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FIRST DIVISION

[G.R. No. 202071, February 19, 2014]

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

RESOLUTION

SERENO, C.J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Tax Appeals (CTA) *En Banc* Decision[1] and Resolution[2] in CTA EB No. 746, which denied petitioner's claim for refund of unutilized input value-added tax (VAT) for not observing the mandatory 120-day waiting period under Section 112[3] of the National Internal Revenue Code.

On 26 September and 13 December 2006, petitioner filed administrative claims with the Bureau of Internal Revenue (BIR) for the refund or credit of the input VAT attributable to the former's zero-rated sales covering the periods 1 July-30 September 2004 and 1 October-31 December 2004, respectively.[4]

On 2 October and 29 December 2006, petitioner filed judicial claims docketed as CTA Case Nos. 7523 and 7556, respectively, for the aforementioned refund or credit of its input VAT.[5] Respondent filed separate Answers to the two cases, which were later consolidated, basically arguing that petitioner failed to substantiate its claims for refund or credit.[6]

Trial on the merits ensued.[7] On 17 January 2011, the CTA First Division rendered a Decision[8] dismissing the judicial claims for having been prematurely filed. It ruled that petitioner had failed to observe the mandatory 120-day waiting period to allow the Commissioner of Internal Revenue (CIR) to decide on the administrative claim.[9] Petitioner's Motion for Reconsideration was denied on 15 March 2011.[10]

Petitioner thereafter filed a Petition for Review before the CTA *En Banc*. The latter, however, issued the assailed Decision affirming the ruling of the CTA First Division. Petitioner's Motion for Reconsideration was denied in the assailed Resolution.

Petitioner filed the present petition[11] arguing mainly that the 120-day waiting period, reckoned from the filing of the administrative claim for the refund or credit of unutilized input VAT before the filing of the judicial claim, is not jurisdictional. According to petitioner, the premature filing of its judicial claims was a mere failure to exhaust administrative remedies, amounting to a lack of cause of action. When respondent did not file a motion to dismiss based on this ground and opted to participate in the trial before the CTA, it was deemed to have waived such defense.

On 3 June 2013, we required[12] respondent to submit its Comment,[13] which it filed on 4 December 2013. Citing the recent case *CIR v. San Roque Power Corporation*,[14] respondent counters that the 120-day period to file judicial claims for a refund or tax credit is mandatory and jurisdictional. Failure to comply with the waiting period violates the doctrine of exhaustion of administrative remedies, rendering the judicial claim premature. Thus, the CTA does not acquire jurisdiction over the judicial claim.

Respondent is correct on this score. However, it fails to mention that *San Roque* also recognized the validity of BIR Ruling No. DA-489-03. The ruling 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."[15]

The Court, in *San Roque*, ruled that equitable estoppel had set in when respondent issued BIR Ruling No. DA-489-03. This was a general interpretative rule, which effectively misled all taxpayers into filing premature judicial claims with the CTA. Thus, taxpayers could rely on the ruling from its issuance on 10 December 2003 up to its reversal on 6 October 2010, when *CIR v. Aichi Forging Company of Asia, Inc*. [16] was promulgated.

The judicial claims in the instant petition were filed on 2 October and 29 December 2006, well within the ruling's period of validity. Petitioner is in a position to "claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity."[17]

WHEREFORE, the petition is **GRANTED**. The Decision and Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 746 are **REVERSED** and **SET ASIDE**. This case is hereby **REMANDED** to the CTA First Division for further proceedings and a determination of whether the claims of petitioner for refund or tax credit of unutilized input value-added tax are valid.

SO ORDERED.

Leonardo-De Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.*, concur.

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[1] *Rollo*, pp. 9-23. The Decision dated 20 December 2011 was penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas concurring. Associate Justice Lovell R. Bautista penned a Dissenting Opinion.

[2] Id. at 29-35. The Resolution dated 24 May 2012 was penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas concurring.

[3] SEC. 112. *Refunds or Tax Credits of Input Tax*. —