods was created starting from December 10, 2003 to October 6, 2010, wherein taxpayers who did not wait for the lapse of the 120-day period

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[6] Note 4, p. 23.
[7] Dated December 10, 2003.
[8] *San Roque* case, see Note 4, pp. 39-40.

are still considered to have filed their petitions on time and not penalized for having filed their judicial claims prematurely.

In the instant case, respondent filed its judicial claim on March 31, 2008 or clearly within the period of exception established by the *San Roque* case, which is December 10, 2003 to October 6, 2010. Thus, even though respondent's petition for review was filed before the lapse of the 120-day period, the same is not treated as premature and dismissible.

WHEREFORE, the instant Petition for Review is **DENIED**. Accordingly, the Decision in C.T.A. Case No. 7747 dated July 13, 2011 is hereby **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
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

(on leave)
ERLINDA P. UY
Associate Justice

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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Members:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA
UY
CASANOVA,
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAY 17 2013 CrsApolinario 1:00 p.m.

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DISSENTING OPINION

CASANOVA, ***J.*****:**

With due respect to my esteemed colleagues, I cannot accede to the majority's application of the doctrine laid down in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue*[1], in resolving the case at bench.

I am aware of the recent pronouncement of the Supreme Court in the afore-cited consolidated cases which clarifies the issue on the

[1] G.R. Nos. 1874865, 196113 & 197156, February 12, 2013.

application of the 120-30 day prescriptive period for refund under Section 112 of the 1997 NIRC. In the said consolidated cases, particularly in the San Roque case, the Supreme Court ruled that from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court in the Aichi case on October 6, 2010, the taxpayer-claimant need not wait for the lapse of the 120-day period before it could file its judicial claim before the CTA.

In the present case, petitioner filed its Petition for Review on March 31, 2008, one hundred one (101) days after it filed its administrative claim, thus violating the 120-30 rule. However, as it filed its judicial claim within the period after the issuance of BIR Ruling No. DA-489-03 and before the promulgation of the Aichi case, petitioner is said to have filed its judicial claim on time, hence the decision of the majority to affirm its Decision in CTA Case No. 7747 dated July 13, 2011.

Notwithstanding the foregoing, it is possible that a Motion for Reconsideration of the said decision may have been filed, thus, until the said Supreme Court case has attained finality and the corresponding entry of judgment has been made[2], prudence dictates that the application of the new doctrine be, in the meantime, deferred.

Moreover, I agree with the Concurring and Dissenting Opinion of Justice Erlinda P. Uy in CTA Case No. 7747 that "the premature filing of the judicial claim before this Court makes the Petition for Review dismissible as no jurisdiction was acquired by the Court to entertain the instant case. And being jurisdictional in nature, this defense is not waivable."

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2 RULE 36
JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF
Sec. 2. *Entry of judgments and final orders.*
If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.

In view of the foregoing, the undersigned votes that the instant Petition for Review should be granted.

CAESAR A. CASANOVA
Associate Justice