REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

CBK POWER COMPANY LIMITED,
Respondent.

CTA *EB* NO. 1624
(CTA Case Nos. 8043 & 8116)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
APR 19 2018 1:09 p.m.

x- x

RESOLUTION

MANAHAN, J.:

To be resolved before this Court is petitioner's **Motion for Partial Reconsideration Re: Decision dated January 31, 2017**[1] filed on February 27, 2018, praying for the modification of this Court's decision dated January 31, 2017 and the denial of the entire claim for refund. The instant motion is actually referring to this Court's decision dated January 31, 2018 and not January 31, 2017, the dispositive portion of which is quoted below:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The October 28, 2016 *Decision* and March 9, 2017 *Resolution*, of the CTA Special Second Division in CTA Case Nos. 8043 & 8116, are hereby **AFFIRMED**.
>
> **SO ORDERED.**

[1] *Rollo*, CTA EB No. 1624, pp. 144-154.

Petitioner argues that respondent should not benefit from the pronouncement of the Supreme Court relative to the issue of the 120-day period as it never relied on Bureau of Internal Revenue (BIR) Ruling No. DA-489-03. Petitioner insisted that when he invoked Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, in his Answer, BIR Ruling No. DA-489-03 was effectively revoked citing the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[2]

Petitioner also argues that the issuance of Revenue Regulation (RR) No. 16-2005 absolutely revoked the said ruling and that respondent failed to submit the complete documents to support its claim, hence, the 120-day period will not commence to run rendering this Court without jurisdiction on the judicial claim of the same.

We deny the Motion for Partial Reconsideration.

After a close and thorough scrutiny of petitioner's arguments, the motion lacks merit. The arguments of petitioner are a mere rehash of those adequately discussed and ably passed upon already by the Court *En Banc*, to wit:

> "Such duty to follow the legal doctrine enunciated by the Supreme Court is not only pursuant to the doctrine of judicial notice but because it is the only institution which the courts should follow as pronounced in the case of *Manila Electric Company v. Philippine Consumers Foundation, Inc. et al.*, to wit:
>
>> A lower court cannot reverse or set aside decisions or orders of a superior court, especially of this Court, for to do so will negate the principle of hierarchy of courts and nullify the essence of review. A final judgment, albeit erroneous, is binding on the whole world. Thus, it is the duty of the lower courts to obey the Decisions of this Court and render obeisance to its status as the apex of the hierarchy of courts. "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation." "**There is only one Supreme Court from whose decisions all other courts should take their bearings**," as eloquently declared by Justice J. B. L. Reyes. (*Emphasis supplied*)

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[2] G.R. No. 153205 dated January 22, 2007.

xxx xxx

Further, the ruling on the exception to the 120+30-day mandatory period to be observed by the taxpayers before filing their judicial claim was not only enshrined in the abovementioned cases but also in the later case of *Commissioner of Internal Revenue* v. *Toledo Power Company,* to wit:

> Pursuant to Section 112 (A) and (D) of the NIRC, a taxpayer has two (2) years from the close of the taxable quarter when the zero-rated sales were made within which to file with the CIR an administrative claim for refund or credit of unutilized input VAT attributable to such sales. The CIR, on the other hand, has 120 days from receipt of the complete documents within which to act on the administrative claim. Upon receipt of the decision, a taxpayer has 30 days within which to appeal the decision to the CTA. However, if the 120-day period expires without any decision from the CIR, the taxpayer may appeal the inaction to the CTA within 30 days from the expiration of the 120-day period.
>
> In *Commissioner of Internal Revenue v. San Roque Power Corporation,* we said that the 120+30-day period must be strictly observed **except from the date of issuance of BIR Ruling No. DA-489-03 on December 10, 2003, which allowed taxpayers to file a judicial claim without waiting for the end of the 120-day period, up to** the date of promulgation of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* on **October 6, 2010, where we declared that compliance with the 120+30-day period is mandatory and jurisdictional.** (Emphasis supplied)."

Thus, the reliance of the respondent was on the jurisprudential ruling of the Supreme Court citing the BIR Ruling No. DA-489-03.

As to the reiterated argument of petitioner on the revocation of said BIR ruling, the Court had also ruled, as follows:

> "xxx petitioner's argument that said ruling was already deemed repealed or revoked by Revenue Regulations (RR) No. 16-2005 which took effect on November 1, 2005 is belied by Revenue Memorandum Circular (RMC) No. 54-2014 which was issued on June 11, 2014.
>
> Item IV of RMC No. 54-2014 pertaining to the exception to the 120+30-day mandatory period provides that: *cm*

> **IV. Exception to the Mandatory and Jurisdictional Nature of the 120+30 day Period (BIR Ruling No. DA-489-03 dated 10 December 2003)**
>
> As an exception to the mandatory and jurisdictional 120+30 day period, it was emphasized that from the time of issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court in the Aichi case on October 6, 2010 (or a period of almost 7 years), taxpayers/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 exception, however, is limited to cases of premature filing (filing of judicial claim prior to the lapse of the 120-day period) and *does not extend to late filing of judicial claim.*

Thus, it is not true that the ruling is already repealed or revoked."

There being no new issues or matters raised by petitioner in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration Re: Decision dated January 31, 2017** is hereby **DENIED** for lack of merit. Consequently, the January 31, 2018 *En Banc's* Decision as well as the CTA Special Second Division's decision dated October 28, 2016 and resolution dated March 9, 2017 are hereby **UPHELD** and **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice