REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

UNIVERSAL WEAVERS CORPORATION,
Respondent.

CTA EB NO. 1348
(CTA Case No. 8566)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:

FEB 09 2017 3:55 p.m.

x- -x

DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) pursuant to Section 3(b), Rule 8 of the Revised Rule of the Court of Tax Appeals seeking nullification of the Decision[1] dated May 11, 2015, and the Resolution[2] dated August 10, 2015 of the First Division of the Court (Court in Division).

[1] Rollo, CTA EB Case No. 1348, pp. 29-41.
[2] Rollo pp. 42-47.

THE FACTS

The facts as stated in the Decision of the Court in Division are as follows:

> "Petitioner[3] Universal Weavers Corporation [UWC] is a corporation duly organized and existing under and by virtue of Philippine laws and registered with the Philippine Economic Zone Authority (PEZA).
>
> Respondent[4] Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue, charged with the duty of assessing and collecting internal revenue taxes.
>
> On December 3, 2007, the OIC-Regional Director for revenue Region No. 4 – San Fernando, Pampanga, Zenaida G. Garcia, issued a Letter of Authority (LOA) No. 000-74245, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2006 to December 31, 2006.
>
> On December 10, 2007, petitioner received a "First Request for Presentation of Records" dated December 6, 2007, issued by Revenue District Officer (RDO) Elisa B. Pellejera of Revenue District Office No. 20 – Balanga City, Bataan, requesting certain documents and records to be made available to the said RDO.
>
> Thereafter, the Notices for Informal Conference were issued by RDO Pellejera on September 18, 2008, and March 16, 2009, respectively.
>
> A notarized waiver of Statute of Limitations dated September 16, 2009 was executed by petitioner's AVP-Plant Controller, Ms. Anita P. Sabado, extending the period of assessment for all internal revenue tax liabilities for the taxable year 2006 without indicating the expiry date of the period agreed upon to assess/collect the tax after regular three-year period of prescription (First Waiver).

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[3] Respondent in this Petition for Review.
[4] Petitioner in this Petition for Review.

On November 5, 2010, Mr. Wilfrido C. Rodriguez, petitioner's Director, executed another notarized Waiver of the Statute of Limitations extending the period of assessment of taxes for the taxable year 2006 until December 31, 2011 (Second Waiver).

On September 9, 2011, petitioner received a Preliminary Assessment Notice (PAN) dated August 12, 2011 issued by Regional Director Romulo L. Aguila, Jr. of Revenue Region No. 4 of the Bureau of Internal Revenue (BIR), assessing petitioner of deficiency income tax, expanded withholding tax and documentary stamp tax for calendar year 2006 as follows:

Deficiency Income Tax	**35%**	**5%**
Taxable net income per audit	P219,098.82	P152,265,089.04
Income tax due	P 76,684.59	P 7,613,254.45
Total income tax due		P 7, 689,939.04
Less: Tax paid		5,460,078.20
Balance		2,229,860.84
20% Interest p.a.		1,969,710.41
TOTAL AMOUNT DUE & COLLECTIBLE		**P 4,199,571.25**
Deficiency Expanded Withholding Tax		
Deficiency expanded withholding tax due		P 8,462.00
20% Interest p.a.		7,897.87
TOTAL AMOUNT DUE & COLLECTIBLE		**P 16,359.87**
Deficiency Documentary Stamp Tax		
Documentary Stamp Tax		P 19,527.32
25% Surcharge		4,881.83
20% Interest p.a.		17,249.13
TOTAL AMOUNT DUE & COLLECTIBLE		**P 41,658.28**
Compromise Penalty (RMO 19-2007)		
Compromise penalty on deficiency income tax		P 25,000.00
Compromise penalty on deficiency expanded withholding tax		2,000.00
Compromise penalty on deficiency documentary stamp tax		4,000.00
TOTAL AMOUNT DUE & COLLECTIBLE		**P 31,000.00**

In a letter dated September 23, 2011, petitioner filed its administrative protest on the PAN and further requested for immediate reinvestigation and/or reconsideration thereof.

On October 18, 2011, petitioner's AVP-Plant Controller, Ms. Anita P. Sabado, executed another notarized Waiver of the Statue of Limitations extending the period of assessment of taxes for the taxable year 2006 until December 31, 2012 (Third Waiver).

On January 13, 2012, petitioner received the Formal Letter of Demand (FLD) dated January 3, 2012 with attached Assessment Notices from the BIR for alleged deficiency taxes for the calendar year 2006, as follows:

Deficiency Income Tax	**35%**	**5%**
Taxable net income per audit	P219,098.82	P152,265,089.04

Income tax due	P 76,684.59	P 7,613,254.45
Total income tax due		P 7, 689,939.04
Less: Tax paid		5,460,078.20
Balance		2,229,860.84
20% Interest p.a.		2,155,532.14
TOTAL AMOUNT DUE & COLLECTIBLE		**P 4,385,392.98**
Deficiency Expanded Withholding Tax		
Deficiency expanded withholding tax due		P 8,462.00
20% Interest p.a.		8,603.03
TOTAL AMOUNT DUE & COLLECTIBLE		**P 17,065.03**
Deficiency Documentary Stamp Tax		
Documentary Stamp Tax		P 19,527.32
25% Surcharge		4,881.83
20% Interest p.a.		18,876.41
TOTAL AMOUNT DUE & COLLECTIBLE		**P 43,285.56**
Compromise Penalty (RMO 19-2007)		
Compromise penalty on deficiency income tax		P 25,000.00
Compromise penalty on deficiency expanded withholding tax		2,000.00
Compromise penalty on deficiency documentary stamp tax		4,000.00
TOTAL AMOUNT DUE & COLLECTIBLE		**P 31,000.00**

On February 10, 2012, petitioner filed its Protest on the FLD dated January 3, 2012. Thereafter, petitioner filed its supporting documents on April 10, 2012.

On November 5, 2012, UWC filed a Petition for Review[5] against the CIR.

On January 28, 2013, the CIR filed an Answer[6] arguing that due process was observed in the assessment of UWC's tax liabilities for calendar year 2006.

In the Joint Stipulation of Facts and Issues,[7] the parties agreed that the issues to be resolved by the Court in Division are as follows:

A. Whether the deficiency tax assessment against the petitioner should be cancelled and withdrawn for failure of respondent to comply with the due process requirements under the Tax Code and Revenue Regulation No. 12-99;

B. Whether or not petitioner is liable to pay deficiency income tax, expanded withholding tax, documentary stamp tax and compromise penalty in the amount of Four Million Three Hundred Eighty-Five Thousand Three Hundred Ninety Two Pesos and 98/100 (4,385,392.98) for the period of January 1, 2006 to December 31, 2006.

[5] Docket, CTA Case No. 8566, pp. 6-24, with Annexes.
[6] Docket, pp.181-189.
[7] Ibid. pp. 547.

During trial, both parties presented their respective evidence. In the Resolution[8] dated March 18, 2014, the parties were ordered to file their respective memorandum. On April 25, 2014,[9] the CIR filed a "Manifestation" stating that he will adopt the arguments raised in the Answer as his memorandum. On April 29, 2014,[10] UWC filed its Memorandum.

The case was submitted for decision on May 6, 2014.[11]

On May 11, 2015, the Court in Division issued the assailed Decision. The dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Final Demand and Final Assessment Notice No. 020-0704010876 is hereby ordered C**ANCELLED**.
>
> **SO ORDERED.**"

On August 10, 2015, the Court in Division issued the assailed Resolution. The dispositive portion thereof reads:

> "**WHEREFORE**, in view of the foregoing, respondent's **Motion for Reconsideration (Re: Decision dated 11 May 2015) is DENIED** for lack of merit.
>
> **SO ORDERED."**

Aggrieved, petitioner CIR filed before the Court *En Banc* this Petition for Review[12].

In the Resolution[13] dated October 6, 2015, UWC was directed by the Court *En Banc* to file its Comment in this case. On November 13, 2015,[14] UWC filed its Comment.

In the Resolution[15] dated December 15, 2015, the Court *En Banc* ordered the parties to file their respective memoranda within thirty (30) days from notice. On January 28, 2016, UWC filed its "Memorandum." [16] On February 9, 2016, the CIR filed his "Memorandum."[17]

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[8] Ibid. pp. 1396-1397.
[9] Ibid. pp. 1398-1401.
[10] Ibid. pp. 1402-1420.
[11] Ibid. p. 1422.
[12] Rollo, CTA EB CASE No.1348, pp. 10-24, with Annexes.
[13] Ibid pp. 53-54.
[14] Ibid. pp. 55-58.
[15] Ibid. pp. 60-61.
[16] Ibid. pp. 62-86.
[17] Ibid. pp. 87-92.

In the Resolution[18] dated March 22, 2016, this case was deemed submitted for decision.

ISSUE

The main issue in this case is whether the Court in Division committed reversible error when it granted the Petition for Review and ordered the cancellation of the Final Demand and Final Assessment Notice (FAN) No. 020-07604010876 for taxable year 2006.

ARGUMENTS

Petitioner argues in his Petition for Review that the waivers executed are valid; that the first waiver was cured or ratified by the execution of the subsequent waivers; that Revenue Memorandum Orders (RMO) are merely directives which are intended only for the guidance of revenue officers and RMO No. 20-90 was not published in any official publication, hence, it cannot be a source of right of a taxpayer. In his Memorandum, the CIR averred that respondent is estopped from questioning the validity of its waivers; it would be more equitable if petitioner's lapses will be allowed to pass consistent with the principle that taxes are the lifeblood of the government and their prompt and certain availability is an imperious need. Hence, respondent should be made liable for deficiency taxes as found by the CIR in its FAN.

On the other hand, UWC argues that there was defect already from the first waiver of prescription, which did not stop the running of the prescriptive period nor remedied by the subsequent defective waivers; the first waiver does not provide the period agreed upon for the waiver while the second and third waivers failed to show that the authorized officers of petitioner accepted them; there was no valid agreement on the waiver of prescription since the requisite of a valid and binding agreement between the parties are not present.

RULING OF THE COURT EN BANC

After a review of petitioner's arguments and the records of this case, the Court *En Banc* finds merit in the instant petition.

Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended, provides for a three-year period for the BIR to assess and collect any deficiency internal revenue tax from a taxpayer, thus:

> SEC. 203. – *Period of limitation upon assessment and collection.* – Except as provided in the Section 222,

[18] Ibid pp. 94-95.

> **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.** For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. *(Emphasis supplied)*

The rationale for this three-year prescriptive period is to safeguard the interest of the taxpayer against unreasonable investigation.[19]

The rule however, is not without exception. The exception is provided under Section 222(b) and (d) of the 1997 NIRC, as amended, viz:

> SEC. 222. – *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx
>
> (d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
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[19]Phil. Journalists Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004 citing J.C. Vitug and E.D. Acosta, TAX LAW AND JURISPRUDENCE 295 (2nd ed. 2002), citing Report of the Tax Commission, Vol. I, p. 98

In *Commissioner of Internal Revenue v. Kudos Metal Corporation*[20], the Supreme Court enunciated the requirements of a properly executed waiver:

> 'Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
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> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after _______ 19 ___", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
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> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
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> 3. The waiver should be duly notarized.
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> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
>
> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
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> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the

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[20] G.R. No. 178087, May 5, 2010, [620 SCRA 232].

> case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.'

The strict compliance to the rules on waiver was emphasized by the Supreme Court in *Philippine Journalist Inc. v. CIR*[21], thus:

> "A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed."

Therefore, an assessment that was given beyond the statute of limitations can never become final and executory, hence, the assessments would not be binding on the taxpayer[22] ***except*** if there is a valid waiver for the extension of the assessment and collection of the taxes due.

However, in the recent case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.),* [23] the Supreme Court held that while faithful compliance with the provisions of RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 must be observed in order for a Waiver to be valid and binding, the equitable principles of *in pari*

[21] G.R. No. 162852, December 16, 2004 [447 SCRA 214, 224].
[22] Commissioner of Internal Revenue vs. Ayala Securities Corporation, 70 SCRA 204.
[23] G.R. No. 212825, December 7, 2015.

delicto, unclean hands, and estoppel should be applied in order that the validity of defective waivers should be upheld in line with the principle that taxes are the lifeblood of the government and their prompt and certain availability is an imperious need.

In the said Decision, the Supreme Court pronounced that:

> "The general rule is that when a waiver does not comply with the requisites for its validity under RMO No. 20-90 and RDAO [No.] 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.
>
> *First,* the parties in this case are *in pari delicto* or "in equal fault." *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.
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> Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable of petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.
>
> *Second,* the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.
>
> *Third,* respondent is estopped from questioning the validity of its waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an

exception to the statute of limitations for assessment of taxes, the Court finds that the applications of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed *five* Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith."

In the case at bar, the Court in Division found the following defects in the subject waivers, viz:

1. The First Waiver[24] failed to specify the expiry date or a definite agreed date between the BIR and petitioner, within which the former may assess and collect revenue taxes. Also, both the date of execution by the taxpayers and date of acceptance by the Bureau were not indicated.
2. The Second Waiver[25] failed to indicate the date of acceptance by Revenue District Officer Atty. Abencio T. Torres.

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[24] BIR Records page 968.
[25] Ibid. page 969, Exhibit "9."

3. The Third Waiver[26] failed to indicate the date of acceptance by Revenue District Officer Roberto S. Bucoy.

Following the doctrine laid down in the Next Mobile case, the waivers in this case cannot be invalidated. Even if there is non-compliance of the subject waivers of the statute of limitations set forth by RMO No. 20-90 and RDAO No. 05-01, UWC is estopped from claiming that the three waivers are invalid and that the CIR's right to assess for taxable year 2006 has prescribed because of UWC's acts that persuaded the BIR to postpone the issuance of the assessments.

Moreover, in the protest letter[27] of UWC filed before the BIR and in the Petition filed by UWC before the Court in Division, UWC did not question the validity of the waivers and the prescription of the petitioner's right to assess respondent for the deficiency taxes. Hence, UWC cannot now invoke the said argument in order to benefit from its own wrongdoing.

The CIR and UWC are both aware of the defects of the three waivers and they transacted with each other relying on the defective waivers. Hence, both parties are at fault. The BIR is negligent in complying the provisions of the NIRC and the existing rules on the execution of waivers. While UWC, by its own positive actions of executing and delivering the subject waivers, is now estopped from questioning the validity of the waivers after it persuaded the BIR to delay the issuance of the assessment based on the waivers it executed.

The assessment for taxable year 2006 was issued on January 3, 2012[28] and was received by UWC on January 13, 2012. The FLD and Assessment notices were issued within the extended period provided in the Third Waiver executed on October 18, 2011.

From the foregoing, the Court finds that the CIR and UWC are both accountable for the defects in the Three Waivers. The application of estoppel is necessary to prevent undue injury to the government because of the cancellation of the CIR's assessment of UWC's responsibilities. Hence, this Court shall uphold the waivers.

WHEREFORE, premises considered, the Petition for Review is **GRANTED.** Accordingly, the Decision promulgated on May 11, 2015 and the Resolution promulgated on August 10, 2015 are hereby **REVERSED AND SET ASIDE.**

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26 Ibid. page 1058. Exhibit "17."
27 Ibid. page 1106.
28 BIR Record page 1086

Let this case be remanded to the Court in Division for further proceedings to determine and rule on the merits of UWC's petition in seeking nullification of the FLD and Assessment Notices dated January 3, 2012.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(I join the Concurring Opinion of P.J.)
CIELITO N. MINDARO-GRULLA
Associate Justice

(I concur with P.J.'s opinion)
CATHERINE T. MANAHAN
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1348** (CTA Case No. 8566)
	Present:
- *versus* -	Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, JJ.
UNIVERSAL WEAVERS CORPORATION, *Respondent.*	Promulgated: FEB 09 2017 ; 3:55 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in granting the Petition for Review filed by the Commissioner of Internal Revenue (CIR) and in reversing the assailed **May 11, 2015 Decision** and **August 10, 2015 Resolution** of the Court in Division which invalidated the Waivers issued by Universal Weavers Corporation (UWC) on the basis of the Supreme Court's pronouncements in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[1] and *Commissioner of Internal Revenue vs. Kudos Metal Corporation.*[2]

In denying the present Petition for Review, the *ponencia* cited the doctrine of estoppel as enunciated by the Supreme Court in *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly*

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[1] G.R. No. 162852, December 16, 2004.
[2] G.R. No. 178087, May 5, 2010.

Nextel Communications Phils., Inc.)[3] which was promulgated on **December 7, 2015 or a few months after the assailed Decision and Resolution were rendered**.

As afore-stated, the conclusions in the assailed Decision and Resolution, to which I concurred, were made on the basis of the then prevailing jurisprudence, *i.e. the Philippine Journalists case*[4] *and the Kudos Metal case,*[5] which both emphasized the significance of strict compliance with the procedure for execution of a waiver. Since the Waivers executed by UWC did not comply with the procedure set forth by the Bureau of Internal Revenue (BIR) itself, the Court in Division invalidated the Waivers and ruled that the same were not sufficient to extend the prescriptive period for the CIR to assess UWC of deficiency taxes.

In the more recent *Next Mobile case*,[6] however, the Supreme Court applied the doctrine of estoppel as an exception to the statute of limitations on the assessment of taxes, *viz.*:

> "Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities."

I submit that unless and until modified by the Supreme Court *En Banc*, the more recent pronouncement in the *Next Mobile case*[7] should be applied in determining the validity of waivers executed by taxpayers. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the

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[3] G.R. No. 212825, December 7, 2015.
[4] *Supra*, note 1.
[5] *Supra,* note 2.
[6] *Supra*, note 3.
[7] *Supra*, note 3.

final arbiter of any justiceable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[8]

All told, after re-assessment of the case and taking into consideration the pronouncement of the Supreme Court in the *Next Mobile case*,[9] I reconsider the position I have previously taken and join the *ponencia* in upholding the validity of the Waivers. As discussed in the *ponencia*, the parties in this case are in *pari delicto* in not ensuring that the requirements set forth in Revenue Memorandum Order No. 20-90 and Revenue Delegation Authority Order No. 05-01 were duly observed. By its very own acts, UWC is estopped from questioning the Waivers' infirmities. Considering that the Formal Letter of Demand and Assessment Notices dated January 3, 2012 were issued within the extended period provided in the valid Waivers, the CIR's right to assess UWC for deficiency taxes for the taxable year 2006 has not prescribed.

In view of the foregoing, I vote to **GRANT** the Petition for Review and concur with the *ponencia* to **REVERSE AND SET ASIDE** the assailed Decision and Resolution of the Court in Division and to **REMAND** the case to the Court in Division to rule on the merits of the deficiency tax assessments as contained in the Formal Letter of Demand and Assessment Notices dated January 3, 2012.

ROMAN G. DEL ROSARIO
Presiding Justice

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[8] Development Bank of the Philippines v. NLRC, March 1, 1995, 242 SCRA 59; Albert v. Court of First Instance of Manila (Branch VI), L-26364, May 29, 1968, 23 SCRA 948 cited in the Concurring Opinion of Sandoval-Gutierrez, J., Raul L. Lambino v. The Commission on Elections, G.R. No. 174153, October 25, 2006.
[9] *Supra,* note 3.