REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8899

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:
MAY 09 2017
9:16 Am [signature]

x---x

RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of this Court is petitioner Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ's (Zuellig) **Motion for Reconsideration (Re: Decision dated March 9, 2017)**[1] filed on March 27, 2017 with respondent Commissioner of Internal Revenue's (CIR) **Comment/Opposition (To Petitioner's Motion for Reconsideration dated 27 March 2017)**[2] filed on April 17, 2017.

Petitioner's Motion assails the Decision of this Court promulgated on March 9, 2017 (the "assailed Decision") which denied Zuellig's Petition for Review for lack of jurisdiction.

---

[1] Docket, Vol. II, pp. 755-775.
[2] *Id.*, pp. 778-782.

In its Motion, petitioner claims that where there is proof that additional documents were submitted after the filing of the administrative claim for value-added tax (VAT) refund, the 120-day period (within which the CIR should act on the claim) begins to run from the date of submission of the last document in support of such claim.[3]

Petitioner likewise argues that had respondent, in good faith, believed that the 120-day period already lapsed, respondent would not have entertained petitioner's purported letter dated March 4, 2014 and made a statement that respondent shall "exert all the necessary effort to ensure the timely processing of your VAT refund claim within the 120-day period..."[4] Thus, according to petitioner, it is clear that the 120-day period did not start on July 5, 2011 but only on April 29, 2014 when it submitted its last transmittal to the BIR, Assessment Service and signified that it has submitted complete documents.[5]

Petitioner thus contends that respondent is estopped from questioning the jurisdiction of this Court.[6] It avers that it relied in good faith that its Application for Refund will be granted with the positive and deliberate act of the respondent.[7] Petitioner asserts that at the first instance, respondent should have denied the Application if the petition has no factual and legal basis.[8]

Petitioner likewise avers that the ruling of the Supreme Court in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[9] was erroneously applied in the present case.[10] It added that Revenue Memorandum Circular (RMC) No. 49-2003 does not require the notice for submission of documents in support of the administrative claim for VAT refund to be in writing.[11]

---

[3] *Id.*, p. 757.
[4] *Id.*, p. 766.
[5] *Id.*
[6] *Id.*
[7] *Id.*, p. 767.
[8] *Id.*
[9] G.R. No. 207112, December 8, 2015.
[10] Docket, Vol. II, p. 770.
[11] *Id.*, p. 772.

In response thereto, respondent maintains that this Court correctly ruled that the Petition for Review was filed out of time.[12] He added that petitioner did not present any compelling ground to justify the reversal of the assailed Decision.[13]

Petitioner's Motion for Reconsideration lacks merit.

Bearing in mind the ruling enunciated by the Supreme Court in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[14] this Court stands by its findings that petitioner's judicial claim for VAT refund was filed out of time. As thoroughly discussed in the assailed Decision, the 120-day period within which the CIR should act on the administrative claim shall be reckoned from July 5, 2011, when petitioner submitted additional documents in response to respondent's request dated June 29, 2011. This Court likewise carefully explained in the assailed Decision that petitioner's subsequent submissions starting on May 8, 2012 onwards cannot be considered for purposes of counting the 120-day period because these were made way beyond the 30-day period from date of respondent's request to submit additional supporting documents. Another reason why these later submissions cannot be counted is because they were made beyond the two-year period prescribed under Section 112(A) of the 1997 National Internal Revenue Code, as amended (1997 NIRC).

To reiterate the Court's ruling in the assailed Decision, to wit:[15]

> "To be sure, it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. Nevertheless, the Supreme Court also emphasized that the foregoing benefit given to taxpayer is not unbridled and, as such, is subject to limitations. Hence, based on the above-quoted portion of *Pilipinas Total Gas*, the filing of the complete supporting documents by the taxpayer in connection with an administrative claim for VAT refund is subject to the following rules:

---

[12] *Id.*, p. 778.
[13] *Id.*, p. 780.
[14] *Supra*, Note 9.
[15] Citations omitted.

> 1. Upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of processing unit.
>
> 2. If in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of the claim, the taxpayer-claimants *shall* submit such documents within thirty (30) days from request of the investigation/processing unit. Notice of the request for the submission of additional supporting documents is required.
>
> 3. It is only upon the submission of the documents by the taxpayer that the 120-day period would begin to run.
>
> 4. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the NIRC.

