REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1998** (CTA Case No. 7683)
- versus -	***Present:***
	DEL ROSARIO, *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
PROCTER & GAMBLE ASIA PTE., LTD, Respondent.	***Promulgated:*** JUL 14 2020 1:20 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue against Procter & Gamble Asia Pte. Ltd. on February 6, 2019, assailing the Amended Decision dated September 6, 2018[1] and Resolution dated January 3, 2019[2], rendered by the Special Second Division of this Court (Court in Division) in CTA Case No. 7683 entitled "*Procter & Gamble Asia, Pte. Ltd, Petitioner, vs. Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read:

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr, and concurred by Associate Justice Caesar A. Casanova (retired) and Associate Justice Cielito N. Mindaro-Grulla (retired), EB Docket, pp. 28 to 67;

[2] Penned by Associate Justice Juanito C. Castañeda, Jr, and concurred by Associate Justice Cielito N. Mindaro-Grulla (retired), EB Docket, pp. 70 to 86.

<u>Amended Decision dated September 6, 2018</u>:

"**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱26,066,581.28**, representing its unutilized excess input VAT attributable to zero-rated sales/receipts for the periods of July 1, 2005 to September 30, 2005 and October 1, 2005 to December 31, 2005.

SO ORDERED."

<u>Resolution dated January 3, 2019</u>:

"**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of Internal Revenue (or CIR) empowered to perform the duties of said office including, among others, the duty to act upon and approve claims for refunds or tax credits as provided by law.

On the other hand, respondent Procter & Gamble Asia Pte. Ltd. (or PGAPL) is a foreign corporation duly organized and existing under the laws of Singapore, with a Regional Operating Headquarters (ROHQ) in the Philippines. The ROHQ provides management, marketing, technical and financial advisory, and other qualified services to its related parties. Respondent is registered as a Value Added Tax (VAT) taxpayer with the Bureau of Internal Revenue (BIR).

On October 24, 2005 and January 26, 2006, respondent filed with the BIR its original Quarterly VAT returns for the 3rd and 4th quarters of 2005, respectively.

On April 4, 2007, respondent amended its Quarterly VAT Returns for the last two quarters of 2005, reporting both sales subject to 10% VAT and zero-rated sales. For the last two quarters of 2005, respondent claimed it incurred unutilized input VAT amounting to ₱53,624,427.14.

On August 21, 2007, respondent filed an administrative claim for tax refund with the BIR for input VAT attributable to its zero-rated sales covering the period July 2005 to September 2005 and October 2005 to December 2005.

Claiming that petitioner has not acted on its application, respondent elevated the case to the Court of Tax Appeals (CTA) by filing a Petition for Review before the CTA Division on September 27, 2007. The case was docketed as CTA Case No. 7683 entitled *"Procter & Gamble Asia Pte Ltd, vs. Commissioner of Internal Revenue".*

The Court in Division dismissed respondent's petition. It ruled that the filing of the judicial claim for tax refund or credit before the CTA was premature, because the petitioner proceeded with its appeal even before the expiration of the 120-day period given to the CIR to decide on its claim for tax refund or credit of excess input VAT. Section 112 of the National Internal Revenue Code (NIRC) of 1997 provides that in case of denial of his claim for tax credit or refund or failure of the CIR to act on the application within 120 days, the taxpayer may, within 30 days from the receipt of the notice of denial or after the expiration of the 120-day period, appeal the decision or unacted claim with the CTA. The Court in Division emphasized that, as enunciated in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, **compliance with the aforesaid 120- and 30-day periods is crucial in filing an appeal before the CTA** (Aichi Doctrine).

Respondent moved for reconsideration, but the Court in Division denied its motion in a Resolution dated March 7, 2011. The Court in Division gave no credence to respondent's argument that petitioner is estopped from raising the issue of jurisdiction considering that it already actively participated in all stages of the proceedings and that the CTA has proceeded to try the case without bringing into respondent's attention that it has no jurisdiction to do so. It ruled that the parties are not barred from assailing the jurisdiction of the court, even when the case has already been tried and decided upon. Jurisdiction must exist as a matter of law and may not be conferred by the consent of the parties or by estoppel.

Thus, on March 22, 2011, petitioner filed a *Petition for Review* before the CTA *En Banc* docketed as CTA EB No. 740 entitled "*Procter & Gamble Asia Pte Ltd, Petitioner, vs. Commissioner of Internal Revenue, Respondent*".

On June 18, 2012, the Court *En Banc* affirmed the decision and resolution of the Court in Division. It found that respondent's administrative claim for excess input VAT credit or refund was timely filed with the BIR on August 21, 2007, while its judicial claim before the Court in Division was filed on September 27, 2007, or only 37 days after it had filed its administrative claim.

