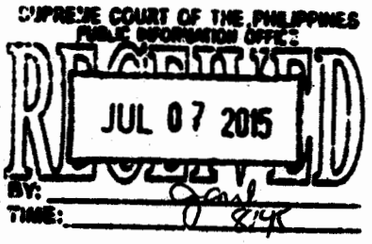
REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **17 June 2015** *which reads as follows*:

G.R. No. 209652 (Commissioner of Internal Revenue v. Procter and Gamble Asia Pte. Ltd.)

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the May 17, 2013 Decision[1] and the October 2, 2013 Resolution[2] of the Court of Tax Appeals En Banc *(CTA En Banc),* in CTA EB Case No. 839, which affirmed the July 13, 2011 Decision[3] and the October 31, 2011 Resolution of the First Division of the CTA *(CTA Division),* in CTA Case No. 7747, directing petitioner Commissioner of Internal Revenue *(CIR)* to refund or issue a tax credit certificate in favor of respondent Procter and Gamble Asia Pte. Ltd. *(P&G)* in the amount of ₱35,578,668.89.

Respondent P&G is a foreign corporation duly organized in Singapore with Regional Operating Headquarters in the Philippines.

On April 25, 2006 and July 25, 2006, P&G filed with the Bureau of Internal Revenue, Revenue District Office *(BIR RDO)* 49-North, Makati City, an administrative claim for refund of unutilized input VAT attributable to its zero-rated sales for the periods covering January 1 to March 31, 2006 and April 1 to June 30, 2006 in the amount of ₱50,041,975.77.

On March 31, 2008, P&G filed a judicial claim via a petition for review with the CTA Division, hinged on the inaction of the CIR on the administrative claim for refund.

On July 13, 2011, the CTA Division promulgated its decision, the dispositive portion of which reads:

> **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 favor of petitioner in the reduced amount of

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[1] *Rollo*, pp. 39-44; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justice Roman G. Del Rosario, Associate Justice Juanito C. Castaneda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito N. Mindaro-Grulla, concurring; and Associate Justice Caesar A. Casanova, dissenting.
[2] Id. at 49-52.
[3] Id. at 72-99. Penned by Associate Justice Esperanza R. Fabon-Victorino.

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.

SO ORDERED.[4]

The CTA Division stated that the judicial claim filed on March 31, 2008, was prematurely filed, having failed to conform to the 120-day period granted to the CIR to decide the administrative claim as enunciated under Section 112(D) [now 112(C)] of the National Internal Revenue Code *(NIRC),* which ended on April 19, 2008. Nonetheless, it ruled that the failure to exhaust administrative remedies was not jurisdictional in nature and merely rendered the action premature for want of a cause of action. It held that the defense of non-exhaustion of administrative remedies may be considered waived if not raised in a motion to dismiss or in an answer, as in the present case. The CTA Division, thus, proceeded to make a ruling on the judicial claim and directed the CIR to issue a tax credit certificate in the reduced amount of ₱35,578,668.89.

On October 31, 2011, the First Division denied the CIR's motion for reconsideration. The CIR filed a petition for review before the CTA *En Banc.*

On May 17, 2013, the CTA *En Banc* rendered the assailed decision, which denied the petition and affirmed the decision of the CTA Division. Citing *CIR v. Aichi Forging Company of Asia, Inc. (Aichi),* the CTA *En Banc* ruled that the 120+30-day period under Section 112(D) [now 112 (C)] of the NIRC was mandatory and jurisdictional[5] but, nevertheless, recognized that the present case fell within the period of exception laid down in *CIR v. San Roque Power Corporation*[6] *(San Roque).* Thus, P&G's judicial claim was not prematurely filed.

On October 2, 2013, the CTA *En Banc* issued the assailed resolution denying the CIR's motion for reconsideration.

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[4] Id. at 98-99
[5] 646 Phil. 710, 732 (2010).
[6] G.R. No. 187485, February 12, 2013, 690 SCRA 336.

Hence, the present petition.

Issues

I

THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT IT HAS JURISDICTION OVER THE SUBJECT MATTER OF THE PETITION FOR REVIEW IN CTA CASE NO. 7747.

II

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, HENCE, MAY BE WAIVED BY PETITIONER CIR, IF NOT TIMELY RAISED IN HER ANSWER.

The Court's Ruling

After a perusal of the records of the case, the Court resolves to **DENY** the petition for failure to show any reversible error in the challenged decision and resolution of the CTA *En Banc* as to warrant the exercise of its discretionary appellate jurisdiction.

Upholding the ruling in *Aichi*, the Court in *San Roque* ruled that the 120+30-day period prescribed under Section 112(D) [now 112 (C)] of the NIRC was mandatory and jurisdictional. The Court, nonetheless, held that there was an exception to the mandatory and jurisdictional nature of the 120+30 day period. It noted that BIR Ruling No. DA-489-03, dated December 10, 2003, expressly stated 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." This BIR Ruling was recognized as a general interpretative rule issued by the CIR under Section 4 of the NIRC and, thus, applicable to all taxpayers.

Considering that the CIR has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to such interpretations. Section 246 of the NIRC, in consonance with equitable estoppel, expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal.

Hence, taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, where it was held that the 120+30-day period was mandatory and jurisdictional. In the present case, respondent P&G filed its judicial claim on March 31, 2008, well within the period of exception. As such, its judicial claim was not prematurely filed and was correctly given due course and ruled upon by the CTA.

WHEREFORE, the petition is **DENIED.** ***(Leonen, J.,*** *on official leave,* ***Jardeleza, J.,*** *designated Acting Member, per Special Order No. 2056, dated June 10, 2015)*

SO ORDERED.

Very truly yours,

MA. LOURDES C. PERFECTO
Division Clerk of Court

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GR209652. 06/17/15 (262[b])URES