To reiterate, the right of the taxpayer to determine when it has to submit complete documents in support of its claim for VAT refund is not absolute but is saddled with limitations, as elucidated in *Pilipinas Total Gas.* As bluntly stated by the Supreme Court in the said case:

> 'If only to settle any doubt, this Court is **by no means** setting a precedent by leaving it to the mercy of the taxpayer to determine when the 120-day reckoning period should begin to run by **providing absolute discretion** as to when he must comply with the mandate submitting complete documents in support of his claim.' *(Emphasis supplied)* ✓

In the present case, it was established that on **June 29, 2011**, respondent requested the presentation of petitioner's company records and the submission of supporting documents in relation to petitioner's administrative claim for refund of excess and unutilized input VAT for CY 2010.

On July 5, 2011, or six (6) days from date of respondent's request, petitioner submitted additional supporting documents.

However, it was likewise established that after the lapse of three hundred eight (308) days from the foregoing submission, petitioner made subsequent submissions of additional documents on the following dates:

- May 8, 2012;
- July 25, 2012;
- December 6, 2012;
- September 11, 2013;
- December 5, 2013; and
- April 29, 2014.

Taking into account the rules laid down by the Supreme Court in *Pilipinas Total Gas*, this Court holds that the 120-day period within which the CIR should act on the administrative claim shall be reckoned from **July 5, 2011,** when petitioner submitted additional documents in response to respondent's request dated June 29, 2011. Petitioner's other submissions starting on May 8, 2012 onwards cannot be considered for purposes of counting the 120-day period because these were made way beyond the 30-day period from date of respondent's request to submit additional supporting documents. Furthermore, these later submissions were likewise made beyond the two-year period prescribed under Section 112(A) of the 1997 NIRC.

Thus, counting one hundred twenty (120) days from July 5, 2011, respondent had until **November 2, 2011** within which to act on petitioner's administrative claim. Accordingly, petitioner had thirty (30) days from November 2, 2011 or until **December 2, 2011** to file its appeal of respondent's inaction on its administrative claim before the CTA. Consequently, petitioner's judicial claim for refund or tax credit filed before this Court on **September 25, 2014** was filed out of time.

As earlier stated, the 30-day period within which to file an appeal of the denial of the claim or inaction on the part of the CIR is both mandatory and jurisdictional and noncompliance therewith precludes the CTA from acquiring jurisdiction over the case."

On the other hand, petitioner's argument that respondent should be deemed estopped from questioning the Court's jurisdiction due to the alleged representation by the BIR Deputy Commissioner, Operations Group that they would exert all the necessary effort to ensure the timely processing of petitioner's VAT claim within the 120-day period is untenable.

Jurisdiction over the subject matter is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.[16] Consequently, questions of jurisdiction may be raised at any stage of the proceedings, even for the first time on appeal.[17]

In the leading case of *Tijam v. Sibonghanoy*,[18] the Supreme Court carved out an exception to the foregoing rule by holding that a party may be barred from raising issue regarding the court's jurisdiction on the ground of laches or estoppel. The relevant portion of the said decision reads:[19]

"It has been held that a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694,

---

[16] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 759 SCRA 311, 312.
[17] *Republic v. Bantigue Point Development Corporation*, G.R. No. 162322, March 14, 2012, 668 SCRA 163, 164.
[18] G.R. No. L-21450, April 15, 1968, 23 SCRA 29.
[19] *Id.*, pp. 35-37.

86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct *not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated*— obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (Pease vs. Rathbun-Jones etc., 243 U.S. 273, 61 L. Ed. 715, 37 S. Ct. 283; St. Louis etc. vs. McBride, 141 U.S. 127, 35 L. Ed. 659). And in Littleton vs. Burgess, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

Upon this same principle is what We said in the three cases mentioned in the resolution of the Court of Appeals of May 20, 1963 (supra) — to the effect that we frown upon the 'undesirable practice' of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse — as well as in Pindañgan etc. vs. Dans, et al., G.R. L-14591, September 26, 1962; Montelibano, et al., vs. Bacolod-Murcia Milling Co., Inc., G.R. L-15092; Young Men Labor Union etc. vs. The Court of Industrial Relation et al., G.R. L-20307, Feb. 26, 1965, and Mejia vs. Lucas, 100 Phil. p. 277.

The facts of this case show that from the time the Surety became a quasi-party on July 31, 1948, it could have raised the question of the lack of jurisdiction of the Court of First Instance of Cebu to take cognizance of the present action by reason of the sum of money involved which, according to the law then in force, was within the original exclusive jurisdiction of inferior courts. It failed to

> **do so. Instead, at several stages of the proceedings in the court *a quo* as well as in the Court of Appeals, it invoked the jurisdiction of said courts to obtain affirmative relief and submitted its case for a final adjudication on the merits. It was only after an adverse decision was rendered by the Court of Appeals that it finally woke up to raise the question of jurisdiction. Were we to sanction such conduct on its part, We would in effect be declaring as useless all the proceedings had in the present case since it was commenced on July 19, 1948 and compel the judgment creditors to go up their Calvary once more. The inequity and unfairness of this is not only patent but revolting.**" *(Emphasis supplied)*

In *Celia S. Vda. De Herrera v. Bernardo*,[20] the Supreme Court, citing the previous case of *Regalado v. Go*,[21] emphasized that laches should be clearly present for the *Sibonghanoy* doctrine to apply. It held:

> "In *Regalado v. Go,* the Court held that **laches should be clearly present for the *Sibonghanoy* doctrine to apply**, thus:
>
> *Laches* is defined as the 'failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier, it is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.'
>
> The ruling in *People v. Regalario* that was based on the landmark doctrine enunciated in *Tijam v. Sibonghanoy* on the matter of jurisdiction by estoppel is the exception rather than the rule. ***Estoppel by laches may be invoked to bar the issue of lack of jurisdiction only in cases in which the factual milieu is analogous to that in the cited case***. In such controversies, laches should have been clearly present; that is, lack of jurisdiction must have been raised so belatedly

---

[20] G.R. No. 170251, June 1, 2011, 650 SCRA 87, 97-98 (Citations omitted).
[21] G.R. No. 167988, February 6, 2007, 514 SCRA 616.

as to warrant the presumption that the party entitled to assert it had abandoned or declined to assert it.

In *Sibonghanoy*, the defense of lack of jurisdiction was raised for the first time in a motion to dismiss filed by the Surety almost 15 years after the questioned ruling had been rendered. At several stages of the proceedings, in the court *a quo* as well as in the Court of Appeals, the Surety invoked the jurisdiction of the said courts to obtain affirmative relief and submitted its case for final adjudication on the merits. It was only when the adverse decision was rendered by the Court of Appeals that it finally woke up to raise the question of jurisdiction." *(Emphasis supplied)*

The Court notes that the facts of the present case are substantially different from that in the *Sibonghanoy* case. Hence, there is no basis for the application of the doctrine laid down by the Supreme Court therein in the present case.

At any rate, it is well-settled that the government cannot be estopped by the mistakes, errors or omissions of its agents.[22] The underlying reason for such rule was succinctly explained by the Supreme Court in the case of *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*[23] as follows:

"It is a well-settled rule that the government cannot be estopped by the mistakes, errors or omissions of its agents. **It has been specifically held that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. Thus, the government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents.** Upon taxation

---

[22] *Commissioner of Internal Revenue v. Nippon Express (Phils.) Corp.*, G.R. No. 212920, September 16, 2015, 771 SCRA 36; *La Suerte Cigar and Cigarette Factory v. Court of Appeals*, G.R. Nos. 125346, 136328-29, 144942, 148605, 158197, & 165499, November 11, 2014, 739 SCRA 563; *Secretary of Finance v. Oro Maura Shipping Lines*, G.R. No. 156946, July 15, 2009, 593 SCRA 29; *Intra-Strata Assurance Corporation v. Republic*, G.R. No. 156571, July 9, 2008, 557 SCRA 378.

[23] G.R. No. 197525, June 4, 2014, 725 SCRA 130, 149 (Citations omitted).

depends the ability of the government to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people." *(Emphasis supplied)*

This Court likewise finds unmeritorious petitioner's claim that the ruling in *Pilipinas Total Gas* has been erroneously applied in the present case. As stated in the assailed Decision, while it is true that it is the taxpayer who ultimately determines when complete documents have been submitted for purposes of commencing and continuing the running of the 120-day period, such discretion is not absolute and is subject to limitations as comprehensively discussed by the Supreme Court in *Pilipinas Total Gas*. In the said case, the Supreme Court expressly requires that the submission of supporting documents in response to the request of the tax examiners must be made within thirty (30) days from notice. It also provides that in all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the 1997 NIRC. These limitations were not complied with by the subsequent submissions of supporting documents made by petitioner in the present case. Hence, they are not included for purposes of counting the 120-day period.

In light of the foregoing disquisition, this Court finds no substantial matter or compelling reason to disturb its findings in the assailed Decision.

WHEREFORE, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(I maintain my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice