

SECOND DIVISION

[G.R. No. 204277, May 30, 2016]

**PROCTER AND GAMBLE ASIA PTE LTD., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

BRION, J.:

Before us is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court seeking the reversal of the decision^[2] dated June 18, 2012, and the resolution^[3] dated November 8, 2012 of the Court of Tax Appeals (CTA) en banc in CTA EB Case No. 740 (CTA Case No. 7683). In the assailed decision and resolution, the CTA *en banc* affirmed the decision^[4] dated November 9, 2010 and resolution^[5] dated March 7, 2011, of the CTA Second Division (*CTA Division*). The latter dismissed the petition of Procter & Gamble Asia Pte. Ltd. (*PGAPL*) for premature filing.

The Facts

Petitioner 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. PGAPL is registered as a Value Added Tax (*VAT*) taxpayer with the Bureau of Internal Revenue (*BIR*). On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (*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 October 24, 2005, and January 26, 2006, PGAPL filed with the BIR its Original Quarterly VAT returns for the Third and Fourth quarters of 2005, respectively.

On April 4, 2007, PGAPL 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, PGAPL claimed it incurred unutilized input VAT amounting to P53,624,427.14.

On August 21, 2007, PGAPL 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 the CIR has not acted on its application, PGAPL elevated the case to the CTA by filing a petition for review^[6] before the CTA division on September 27, 2007.

The CTA Division dismissed PGAPL's petition.^[7] It ruled that the filing of the judicial

claim for tax refund or credit before the CTA is 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 of 1997 (*NIRC*) 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 CTA Division emphasized that, as enunciated in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,^[8] **compliance with the aforesaid 120- and 30-day periods is crucial in filing an appeal before the CTA** (*Aichi Doctrine*).

PGAPL moved for reconsideration, but the CTA denied its motion in a resolution dated March 7, 2011.^[9] The CTA Division struck down PGAPL's argument that respondent is already 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 petitioner's attention that it has no jurisdiction to do so. It ruled that 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.^[10]

Thereafter, petitioner filed a petition for review^[11] before the CTA *en banc*.

In its decision^[12] dated June 18, 2012, the CTA *en banc* affirmed the decision and resolution of the CTA Division. It found that PGAPL's administrative claim for excess input VAT credit or refund was timely filed with the BIR on August 21, 2007. However, its judicial claim before the CTA was filed on September 27, 2007, or only 37 days after it had filed its administrative claim.

Based on these timelines, the CTA *en banc* held that PGAPL's petition was prematurely filed. Thus, 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.

The CTA *en banc* further held that, contrary to petitioner's claim, the *Aichi Doctrine* was not effectively abandoned by the Supreme Court in its rulings in *Hitachi Global Storage Technologies Corp v. Commissioner of Internal Revenue*,^[13] *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,^[14] and *Kepco Philippines Corporation v. Commissioner of Internal Revenue*.^[15] It observed that in PGAPL's cited cases, the issue of compliance with the 120- and 30-day periods under Section 112 of the *NIRC* was never squarely raised. Thus, *Aichi* remains the prevailing doctrine on the compliance with the 120- and 30-day periods.

The CTA *en banc* further ruled that *Hitachi*, *Silicon*, and *Kepco* could not have overturned *Aichi*. Such reversal would run counter to the constitutional mandate that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the Supreme Court sitting *en banc*.^[16]

The CTA *en banc* also denied petitioner's motion for reconsideration.^[17] Hence, on December 28, 2010, PGAPL filed the present petition.

PGAPL insists that this Court had abandoned the *Aichi* Doctrine not only in *Hitachi, Silicon*, and *Kepco*, but also in *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*,^[18] *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*,^[19] and *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*.^[20]

PGAPL also posits that the premature filing of its judicial claim is not fatal to its case. It is not jurisdictional, but merely a failure to exhaust administrative remedies, which, when analyzed more closely, only amounts to a lack of cause of action. Thus, its petition before the CTA might have been infirm, but the CIR should be deemed to have waived this infirmity when it did not file a motion to dismiss and opted to participate at the trial.

PGAPL further argues that its constitutional rights to due process and equal protection of laws were violated when their judicial claim for tax credit or refund was dismissed due to noncompliance with the *Aichi* Doctrine. It noted that the claims filed by the taxpayers in *Intel*,^[21] *San Roque*,^[22] *Panasonic*,^[23] *AT&T*,^[24] *Hitachi, Silicon, Kepco, Microsoft, Southern Philippines Power*, and *Western Mindanao Power* were given due course despite the similar failure to observe the 120- and 30-day periods.

Finally, petitioner claims that even assuming that the *Aichi* Doctrine has not been overturned, it does not apply to its case, because the facts in *Aichi* are not identical with those in the present case. Further, the respondent should be considered estopped from questioning the jurisdiction of the CTA, considering that it has participated in all stages of the case.

On February 6, 2013,^[25] we required the CIR to comment on the petition.

In the meantime, on February 12, 2013, we decided the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*, *Taganito Mining Corporation v. Commissioner of Internal Revenue*, and *Philex Mining Corporation v. Commissioner of Internal Revenue*.^[26] In *San Roque-Taganito*, we recognized the effectivity of BIR Ruling No. DA-489-03, which 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." We said:

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 first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. **The second exception 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 (*emphasis ours*).

In finding that the said BIR ruling is a **general interpretative rule**, which is an exception to the doctrine laid down in *Aichi*, this court held that taxpayers **acting in good faith** should not be made to suffer for adhering to general interpretative rules of the CIR interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the CIR or this court. Thus, We clarified that **strict compliance with the 120- and 30-day periods is necessary for a judicial claim of tax credit or refund to prosper, except for the period from December 10, 2003, the issuance of BIR DA-489-03, to October 6, 2010, when this court adopted the *Aichi* Doctrine.** Hence, a judicial claim for tax credit or refund filed within the period mentioned above will be deemed to have been filed on time.

On May 6, 2013, even before the CIR could comment, PGAPL filed a manifestation^[27] invoking in its favor this court's ruling *San Roque-Taganito*. Petitioner claims that since its judicial claim was filed before the CTA on September 27, 2007, when BIR Ruling No. DA-489-03 was in effect, its judicial claim should be deemed as having been timely filed.

In her comment^[28] dated June 11, 2013, the CIR argues that her office has the exclusive and original jurisdiction to interpret tax laws, subject to the review of the Secretary of Finance, as provided in Section 4 of the NIRC. Hence, BIR Ruling No. DA-489-03 was issued *ultra vires*, having been issued by BIR Deputy Commissioner Jose Mario C. Bunag, not by the CIR. The CIR further claims that even if we assume that the said ruling is valid, it still does not apply to the case of PGAPL, because it did not prove that it acted in good faith. According to respondent, if PGAPL truly relied on the BIR ruling in good faith, it should have raised the rule set forth in the said BIR ruling as early as the time the present case was pending before the CTA.

The Court's Ruling

We find the petition meritorious.

BIR Ruling No. DA-489-03 is an exception to the Aichi Doctrine

Under Section 112 of the NIRC,^[29] if the administrative claim for tax credit or refund of input taxes is not acted upon by the CIR within 120 days from the date of submission of complete documents in support of the application, the taxpayer affected may appeal the unacted claim with the CTA within 30 days from the expiration of the 120-day period.

In *Aichi*, this Court ruled that observance of the 120- and 30-day periods is crucial in the filing of an appeal before the CTA. By "crucial," this Court meant that its observance is jurisdictional and mandatory, not merely permissive.

Contrary to the PGAPL's claim, this court has not abandoned the *Aichi* doctrine, more specifically in *Intel, San Roque (2009), Panasonic, AT&T, Hitachi, Silicon, Kepco, Microsoft, Southern Philippines Power Corporation, and Western Mindanao Power Corporation*.

While all such cases dealt with claims for tax credit or refund of excess input tax, the rulings of this Court were on the issue of compliance with applicable requirements supporting the taxpayer's claim. The issue of whether compliance with the 120- and 30-day periods under Section 112 of the NIRC is mandatory and jurisdictional was never squarely raised in any of the petitioner's cited cases.

The basic rule is that past decisions of this Court be followed in the adjudication of cases. However, for a ruling of this Court to come within this rule (known as *stare decisis*), the Court must categorically rule on an issue expressly raised by the parties; it must be a ruling on an issue directly raised.^[30] When the court resolves an issue merely *sub silentio*, *stare decisis* does not apply on the issue touched upon.

In fact, the same argument was struck down by this court in *San Roque-Taganito*. There, we held that, "[a]ny issue, whether raised or not by the parties, but not passed upon by the court, does not have any value as a precedent."^[32] (*emphasis in the original*)

From this perspective, the *Aichi* Doctrine could not have been overturned by subsequent cases before this Court that were decided based on another issue and the application of a different doctrine or rule of law. In the same vein, the cases cited by PGAPL are irrelevant to the present case, because they did not rule on the jurisdictional and mandatory nature of the 120- and 30-day periods.

Indeed, *Aichi* is the prevailing doctrine on the matter of mandatory compliance with the 120- and 30-day periods in the filing of judicial claims of tax credit or refund before the CTA. However, in the manner of most rules, the *Aichi* Doctrine is also subject to exceptions.

In accordance with the equitable estoppel principle under Section 246 of the NIRC,^[33] we ruled in *San Roque-Taganito* that there are exceptions to the strict rule that compliance with the *Aichi* Doctrine is mandatory and jurisdictional, one of which is BIR Ruling No. DA-489-03. If the CIR issues a ruling, either a specific one applicable to a particular taxpayer or a general interpretative rule applicable to all taxpayers, and, as a result, misleads the taxpayers affected by the rule, into filing prematurely judicial claims with the CTA, the CIR cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim.^[34]

Since then, this Court has consistently adopted the ruling in *San Roque-Taganito* in holding that BIR Ruling No. DA-489-03 is an exception to the *Aichi* Doctrine.^[35] We see no reason to disturb what is now a settled ruling.

Therefore, as a general interpretative rule, all taxpayers may rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003, until its effective reversal by the *Aichi* Doctrine adopted on October 6, 2010. Thus, judicial claims for tax credit or refund instituted before the CTA should be given due course, despite their failure to comply with the 120- and 30-day periods.