Based on these timelines, the Court *En Banc* held that respondent's petition was prematurely filed. Therefore, the CTA had no jurisdiction to hear and decide its appeal. The CTA *En Banc* reiterated that, based on *Aichi,* the premature filing of a taxpayer's claim for tax credit or refund on input VAT before the CTA warrants dismissal as the CTA did not acquire jurisdiction over the claim.

Subsequently, the Court *En Banc* also denied petitioner's Motion for Reconsideration. Hence, on December 28, 2010, respondent filed a *Petition for Review on Certiorari* with the Supreme Court entitled ""*Procter & Gamble Asia Pte Ltd vs. Commissioner of International*, with docket no. G.R. No. 204277.[3]

The Supreme Court rendered a Decision in said case on May 30, 2016 granting the petition, the dispositive portion of which provides:

> "**WHEREFORE**, premises considered, we **GRANT** the petition. The decision dated June 18, 2012, and the resolution dated November 8, 2012 of the CTA *en banc* in CTA EB Case No. 740 are hereby **REVERSED** and **SET ASIDE**. Accordingly, we **REMAND** the case to the CTA Second Division for the proper determination of the creditable or refundable amount due to the petitioner, if any.
>
> **SO ORDERED**."

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[3] Division Docket – Vol. 4 (CTA Case No. 7683), pp. 2155 to 2198.

On July 7, 2017, the Court received the *Entry of Judgment* issued by the Supreme Court certifying that on July 8, 2016, the Decision has become final and executory.[4]

Thereafter, the Court in Division set CTA Case No. 7683 for the presentation of evidence of the parties. Notably, respondent manifested that it will no longer present additional evidence, while petitioner averred that he is submitting the case for decision based on the pleadings.

The Supplemental Memorandum for the petitioner was filed on October 8, 2017, while respondent's Supplemental Memorandum was filed on October 18, 2017. Accordingly, CTA Case No. 7683 was submitted for decision on October 24, 2017.

In the assailed Amended Decision dated September 6, 2018,[5] the Court in Division partially granted the Petition for Review in CTA Case No. 7683, ordering the CIR to refund or issue a tax credit certificate in the amount of ₱26,066,581.28.

Petitioner filed a *Motion for Partial Reconsideration*[6] on September 21, 2018, with respondent's *Comment/Opposition (Re: Respondent's Motion for Partial Reconsideration dated September 20, 2018)*[7] filed on October 29, 2018.

In the assailed Resolution dated January 3, 2019,[8] the Court in Division denied petitioner's Motion for Partial Reconsideration, for lack of merit.

On January 17, 2019, petitioner filed before the Court *En Banc* a *Motion for Extension of Time to File Petition for Review*,[9] praying for an additional period of fifteen (15) days from January 24, 2019, or until February 8, 2019, to file its *Petition for Review*. As prayed for, the Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from January 24, 2019 or until February 8, 2019 within which to file its Petition for Review.[10]

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[4] Division Docket – Vol. 4 (CTA Case No. 7683), p. 2662.
[5] EB Docket, pp. 28 to 67; Division Docket – Vol. 5 (CTA Case No. 7683), pp. 2699 to 2739.
[6] Division Docket – Vol. 5 (CTA Case No. 7683), pp. 2740 to 2751.
[7] Division Docket – Vol. 5 (CTA Case No. 7683), pp. 2755 to 2759.
[8] EB Docket, pp. 70 to 86; Division Docket – Vol. 5 (CTA Case No. 7683), pp. 2761 to 2777.
[9] EB Docket, pp. 1 to 3.
[10] Minute Resolution dated January 21, 2019, EB Docket, p. 4.

Thus, on February 6, 2019, petitioner filed his *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1998.[11] In his *Petition for Review,* petitioner prays that the instant case be given due course and that judgment be rendered reversing and setting aside the assailed Decision dated September 6, 2019 and Resolution dated January 3, 2019, only insofar as it partially granted respondent's claim for refund/tax credit in the amount of ₱26,066,581.28, representing unutilized excess input VAT attributable to zero-rated sales/receipts for the periods of July 1, 2005 to September 30, 2005 and October 1, 2005 to December 31, 2005.

On March 4, 2019, the Court *En Banc* ordered respondent to file its *Comment* to the instant *Petition for Review.*[12]

On March 29, 2019, respondent filed *a Motion for Extension of Time to File Comment,*[13] praying for an extension of fifteen (15) days from March 29, 2019 or until April 13, 2019, within which to file its *Comment.* The Court *En Banc* granted respondent a final and non-extendible period of fifteen (15) days from March 29, 2019, or until April 13, 2019, within which to file its *Comment.*[14] Respondent filed its *Comment/Opposition* on April 12, 2019.[15]

Thereafter, on May 8, 2019, the Court *En Banc* gave due course to the Petition for Review and ordered the parties to submit their respective memoranda within a period of thirty (30) days from notice.[16]

On June 17, 2019, respondent filed its *Memorandum (For the Respondent)*[17]. On the same date, petitioner filed a *Manifestation & Motion* stating that he is adopting all the arguments (factual and legal) found in his Petitioner for Review filed on February 6, 2019.[18] Correspondingly, the instant case was submitted for decision on July 10, 2019.[19] Hence, this Decision.

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[11] EB Docket, pp. 5 to 20.
[12] Resolution dated March 4, 2019, EB Docket, pp. 88 to 89.
[13] EB Docket, pp. 90 to 92.
[14] Minute Resolution dated April 1, 2019, EB Docket, p. 93.
[15] EB Docket, pp. 94 to 98.
[16] Resolution dated May 8, 2019, EB Docket, pp. 100 to 101.
[17] EB Docket, pp. 102 to 109.
[18] EB Docket, pp. 111 to 112.
[19] EB Docket, pp. 116 to 117.

ISSUE

Petitioner raises a sole issue for the Court *En Banc's* resolution, to wit:

> "WHETHER OR NOT THE SPECIAL SECOND DIVISION OF THIS HON. COURT ERRED IN HOLDING THAT RESPONDENT IS PARTIALLY ENTITLED TO ITS CLAIM FOR TAX REFUND/TAX CREDIT IN THE AMOUNT OF PHP26,066,581.28, REPRESENTING ITS UNUTILIZED EXCESS INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES/RECEIPTS FOR THE PERIODS OF JULY 1, 2005 TO SEPTEMBER 30, 2005 AND OCTOBER 1, 2005 TO DECEMBER 31, 2005."[20]

Petitioner's arguments:

Petitioner argues that respondent failed to prove one of the requisites that its sale of services for the periods covering July 1, 2005 to September 30, 2005 and October 1, 2005 to December 31, 2005, indeed qualify for VAT zero-rating under Section 108(B)(2) of the 1997 NIRC in relation to Section 113(A)(2), (B)(1)(2)(a)(c)(d)(3) of the same code, as implemented under Section 4.113-1(A)(2), B(1)(2)(a)(c)(d) of Revenue Regulations (RR) No. 16-2005.

Petitioner also argues that respondent's documentary exhibits (i.e. invoices and official receipts, certifications of inward remittances issued by Citibank N.A. Philippine Branch, SEC Certificate of Non-Registration, the Procter & Gamble Company and Subsidiaries Report to the U.S. Securities and Exchange Commission, Business Service Agreements and Credit Notes) presented as evidence in support of its judicial claim for input VAT refund are hearsay evidence. Hence, these documents are inadmissible and have no probative value.

Lastly, petitioner contends that respondent's claim for refund is strictly construed against it for the same partakes the nature of tax exemption.

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[20] *Petition for Review*, EB Docket, p. 10.

Respondent's counter-arguments:

Respondent counter-argues that the VAT invoices and official receipts comply with legal requirements, while its supporting documents were all examined, evaluated and considered by the Court in arriving at its Amended Decision. Respondent further points out that its pieces of documentary evidence are not hearsay.

Finally, respondent contends that substantial justice dictates that the government should not keep the money that does not belong to it at the expense of its citizens.

THE COURT *EN BANC*'S RULING

The Petition for Review lacks merit.

A perusal of the arguments in the Petition for Review shows that the same are mere reiterations of its argument in his Motion for Partial Reconsideration[21] filed on September 21, 2018 in CTA Case No. 7683. Nonetheless, the Court *En Banc* shall address the issues raised by petitioner before this Court.

Respondent's VAT official receipts show compliance with the mandatory invoicing requirements of the law.

Petitioner argues that the Invoices and Official Receipts marked as Exhibits "PP-1" to "PP-142", in support of respondent's claim of unutilized input VAT attributable to its zero-rated sales/receipts for the periods of July 1, 2005 to September 30, 2005 and October 1, 2005 to December 31, 2005 do not contain in full the required information under Section 113(A)(2), (B)(1)(2)(a)(c)(d)(3) of the NIRC of 1997, as implemented by Section 4.113-1(A)(2),B(1)(2)(a)(c)(d) of Revenue Regulations No. 16-05. Hence, respondent's claim of unutilized input VAT refund for the periods of July 1, 2005 to September 30, 2005 and October 1, 2005 to December 31, 2005 should be denied outright for lack of merit.

We are not persuaded.

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[21] Division Docket (CTA Case No. 7683) – Vol. 5, pp. 2740 to 2752.

In filing the instant Petition for Review, aside from his general assertions, petitioner failed to specify which of the remaining VAT invoices and official receipts presented by respondent allegedly failed to comply with the invoicing requirements under the NIRC of 1997, as amended, and which of the required information on such VAT invoices or receipts is lacking.

On the other hand, upon careful review of the documentary exhibits presented by respondent, the Court *En Banc* finds that *Exhibits "PP-1" to "PP-142"* are BIR registered VAT official receipts issued by respondent for its zero-rated sales to affiliates which were audited by the court-commissioned Independent Certified Public Accountant (ICPA). As noted by the ICPA and as verified by the Court, these receipts are (1) original duplicate copies of VAT official receipts; (2) pre-printed with respondent's Taxpayer's Identification Number (TIN)-VAT; (3) zero-rated sales official receipts; (4) pre-printed with the BIR's authority to print; (5) issued on a date within the period of claim; and (5) issued in the name of the customer.

Thus, contrary to petitioner's bare assertions, *Exhibits "PP-1 to PP-142"* comply with legal requirements under the NIRC of 1997.

Accordingly, We hold that the findings and conclusion of the Court in Division are in order.

Petitioner failed to timely object to the admission of documents alleged to be hearsay evidence.

Petitioner also avers that respondent's documentary exhibits should not have been given probative value by the Court for being hearsay evidence.

Petitioner argues that respondent's witness (i.e. Teresita Sugay, Sandeep Devgon and ICPA Katherine O. Constantino) have no personal knowledge on the fact of issuance and contents of its documentary exhibits, such as: (i) invoices and official receipts, (ii) Certifications of Inward Remittances issued by Citibank N.A. Philippine Branch; (iii) SEC Certificate of Non-Registration; (iv) The Procter and Gamble Company and Subsidiaries Report to the U.S. Securities and Exchange Commission; (v) Business Service

Agreements; and (vi) Credit Notes. The said documents were prepared by another person other than the said witnesses, therefore, they are devoid of probative value since there is a need for respondent to present the signatory of those documents, or any person who had a hand in the preparation thereof.

Petitioner's argument is bereft of merit.

It is basic in the rule of evidence that objection to evidence must be made after the evidence is formally offered. In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made.[22]

In *Blas vs. Angeles-Hutalla*,[23] the Supreme Court held:

> **"The established doctrine is that when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, <u>such objection shall be considered as waived</u>.** In *Tison v. Court of Appeals*, the Supreme Court set out the applicable principle in the following terms:
>
> > [F]or while the documentary evidence submitted by petitioners do not strictly conform to the rules on their admissibility, we are, however, of the considered opinion that the same may be admitted by reason of private respondent's failure to interpose any timely objection thereto at the time they were being offered in evidence. **It is elementary that an objection shall be made at the time when an alleged inadmissible document is offered in evidence, otherwise, <u>the objection shall be treated as waived</u>, since the right to object is merely a privilege which the party may waive.**
> >
> > As explained in *Abrenica vs. Gonda, et al.*, it has been repeatedly laid down as a rule of evidence that **a protest or objection against**

[22] *Westmont Investment Corporation vs. Francia, Jr., et al.*, G.R. No. 194128, December 7, 2011.
[23] G.R. No. 155594, September 27, 2004.

> **the admission of any evidence must be made at the proper time, otherwise, <u>it will be deemed to have been waived</u>. The proper time is** when from the question addressed to the witness, or from the answer thereto, or **from the presentation of the proof, the inadmissibility of the evidence is, or may be inferred.**
>
> Thus, **a failure to except to the evidence because it does not conform with the statute is a waiver of the provisions of the law.** xxx." (Emphases and underscoring supplied)

In the instant case, it is noted that despite due notice, petitioner failed to file any comment or opposition to any of the evidence offered in respondent's *Formal Offer of Evidence* in CTA Case No. 7683.[24] In fact, petitioner firstly raised this allegation only in his Supplemental Memorandum[25] filed on October 4, 2017.

Needless to state, after such formal offer, the inadmissibility of any of the evidence offered is, or may already be, inferred. Considering that petitioner failed to object to the admissibility of respondent's documentary evidence, he has effectively waived his right to do so. Such being the case, petitioner cannot now question the admissibility of the subject evidence for being hearsay.

In sum, petitioner failed to refute the findings of the Court in Division. To stress, the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[26]

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit.

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[24] Resolution dated September 8, 2009, Division Docket (CTA Case No. 7683) – Vol. 3, pp. 1602 to 1603.

[25] Division Docket (CTA 7683) – Vol. 4, pp. 2683 to 2691.

[26] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),* G.R. No. 188016, January 14, 2015.

Accordingly, the Amended Decision dated September 6, 2018 and the Resolution dated January 3, 2019 rendered by the Court in Division in CTA Case No. 7683, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice