Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1427** (CTA Case No. 8459)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, JJ.
CENTRAL AZUCARERA DON PEDRO, INC., Respondent.	Promulgated: MAR 29 2017 3:21 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2] dated November 23, 2015, rendered by the Third Division of

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc Docket, pp. 30-87.

this Court in CTA Case No. 8459, and its Resolution[3] dated February 2, 2016.

This Court's Division found that majority of the assessment had prescribed due to the execution of invalid waivers of defense of prescription under the statute of limitations of the NIRC. Out of the Php345,249,425.93 representing various deficiency taxes, respondent was ordered to pay deficiency documentary stamp tax (DST) in the reduced amount of Php281,250.00.

Petitioner Commissioner of Internal Revenue (CIR) assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated November 23, 2015:

*"**WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **PARTIALLY GRANTED.** Petitioner is hereby **ORDERED TO PAY** the deficiency DST assessment in the reduced amount of Php 281,250.00, inclusive of the twenty five percent (25%) surcharge imposed under Section 248(A)(3) of the 1997 NIRC, as amended, computed as follows:*

Indemnity and Guarantee Agreements	*P*	*3,000,000.00*
Basic Deficiency DST(P3,000,000/P4x.30)	*P*	*225,000.00*
Add: 25% Surcharge		*56,250.00*
Total Amount Due	***P***	***281,250.00***

*In addition, petitioner is also **ORDERED TO PAY**:*

1. Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency of Php 225,000.00 computed from July 5, 2007 until full payment thereof, pursuant to Section 249 (B) of the 1997 NIRC; and

2. Delinquency interest at the rate of twenty percent (20%) per annum on the amount of Php 281,250, representing the basic deficiency DST of Php 225,000.00; the twenty five (25%) percent surcharge; and on the twenty (20%) percent deficiency interest which have accrued as aforestated in Item (1), computed from March 13, 2012 until full payment thereof pursuant to Section 249 (C) of the 1997 NIRC, as amended.

[3] En banc Docket, pp. 88-102.

SO ORDERED."

Resolution dated February 2, 2016:

*"**WHEREFORE**, considering the arguments and counter-arguments raised by respondent and petitioner, respectively, respondent's 'Motion for Reconsideration (Re: Decision Promulgated 23 November 2015)' is hereby **DENIED** for lack of merit.*

SO ORDERED."

The pertinent facts as narrated by this Court's Division in its Decision read as follows:

"The Parties

Petitioner[4] is a corporation organized and existing under the laws of the Philippines, holding office at 6th Floor, Cacho-Gonzales Building, 101 Aguirre Street, Legaspi Village, Makati City. It is principally engaged in the business of manufacturing, refining and trading sugar and molasses.

Respondent[5] is the duly appointed Commissioner of Internal Revenue ("CIR"), holding office at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On January 15, 2007, petitioner received a Notice from respondent that it is a Large Taxpayer, pursuant to Revenue Regulations ("RR") No. 1-98.

Petitioner received Letter of Authority No. 00011820 ("LOA") dated October 10, 2007 from the BIR, authorizing the examination of its books of account and other financial records for all internal revenue taxes for the fiscal year ending June 30,2007.

A Notice of Informal Conference ("NIC") dated August 18, 2010 was received by petitioner on even date from the Large Taxpayers Excise Audit Division I ("LTEAD") of the Large Taxpayers Service ("LTS") of the BIR. The NIC, pursuant to the LOA, informed the petitioner of the

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[4] Commissioner of Internal Revenue (CIR) was the respondent before this Court in Division and thereafter the petitioner before this Court en banc.
[5] Ibid.

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proposed deficiency IT, VAT, WTC, EWT and DST assessments for fiscal year ending June 30, 2007.

Petitioner received a Preliminary Assessment Notice ("PAN") from Assistant Commissioner Zenaida G. Garcia of the LTS (Excise and Large Taxpayers District Office), informing petitioner of the proposed deficiency IT, VAT, WTC, EWT and DST assessments amounting to Php1,084,740,400.25, inclusive of interest and compromise penalty.

Subsequently, petitioner was made to execute its First Waiver of Statute of Limitations Under the National Internal Revenue Code ("NIRC") signed by petitioner and the Assistant CIR on April 26, 2010 and June 21, 2010, respectively.

Thereafter, petitioner and respondent executed a Second Waiver signed by petitioner and the Assistant CIR on October 18, 2010 and October 28, 2010, respectively. Lastly, a Third Waiver was signed by petitioner and the Assistant CIR on January 12, 2011 and February 9, 2011, respectively.

On May 6, 2011, petitioner received a Formal Letter of Demand ("FLD") with attached Final Assessment Notice ("FAN") and Details of Discrepancy, reiterating and increasing the alleged deficiency IT, VAT, WTC, EWT and DST assessments of petitioner to the aggregate amount of Php1,429,024,808.10, inclusive of interest and compromise penalty.

A Final Decision on Disputed Assessment ("FDDA") dated March 13, 2012 was received by petitioner on even date and was issued by Officer in Charge - Assistant Commissioner Alfred S. Misajon of LTS. The FDDA states that after evaluation of the documents and records submitted, the office found deficiency IT, VAT, WTC, EWT and DST for fiscal year ending June 30,2007 in the aggregate amount of Php345,249,425.93, inclusive of interest and compromise penalty, xxxx.

xxx xxx xxx.

The FDDA further provides that the same serves as the final decision of respondent on the matter, which is appealable to the Court of the Tax Appeals ("CTA") within thirty (30) days from receipt.

Hence, petitioner was left with no recourse but to seek redress from the Court on April 11, 2012 through the present Petition for Review.

On July 2, 2012, respondent filed her Motion to Admit Attached Answer; which the Court, in a Resolution dated August 6, 2012, granted, and accordingly the attached Answer was admitted.

Respondent interposed xxx Special and Affirmative Defenses in her Answer:

xxx xxx xxx.

Petitioner and respondent filed their respective Pre-trial Briefs on October 1, 2012 and September 18,2012.

On November 14,2012, the parties filed their Joint Stipulation of Facts ("JSFI"), thus, a Pre-Trial Order was issued on December 12, 2012. On March 21, 2014, petitioner filed its Formal Offer of Evidence with Motion for Permanent Marking, which was resolved by the Court in its Resolution dated June 17, 2014.

On August 8, 2014, respondent filed her Formal Offer of Documentary Evidence, which was resolved by the Court in its September 16, 2014 Resolution.

In compliance to the July 24,2014 Minute Resolution of the Court granting the parties a period of thirty (30) days from receipt of the Court's Resolution on respondent's Formal Offer of Evidence to file their respective memoranda, petitioner and respondent then filed their Memoranda on October 22, 2014, and November 24, 2014, respectively. On December 1, 2014, the Court promulgated a Resolution submitting the case for Decision, xxx."

On November 23, 2015, this Court's Division partially granted respondent corporation's petition. This Court's Division ruled that the assessment on various deficiency taxes had prescribed due to the execution of invalid waivers of defense of prescription under the statute of limitations of the NIRC. Out of the Php345,249,425.93 representing deficiency Income Tax, VAT, Withholding Tax on Compensation, Withholding Tax-Expanded and Documentary Stamp Tax, this Court's Division ordered the payment of deficiency DST assessment in the amount of Php 281,250.00, inclusive of the twenty five percent (25%) surcharge. Petitioner CIR filed a Motion for Reconsideration. Said motion was denied for lack of merit. Hence, the present petition was filed.

Petitioner raised the following issues:

I.
WHETHER THE WAIVERS EXECUTED BY BOTH PARTIES ARE VALID SINCE THE DOCTRINE OF ESTOPPEL IS APPLICABLE IN THE INSTANT CASE.

II.
WHETHER THE PRESCRIPTIVE PERIOD PROVIDED UNDER SECTION 203 OF THE TAX CODE DOES NOT EXTEND TO WITHHOLDING TAXES CONSIDERED AS PENALTIES.

III.
WHETHER RESPONDENT IS LIABLE TO PAY THE TOTAL AMOUNT OF Php345,249,425.93 REPRESENTING DEFICIENCY INCOME TAX, VAT, WITHHOLDING TAX ON COMPENSATION, WITHHOLDING TAX-EXPANDED AND DOCUMENTARY STAMP TAX FOR FISCAL YEAR ENDING JUNE 30, 2007.

Petitioner argued that respondent cannot impugn the validity of the waiver which it validly executed citing the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[6] Petitioner claims that respondent benefited from the execution of the waivers since respondent needed sufficient time to gather documents and that the submission of those additional documents led to the reduction of its deficiency taxes from Php1,429,024,808.10 in the PAN [7] to Php345,249,425.93 in the FDDA[8].

Petitioner further argued that RMO 20-90 is an internal memorandum of the Bureau of Internal Revenue (BIR) which is not a source of a right of a taxpayer; that a board resolution is not required when the waiver was signed by any of the corporation's responsible officials; that petitioner should not be made to suffer the consequences of the negligence of the notary public; that a withholding tax, assessment is not a tax and therefore not covered by the

[6] G.R. No. 212825, December 7, 2015.
[7] Preliminary Assessment Notice
[8] Final Decision on Disputed Assessment.

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prescriptive period to assess taxes; and that respondent is liable to pay for additional deficiency DST.

In its Comment[9], respondent avers that the arguments raised were a mere rehash of the arguments that were considered and passed upon by the Third Division of this Court. Respondent insists that petitioner's right to assess the alleged deficiency for the fiscal year ending June 30, 2007 has already prescribed and that the FDDA is void to the extent that it raised new deficiency assessment outside the scope of the FAN, thus depriving respondent of due process.

The main issue is whether the waivers of defense of prescription under the statute of limitations of the NIRC executed by respondent are valid.

We resolve.

The relevant provisions of law and regulations pertaining to the prescription of assessment of deficiency taxes and exception thereto are Sections 203 and 222 (b) of the National Internal Revenue Code (NIRC) and Revenue Memorandum Order ("RMO") No. 20-90, dated April 4, 1990 as modified by Revenue Delegation Authority Order ("RDAO") No. 05-01, dated August 2, 2001.

Section 203 of the NIRC provides as follows:

> *"SECTION 203. Period of Limitation Upon Assessment and Collection. - Except as provided in Section 222, 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 a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For 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." (Emphases ours)*

The law is clear. Pursuant to Section 203 of the 1997 NIRC, respondent should issue an assessment for deficiency

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[9] En banc Docket, pp. 109-128.

taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond this three (3)-year prescriptive period shall not be valid considering that no proceeding in court shall be begun after the expiration of such period.

Section 222(b) of the 1997 NIRC provides the exception, to wit:

> *"SECTION 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –*
>
> *XXX XXX 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.**" (Emphases ours)*

The law is likewise clear on the exception to the prescriptive period of assessment. Pursuant to Section 222(b) of the 1997 NIRC, the prescriptive period in Section 203 of the 1997 NIRC may be extended by way of a written agreement between the taxpayer and the CIR, if entered into before the lapse of the said period.

In implementing Section 222(b) of the NIRC, petitioner issued Revenue Memorandum Order ("RMO") No. 20-90, dated April 4, 1990, which provides the procedure for the proper execution of a "Waiver of the Statute of Limitations under the National Internal Revenue Code", to wit:

> *"xxx. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed:*
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> *1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after___ 19__ " should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription.*

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The period agreed upon shall constitute the time within which to effect the assessment/ collection of the tax in addition to the ordinary prescriptive period.

2. The waiver shall be signed by the taxpayer [himself/herself] or [his/her] duly authorized representative.

In the case of a corporation, the waiver must be signed by any of its responsible officials. Soon after the waiver is signed by the taxpayer, the [CIR] or the revenue official authorized by [him/her], as hereinafter provided, shall sign the waiver indicating that the [BIR] has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. 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.

3. The following revenue officials are authorized to sign the waiver.

A. In the National Office

1. ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	*For tax cases involving not more than [Php]500,000.00*
2. Deputy Commissioner	*For tax cases involving more than [Php]500,000.00 but not more than [Php]1M*
3. Commissioner	*For tax cases involving more than [Php]1M*

B. In the Regional Offices

1. *The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.*
2. *The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/ collect is about to prescribe, regardless of amount.*

> 3. *The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/ collect is about to prescribe regardless of amount.*
> 4. *The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the 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 shall be indicated in the original copy.*
> 5. *The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/ collect shall be administratively dealt with. [Emphases ours]*

The above RMO No. 20-90 was later modified by Revenue Delegation Authority Order ("RDAO") No. 05-01[10],

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[10] REVENUE DELEGATION AUTHORITY ORDER NO. 05-01
SUBJECT : Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations
TO : All Internal Revenue Officers and Employees and Others Concerned

a. Revenue Officials Authorized to Sign the Waiver

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

A. For National Office cases
Designated Revenue Official
1. Assistant Commissioner (ACIR), - For tax fraud and policy Enforcement Service cases
2. ACIR, Large Taxpayers Service - For large taxpayers cases other than those cases falling under Subsection B hereof
3. ACIR, Legal Service - For cases pending verification and awaiting resolution of certain legal issues prior to prescription and for issuance/compliance of Subpoena Duces Tecum
4. ACIR, Assessment Service (AS) - For cases which are pending in or subject to review or approval by the ACIR, AS
5. A CIR, Collection Service For cases pending action in the Collection Service

B. For cases in the Large Taxpayers District Office (LTDO)

The Chief of the L TDO shall sign and accept the waiver for cases pending investigation/ action in [his/her] possession.

C. For Regional cases
Designated Revenue Official
1. Revenue District Officer Cases pending investigation/ verification/ reinvestigation in the Revenue District Offices
2. Regional Director Cases pending in the Divisions in the Regional Office, including cases pending approval by the Regional Director

In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign

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"Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations" dated August 2, 2001.

The Supreme Court in the cases of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[11], *Commissioner of Internal Revenue v. FMF Development Corporation*[12], *CIR v. Kudos Metal Corporation*[13], instructively held that the waiver of the statute of limitations must faithfully comply with the provisions of RMO No. 20-90 and RDAO 05-01 in order to be valid and binding.

In this case, we find the defects of the waiver as found by this Court's Division to be correct, to wit:

> *"Anent the First Waiver, the Court found that at the time the same was signed by the CIR representative on June 21, 2010, all the assessed taxes have prescribed, save for Income Tax, 4th Quarter VAT, and June CWT. Moreover, it did not include the duly notarized and written authority of Ms. Darlene A. Binay to sign the same on behalf of petitioner, same goes for the 2 other waivers. As to The Third Waiver which aims to further extend the prescriptive period from October 28, 2010 until February 19, 2011, the notary public is clearly unauthorized to notarize the same. It was notarized on February 31, 2011 but the notary public's authorization is only until December 31, 2010. It is the BIR's obligation to ensure proper notarization of the waiver, which it failed to do."*[14]

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the same under meritorious circumstances in the absence of the abovementioned officials.

The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or [its/his/her] authorized representative before affixing [his/her] signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The "WAIVER" should not be accepted by the concerned BIR office and official unless duly notarized.

b. Repealing Clause

All other issuances and/ or portions thereof inconsistent herewith are hereby repealed and amended accordingly.

c. Effectivity

This revenue delegation authority order shall take effect immediately upon approval.

[11] G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[12] G.R. No. 167765, June 30, 2008, 556 SCRA 698.
[13] G.R. No. 178087, May 5, 2010, 620 SCRA 232.
[14] En banc Docket, pp. 30-87.

While the defects of the waiver for non-compliance with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05 will generally render the waiver invalid and not effectively extend the period to assess, the Supreme Court in the case of *Commissioner of Internal Revenue v. Next Mobile, Inc.*[15], elaborates the exceptions, to wit:

> "*To be sure, both parties in this case are at fault.*
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> *Here, respondent, through Sarmiento, executed five Waivers in favor of petitioner. However, her authority to sign these Waivers was not presented upon their submission to the BIR. In fact, later on, her authority to sign was questioned by respondent itself, the very same entity that caused her to sign such in the first place. Thus, it is clear that respondent violated RMO No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials and RDAO 01-05(sic) which requires the presentation of a written and notarized authority to the BIR.*
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> *Similarly, the BIR violated its own rules and was careless in performing its functions with respect to these Waivers. It is very clear that under RDAO 05-01 it is the duty of the authorized revenue* ***official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative*** *before affixing his signature to signify acceptance of the same. It also instructs that* ***in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized****. Furthermore, it mandates that* ***the waiver should not be accepted by the concerned BIR office and official unless duly notarized.***
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> *Vis-a-vis the five Waivers it received from respondent, the BIR has failed, for five times, to perform its duties in relation thereto: to verify Ms. Sarmiento's authority to execute them, demand the presentation of a notarized document evidencing the same, refuse acceptance of the Waivers when no such document was presented, affix the dates of its acceptance on each waiver, and indicate on the Second Waiver the date of respondent's receipt thereof.*
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> *Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of*

[15] G.R. No. 212825, December 7, 2015

these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.

In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the CIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.

On the other hand, the stringent requirements in RMO 20-90 and RDAO 05-01 are in place precisely because the BIR put them there. Yet, instead of strictly enforcing its provisions, the BIR defied the mandates of its very own issuances. Verily, if the BIR was truly determined to validly assess and collect taxes from respondent after the prescriptive period, it should have been prudent enough to make sure that all the requirements for the effectivity of the Waivers were followed not only by its revenue officers but also by respondent. The BIR stood to lose millions of pesos in case the Waivers were declared void, as they eventually were by the CTA, but it appears that it was too negligent to even comply with its most basic requirements.

The BIR's negligence in this case is so gross that it amounts to malice and bad faith. Without doubt, the BIR knew that waivers should conform strictly to RMO 20-90 and RDAO 05-01 in order to be valid. In fact, the mandatory nature of the requirements, as ruled by this Court, has been recognized by the BIR itself in its issuances such as Revenue Memorandum Circular No. 6-2005, among others. Nevertheless, the BIR allowed respondent to submit, and it duly received, five defective Waivers when it was its duty to exact compliance with RMO 20-90 and RDAO 05-01 and follow the procedure dictated therein. It even openly admitted that it did not require respondent to present any notarized authority to sign the questioned Waivers. The BIR failed to demand respondent to follow the requirements for the validity of the Waivers when it had the duty to do so, most especially because it had the highest interest at stake. If it was *serious in collecting taxes, the BIR should have meticulously complied with the foregoing orders, leaving no stone unturned.*

The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05(sic), 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.

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 if 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 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 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.*
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> *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."*

Similarly, both parties in this case are at fault. Respondent executed three Waivers in favor of petitioner. The Court found that at the time the first waiver was signed by the CIR representative on June 21, 2010, it did not include the duly notarized and written authority of Ms. Darlene A. Binay to sign the same on behalf of respondent. The same goes for the two (2) other waivers. On the third Waiver which aims to further extend the prescriptive period from October 28, 2010 until February 19, 2011, the notary public is clearly unauthorized to notarize the same. It was notarized on February 31, 2011 but the notary public's authorization is only until December 31, 2010.

Respondent violated RMO No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials and RDAO 05-01 which requires the presentation of a written and notarized authority to the BIR. Likewise, petitioner violated RDAO 05-01. It is petitioner's duty to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. It also instructs that in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such

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delegation is in writing and duly notarized. Furthermore, it mandates that the waiver should not be accepted by the concerned BIR office and official unless duly notarized.

Finally, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects in the administrative level. Respondent was given the opportunity to gather and submit documents to substantiate its claims and was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. But after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor - an act which clearly constitutes bad faith[16].

In light of the *Next Mobile Case* and considering that the Court's Division found that the bulk of the assessment has prescribed due to the execution of invalid waivers of defense of prescription under the statute of limitations of the NIRC, prudence dictates that the case should be referred back to this Court's Division for the determination of the merits of respondent's petition seeking the nullification of the BIR's Final Decision on Disputed Assessment dated March 13, 2012.

WHEREFORE, premises considered, the Court resolves to **GRANT** the petition. The Decision[17] dated November 23, 2015 of the Third Division of this Court in CTA Case No. 8459, and its Resolution[18] dated February 2, 2016 are hereby **REVERSED** and **SET ASIDE**. Accordingly, let this case be remanded to the Third Division of this Court for further proceedings in order to determine and rule on the merits of respondent's petition seeking the nullification of the BIR's Final Decision on Disputed Assessment dated March 13, 2012.

SO ORDERED.

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

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[16] Commissioner of Internal Revenue v. Next Mobile, Inc., G.R. No. 212825, December 7, 2015
[17] En banc Docket, pp. 30-87.
[18] En banc Docket, pp. 88-102.

WE CONCUR:

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

(took no part)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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